

COURT FILE NO.[ ]

**IN THE ROYAL COURT OF JERSEY****(Samedi Division)****IN THE MATTER OF THE REPRESENTATION OF LYDIAN INTERNATIONAL LIMITED****AND IN THE MATTER OF THE COMPANIES (JERSEY) LAW 1991****AND IN THE MATTER OF THE LETTER OF REQUEST FROM THE ONTARIO SUPERIOR COURT  
OF JUSTICE**

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**FIRST AFFIDAVIT OF VICTOR FLORES**

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I, Victor Flores, of 6 Peach Tree Lane, Briarcliff Manor, New York, hereby make oath and say as follows:-

1. I am a director of the Representor, Lydian International Limited (**Lydian International**). As detailed below, Lydian International formed part of a broader structure of which Lydian International is the ultimate parent. I have been a director of Lydian International since June 2019. I joined the board of directors of Lydian International in June 2019 as a nominee of Orion Co IV (ED) Limited, a division of Orion Fund JV Limited (**Orion**). Orion was one of Lydian International's secured lenders.
2. Prior to my involvement with Orion and Lydian International, I had over 30 years of experience, most recently as a mining consultant advising mining companies and investment managers, with a particular focus on investment analysis, portfolio management, technical due diligence and corporate finance. From November 2009 to March 2018, I was a Partner at Paulson & Co. and Co-Portfolio Manager of the PFR Gold Fund, responsible for the firm's gold mining investments. Prior to that, I was a Managing Director and Senior Gold Analyst with HSBC Securities (USA) from March 1998 through November 2009 and served as Portfolio Manager and Analyst at US Global Investors from January 1988 until March 1998. I achieved the Chartered Financial Analyst (CFA) designation in 1992. I also serve as a Non-Executive Director on the Board of Polymetal International, the world's tenth-largest gold producer, also domiciled in Jersey.
3. Due to my involvement with Lydian International, and the other entities within the broader group, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records, press releases, and public filings of Lydian International and have spoken with certain of the directors, officers and/or employees

of the other group entities as necessary. Where I have relied upon information from others, I believe the same to be true.

4. I further confirm that the content of the Representation filed in this matter is true to the best of my knowledge, information and belief.
5. I make this affidavit in support of the Representation of Lydian International which seeks orders that the Court wind up Lydian International pursuant to Article 155 of the Companies (Jersey) Law 1991 on the grounds that it is just and equitable to do so and to make orders and give directions as prayed for to effect the orderly winding up of Lydian International.
6. There is now produced and shown to me a bundle of true copy documents marked **VF1** to which I refer.

**A. Summary of grounds for winding up Lydian International**

7. The group of which Lydian International is the ultimate parent has undergone a recent restructuring (as detailed below at paragraph 21). A structure chart illustrating the structure prior to the restructuring is exhibited at [**VF1/ page 1**] and is hereinafter referred to as the **Pre-Restructuring Lydian Group**. A structure chart illustrating the structure following the restructuring is also exhibited at [**VF1/ page 2**].
8. The principal basis upon which the orders are sought that Lydian International be wound up on just and equitable grounds is to facilitate implementation of a restructuring of the Lydian Group pursuant to the laws of Canada, in accordance with a Letter of Request issued from the Ontario Superior Court of Justice (the **Ontario Court**) to the Royal Court, as described in more detail below.
9. In addition, and in any event, I consider that it is appropriate that Lydian International is wound up on just and equitable grounds given that:
  - (a) It has lost its substratum, given that the principal asset of the Lydian Group (an Armenian gold mine and other assets connected with it) is no longer a viable economic prospect and a cease trade order has been issued against it.
  - (b) As part of its restructuring, Lydian International has assigned away its assets and been released from its material indebtedness by its major secured creditors (as detailed below). It has no further access to cash and unless it is wound up in an orderly fashion and its affairs dealt with by professional liquidators it will be left to "drift" until strike off.

10. The Pre-Restructuring Lydian Group was historically located in a range of jurisdictions being Jersey, England, Canada, the Republic of Armenia, the British Virgin Islands, the United States of America, and The Republic of Georgia.
11. It is proposed that Andrew Wood and Alex Adam of Deloitte LLP be appointed as liquidators to assist with the liquidation of Lydian International in Jersey, which is to take place in co-ordination with a wider restructuring across the various entities in the group, which is being directed out of Canada under supervision of the Ontario court.
12. I understand from Mourant Ozannes, Advocates for Lydian International, that the mechanism of a just and equitable winding up is the most appropriate method for achieving the winding up of Lydian International.

#### **B. Sources of information**

13. Lydian International has engaged Stikeman Elliot LLP (**Stikeman**) to provide advice in respect of the laws of Canada. Stikeman are obtaining primary instructions from Lydian International, are liaising with the Pre-Restructuring Lydian Group's senior lenders, have applied for restructuring relief in Canada on behalf of Lydian International and other entities within its wider group, and are coordinating the multi-jurisdictional proceedings. Alvarez & Marsal Canada Inc. are insolvency practitioners who were named as "Monitor" over Lydian International, and other entities within the wider group (as detailed below at paragraph 21).
14. Further to the onset of the Pre-Restructuring Lydian Group's financial difficulties in 2018, Edward Sellers was appointed as the Interim President and Chief Executive Officer of Lydian International. Edward Sellers has extensive experience serving as a director, advisor and lawyer to large public and private enterprises, having done so for over 30 years. He serves as President and Managing Director of Black Swan Advisors Inc. (**Black Swan Advisors**), providing independent interim governance support and leadership to enterprises in transition, decline or distress. Prior to establishing Black Swan Advisors in 2016, he served as a partner and Chair of the national restructuring practice at a leading Canadian law firm. Mr Sellers was the President and Chief Executive Officer of Lydian International from 12 June 2019 until 30 June 2020. Mr Sellers was also on the Board of Directors of Lydian International since 1 November 2018, and was appointed to the Board of Directors of the other CCAA Applicants (as defined below at paragraph 21) after 12 June 2019. I refer below to the various affidavits filed by Mr Sellers in the context of the Canadian restructuring proceedings.
15. As stated above, Mr Sellers resigned from Lydian International on 30 June 2020. The reasons for his resignation are set out below at paragraph 138, but in summary such resignation was necessary given the expiry of directors and officers insurance on 30 June 2020. I am now the sole director of Lydian International.

#### **C. The integrated nature of the Pre-Restructuring Lydian Group**

16. The Pre-Restructuring Lydian Group was highly integrated, and its business and affairs were directed primarily out of Canada. Substantially all the strategic business affairs of the Pre-Restructuring Lydian Group, including key decision making, was conducted through personnel located in Canada.
17. All entities within the Pre-Restructuring Lydian Group were borrowers or guarantors of the Pre-Restructuring Lydian Group's key secured indebtedness. The Pre-Restructuring Lydian Group's loan agreements were governed primarily by the laws of the Province of Ontario. All of the Pre-Restructuring Lydian Group's material professional advisory relationships (including its legal and audit firm engagement partners) are with professionals based in Toronto.
18. Lydian International's shares were, until recently, listed on the Toronto stock Exchange (**TSX**) and it is governed by the regulatory regime imposed on public companies by the Province of Ontario and enforced by the Ontario Securities Commission.
19. The Pre-Restructuring Lydian Group's restructuring efforts have been directed out of Toronto.

#### **D. Commencement of the Canadian restructuring proceedings**

20. Alan Hutchens, Senior Vice-President of the Monitor, swore an affidavit on 31 January 2020 which, *inter alia*, provides an overview of the Canadian federal insolvency and restructuring statute *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (Canada) (the **CCAA**) at paragraphs 5 to 12 [**VF1/ pages 4 - 6**]. In short summary, the CCAA allows insolvent corporations owing their creditors in excess of CDN 5 million to restructure their business and financial affairs.
21. On 23 December 2019 Lydian International, Lydian Canadian Ventures Corporation (**Lydian Canada**), and Lydian U.K Corporation Limited (**Lydian UK**) (collectively, the **CCAA Applicants**) applied for protection from their creditors in Canada under the CCAA on the grounds that they were unable to pay their debts (the **CCAA Application**). Certain other non-applicant entities were also granted a stay of proceedings; namely, Lydian Armenia CJSC, Lydian International Holdings Limited, Lydian Resources Armenia Limited and Lydian U.S. Corporation (together known as the **Non-Applicant Stay Parties**).
22. The following documents were filed in support of the CCAA Application:-
  - (a) Notice of Application at [**VF1/ pages 20 - 28**]; and
  - (b) Affidavit of Edward A. Sellers sworn on 22 December 2019 along with its exhibits (the **22 December Affidavit**) at [**VF1/ pages 29 - 701**].

23. By an order dated the 23 December 2019 (the **Initial Order**) [VF1/ pages 702 - 714], as amended on 23 January 2020 (the **Amended and Restated Initial Order**) [VF1/ pages 715 - 734] of the Ontario Superior Court of Justice (**Ontario Court**), the Ontario Court granted orders including:
- (a) Pursuant to paragraph 2 and 3 of the Initial Order, the CCAA Applicants including Lydian International were companies to which the CCAA applied, enjoyed certain of the benefits and the protections provided for in the CCAA Order, and remained in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the **Property**) and the business undertaken by the CCAA Applicants (the **Business**).
  - (b) Pursuant to paragraph 9 of the Initial Order, authorising the CCAA Applicants to continue negotiations with stakeholders in an effort to pursue restructuring options for the CCAA Applicants, including all avenues of refinancing of their Business or Property, subject to approval of the Court prior to any material refinancing.
  - (c) Pursuant to paragraph 18 of the Initial Order, granting a first ranking charge (the **Administration Charge**) for the benefit of the Monitor, its counsel, and the CCAA Applicants' counsel in the amount of CAD 460,740 (being USD 350,000 as per the Bank of Canada's published exchange rate on 20 December 2019) as security for their professional fees and disbursements.
  - (d) Pursuant to paragraphs 10 to 14 of the Initial Order, the CCAA Applicants including Lydian International were afforded wide ranging protection from their creditors, such that no proceedings could be continued or commenced against them or the Monitor, or affecting their Business or Property, until 2 January 2020, all being subject to further orders that may be made by the Ontario Court.
  - (e) Pursuant to paragraph 21 of the Initial Order, Alvarez & Marsal Canada Inc. was appointed by the Ontario Court as the monitor (the **Monitor**), an officer of the Ontario Court, to monitor the business and financial affairs of the CCAA Applicants pursuant to the CCAA and the Initial Order, and to report to the Ontario Court.
  - (f) Pursuant to the CCAA and the Initial Order, the Monitor had broad powers including the authorisation to have full and complete access to the premises, books, records, data (including in electronic form) and other financial documents of the CCAA Applicants, to assess the CCAA Applicants' business and financial affairs and to perform its duties arising under the Initial Order (paragraph 22(d) of the Initial Order).

(g) Pursuant to paragraph 42 of the Initial Order, the CCAA Applicants and Monitor were authorised *"to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of [the Initial Order] and for assistance in carrying out the terms of [the Initial Order]"*. The same paragraph further provides that *"the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada."*

24. Elizabeth Pillon, a partner at Stikeman and Head of the Restructuring Group, swore an affidavit dated 18 February 2020 [**VF1/ pages 735 - 748**], which explains the jurisdictional basis upon which the Ontario Court placed Lydian International (a Jersey company) into CCAA proceedings in Canada.

#### **E. Background to initial CCAA Application**

25. The facts and matters which caused the CCAA Applicants and the Non-Applicant Stay Parties to seek the assistance of the Ontario Court are as set out in the 22 December Affidavit to which I refer [**VF1/ pages 29 - 701**]. I summarise below certain key facts and matters from the 22 December Affidavit, which reflected the situation facing the Pre-Restructuring Lydian Group at the time of the CCAA Application.

##### The CCAA Applicant entities

26. The following entities were applicant entities in respect of the CCAA Application.

##### *Lydian International*

27. Lydian International is a public company continued under the laws of the Jersey, from the Province of Alberta pursuant to the *Companies (Jersey) Law 1991*. Lydian International's registered office is located at Bourne House 1st Floor, Francis Street, St. Helier, Jersey.
28. Lydian International was originally incorporated under the *Business Corporations Act (Alberta)* on February 14, 2006 as "Dawson Creek Capital Corp.", which became Lydian International on December 12, 2007.
29. Lydian International had two types of securities listed on the Toronto Stock Exchange (**TSX**): (i) ordinary shares trading under the symbol LYD, which were delisted from the TSX on 5 February 2020; and (ii) warrants that were, until their expiry in 2017, traded under the symbol LTD.WT.

##### *Lydian Canada*

30. Lydian Canada is a direct, wholly owned subsidiary of Lydian International. Lydian Canada is incorporated under the Business Corporations Act (British Columbia) and has a registered

head office at 5300 Commerce Court West, 199 Bay Street, Toronto, Ontario. Its registered and records office is located at Park Place, 666 Burrard Street, Suite 1700, Vancouver, British Columbia.

*Lydian UK*

31. Lydian UK is a corporation incorporated in the United Kingdom under the laws of England and Wales. Lydian UK is a direct, wholly owned subsidiary of Lydian Canada, with its head office located at 11-12 St. James's Square, 3rd Floor, Suite 1, London, United Kingdom. Lydian UK has no material trading assets, commercial contracts or trade creditors in the UK.

The Non-Applicant Stay Parties

32. In addition to the above entities, which were the CCAA Applicants, the Non-Applicant Stay Parties were also granted a stay of proceedings pursuant to the terms of the Initial Order and the Amended and Restated Initial Order. Further particulars of the Non-Applicant Stay Parties are set out below.
- (a) Lydian U.S. Corporation (**Lydian US**): a corporation incorporated under the laws of the State of Colorado, United States, which is a direct, wholly owned subsidiary of Lydian International;
  - (b) Lydian International Holdings Limited (**Lydian Holdings**): a corporation incorporated under the laws of the British Virgin Islands, which is a direct, wholly owned subsidiary of Lydian UK;
  - (c) Lydian Resources Armenia Limited (**Lydian Resources**): a corporation incorporated under the laws of the British Virgin Islands, which is a direct, wholly owned subsidiary of Lydian Holdings; and
  - (d) Lydian Armenia CJSC (**Lydian Armenia**): a corporation incorporated under the laws of the Republic of Armenia, which is a direct, wholly owned subsidiary of Lydian Resources. Lydian Armenia owns and operates the Amulsar Project (defined below).
33. It was due to the integrated nature of the Pre-Restructuring Lydian Group that the CCAA Applicants applied for and were granted a stay of proceedings in respect of the Non-Applicant Stay Parties pursuant to the terms of the Initial Order.

The Amulsar gold mine

34. The primary business interest of the Pre-Restructuring Lydian Group was the exploration and development of a gold mine in Armenia (the **Amulsar Project**), which was the sole operating asset of the Pre-Restructuring Lydian Group. The Amulsar Project was owned and operated

by Lydian Armenia, which as described above was a wholly owned subsidiary of Lydian International and within the wider Pre-Restructuring Lydian Group.

35. The Amulsar Project was funded by a combination of equity, debt capital, and stream financing arrangements (the latter being a type of financing arrangement common to the mining industry). The debt and stream financing arrangements were secured by substantially all the assets of Lydian Armenia and Lydian International and the shares of various entities of the Pre-Restructuring Lydian Group.
36. Construction of the Amulsar Project began in October 2016 and was over 75% complete by June 2018. However, since June 2018 and continuing to the present time Lydian Armenia has been unable to access and complete construction at the Amulsar Project due to, amongst other factors, unlawful blockades by protestors and the arbitrary actions by the Government of Armenia (**GOA**), as described in detail in the 22 December Affidavit starting at paragraph 43. Those actions include:
  - (a) unlawful blockades at the Amulsar Project;
  - (b) improper, unsupported and retroactive challenges by GOA officials to previously granted mining rights, mining agreements and water permits held by Lydian Armenia; and
  - (c) failure by the police and GOA to act in removing unlawful protestors and granting Lydian Armenia access to the Amulsar Project.
37. As a result of this hardship, the Pre-Restructuring Lydian Group took various steps to maintain stability over its financial position and seek financial alternatives. These steps included:
  - (a) multiple attempts to resolve issues with the GOA and Armenian police, including taking action in the Armenian courts to seek re-entry to the Amulsar Project;
  - (b) negotiating several forbearance agreements with its lenders, the most recent of which expired on 20 December 2019 (the **Forbearance Agreements**);
  - (c) cost reduction efforts, including a reduction in the Pre-Restructuring Lydian Group's workforce by over 90%;
  - (d) considering numerous re-start options, including the development of a revised National Instrument 43-101 Technical Report to assess the impact of the blockade on construction, and the assessment of sale or refinancing options (National Instrument 43-101 is a national instrument for the Standards of Disclosure for Mineral Projects within Canada. The Instrument is a codified set of rules and



guidelines for reporting and displaying information related to mineral properties owned by, or explored by, companies which report these results on stock exchanges within Canada);

- (e) canvassing the market for refinancing or sale options;
  - (f) retaining various experts to advise the Pre-Restructuring Lydian Group;
  - (g) commencing a process to solicit interest in financing international investment arbitration proceedings against the GOA, pursuant to bilateral investment treaties, on the basis that the GOA's actions and inactions have seriously undermined the value of the Pre-Restructuring Lydian Group's investment in the Amulsar Project (the **Treaty Arbitration**); and
  - (h) commencing a solicitation process for parties interested in financing the Treaty Arbitration.
38. In the two years since the illegal blockades began, Lydian Armenia employed various efforts to resolve the factors that restricted operations at the Amulsar Project, as set out above, however this has been to no avail and access to the Amulsar site has never been re-gained. The mine site deteriorated over time due to numerous factors, including exposure to harsh weather conditions and an inability to take steps to maintain and protect the equipment and structures on the site. The situation inevitably prevented Lydian Armenia from generating revenue in the ordinary course.

#### Financing arrangements

39. The particulars of the financing arrangements are set out at paragraphs 101 to 105 of the 22 December Affidavit. A summary is set out below.
40. As stated above, the Pre-Restructuring Lydian Group was focused on exploring and developing the **Amulsar Project**. The Amulsar Project was funded by a combination of equity, debt capital, and streaming agreements.
41. The debt and stream financing arrangements were secured by substantially all the assets of Lydian International and Lydian Armenia and the shares of various entities of the Pre-Restructuring Lydian Group.
42. As at 30 September 2019, prior to applying for protection under the CCAA, the CCAA Applicants had liabilities totalling approximately USD 395 million. The majority of those obligations related to various term loans and streaming obligations to Orion, Resource Capital

Fund VI L.P. (**RCF**), and Osisko Bermuda Limited (**Osisko**) (collectively, the **Senior Lenders**).

43. The Pre-Restructuring Lydian Group also entered into secured credit facilities in respect of equipment associated with the Amulsar Project. The equipment financiers are Ameriabank Closed Joint Stock Company (**Ameriabank**), Caterpillar Financial Services (UK) Limited (**CAT**) and ING Bank N.V (**ING**). The ING facility was subsequently transferred to AB Svensk Exportkredit (publ). Together these are referred to below as the **Equipment Financiers**. Lydian International guaranteed Lydian Armenia's obligations to the Equipment Financiers. As at the time of the 22 December Affidavit being sworn, the CCAA Applicants had total liabilities to their Equipment Financiers totalling over USD 89.3 million.
44. The liabilities owed by Lydian International to the Senior Lenders and the Equipment Financiers are regulated by the terms of various inter-creditor agreements, the cumulative effect of which is that, amongst other things:
  - a. the Equipment Financiers have a first ranking and senior lien in the equipment financed by them at Lydian Armenia; and
  - b. Orion, as collateral agent for the Senior Lenders, has a first ranking and senior lien in all other assets of the Pre-Restructuring Lydian Group and a second ranking lien in, amongst other things, the equipment financed by the respective Equipment Financiers.

#### **F. Recognition by the Royal Court**

45. The Ontario Court issued a letter of request (the **First Letter of Request**) to the Royal Court of Jersey dated 23 December 2019, asking the Royal Court of Jersey to assist it by making orders to, *inter alia*, recognise (i) the appointment of the Monitor in Jersey, and (ii) the stay of proceedings imposed in the context of the ongoing CCAA proceedings (the **CCAA Proceedings**) in Jersey [**VF1/ pages 749 - 752**].
46. By an Act of Court dated 25 February 2020, the Deputy Bailiff of Jersey made orders recognising the CCAA Proceedings and that:-
  - (a) The appointment of the Monitor be registered in the rolls of the Royal Court and notified to the Jersey Financial Services Commission;
  - (b) Lydian International would remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever in Jersey and, subject to further order of the Ontario Court, Lydian International would continue to carry on business in a manner consistent with the preservation of its business and property;

- (c) No proceeding or enforcement process in or out of any court or tribunal was to be commenced or continued against or in respect of Lydian International, or affecting its business or its property, except with the written consent of Lydian International, or with leave of the Ontario Court; and
- (d) Lydian International and any party affected by the orders made by the Royal Court, including the creditors of Lydian International, had liberty to apply.

**[VF1/ pages 753 - 754]**

- 47. No application was received in respect of parties affected by the above orders pursuant to their liberty to apply.
- 48. The Deputy Bailiff published the reasons for his decision in the matter of the Representation of Lydian International Limited [2020 JRC 049] **[VF1/ pages 755 - 762]**.

#### **G. Further CCAA orders**

- 49. Further to issuance of the Initial Order, the CCAA Applicants were required as part of the CCAA process to apply for periodic orders to extend the Stay Period. In each such return to the Court, an update was provided as to the steps taken within the CCAA Proceedings by the CCAA Applicants to date, and the CCAA Applicants also sought further orders as were required from time to time in order to progress the restructuring efforts of the Pre-Restructuring Lydian Group. Each return date hearing also served as an opportunity for any interested parties to apply to the Court for relief, including for a lift in the stay of proceedings. A summary of certain of the further orders made by the Ontario Court following the Initial Order being made is set out below.
- 50. On 2 January 2020, the Ontario Court issued an order extending the Stay Period in favour of the Applicants and the Non-Applicant Stay Parties to 23 January 2020 **[VF1/ pages 763 - 765]**.
- 51. On 23 January 2020 the Ontario Court issued the Amended and Restated Initial Order, which, among other things, expanded the CCAA Applicants' restructuring capabilities within the CCAA Proceedings, granted additional protections to the Monitor and extended the Stay Period with respect to the Applicants and the Non-Applicant Stay Parties until 2 March 2020. The affidavit of Edward Sellers dated 20 January 2020 filed in support of the Amended and Restated Initial Order is exhibited hereto **[VF1/ pages 766 - 775]**.
- 52. CAT, an Equipment Financier, lodged an objection to an extension of the stay period on 22 January 2020. On 23 January 2020, ING, a second Equipment Financier, advised Lydian that it too would be seeking to lift the stay of proceedings for purposes of enforcing its security

against the ING financed equipment. The concerns of CAT and ING were ultimately dealt with by agreement with the CCAA Applicants and the Senior Lenders, as detailed at paragraph 57 below.

53. On 2 March 2020, the Ontario Court issued an order to extend the Stay Period to 11 March 2020 [**VF1/ pages 776 - 778**].

54. On 11 March 2020 the Ontario Court issued an order which among other things:

- (a) extended the Stay Period to 30 April 2020;
- (b) approved the CCAA Applicants' ability to enter into an agreement regarding debtor-in-possession financing (the **DIP Agreement**) pursuant to which the CCAA Applicants obtained access to a facility to fund certain obligations of the CCAA Applicants and the Non-Applicant Stay Parties through the stay extension period to 30 April 2020, secured by a charge over the CCAA Applicants' property (**DIP Charge**); and
- (c) increased the Administration Charge to secure the monthly fees of BMO Nesbitt Burns Inc. (**BMO**).

[**VF1/ pages 779 - 785**]

55. The affidavit of Edward Sellers dated 10 March 2020 filed in support of the application for the 11 March 2020 orders is exhibited hereto [**VF1/ pages 786 - 1004**].

56. On 30 April 2020, the Ontario Court issued a further order which, *inter alia*, extended the Stay Period to 30 June 2020 and approved the Applicants' ability to enter into an amendment to the DIP Agreement (the **DIP Amendment**) for purposes of obtaining access to further funding to fund obligations of the CCAA Applicants and the Non-Applicant Stay Parties through the extension of the Stay Period, along with security in respect of such funds [**VF1/ pages 1005 - 1008**]. The DIP Amendment contained a requirement for the CCAA Applicants to provide a term sheet or memo to the Senior Lenders (in their capacity as DIP Lenders) in a form acceptable to Orion and either Osisko or RCF, acting reasonably, that sets out the terms, transactions, steps and timelines for the proposed completion of the CCAA Applicants' restructuring and prospective conclusion of the CCAA Proceedings, with a view to distributing the shares of Lydian Canada to or for the benefit of Lydian International's Senior Lenders. The affidavit of Edward Sellers dated 27 April 2020 filed in support of the application for the 30 April 2020 orders is exhibited hereto [**VF1/ pages 1009 - 1128**].

57. On 4 May 2020, following an agreement with the CCAA Applicants, CAT and ING, and with the consent of the CCAA Applicants, the Court issued orders lifting the stay of proceedings

to enable CAT and ING to take enforcement steps with respect to their equipment located in Armenia [**VF1/ pages 1129 - 1132**].

58. As a result of the abovementioned orders, the stay period was ultimately extended until 30 June 2020.
59. On 15 June 2020, the third Equipment Financier, Ameriabank, issued a demand for payment.

#### **H. Efforts to resolve the Lydian Group's financial difficulties during the CCAA**

60. The Pre-Restructuring Lydian Group undertook extensive efforts to address the catastrophic financial and operational consequences of the illegal blockades. The efforts undertaken by the Pre-Restructuring Lydian Group are chronicled in the affidavits filed by Edward Sellers in the context of the Canadian CCAA Proceedings, e.g.:
  - (a) The 22 December Affidavit at paragraphs 79 to 98.
  - (b) The affidavit of Edward Sellers dated 20 January 2020 at paragraphs 10 to 16 [**VF1/ pages 766 - 775**].
  - (c) The affidavit of Edward Sellers dated 10 March 2020 at paragraphs 5 to 12.
  - (d) The affidavit of Edward Sellers dated 27 April 2020 at paragraphs 5 to 27.
  - (e) The affidavit of Edward Sellers dated 15 June 2020 at paragraphs 14 to 26 [**VF1/ pages 1133 - 1411**].
  - (f) The affidavit of Edward Sellers dated 24 June 2020 at paragraph 18 [**VF1/ pages 1412 - 1617**].
61. In brief summary, those efforts have included engaging in negotiations with the GOA, commencing legal proceedings in Armenia to remove the illegal blockades at the Amulsar mine, and also expending significant time and resources in responding to various duplicative and unjustified environmental audits and orders with respect to the Amulsar site. Despite the best efforts of the Pre-Restructuring Lydian Group, and attempts to negotiate a potential return to the Amulsar site with the GOA over the past two years, discussions on access have been unsuccessful and Lydian International has been unable to secure the GOA's commitment to permit a return to the site.
62. The CCAA Applicants, in conjunction with the Monitor, also retained BMO which has acted as financial advisor to Lydian International since 2018, in connection with:-

- (a) investigating potential refinancing or sale options and carrying out a sale and investment solicitation process (**SISP**) to canvas the market for potential refinancing or sale opportunities with respect to the Pre-Restructuring Lydian Group's mining assets [**VF1/ page 1618, para. 2**]; and
- (b) commencing a process to solicit interest in financing the Treaty Arbitration [**VF1/ pages 1620 - 1621, paras. 11 - 15**].

63. The extensive efforts undertaken by BMO in connection with the SISP process and the Treaty Arbitration are set out in detail in the Affidavit of Mark Caiger, managing director of BMO, dated 11 June 2020 and filed in support of the CCAA Proceedings [**VF1/pages 1618 - 1635**]. In short summary:

- (a) With regard to the SISP, BMO contacted numerous potential counterparties in multiple rounds of SISP marketing, but those efforts did not result in a transaction capable of satisfying the claims of the Pre-Restructuring Lydian Group's secured lenders; and
- (b) With regard to the Treaty Arbitration, BMO contacted 21 potential counterparties to determine their interest in financing the Treaty Arbitration, including established litigation and arbitration financiers with substantial funds under their management.

This process generated several expressions of interest. However, each such expression provided that any financing provided for the Treaty Arbitration would be secured by charges that would rank ahead of the obligations owing to the Senior Lenders, together with a sharing of any sums ultimately realised. I understand this to be consistent with industry practice in other arrangements for litigation financing. As such, it was not feasible for the CCAA Applicants to pursue the Treaty Arbitration, primarily due to the extended period to litigate and the significant additional financial resources that would be required in such circumstances.

BMO also contacted shareholders of Lydian International who had expressed a potential interest in financing the Treaty Arbitration, and provided them with the proposal documentation. Ten parties, including two of Lydian International's shareholders, were provided with access to a suite of documentation containing a selected set of arbitration-related documentation. No firm proposal for financing the Treaty Arbitration arose from this process.

64. Moreover, in the event that Treaty Arbitration was to be pursued, it would be necessary, prior to any recovery for stakeholders of Lydian International beyond the Senior Lenders, for any arbitration award that would flow to Lydian International to exceed:

- a) the amounts owed to the Senior Lenders, inclusive of interest and financing costs accrued during the Treaty Arbitration process through to successful completion and enforcement of any judgment;
- b) the operating and carrying costs of the Amulsar Project during that period; and
- c) the litigation costs and financing costs for the Treaty Arbitration plus any sharing of the Treaty Award (as defined below). Unsecured creditors would then be entitled to any next share in any net recovery.

**[VF1/ page 1421, para. 23(g)]**

#### **I. Debt owed to Senior Lenders and Equipment Financiers**

- 65. Since the commencement of the blockades in 2018, the CCAA Applicants incurred over USD 137 million in dislocation expenses over two years and have sought further financial support in the form of the Forbearance Agreements and cash advances from the Senior Lenders.
- 66. At the commencement of the CCAA Proceedings (and as set out in the 22 December Affidavit **[VF1/ page 52, para. 101]**), the Pre-Restructuring Lydian Group had liabilities totalling approximately USD 395 million, the majority of which related to secured obligations owing under various term loans and streaming obligations to the Senior Lenders.
- 67. The Forbearance Agreements lapsed in December 2019 and the CCAA Applicants commenced CCAA Proceedings on 23 December 2019. During the CCAA Proceedings, the Senior Lenders agreed to provide DIP financing to the CCAA Applicants in excess of USD 8 million to enable the CCAA Applicants and Non-Applicant Stay Parties to take various steps to preserve their assets and pursue various monetisation efforts.
- 68. Interest on the obligations to the Senior Lenders and the Equipment Financiers has continued to accrue at a rate of between USD 35 - USD 40 million per year since the commencement of the blockades, with an additional USD 10 - USD 15 million of annual deferred financing cost accretion. In aggregate, the annual expense for debt related interest and deferred financing cost accretion is between USD 45-55 million. In addition to debt related expenses, the ongoing operating costs of the Pre-Restructuring Lydian Group have only been financed to date by depleting existing internal sources or through additional financial support from the Senior Lenders.
- 69. A summary of Lydian International's total indebtedness (inclusive of amounts owed to the Senior Lenders in their capacity as DIP lenders), and the major shareholders in Lydian

International as of the end of Q1 2020 is provided below [VF1/pages 1138 - 1139, para. 24].

Entity	Shareholding	Term loan	Stream agreement	Equipment finance
Orion Mine Finance	88,836,000 shares (11.7%)	USD 161.1M		
Resource Capital Funds	243,183,333 shares (32%)	USD 27.2M	USD 34.6M	
Osisko Gold Royalties Ltd.		USD 4.3M	USD 57.6M	
Caterpillar Financial Services (UK) Limited				USD 26.5M
AB Svensk Exportkredit (publ)				USD 53.7M
Ameriabank CJSC				USD 10.4M
Total	332,019,333	USD 192.6M	USD 92.2M	USD 90.6M

70. Lydian International was, therefore, obviously and hopelessly insolvent.

#### **J. Expiry of Senior Lenders' and Equipment Financiers' support**

71. The Senior Lenders reached a point such that they would not fund the CCAA Applicants any further. In April 2020, Orion acting as agent or the Senior Lenders, advised that a majority of the Senior Lenders were no longer prepared to support independent efforts by the CCAA Applicants to seek value from the Pre-Restructuring Lydian Group's assets and were prepared to take enforcement steps with respect to the Pre-Restructuring Lydian Group's Property.

72. The liquidity made available to the CCAA Applicants by way of DIP financing since 30 April 2020 had been conditioned on the CCAA Applicants: (i) proposing a restructuring that would be equivalent to the Senior Lenders enforcing their security over the shares of Lydian Canada; and (ii) meeting a deadline to exit the CCAA Proceedings imposed by a majority of



the Senior Lenders, or further enforcement steps would be taken [**VF1/ page 1418, para. 18(f)**].

73. Furthermore, the Pre-Restructuring Lydian Group's directors' and officers' insurance coverage, which has been extended on a month-to-month basis since 31 December 2019, expired on 30 June 2020 and could not be extended any further [**VF1/ page 1445, para. 36**].
74. The CCAA Applicants' options were therefore limited to: (a) facing enforcement steps from the Senior Lenders and Equipment Financiers; (b) filing alternative bankruptcy, administration, or liquidation proceedings across multiple jurisdictions; or (c) distributing the shares of Lydian Canada to or for the benefit of the Secured Lenders by implementing a plan of arrangement of the Applicants under the CCAA and the Business Corporations Act (British Columbia) (the **BCBCA**).

#### **K. Cease trade order**

75. As a public company, Lydian International is subject to the regulatory regime imposed on public companies by the Province of Ontario and enforced by the Ontario Securities Commission (the **OSC**). Following the delisting of its shares in February 2020, Lydian International became a "venture issuer" under applicable securities laws, and remained subject to continuous disclosure obligations for all annual and interim filings for 2020, the preparation of which is expensive and time consuming.
76. The Senior Lenders confirmed that they would not fund the costs of Lydian International complying with its public disclosure requirements going forward, and these costs were not included in the DIP financing provided to the Applicants in March and April 2020. Given its limited liquidity, Lydian International was not in a position to continue to comply with its public reporting requirements for 2020.
77. Due to Lydian International's financial constraints, Lydian International alerted the OSC in February 2020 that it was not able to continue with its public disclosure going forward. As a result of the onset of the COVID-19 pandemic, the OSC granted a 45-day extension for any annual or interim filings that were due before June 1, 2020.
78. On June 9, 2020, the OSC issued a cease trade order against Lydian International for its failure to make the required interim filings for the first quarter of 2020 [**VF1/ page 1448, para. 48**].

#### **L. The Plan**

79. In lieu of further secured lender enforcement, which could have taken the form of enforcement of share pledges or other security, or credit bidding of debt to acquire shares or assets, or other alternatives, the CCAA Applicants worked to find a more orderly transition from the CCAA Proceedings. Working closely in conjunction with the Monitor and the Senior Lenders, the CCAA Applicants formulated a plan of arrangement pursuant to the CCAA and the BCBCA (the **Plan**) which represented the most efficient mechanism to effect an orderly transition of the Pre-Restructuring Lydian Group's affairs [**VF1/ pages 1426, para. 46**].
80. The Plan minimises adverse collateral impacts on Lydian Armenia, provides for an orderly exit from the CCAA proceedings, and avoids uncoordinated enforcement steps being taken on the Pre-Restructuring Lydian Group's property to the detriment of the Pre-Restructuring Lydian Group's stakeholders generally [**VF1/ pages 1427, para. 48**].
81. A final copy of the Plan dated 30 June 2020 appears at [**VF1/ pages 1636 - 1701**]. Defined terms below not otherwise defined are as defined in the Plan [**VF1/ pages 1637 - 1642**].

#### Filing of the Plan

82. By a motion record dated 15 June 2020 the CCAA Applicants applied to the Ontario Court for orders, inter alia, that the Ontario Court accept the filing of the Plan (the **Plan**) [**VF1/ pages 1702 - 1710**], and authorising the CCAA Applicants to call, hold and conduct a meeting of those creditors to be affected, to vote on the Plan.
83. The affidavit of Edward Sellers dated 15 June 2020 filed in support of such motion is exhibited hereto at [**VF1/pages 1133 - 1411**]. That affidavit provides an overview of the CCAA Proceedings and what is proposed by the Plan (paragraphs 5 to 12), the background to the CCAA Applicants and their lack of options (paragraphs 13 to 48), the CCAA Applicant's previous efforts to monetise their assets (paragraphs 49 to 62), a summary of the transactions in the Plan (paragraphs 63 to 101) and approval of the activities of the Monitor (paragraph 201).
84. The Ontario Court granted orders in substantially the form sought by its order dated 18 June 2020 [**VF1/ pages 1711 - 1786**] (the **Plan Meeting Order**).

#### Summary of the Plan

85. A copy of the Pre-Restructuring Lydian Group structure chart is exhibited at [**VF1/ page 1**]. A structure chart illustrating the structure of the group post-restructuring is exhibited at [**VF1/ page 2**].
86. The Plan was presented to only the Senior Lenders, who were the CCAA Applicants' only secured creditors. All of the CCAA Applicants' unsecured creditors, including the Equipment Financiers are Unaffected Creditors (e.g. creditors whose claims are not affected by the Plan)

in the Plan. Equity Claimants of Lydian International (e.g. shareholders of Lydian International) are also unaffected by the Plan, however it is intended that the equity interests of Lydian International will be dealt with as part of this application to wind up Lydian International on just and equitable grounds. As Unaffected Creditors, these groups did not have a right to vote or participate in the Plan.

*Purpose of the Plan*

87. The purpose of the Plan was to:
- a. Implement a corporate and financial restructuring of the CCAA Applicants;
  - b. Provide for the assignment or settlement of all intercompany debts owing to the CCAA Applicants prior to the implementation of the Plan to, among other things, minimise adverse tax consequences to Lydian Armenia and its stakeholders;
  - c. Provide for the equivalent of an assignment of substantially all of the assets of Lydian International to an entity (**SL Newco**) owned and controlled by the Senior Lenders by amalgamating Lydian Canada with SL Newco, resulting in a new entity (**Restructured Lydian**);
  - d. Provide for a corresponding orderly wind up, and financing of such wind up, of Lydian International and an orderly disposition or winding up, and financing thereof, of the affairs of the other Released Guarantors (as defined in the Plan, and including other entities within the Pre-Restructuring Lydian Group that had guaranteed obligations to the Senior Lenders) which would include the release of all obligations and guarantees of such Released Guarantors to the Senior Lenders (in their capacities as lenders and purchasers), if any;
  - e. Permit Restructured Lydian and its shareholders/stakeholders to determine the manner and timing of pursuing any strategy post implementation of the Plan on 6 July 2020;
  - f. Permit Lydian Canada and Lydian UK to exit CCAA Proceedings on 6 July 2020; and
  - g. Permit Lydian International to exit CCAA Proceedings upon the earlier of:
    - (i) completion of (a) to (d) above, or
    - (ii) an order of the Court terminating the CCAA Proceedings.
88. The Plan recognises and continues the priority position of the Senior Lenders in the Restructured Lydian Group. Secured creditors and unsecured creditors with claims at or below Restructured Lydian continue to maintain their claims in the Restructured Lydian

Group, including Lydian Armenia, with the same priority as they previously had, ranking behind the Senior Lenders.

89. Unsecured creditors, Equity Claimants, and the Equipment Financiers with claims at the Lydian International level continue to have their claims after the Plan Implementation Date (6 July 2020), and such claims are intended to be addressed via this application. Equity claims, Equipment Financier claims and unsecured claims against Lydian International are not assumed by Restructured Lydian as part of the Plan and will remain outstanding after the effective time. That is reflective of the current commercial realities facing the CCAA Applicants and their inability to meet their secured obligations for the past two years.
90. Ultimately, the Plan results in the privatisation of the Pre-Restructuring Lydian Group and, when the steps are completed, the CCAA Proceedings can be terminated and the Monitor discharged. The Senior Lenders will be the sole shareholders of Restructured Lydian.

*Intercompany debts*

91. While the main focus of the Plan addresses the privatisation of Lydian Canada and its subsidiaries, as previously described a secondary element of the Plan involves rationalising the other subsidiaries of Lydian International, including Lydian Resources Georgia Limited (**Lydian Georgia**) and Georgian Resource Company LLC (**Lydian GRC**, and together with Lydian Georgia, the **Georgia Subsidiaries**), so as to avoid their uncontrolled collapse and resolve their affairs with the support and funding provided by the Senior Lenders under the Plan.
92. The Plan provided that Lydian International transfer and assign the shares of Lydian Georgia and the intercompany debt of approximately USD 2.8 million owed to Lydian International by Lydian GRC (the **GRC-Jersey Interco Debt**) to an individual, Vahe Kevorkov (the **Lydian Georgia Purchaser**), who provided Lydian GRC with approximately USD 140,000 in 2019 to permit it to avoid default (the **Georgia Rescue Loan**). As consideration therefor, the Lydian Georgia Purchaser and its subsidiaries released Lydian International and its directors, and the Georgia Subsidiaries, from any and all claims.
93. Mr Sellers' 24 June 2020 affidavit at paragraphs 50 – 56 [**VF1/ pages 1427 - 1428**] reviews the circumstances of the GRC-Jersey Interco Debt, and the rationale for it being compromised as part of the Plan. In short summary, the Senior Lenders advanced the sum of USD 2.8 million to Lydian GRC (which was recorded in the respective companies books and records as the GRC-Jersey Interco Debt) in order to allow it to meet employee termination obligations and to prevent an imminent default in the performance of its Georgian exploration and development license. The Senior Lenders did not wish to maintain any interest in the Georgia Subsidiaries and Mr Sellers' concluded that the GRC-Jersey Interco Debt was uncollectable on any basis.

### *Releases*

94. The Plan also provides for specific releases, including releases of claims of the specified entities of the Pre-Restructuring Lydian Group, and releases of directors and officers (**D&Os**), the Monitor and the Senior Lenders, as outlined in section 6.6 of the Plan [**VF1/ page 1652**]. A chart summarising the specific releases provided for in the Plan and their proposed effect is exhibited hereto [**VF1/ page 1787 - 1791**].
95. The releases were critical components of the negotiations and decision-making process for the D&Os and Senior Lenders in obtaining support for the Plan and resolving the CCAA Proceedings for the benefit of the Restructured Lydian Group, including Lydian Armenia, and all of its stakeholders.
96. The Released Parties (as defined in section 6.6 of the Plan) made significant contributions to the CCAA Applicants' restructuring, both prior to and throughout the CCAA Proceedings. The extensive efforts of the D&Os and the Senior Lenders for over two years, and the additional direct and indirect financial contribution from the Senior Lenders in excess of USD 39 million (consisting of further direct cash advances in excess of 20 million, and consent to consume internally generated liquidity in excess of 19 million) during that time (including DIP Loans in excess of USD 8 million during the CCAA Proceedings), resulted directly in the preservation of the Pre-Restructuring Lydian Group's business, provided numerous opportunities for the CCAA Applicants to seek to monetise their assets for the benefit of stakeholders generally and led to the successful negotiation of the Plan for the benefit of the Restructured Lydian Group, including Lydian Armenia, and all of its stakeholders.
97. As outlined below at paragraph 102(g), in addition to full releases of Lydian International, the Plan involves Lydian International transferring and assigned all claims of Lydian International against Lydian Canada and any of Lydian Canada's subsidiaries, to Lydian Canada.

### *Publication of the Plan*

98. The Plan (as well as the CCAA Proceedings in general) have been well publicised. In particular, Lydian International issued press releases announcing the commencement of the CCAA Proceedings on 23 December 2019, and press releases related to the Plan on 1 June 2020, and 15 June 2020, directing all interested parties to the Monitor's website for all information relating to the CCAA Applicants, the CCAA Proceedings, and this application to wind up Lydian International in Jersey [**VF1/ pages 1792 - 1794**].

99. The Plan was implemented on 6 July 2020<sup>1</sup>.

Other considerations

100. Various factors were taken into consideration in determining the response to proposed enforcement steps by the Senior Lenders and Equipment Financiers, and in developing the structure and terms of the Plan. These are particularised in detail in the affidavit of Edward Sellers dated 24 June 2020 [**VF1/ pages 1419 - 1421**] at paragraphs 19 to 23. In summary:

- (a) The Affected Claims (as defined in the Plan, but comprising those claims of the Senior Lenders impacted by the Plan) of the Senior Lenders total in excess of USD 300 million. The secured obligations owing to the Equipment Financiers are approximately an additional USD 90.6 million. Interest on those sums continues to run at a rate of approximately USD 45-55 million per year.
- (b) An estimate of the operating costs of the Restructured Lydian Group, without regard to costs to complete construction, exceeds approximately USD 5.3 million per year.
- (c) The Senior Lenders have provided in excess of USD 8 million by way of financing to allow the CCAA Applicants and the Non-Applicant Stay Parties to conduct the CCAA Proceedings and deal with related matters. The CCAA Plan provides for a further financing facility of USD 1.866 million to assist in implementing the Plan.
- (d) Efforts to monetise the Pre-Restructuring Lydian Group's assets have not succeeded.
  - (i) The SISP process was not successful in generating offers.
  - (ii) With regard to the pursuit of the Treaty Arbitration, prior to any recovery for stakeholders of Lydian International beyond the Senior Lenders, any arbitration award that would flow to Lydian International would have to exceed: a) the amounts owed to the Senior Lenders, inclusive of interest and financing costs accrued during the Treaty Arbitration process through to successful completion and enforcement of any judgment; b) the operating and carrying costs of the Amulsar Project during that period; and c) the litigation costs and financing costs for the Treaty Arbitration plus any sharing of the award. Unsecured creditors would then be entitled to any next share in any net recovery.

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<sup>1</sup> A more detailed overview of the Plan is provided at section 4 of the Monitor's seventh report to the Ontario Court. That report is exhibited to the affidavit of Alan Hutchens, filed in these proceedings [**AJH1/ pages 472 - 638**].

Steps proposed by the Plan

101. As a condition precedent to the implementation of the Plan, an amount of USD 1.866 million was advanced by the majority of the Senior Lenders to Lydian Armenia. Such amount was then transferred by way of intercompany loan by Lydian Armenia to Lydian International prior to the implementation of the Plan and Lydian International immediately transferred such amount to the Monitor, which amount is to be held by the Monitor solely for the benefit of the CCAA Applicants, and disbursed by the Monitor upon written direction from Lydian International, for the purposes specifically provided for in the Plan. The USD 1.866 million amount was advanced by the majority of the Senior Lenders through DIP loan financing to Lydian Armenia for the purposes of funding expenses following the Plan implementation date (6 July 2020), including the steps necessary to terminate the CCAA proceedings (**Post-Implementation Date Expenses**).
102. Pursuant to the terms of the Plan, the following transactional steps (among others) have been approved by the Ontario Court and have been implemented or steps taken to initiate the implementation:
  - (a) Lydian US has assigned to Lydian International the indebtedness owed to Lydian US by Lydian Armenia in exchange for the satisfaction of approximately USD 3,373,000 owing by Lydian US to Lydian International;
  - (b) Lydian US has repaid approximately USD 9,304,000 to Lydian International and Lydian International has repaid the entirety of its debt to Lydian US by way of set-off;
  - (c) The remaining debt owed by Lydian US to Lydian International of approximately USD 17,000 has been transferred and assigned by Lydian International to Lydian US as a capital contribution to Lydian US by Lydian International without the issuance of shares of common stock of Lydian US;
  - (d) Lydian International has repaid its indebtedness to Lydian Armenia noted above by: (i) offsetting the amount owed with the amount of Post-Implementation Date Expenses actually paid by the Monitor in the CCAA Proceedings pursuant to the Plan; and (ii) the Monitor returning any unused funds reserved for Post-Implementation Date Expenses to Lydian Armenia;
  - (e) Lydian International has assigned to Lydian Canada the indebtedness owed to it by Lydian Armenia (less the amount loaned by Lydian Armenia to Lydian International noted above) in exchange for Lydian Canada issuing common shares of Lydian Canada to the Company;

- (f) Lydian International has transferred and assigned its shares of Lydian Resources Georgia Limited and the indebtedness owed to it by Georgian Resource Company LLC to the Georgia Purchaser and, as consideration therefor, the Georgia Purchaser released, and caused Lydian Georgia and Lydian GRC to release, Lydian International and all of the current and former directors and officers of Lydian International, Lydian Resources Georgia Limited and Georgian Resource Company LLC from any and all claims;
  - (g) Lydian International has transferred and assigned all claims of Lydian International against Lydian Canada and any of Lydian Canada's subsidiaries, to Lydian Canada;
  - (h) Lydian Canada has amalgamated with SL Newco to form Restructured Lydian, and continue as one corporation pursuant to the terms of the Plan;
  - (i) The preferred share of Restructured Lydian issued to Lydian International has been redeemed by Lydian International in accordance with its terms;
  - (j) All claims as contemplated to be released by the Plan have been fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred without any liability, payment or other compensation; and
  - (k) On the Plan Implementation Date (6 July 2020), the CCAA Proceedings with respect to Lydian UK and Lydian Canada were terminated, such that Lydian International is the only remaining CCAA Applicant in the CCAA Proceedings. A stay of proceedings was granted in relation to Lydian International until the earlier of (a) issuance of the Monitor's CCAA Termination Certificate (as defined in the Plan), or (b) 21 December 2020. This stay extension affords Lydian International to apply for it to be wound up in Jersey.
103. The following steps are to occur after the implementation of the Plan and are in the process of being implemented:
- (a) Lydian US is in the process of being wound-up and dissolved pursuant to the laws of Colorado; and
  - (b) Kavkaz Zoloto CJSC is in the process of being wound-up and dissolved pursuant to the laws of Armenia.
104. As previously stated, the structure charts showing the structure of the Pre-Restructuring Lydian Group post implementation of the steps in the Plan is exhibited hereto at **[VF1/ page 2]**.

#### Meeting of creditors



105. The Plan was tabled for a vote by the Affected Creditors, consisting of the Senior Lenders, by way of Zoom videoconference (to accommodate social distancing requirements) on 19 June 2020. The required quorum to hold the meeting was satisfied, as each of the Senior Lenders was present. Each of Orion and Osisko voted in favour of the plan, while RCF voted against. The value of the claims of Orion and Osisko total 77.8% of the total value of the Affected Creditors who were present and voting. The Plan was accordingly approved by the requisite majority (which I understand to be at least two thirds in value and half in number of the Affected Creditors present and voting).

Sanctioning of the Plan

106. By a motion dated 29 June 2020, and following approval by the Affected Creditors at the meeting, the CCAA Applicants applied for orders inter alia seeking a declaration that the 19 June 2020 meeting was duly convened and held, and sanctioned and approved the Plan. The affidavit of Edward Sellers dated 24 June 2020 [**VF1/ pages 1412 - 1617**], was filed in support such motion and provides inter alia a comprehensive overview as to the steps taken in the CCAA proceedings.
107. By his further affidavit dated 28 June 2020 [**VF1/ pages 1795 - 1933**], Edward Sellers noted that certain immaterial changes had been made to the Plan since the date of his previous 24 June 2020 Affidavit; provided the Court with a finalised version of the Plan [**VF1/ pages 1895 - 1913**]; addressed the Court as to certain issues concerning DIP financing provided by the Senior Lenders to enable the CCAA Applicants to take the necessary steps to implement the Plan and terminate the CCAA proceedings; and provided the Court with a finalised copy of the agreement entered into for the purposes of such financing (the **DIP Exit Facility Amendment**) [**VF1/ pages 1919 - 1931**].
108. On 29 June 2020, the Ontario Court made an order in substantially the form sought [**VF1/ pages 1934 - 1949**] (the **Plan Sanction Order**), and:
- (a) declared that the Meeting of Affected Creditors held on 19 June 2020 was duly convened and held, all in accordance with the Plan Meeting Order;
  - (b) sanctioned and approved the CCAA Applicants' Plan as approved by a requisite majority of Affected Creditors at the meeting, in accordance with the Plan Meeting Order;
  - (c) increased the DIP Charge to capture the DIP Exit Credit Facilities (as defined in the Plan);
  - (d) extended the Stay of Proceedings as follows:

- (i) with respect to Lydian International to the earlier of (i) the date the CCAA Termination Certificate (as defined in the Plan) is issued, and (ii) 21 December 2020; and
- (ii) Lydian Canada and Lydian UK and the Non-Applicant Stay Parties until and including the date of the filing of the Monitor's Plan Implementation Termination Certificate (6 July 2020);
- (e) issued a Letter of Request to the Royal Court of Jersey (the **Second Letter of Request**) (as detailed below at paragraphs 125 to 128) [VF1/ pages 1950 - 1953];
- (f) approved the Monitor's activities to date, as set out in its reports to the Court to date;
- (g) approved fees of the Monitor and its counsel through to 23 June 2020;
- (h) dispensed with the requirement for the Monitor and its counsel to pass their accounts for the period from and after 24 June 2020;
- (i) authorised the Monitor to perform the activities provided for in the Plan or which are necessary and incidental to implementing the Plan, which are to be taken by the Monitor; and
- (j) provided for mechanisms to terminate the CCAA Charges, the CCAA Proceedings and discharge the Monitor.

#### Parties unaffected by the Plan

109. As outlined above, only the Senior Lenders (as Affected Creditors) were eligible to participate and vote in the Plan as one class. The Unaffected Creditors include unsecured creditors, the Equipment Financiers and the Equity Claimants, including shareholders of Lydian International. The Unaffected Creditors were not entitled to vote on or participate in the Plan.

#### Class action claim

110. The CCAA Applicants' local counsel in Armenia have advised that a proposed class action has been announced in Armenia by eleven minority shareholders of Lydian International (the **Minority Shareholders**) as against the GOA and Armenian police, in connection with the failure to remove the blockades from the Amulsar site and the corresponding financial losses resulting from the cessation of all construction activity at the Amulsar Project. Lydian Armenia has been named as a third party in the proposed class action. The Armenian Administrative Court has accepted jurisdiction to hear and determine the class action. A

copy of an unofficial English translation of the Administrative Court's decision in that regard appears at exhibit [VF1/ pages 1609 – 1610] The Ontario Court was advised of this proposed class action prior to the hearing seeking the issuance of the Sanction Order.

111. Lydian Armenia's local counsel further advised on 31 July 2020 that the Yerevan Court of First Instance had accepted to hear a claim from one of the shareholders of Lydian International (Edgar Abrahamyan) against Lydian International and Lydian Armenia (as joint respondents). The claimant seeks damages of USD 22,580, which is the amount Mr Abrahamyan purportedly paid for his shares in Lydian International. I understand from Lydian Armenia's local counsel that, if Lydian International is wound up, the Armenian Court is likely to dismiss the case against it (albeit the case against Lydian Armenia would proceed). A copy of the English translation of the shareholder claim (provided by Lydian Armenia's local counsel) is exhibited hereto [VF1/ pages 2133 - 2140].

Communications from shareholders, Equipment Financiers, and unsecured creditors

112. As stated at paragraph 98 above, the CCAA Proceedings were well publicised, and the shareholders, Equipment Financiers, and unsecured creditors were afforded the opportunity to be heard in the CCAA Proceedings.
113. The Monitor has posted, since the beginning of the CCAA Proceedings, all materials made available to the Ontario Court and the Royal Court to its website [VF/ page 1954]. There were, in addition, press releases at key junctures in the proceedings. For example, press releases were made on 23 December 2019 (announcing the commencement of the CCAA Proceedings) [VF/ page 1792], on 1 June 2020 [VF/ page 1793] (in relation to Lydian International's inability to file interim financial statements) and 15 June 2020 [VF/ page 1794] (providing a comprehensive update as to the terms of the Plan and the upcoming motion seeking the issuance of the Plan Meeting Order). In each publication, a link to the website of the Monitor was made available.
114. In addition, the Monitor's counsel wrote to the shareholders on multiple occasions to inform them of what they needed to do in order to participate in the CCAA Proceedings and make submissions before the Ontario Court.
115. The affidavit of Edward Sellers dated 24 June 2020 details at paragraphs 25 to 44 the communications between the CCAA Applicants/ the Monitor and stakeholders since the issuance of the 1 June 2020 press release, and the Plan Meeting Order, to raise concerns in respect of the proposed Plan. In summary:
  - (a) At the hearing in connection with the Plan Meeting Order, counsel for ING (an Equipment Financier) raised a concern regarding the effect of the winding up of Lydian International in Jersey including with respect to any rights that ING may have

to the proceeds of the Treaty Arbitration. In summary, ING considered that a Waiver and Consent Agreement dated 26 November 2018, between ING and the CCAA Applicants and Lydian Armenia (the **Waiver**) operated to give ING priority over other unsecured creditors of Lydian Armenia with regard to the proceeds of the Treaty Arbitration. As outlined in the 10 March Affidavit at paragraphs 119 to 126, the Senior Intercreditor Agreement signed by the Senior Lenders and ING provides that ING's security in the property of Lydian Armenia, other than the equipment which ING financed, is subordinate to the security interests held by the Senior Lenders, which secure Lydian Armenia's obligations under the Credit Agreement and the Stream Agreement [**VF1/ pages 833 - 834**].

The CCAA Applicants and the Senior Lenders continued to engage with ING after the Plan Meeting Order and ultimately agreement was reached as to the form of acknowledgement in favour of ING, which was included in the Court's judgment in respect of the Plan Meeting Order (at para 33) [**VF1/ page 2042**]:

*"...for greater certainty this Plan does not compromise any claim that ING may have in respect of proceeds from a successfully-asserted arbitration claim. In addition, the Senior Lenders have agreed that, after payment of all claims of the Senior Lenders to proceeds from a successfully-asserted arbitration claim whether on account of: (i) claims of the Senior Lenders prior to the Plan Implementation Date; or (ii) further advances made by the Senior Lenders (or their affiliates) after the Plan Implementation Date, (whether such further advances are made as equity, secured debt or unsecured debt), the proceeds will be paid to Lydian Armenia in an amount sufficient and to be used to pay ING's claims against Lydian Armenia prior to any further monies being returned to equity holders."*

ING did not object to the Plan or the final order to the Plan Sanction Order.

- (b) Maverix Metals reached out to the Monitor in advance of the CCAA motion, in its capacity as apparent assignee of an unsecured payment obligation from Lydian International. I understand that Edward Sellers liaised with Stikeman in relation to this obligation. The payment obligation was subordinated to the Senior Lenders in 2015 pursuant to the terms of a Subordination Agreement (as detailed at paragraphs 34 to 37 of the 24 June 2020 affidavit [**VF1/page 1423 - 1424**]). Ultimately, Maverix Metals did not raise any objection to the Plan or the Plan Sanction Order.
- (c) I understand that Edward Sellers had direct communications with shareholders prior to and since the filing of the Plan Meeting Order materials, regarding the lack of any recovery through the Plan for Lydian International shareholders. This was consistent

with and principally related to prior communications from Lydian International shareholders regarding their disappointment that Lydian International had not pursued the Treaty Arbitration (as detailed at paragraphs 38 to 44 of the 24 June 2020 affidavit [**VF1/ page 1424 - 1426**]).

116. In its seventh report to the Ontario Court dated 25 June 2020, the Monitor prepared a chart that sets out each communication received from the various shareholders (the **Shareholder Communications Chart**), the nature of such communication, and contains a copy of the communication delivered by the Monitor to those shareholders informing them how to file a Notice of Appearance in order to participate in the CCAA Proceedings, and outlines those parties that served a Notice of Appearance (in order to appear before the Ontario Court).<sup>2</sup>
117. In addition, I understand that the Monitor had previously received email correspondence from certain individuals who identify themselves as Armenian citizens and members of the Armenian Environmental Front (**AEF**) Civil Initiative, which they describe as a volunteer environmental watchdog group. These communications were brought to the Ontario Court's attention, and the Ontario Court requested that in the future, the AEF electronically serve on the service list and file all materials it wishes to be brought to the attention of the Ontario Court in accordance with the Ontario *Rules of Civil Procedure* (the **Rules**). On 19 March 2020, the Monitor wrote to the AEF setting this out, and noting that in order to raise issues or make submissions with the Court, the AEF must take certain procedural steps in accordance with the Rules, and is not permitted to communicate directly with the Ontario Court. A copy of this correspondence is attached hereto as [**VF1/ pages 1099 - 1106**].
118. I understand that Advocate Alexander of Mourant Ozannes also received email correspondence from shareholders of Lydian International, expressing their concerns with the winding up of Lydian International in Jersey and the lack of recovery for the shareholders of Lydian International [**VF1/ pages 1955 - 2035**]. Those communications appear to be similar, and in some cases the same, terms to those communications received by the Monitor.
119. At the hearing of the Plan Sanction Order, the Ontario Court heard from four shareholders. The nature of their comments and the Ontario Court's conclusions are found at paragraphs 42 to 48 of the Canadian Court's judgment [**VF1/ pages 2043 - 2044**].

#### **M. Sanction Order Endorsement**

120. Chief Justice Geoffrey B. Morawetz presided over the CCAA Proceedings and released reasons for his decisions in respect of the Plan Sanction Order on 10 July 2020 [**VF1/ pages 2036**

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<sup>2</sup> The Affidavit of Alan Hutchens filed in these proceedings dated on or about the date of this Affidavit exhibits the seventh report of the Monitor at [**AJH1/ pages 472 - 638**] and the Shareholder Communications Chart is at **pages 510 - 523**.

**to 2053]**. The judgment of the Ontario Court is known as an "endorsement" (the **Sanction Order Endorsement**).

The Plan is fair and reasonable

121. Chief Justice Morawetz was required to determine, in giving his approval to the Plan, whether it was fair and reasonable in all the circumstances. Relevant extracts from the Sanction Order Endorsement in that respect are set out below:

*"[29] The Applicants' submit that when considering whether a plan of compromise and arrangement is fair and reasonable, the court should consider the relative degree of prejudice that would flow from granting or refusing to grant the relief sought. Courts should also consider whether the proposed plan represents a reasonable and fair balancing of interests, in light of the other commercial alternatives available (see: Re Canadian Airlines Corp, 2000 ABQB 442 at paras. 3, 94, 96, and 137 – 138; and Re Canwest Global Communications Corp, 2010 ONSC 4209).*

*[30] The CCAA permits the filing of a Plan by an Applicant to its secured creditors. The Applicants' submit the fact that unsecured creditors may receive no recovery under a proposed plan of arrangement does not, of itself, negate the fairness and reasonableness of a plan of arrangement (Anvil Range Mining Corp. (Re), 2002 CanLII 42003 (ONCA); and 1078385 Ontario Ltd., (Re), 2004 CanLII 55041 (ONCA) at paras 30-31 (CanLII), affirming 2004 CanLII 66329 (ONSC))."*

*"[41] The Monitor supports the Plan. As noted in the Monitor's Seventh Report, "it is the Monitor's view that the Plan represents a better path forward than any other alternative that is available to the Applicants and is fair and reasonable."<sup>3</sup>*

*[42] I am aware that concerns with respect to the fairness of the Plan have been raised by numerous shareholders of Lydian International and oral submissions were made by John LeRoux, Hasan Ciftahan, Mehmet Ali Ekingen and Atilla Bozkay."*

*"[48] The economic reality facing the shareholders existed prior to the COVID-19 pandemic. The [CCAA] Applicants were insolvent when they filed these proceedings on December 23, 2019. The financial situation facing the Applicants has not improved since the filing. In fact, it has declined. The mine is not operating with the obvious result that it is not generating revenues and interest continues to accrue on the secured debt. The fact that shareholders will receive no compensation is unfortunate but is a reflection of reality which does not preclude a finding that the Plan is fair and reasonable for the purposes of this motion."*

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<sup>3</sup> The Monitor's Seventh Report is exhibited to the affidavit of Alan Hutchens dated on or about the date of this Affidavit and filed in these proceedings. See in particular sections 4.19 to 4.26 and 7 in respect of the Monitor's assessment that the Plan is fair and reasonable in the circumstances. [AJH1/ pages 492 - 557]

*"[64] I accept this assessment and find that the Plan is fair and reasonable in the circumstances."*

#### Releases

122. As described at paragraphs 94 to 97 above, the Plan provides for certain releases. These are described more fully at paragraph 83 of Mr Seller's 15 June affidavit [**VF1/ pages 1155 - 1156**].
123. Section 6.6 of the Plan provides for full and final releases in favour of the Released Parties, who consist of (a) the CCAA Applicants, their employees, agents and advisors (including counsel) and each of the members of the Pre-Restructuring Lydian Group's current and former directors and officers; (b) the Monitor and its counsel; and (c) the Senior Lenders and each of their respective affiliates, affiliated funds, their directors, officers, employees, agents and advisors (including counsel).
124. The Sanction Order Endorsement contains at paragraphs, 50 to 62 [**VF1/ pages 2044 - 2046**], careful analysis as to why such releases are appropriate in the circumstances faced by the CCAA Applicants. Chief Justice Morawetz considered the following submissions by the CCAA Applicants:
  - (a) The Released Parties made significant contributions to the Applicants' restructuring, both prior to and throughout these CCAA Proceedings, which resulted directly in the preservation of the Pre-Restructuring Lydian Group's business, provided numerous opportunities for the Applicants to seek to monetise their assets for the benefit of stakeholders generally and led to the successful negotiation of the Plan for the benefit of the Restructured Lydian Group.
  - (b) The releases were critical components of the negotiations and decision-making process for the D&Os and Senior Lenders in obtaining support for the Plan and resolving these CCAA Proceedings for the benefit of the Restructured Lydian Group, including Lydian Armenia, and all of its stakeholders.
125. Chief Justice Morawetz concludes at paragraphs 60 and 62 that:
 

*"[60] Full disclosure of the releases was made (a) in the draft Plan that was circulated to the Service List and filed with the Court as part of the Applicants' Motion Record (returnable June 18, 2020) and (b) the Plan attached to the Meeting Order. The Applicants also issued the Press Releases. This notification process ensured that the Applicants' stakeholders had notice of the nature and effect of the Plan and releases."*

"[62] In my view, each of the Released Parties has made a contribution to the development of the Plan. In arriving at this determination, I have taken into account the activities of the Released Parties as described in the Reports of the court-appointed Monitor. I am satisfied that it is appropriate for the Plan to include the releases in favour of the Released Parties."

#### **N. Issuance of the Second Letter of Request**

126. By the Plan Sanction Order, the Ontario Court issued a further letter of request (the **Second Letter of Request**) [VF1/ pages 1950 - 1953]. The Second Letter of Request seeks the assistance of the Royal Court in the winding-up Lydian International in Jersey, subject entirely to the discretion of the Royal Court and the laws of Jersey.

127. The Ontario Court, by paragraph 8 of the Second Letter of Request, requests:

*"in deference to the jurisdiction and discretion of the Royal Court of Jersey in such matters, the assistance of the Royal Court of Jersey, pursuant to its inherent jurisdiction, to assist in the implementation of the Plan of the Applicants and in particular (without prejudice to the generality of the foregoing) to consider the application to wind up Lydian International on just and equitable grounds pursuant to the laws of Jersey, by granting such further or other relief as it thinks fit in aid of the winding up of Lydian International Limited."*

128. The Plan therefore envisages that proceedings will be initiated in Jersey seeking the winding up Lydian International Limited on a just and equitable basis. However, the Royal Court of Jersey has, notwithstanding the Second Letter of Request or the CCAA Proceedings, full discretion to consider whether to wind up Lydian International Limited on just and equitable grounds pursuant to the laws of Jersey.

129. The discretion of the Royal Court is further reflected by the wording of the Plan itself, which provides at section 6.4 that:

*"Lydian Jersey [Lydian International] will apply to the Royal Court of Jersey seeking, in full deference to the discretion and jurisdiction of the Royal Court of Jersey, an orderly wind up through a Just and Equitable Winding Up Process pursuant to laws of Jersey"*

#### **O. Lydian International's corporate governance issues**

130. At the commencement of the CCAA Proceedings, the directors of Lydian International were Russell Ball, Edward Sellers, William Abel, Gillian Davis, Stephen Altmann, and me.
131. The terms of an ordinary resolution of Lydian International dated 26 May 2016 required the number of board members to be at least 5 [VF1/ pages 2054 - 2055]. However, the



directors were required to make the decision to reduce the number of directors below this threshold given the practical difficulties and financial limitations faced by Lydian International.

132. In Edward Sellers' 10 March Affidavit [**VF1/ pages 794 – 795, paras. 20 - 26**], he explains the governance challenges faced by the Pre-Restructuring Lydian Group. In particular, in consultation with the Senior Lenders, the CCAA Applicants decided to streamline the directors sitting on the boards of the various Pre-Restructuring Lydian Group entities. With regard to Lydian International, the directors other than Edward Sellers and me resigned on 12 March 2020.
133. The mechanism to remedy this technical breach of the abovementioned resolution would be to go back to members to reduce the number of directors again. However, given the insolvency of Lydian International and the consequent disenfranchisement of shareholders, it would have been impractical and very likely a waste of cost and time in convening a shareholder meeting for this purpose.
134. On 15 June 2020 the board of Lydian International called a board meeting for the directors to consider the proposal to file the Plan with the Ontario Court and thereafter to implement the steps proposed by the Plan as regards Lydian International (the **15 June Board Meeting**) [**VF1/ pages 2056 - 2061**].
135. It was noted at the 15 June Board Meeting that, in light of potential conflicts of interest by the directors (myself and Edward Sellers), it was not possible for the board meeting to be quorate in accordance with Lydian International's Articles of Association [**VF1/ pages 2062 - 2104**]. The potential conflicts were in respect of my appointment to the board as an Orion representative, and the payment of an implementation fee to Edward Sellers on completion of the Plan.
136. The directors were therefore required to consider whether they should be exercising their discretion to make decisions which are required to be in the best interests of Lydian International, in circumstances where each had disclosed a potential conflict of interest. The factors that we, as directors, considered were as follows:
  - (a) The Company is hopelessly insolvent. The Pre-Restructuring Lydian Group had current obligations to the Senior Lenders and Equipment Financiers totalling an aggregate amount of approximately USD 406.8 million. The sole operating asset of the Pre-Restructuring Lydian Group, the Amulsar mine, has been inaccessible since June 2018 due to illegal blockades and associated actions of the GOA (as set out in detail above).

- (b) In circumstances where Lydian International is insolvent, the directors' duty to act in the best interests of company with regard for shareholders had for all practical purposes transitioned to a duty to act in the best interest of Lydian International with regard for creditors; and in particular to minimise their losses.
  - (c) The subject-matter of the decisions intended to be taken by the meeting concerned, inter alia, approval, filing, and implementation of the Plan (and subsequent Court approval).
  - (d) In view of the senior lending arrangements which the Company is subject to, the duty to act with regard for the creditors effectively equates to acting with regard for the Senior Lenders, there was no extant scenario in which Lydian International's unsecured creditors or members would be entitled to any distribution on the insolvency of Lydian International.
  - (e) The approval of at least two thirds in value and the majority in number of the Senior Lenders was a pre-requisite to the Plan being approved under the CCAA. Therefore, in circumstances where the secured creditors are content by majority with the decisions being taken in relation to Lydian International, the directors considered that such transactions envisaged by this meeting properly regard their interests.
  - (f) Reasonably acting directors appointed in their stead (even if that had been, practically possible, which it was not (see below)) would, in all the circumstances, have arrived at an identical decision.
137. Accordingly, the 15 June Board Meeting proceeded and the directors resolved to approve, file and thereafter implement the Plan, it being in the best interest of Lydian International and its creditors as a whole.
138. As detailed above at paragraph 137, by the Plan Sanction Order [**VF1/ pages 1934 - 1949**], the Plan was approved and sanctioned by the Ontario Court, the Ontario Court finding that the relevant statutory requirements set out in the CCAA had been met and that it was an appropriate exercise of its discretion, bearing in mind the insolvency of Lydian International and the wishes of the Senior Lenders.
139. Lydian International then proposed to take steps to implement the Plan and, in particular, Lydian International proposed to apply to the Royal Court of Jersey to be wound up on a just and equitable basis. By a written resolution of the directors dated 29 June 2020, the directors resolved to instruct Mourant Ozannes to prepare such application.
140. Edward Sellers resigned from the board of Lydian International on 30 June 2020. The reason for his resignation was that the directors and officers insurance in respect of his directorship of Lydian International expired on 30 June 2020 (at the expiry of the latest CCAA stay

period). Accordingly, it was necessary for him to resign on or prior to that date. With the expiry of the D&O insurance, it was extremely difficult to recruit new directors.

141. The directors have been advised by Mourant Ozannes that Article 73(2) of the Companies (Jersey) Law 1991 (**Companies Law**) requires that Lydian International, as a public limited company, must have a minimum of two directors. Following Edward Sellers' resignation, I am the sole director of Lydian International.
142. While that breach of the Companies Law is unfortunate, it is a reality of the cross-border nature of the restructuring faced by the Pre-Restructuring Lydian Group, and its insolvent state. Lydian International does not have the necessary funding to maintain a complete board of directors. In the normal course in Canada, D&O policies expire prior to a company entering into a liquidation procedure. Directors do not continue in office for the duration of a bankruptcy or receivership proceeding where a Court officer is named to take over, in effect, the role of management. I understand from Mourant Ozannes that the position in Jersey is different, given that directors remain in office even whilst the liquidation is underway.
143. As I have ongoing involvement with Restructured Lydian and its subsidiaries post Plan implementation, I have stayed on as a director, in order to allow Lydian International to be wound up in an orderly manner.

**P. Proposal to appoint joint liquidators**

144. The CCAA Applicants have retained Andrew Wood and Alex Adam from Deloitte LLP to act as joint liquidators in respect of the winding up of Lydian International. Their details are:
  - (a) Mr Andy Wood: PO Box 403, Gaspe House, 66-72 Esplanade, St Helier, Jersey, Channel Islands, JE4 8WA; and
  - (b) Mr Alex Adam: PO Box 137, Regency Court, Gategny Esplanade, St Peter Port, Guernsey, Channel Islands, GY1 3HW.
145. Each has confirmed that they are prepared to accept an appointment as joint liquidator. I understand that, given that Lydian International is a Jersey company and the just and equitable winding up is a Jersey process, Mr Wood would adopt the principal role as regards conducting the just and equitable winding up of Lydian International.

**Q. Position of Lydian International following implementation of the Plan**

146. The total liability of the CCAA Applicants, including Lydian International, to the Senior Lenders amounted to over USD 300 million at the end of Q1. The CCAA Applicants owed further liabilities to their Equipment Financiers of over USD 90.6 million.
147. Lydian International's financial statement as at the end of Q1 2020 [**VF1/ pages 2105 - 2121**] records the financial position of Lydian International prior to implementation of the Plan, and note that as at 31 March 2020 Lydian International had:
- (a) Total current assets of USD 15,623,000
  - (b) Total assets of USD 47,044,000
  - (c) Total current liabilities of 403,459,000
  - (d) Total liabilities of USD 406,785,000
148. The Plan has provided for the equivalent of an assignment and transfer of substantially all of Lydian International's assets (including the substantial shareholding it held in Lydian Canada) by amalgamating Lydian Canada with SL Newco to form Restructured Lydian, all in accordance with the terms proposed by the Plan. In particular, Lydian International's ordinary shares in Lydian Canada were exchanged for a single preferred share in SL Newco which was subsequently redeemed. In exchange, Lydian International and certain other subsidiaries were granted an absolute release and discharge from all indebtedness, liabilities and obligations owing to the Senior Lenders, and from all security, encumbrances and other documents in respect thereof in order to permit an orderly winding up in Jersey without a protracted and costly liquidation process being undertaken by Jersey liquidators. The consolidated balance sheet of Lydian International, showing its financial position post implementation of the Plan, shows that the only material funds currently held by Lydian International are the Post-Implementation Date Expenses Reserve [**VF1/ pages 2122 - 2125**].
149. The priority of the Senior Lender's security was such that in any alternative insolvency procedure open to Lydian International (e.g. a Désastre or Creditors' Winding Up) prior to implementation of the Plan, the assets of Lydian International would have been transferred as amongst the creditors in first priority to the Senior Lenders; subject to higher ranking payments (i.e. costs and expenses of the liquidation itself).
150. The Secured Lenders have, by the terms of the Plan, released Lydian International from its indebtedness to them upon the Plan Implementation Date (6 July 2020). Accordingly, Lydian International is no longer burdened by its debt obligations to the Senior Lenders.
151. Lydian International has no access to further financial support. In the event that it is not wound up, it will be left to "drift" in Jersey until strike off. It will not be able to comply with its ongoing statutory obligations in Jersey.

152. The unsecured creditors of Lydian International [VF1/ page 2126] are predominantly professional firms whose fees are being paid from time to time from the Post-Implementation Date Expenses Reserve.

#### **R. Lydian International's assets in Jersey**

153. Lydian International is a holding company and it carried out no substantive business activities. The Pre-Restructuring Lydian Group's loan agreements were governed primarily by the laws of the Province of Ontario. As detailed below, Lydian International retains a small office/file storage facility in Jersey.

##### Jersey office

154. Lydian International occupies premises at Bourne House 1st Floor, Francis Street, St Helier, Jersey, JE2 4QE pursuant to a lease dated 2 August 2017 between Zoarcas Investments Limited and Lydian International [VF1/ pages 2127 - 2131]. The monthly rent is £470 and the lease is terminable upon three months' notice being given by the tenant.
155. The nominal assets that Lydian International may own in Jersey are office effects and files at its offices. It is likely that these files relate principally to the affairs of Lydian Armenia, and it is therefore anticipated that they will be collected and re-located prior to commencement of Lydian International's winding up.

##### Jersey employees

156. While Lydian International previously employed certain individuals, those employment contracts have been transferred to other entities within the Restructured Lydian Group.

#### **S. Conduct of the winding-up**

157. As detailed at paragraph 121 above, the Ontario Court found that the Plan is fair and reasonable in all the circumstances. The Plan was also implemented with the majority consent of the Senior Lenders and the support of the Monitor.
158. In view of the significant body of information provided to the Ontario Court, and the fact that the creditors and shareholders had the opportunity to raise concerns in the Canadian proceedings, which were appropriately considered, I understand the liquidators will in effect be relying on the diligence applied to the process by the Ontario Court with regard to their investigations.
159. Further investigations by the joint liquidators would be disproportionate and costly in view of the detailed history of the CCAA Proceedings, the opportunity afforded to stakeholders to

make representations before the Ontario Court (which were extensive), and the provisions of the Plan. The Senior Lenders have voted in favour of the Plan by way of majority, and all claims against the directors are waived pursuant to the terms of the Plan and the Plan Sanction Order. These investigations would appear to be, in my view, duplicative and costly.

#### **T. Costs of the Just and Equitable winding up**

160. As noted above, the majority of the Senior Lenders have agreed to fund the costs associated with implementation of the Plan, as set out in the DIP Exit Facility Amendment [VF1/ pages 1919 - 1931]. A schedule setting out the costs with regard to Lydian International Limited appears at [VF1/ page 1847]. The total costs for winding up Lydian International in Jersey per the schedule are estimated to be USD 217,000, including legal costs and expenses and Deloitte LLP's fees.

#### **U. Service and Notice**

161. The CCAA Applicants and the Monitor have communicated updates in the CCAA Proceedings to date with shareholders and creditors of Lydian International by way of press releases [VF1/ 1792 - 1794], direct correspondence from the Monitor, and motion materials and updates posted to the website of the Monitor [VF1/ page 1954].
162. The website of the Monitor has, since the beginning of the CCAA Proceedings, made available the Canadian and Jersey Court Documents [VF1/ page 1954]. It is in my view likely that any notices posted to the website of the Monitor will come to the attention of the shareholders as well as unsecured creditors of Lydian International. It is clear, given the direct communications by shareholders to the Ontario Court and the Service List that shareholders had knowledge of the CCAA Proceedings and Plan.
163. Chief Justice Morawetz heard from representatives of Lydian International's shareholders during the motion to approve the Sanction Order, and noted this in his reasons in connection with the Sanction Order.

#### **V. Termination of the CCAA Proceedings and the discharge of the Monitor**

164. Pursuant to the Plan, the Monitor filed the Plan Implementation Certificate (as defined in the Plan) on 6 July 2020, certifying that the Monitor has received written notice from the CCAA Applicants that all of the conditions precedent (as set out in the Plan) have been satisfied or waived, and that the Effective Time (as defined in the Plan) has occurred.
165. The filing of the Plan Implementation Certificate had the effect of, inter alia, terminating the CCAA Proceedings with respect to Lydian UK and Lydian Canada, terminating and varying certain charges granted by the various CCAA orders, and authorising the Monitor to maintain

the Post-Implementation Date Expenses Reserve (as defined in the Plan) and making certain payments.

166. Upon satisfying certain conditions, including the disbursement of the Remaining Post Implementation Date Expenses (as defined in the Plan) and the transfer of any remaining Post-Implementation Date Expenses Reserve to Restructured Lydian, the Monitor will file the CCAA Termination Certificate (as defined in the Plan), which will have the effect of terminating the remaining charges, discharging the Monitor and terminating the CCAA Proceedings. It is anticipated that the CCAA Termination Certificate will be filed upon dissolution of Lydian International.

**W. Engagement with the Viscount**

167. Mourant Ozannes, on behalf of Lydian International, have liaised with the Viscount of the Royal Court of Jersey in relation to this application and have supplied her with a copy of the Second Letter of Request, the Representation and the evidence. The Viscount has, as I understand matters, no observations to draw to the attention of the Court.

**X. No declaration made under the Bankruptcy (Désastre) Law 1990**

168. I understand that pursuant to Article 155(1) of the Companies (Jersey) Law 1991, a company cannot be wound up on just and equitable grounds where a declaration has been made under the Bankruptcy (Désastre) Law 1990. I confirm that to the best of my knowledge no such declaration has been made in respect of Lydian International.

**SIGNED** and **SWORN** by the said **VICTOR FLORES**

**SIGNED** and **SWORN** by the said )

**VICTOR FLORES** )

At *New York* )

This *6th* day of *August* 2020 )

BEFORE ME



Commissioner for Oaths/Practising Solicitor

CAROLINE S ROOSJE  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01RO6332590  
Qualified in Kings County  
My Commission Expires November 02, 2023

**COURT FILE NO.[ ]**

**IN THE ROYAL COURT OF JERSEY**  
**(SAMEDI DIVISION)**

**IN THE MATTER OF THE REPRESENTATION OF LYDIAN INTERNATIONAL LIMITED**

**AND IN THE MATTER OF THE COMPANIES (JERSEY) LAW 1991**

**AND IN THE MATTER OF THE LETTER OF REQUEST FROM THE ONTARIO SUPERIOR COURT  
OF JUSTICE**

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**EXHIBIT VF1**

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This is the exhibit marked VF1 referred to in the First Affidavit of Victor Flores

**SIGNED** and **SWORN** by the said **VICTOR FLORES**

This is the exhibit marked "VF1" referred to in the First Affidavit of Victor Flores.

BEFORE ME



Commissioner for Oaths/Practising Solicitor

CAROLINE S ROOSJE  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01RO6332590  
Qualified in Kings County  
My Commission Expires November 02, 2023