Court File No. CV-22-00683820-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF VOYAGER DIGITAL LTD.

APPLICATION OF VOYAGER DIGITAL LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

SECOND REPORT OF THE INFORMATION OFFICER

ALVAREZ & MARSAL CANADA INC.

SEPTEMBER 30, 2022

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APPENDICES

1.0 INTRODUCTION

Voyager Chapter 11 Proceedings

1.1 On July 5, 2022 (the "**Petition Date**"), Voyager Digital Holdings, Inc. ("**Voyager Holdings**"), Voyager Digital Ltd. ("**VDL**") and Voyager Digital, LLC ("**OpCo**") (each a "**Debtor**" and collectively, the "**Debtors**", and together with their direct and indirect non-Debtor affiliates, the "**Voyager Group**"), commenced voluntary reorganization proceedings[1] (the "**Chapter 11 Proceedings**") pursuant to Chapter 11 of the U.S. Code (the "**U.S. Bankruptcy Code**") before the United States Bankruptcy Court for the Southern District of New York (the "**U.S. Court**").

1.2 On July 8, 2022 (the "**First Day Hearing**"), the U.S. Court granted various interim and final orders in the Chapter 11 Proceedings (the "**First Day Orders**"), including an order (the "**Foreign Representative Order**") authorizing VDL to act as foreign representative of the Debtors (in such capacity, the "**Foreign Representative**") in a proceeding to be commenced in the Ontario Superior Court of Justice (Commercial List) (the "**Canadian Court**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**" and these proceedings the "**CCAA Recognition Proceedings**", and together with the Chapter 11 Proceedings, the "**Restructuring Proceedings**"). The Foreign Representative Order also authorizes VDL to:

(a) seek recognition of the Chapter 11 Proceedings in a proceeding in Canada;

[1] On July 6, 2022, the U.S. Court granted an order directing, for procedural purposes only, joint administration of the Chapter 11 Proceedings as Voyager Digital Holdings, Inc. *et al*. This order does not provide for consolidation for substantive purposes.

(b) request that the Canadian Court lend assistance to the U.S. Court in protecting the property of the estates; and

(c) seek any other appropriate relief from the Canadian Court that VDL deems just and proper in furtherance of the protection of the Debtors' estates.

CCAA Recognition Proceedings

1.3 On July 11, 2022, the Foreign Representative brought an application before the Canadian Court for certain relief pursuant to Part IV of the CCAA.

1.4 On July 12, 2022, VDL obtained two orders of Canadian Court:

(a) an initial recognition order (the "**Initial Recognition Order**"), among other things,

(i) declaring that VDL is the foreign representative in respect of the Chapter 11 Proceedings;

(ii) recognizing the Chapter 11 Proceedings of VDL as a foreign proceeding under Part IV of the CCAA;

(iii) granting a stay of proceedings in respect of VDL and their property and business; and

(iv) prohibiting VDL from selling or otherwise disposing of any property in Canada outside of the ordinary course of business, without leave of the Canadian Court; and

(b) a supplemental order (the "**Supplemental Order**"), among other things,

(i) recognizing certain of the First Day Orders;

(ii) appointing Alvarez & Marsal Canada Inc. as information officer in respect of the CCAA Recognition Proceedings (in such capacity, the "**Information Officer**"); and

(iii) granting a super-priority charge up to a maximum of CDN$500,000 over VDL's property in Canada in favour of counsel to VDL, the Information Officer and counsel to the Information Officer, Blake, Cassels & Graydon LLP, as security for their professional fees and disbursements in respect of these CCAA Recognition Proceedings.

1.5 On August 5, 2022, the Canadian Court issued an amended and restated Initial Recognition Order setting out that the center of main interest of VDL is the United States and that the Chapter 11 Proceeding of VDL is a foreign main proceeding.

1.6 On August 11, 2022, the Canadian Court made an order recognizing and giving effect in Canada to nine orders of the U.S. Court, including:

(a) the NOL Order;

(b) the Wages Order;

(c) the Taxes Order;

(d) the Second Interim Cash Management Order;

(e) the Stretto Appointment Order;

(f) the Bar Date Order;

(g) the Insurance Order;

(h) the OCP Order; and

(i) the Bidding Procedures Order;

each as defined and described in the First Report of the Information Officer dated August 8, 2022 (the "**First Report**").

1.7 As discussed in the First Report, on August 2, 2022, counsel for a proposed representative plaintiff in a proposed class action on behalf of certain equity investors (the "**Proposed Plaintiff**") served a notice of motion seeking a variety of relief including:

(a) compelling VDL to provide copies of insurance policies that may be responsive to the claims of the putative class members;

(b) compelling VDL to provide details of intercorporate funding arrangements;

(c) removal of the stay in favour of directors and officers (the "**D&O Stay**") from the Supplemental Order;

(d) additional duties of the Information Officer;

(e) tolling of all prescription, time or limitation periods applicable to any Misrepresentation Rights (as defined therein) and of mandatory dismissal for delay under section 29.1 of the *Class Proceedings Act*, 1992 until the stay is lifted;

(f) appointment of Siskands LLP/Aird & Berlis LLP as representative counsel ("**Proposed Representative Counsel**") for all securities claimants and current shareholders of VDL, funded by a charge on the estate of VDL or such other financial arrangements as the Honourable Court finds acceptable; and

(g) creation of an equity committee in the CCAA Proceeding from which Proposed Representative Counsel shall take instruction.

1.8 On August 11, 2022, the Canadian Court heard a motion in respect of items (f) and (g) above. As a result of discussions among the Foreign Representative, the Information Officer and the Proposed Plaintiff, the Proposed Plaintiff did not seek the remaining relief at the August 11, 2022 motion. The Canadian Court issued an endorsement (the "**Representative Counsel Endorsement**") on August 11, 2022, finding that the Chapter 11 Proceeding, as the plenary proceeding, is the appropriate forum in which the request for appointment of Proposed Representative Counsel should be brought. A copy of the Representative Counsel Endorsement is attached hereto as **Appendix "A"**.

1.9 On September 19, 2022, the Ad Hoc Group of Equity Interest Holders of VDL (of which the Proposed Plaintiff is a member), retained Kilpatrick Townsend & Stockton LLP and Dundon Advisers, LLC in the Chapter 11 Proceedings.

1.10 Further information regarding these CCAA Recognition Proceedings, including the First Report, can be found on the Information Officer's website at https://alvarezandmarsal.com/Voyager Digital (the "**Case Website**"). Copies of documents filed in the Chapter 11 Proceedings can be found on the case website maintained by Stretto, Inc. ("**Stretto**") at: https://cases.stretto.com/Voyager (the "**Chapter 11 Website**"), which can also be accessed via the Case Website.

2.0 TERMS OF REFERENCE AND DISCLAIMER

2.1 In preparing this report of the Information Officer (the "**Second Report**"), the Information Officer has relied solely on information and documents provided by the Foreign Representative, the other Debtors, and their Canadian legal counsel (collectively, the "**Information**"). Except as otherwise described in this Second Report, the Information Officer has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Information Officer has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CASs**") pursuant to the *Chartered Professional Accountants Canada Handbook*, and accordingly, the Information Officer expresses no opinion or other form of assurance contemplated under CASs in respect of the Information.

2.2 This Second Report should be read in conjunction with the Affidavit of Raajan Aery sworn September 28, 2022 (the "**Aery Affidavit**").

2.3 Unless otherwise stated, all monetary amounts contained herein are expressed in USD.

3.0 PURPOSE OF THIS SECOND REPORT

3.1 The purpose of this Second Report is to provide the Canadian Court with information or additional information regarding the following:

(a) a brief update on the Marketing Process (as defined below) and the status of the Chapter 11 Proceedings;

(b) the four orders that the Foreign Representative is seeking to have recognized and given effect by the Canadian Court pursuant to the CCAA being (i) Kirkland Retention Order, (ii) the BRG Retention Order, (iii) the Moelis Retention Order, and (iv) the KERP Order (each as defined and described below);

(c) VDL's capital structure and intercompany transactions of the Voyager Group;

(d) the stay of proceedings in place in Canada with respect to directors and officers; and

(e) the subsequent activities of the Information Officer since the date of the First Report.

4.0 STATUS OF THE CHAPTER 11 PROCEEDINGS

Restructuring

4.1 As discussed in the First Report, in late June 2022, the Voyager Group, with the assistance of its investment banker, Moelis & Company LLC ("**Moelis**"), commenced a comprehensive marketing process (the "**Marketing Process**") to solicit investor appetite in either (a) a sale of the Debtors' entire business to either a financial sponsor or a strategic company in the cryptocurrency industry pursuant to section 363 of the U.S. Bankruptcy Code ("**363 Sale**"), or (b) a capital raise whereby a third party (individually or as part of a consortium) would provide a capital infusion into the Voyager Group's business enterprise.

Bidding Procedure Milestones

4.2 Shortly after the Petition Date, the Debtors crafted bidding procedures (the "**Bidding Procedures**") to further effectuate the Marketing Process, whether pursuant to a 363 Sale and/or provide a path for approval of a Stand-Alone Plan.

4.3 On August 5, 2022, the U.S. Court entered an Order (i) Approving the Bidding Procedures and Related Dates and Deadlines, and (ii) Scheduling Hearings and Objection Deadlines with respect to the Debtors' Sale, Disclosure Statement and Plan Confirmation (the "**Bidding Procedures Order**"). As noted above, the Bidding Procedures Order was recognized by the Canadian Court on August 11, 2022.

4.4 On August 22, 2022, the Debtors filed a Notice of Filing of Revised Bidding Procedures with the U.S. Court which provided notice of a hearing on September 29, 2022 to consider approval of a successful bid or bids for the Debtors' assets (the "**Sale Hearing**"). On September 20, 2022, the U.S. Court rescheduled the Sale Hearing for October 19, 2022.

Successful Bidder

4.5 On September 26, 2022, the Debtors gave notice that, upon the conclusion of an auction and various other steps contemplated by the Bidding Procedures, the Debtors, in the exercise of their business judgement, and in consultation with the official committee of unsecured creditors (the "**UCC**"), selected West Realm Shires Inc. ("**FTX US**") as the successful bidder with respect to certain of the Debtors' assets (the "**Proposed Sale**"). A copy of the Voyager Group's press release in respect of the Proposed Sale is attached hereto as **Appendix "B"**.

4.6 On September 27, 2022, OpCo and FTX US executed an asset purchase agreement (the "**Asset Purchase Agreement**") memorializing the terms of the Proposed Sale.

4.7 On September 28, 2022, the Debtors filed a motion for an order authorizing entry into the Asset Purchase Agreement. Such motion will be heard at the Sale Hearing on October 19, 2022. Objections to the Proposed Sale are due on October 12, 2022.

4.8 No relief is being sought from the Canadian Court at this time in respect of the Proposed Sale. The Information Officer will provide details on the Proposed Sale in a further report if and when it is considered appropriate and relevant to the CCAA Recognition Proceedings or in response to any motion brought forward by the Foreign Representative.

Plan and Disclosure Statement

4.9 Simultaneously with their Marketing Process efforts, the Debtors, Moelis, and the Debtors' other advisors began to analyze potential strategies to effectuate a standalone chapter 11 plan of reorganization ("**Stand-Alone Plan**").

4.10 On August 12, 2022, the Debtors filed a First Amended Joint Plan of Reorganization (the "**First Amended Joint Plan**") and the proposed disclosure statement which sets out a summary of the First Amended Joint Plan. The First Amended Joint Plan provides for a Stand-Alone Plan that can be effectuated without a sale or strategic partner.

4.11 On August 18, 2022, the Debtors filed a motion for entry of an order approving (i) the adequacy of the disclosure statement, (ii) solicitation and notice procedures, (iii) forms of ballots and notices in connection therewith, and (iv) certain dates with respect thereto (the "**Disclosure Statement Hearing**"). On August 24, 2022, the U.S. Court rescheduled the Disclosure Statement Hearing for September 29, 2022. On September 20, 2022, the U.S. Court rescheduled the Disclosure Statement Hearing for October 19, 2022.

4.12 Objections to the adequacy of the disclosure statement are due on October 12, 2022.

4.13 The Information Officer understands that, as soon as reasonably practicable, the Debtors will file an amended Plan and Disclosure Statement ("**Second Amended Joint Plan**") to seek consummation of the Proposed Sale pursuant to the Second Amended Joint Plan.

4.14 As of the date of this Second Report, the Second Amended Joint Plan has not been filed and no relief is being sought before the Canadian Court in respect of the Second Amended Joint Plan.

4.15 The Information Officer will prepare a report on the Second Amended Joint Plan if and when it is considered appropriate and relevant to the CCAA Recognition Proceedings or in response to any motion brought forward by the Foreign Representative before this Court.

Bar Date

4.16 As discussed in the First Report, the Bar Date Order established October 3, 2022 as the general bar date. This is the date by which all entities (other than governmental units and certain categories of claimants exempt from complying with the applicable bar dates) that wish to assert a claim against the Debtors that arose prior to the Petition Date must file a proof of claim.

5.0 ADDITIONAL ORDERS OF THE U.S. COURT

5.1 Since the date of the First Report, the U.S. Court has made the following orders which, as described in greater detail in the Aery Affidavit, the Foreign Representative is seeking recognition of at a hearing before the Canadian Court on October 6, 2022:

(a) Order Authorizing the Retention and Employment of Kirkland & Ellis LLP and Kirkland & Ellis International LLP (together "**Kirkland**") as attorneys for the Debtors and debtors in possession effective as of July 5, 2022 ("**Kirkland Retention Order**");

(b) Order Authorizing the Employment and Retention of Berkeley Research Group LLC ("**BRG**"), as Financial Advisor Effective as of July 5, 2022 ("**BRG Retention Order**");

(c) Order Authorizing the Employment and Retention of Moelis as Investment Banker and Capital Markets Advisor to the Debtors, Effective as of the Petition Date ("**Moelis Retention Order**"); and

(d) Order Approving the Debtors' Key Employee Retention Plan ("**KERP**") and Granting Related Relief ("**KERP Order**").

5.2 Copies of all such orders and other documents related to the Chapter 11 Proceedings are available on the Chapter 11 Website, a link to which is included on the Case Website. The above orders and their relevance to the Canadian stakeholders are discussed below.

Kirkland Retention Order

5.3 On August 4, 2022, the U.S. Court entered the Kirkland Retention Order. The Kirkland Retention Order authorizes the Debtors to retain and employ Kirkland as the Debtors' U.S. insolvency counsel effective as of July 5, 2022 to perform all necessary legal services for the Debtors in connection with the Chapter 11 Proceedings, in accordance with the terms and conditions set forth in the engagement letter between the Debtors and Kirkland.

BRG Retention Order

5.4 On August 16, 2022, the U.S. Court entered the BRG Retention Order. Pursuant to the BRG Retention Order, the Debtors were authorized to retain BRG as a financial advisor, effective as of July 5, 2022.

5.5 The Debtors have retained BRG to provide various services, including supporting the development of a restructuring plan and strategic alternatives for the Debtors, preparing various financial analyses, and providing advice to management on cash conservation measures.

Moelis Retention Order

5.6 On August 16, 2022, the U.S. Court entered the Moelis Retention Order. Pursuant to the Moelis Retention Order, the Debtors were authorized to retain Moelis as the Debtors' investment banker and capital markets advisor, effective as of the Petition Date.

5.7 The Debtors have retained Moelis to provide various services, including assisting the Debtors in reviewing and analyzing their business plan and financial condition, and analyzing and negotiating any potential restructuring, sale or capital transaction.

KERP Order

5.8 On August 25, 2022, the U.S. Court entered the KERP Order. The KERP allows the Debtors to retain certain critical non-insider employees and provides for payment of cash retention awards to 38 of the Debtors' non-insider employees (the "**Participants**"). Each of the Participants performs essential accounting, cash and digital asset management, IT infrastructure, legal and other critical functions for the Debtors.

5.9 The Debtors sought approval of the KERP to avoid the departure of the Participants, key employees of the Debtors, during the Chapter 11 Proceedings. The Debtors are of the view that such departures would destroy value, harm the Debtors' restructuring efforts and adversely affect the Debtors' ability to operate in the ordinary course upon emergence from the Chapter 11 Proceedings.

5.10 The KERP Order authorizes, but does not direct, the Debtors to implement the KERP and to make the payments contemplated under the KERP specified in the Debtors' motion. The Debtors are authorized to add replacement participants to the KERP in the event that a Participant resigns or is terminated for cause.

6.0 UPDATE ON VDL'S NON-CONSOLIDATED CAPITAL STRUCTURE

6.1 As of the date of the First Report, based on information provided by management to the Information Officer, the Information Officer understood the amount owing to VDL from OpCo in respect of unsecured intercompany debt facilities existing at the Petition Date exceeded $71.5 million. However, this information was provided on a preliminary basis, and in the First Report, the Information Officer indicated that further review was required.

6.2 Upon receiving additional information from management of the Voyager Group, as of the Petition Date, the Information Officer understands that the amount owing to VDL from OpCo in respect of unsecured intercompany debt facilities is approximately $217.5 million, including $80.4 million which is documented by way of certain loan agreements and $137.1 million which is characterized as debt on the books and records of VDL, but for which no intercompany loan agreements exist.

6.3 In addition, as of the Petition Date, the Information Officer understands the amount owing to VDL from Voyager Holdings include (a) approximately $6.3 million in respect of an unsecured intercompany debt facility for which an intercompany loan agreement is in place, and (b) approximately $2.1 million in respect of unsecured intercompany receivables relating to allocations of expenses and management fees, recharges of bills paid on behalf of one another and cash movements between VDL and Voyager Holdings.

6.4 The Information Officer understands amounts owing to VDL from Voyager Group entities (including Non-Debtors) is as follows:

VDL Intercompany Balances	**Total (USD)**
VDL Intercompany Debt	
OpCo	$217,458,709.60
Voyager Holdings	$6,329,942.60
Total Debtor Intercompany Debt Receivables	**$223,788,652.20**
Other Debtor Intercompany Receivables	
Voyager Holdings	$2,132,044.79
Total Other Debtor Intercompany Receivables	**$2,132,044.79**
Non-Debtor Intercompany Receivables	
HTC Trading	$1,122,807.31
LGO SAS	$1,054,238.88
Voyager Digital Brokerage Canada Ltd	$890,403.64
Voyager Digital Brokerage Ltd.	$48,304.60
Voyager European Holdings ApS	$866,982.03
Voyager IP, LLC	$164.40
Total Non-Debtor Intercompany Receivables	**$3,982,900.86**

6.5 In addition to the above, based on information provided by management of the Voyager Group, the Information Officer understands that approximately $46 million was advanced to OpCo by VDL in the form of equity and approximately $16 million was advanced to Voyager European Holdings ApS by VDL in the form of equity for the acquisition of Coinify during fiscal year ended June 30, 2022.

6.6 The Information Officer has been in communication with counsel to the Proposed Plaintiff regarding the intercompany receivables prior to the date of this Second Report.

7.0 DIRECTOR & OFFICER STAY

7.1 In the First Report, the Information Officer noted that the stay of proceedings in place in the Chapter 11 Proceedings did not extend to claims against directors and officers (with the exception of derivative claims) and that the Debtors intended to file a motion in the Chapter 11 Proceedings to address the asymmetry between the D&O Stay and the Chapter 11 Proceedings.

7.2 On August 10, 2022, the Debtors filed an adversary complaint and motion (the "**U.S. D&O Motion**") in the Chapter 11 Proceeding to extend the automatic stay or, in the alternative, for injunctive relief enjoining the prosecution of pending litigation against the Debtors' directors and officers in the class action commenced by the Proposed Plaintiff in Canada (the "**Canadian Class Action**"). A copy of the U.S. D&O Motion is attached hereto as **Appendix "C"**.

7.3 On August 20, 2022, the Proposed Plaintiff and the Debtors entered into a stipulation (the "**Stipulation**") by which the Debtors agreed to adjourn the U.S. D&O Motion initially to November 15, 2022, and thereafter as appropriate, subject to the Proposed Plaintiff agreeing to refrain from taking any steps against any and all defendants in the Canadian Class Action until the Proposed Plaintiff seeks and receives written permission from the Debtors or an order from the U.S. Court. A copy of the Stipulation is attached hereto as **Appendix "D"**.

8.0 ACTIVITIES OF THE INFORMATION OFFICER

8.1 The activities of the Information Officer since the date of the First Report (August 8, 2022) have included:

(a) reviewing relevant materials filed in the Chapter 11 Proceedings and drafts of the application materials for the CCAA Recognition Proceedings;

(b) maintaining the Case Website for the CCAA Recognition Proceedings to make available copies of the orders granted in the proceedings and other non-confidential materials. As noted above, there is also a link on the Information Officer's website to the Chapter 11 Website maintained by Stretto that includes copies of the U.S. Court materials and orders, petitions and notices and other materials relevant to the Chapter 11 Proceedings;

(c) reviewing and considering the orders made in the Chapter 11 Proceedings;

(d) monitoring the Chapter 11 Website for activity in the Chapter 11 Proceedings;

(e) communicating with counsel to VDL and management of the Voyager Group regarding matters relevant to the CCAA Recognition Proceedings and the Chapter 11 Proceedings;

(f) communicating with counsel to the Proposed Plaintiff;

(g) attending hearings before the Canadian Court on August 11, 2022;

(h) attending hearings before the U.S. Court on August 24, 2022 and September 29, 2022;

(i) attending a townhall meeting of the UCC on August 11, 2022;

(j) attending the meeting of creditors on August 30, 2022;

(k) responding to inquiries from investors; and

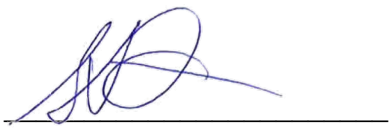
(l) with the assistance of legal counsel, preparing this Second Report.

9.0 RECOMMENDATIONS

9.1 The Information Officer understands that recognition by the Canadian Court of the requested orders is relevant to the conduct of the Restructuring Proceedings. The Information Officer, together with its legal counsel, has reviewed the Kirkland Retention Order, BRG Retention Order, Moelis Retention Order, and the KERP Order and is of the view that granting recognition of these orders is reasonable and appropriate in the circumstances. Based on the foregoing, the Information Officer respectfully recommends that the Canadian Court grant the relief requested by the Foreign Representative.

All of which is respectfully submitted to the Court this 30th day of September, 2022.

ALVAREZ & MARSAL CANADA INC.
Information Officer of Voyager Digital Ltd.,
and not in its personal or corporate capacity

Per: 

Stephen Ferguson
Senior Vice-President

APPENDIX “A”

SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-22-00683820-00CL **DATE:** 11 August 2022

NO. ON LIST:

TITLE OF PROCEEDING: **VOYAGER DIGITAL LTD**

BEFORE JUSTICE: **CAVANAGH**

PARTICIPANT INFORMATION

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ENDORSEMENT OF JUSTICE CAVANAGH:

There are two motions before me.

First, Voyager Digital Ltd. ("VDL"), as the foreign representative of VDL in respect of the case under Chapter 11 of Title 11 of the United States Code commenced by VDL in the United States Bankruptcy Court for the Southern District of New York (the "U.S. Bankruptcy Court") (the "U.S. Proceeding"), moves for an order recognizing and enforcing in Canada certain orders entered by the U.S. Bankruptcy Court in the Chapter 11 case.

Second, Francine De Sousa, on behalf of the proposed class-action plaintiff under Court File No. 22-00683699-00 CP, moves for certain relief as set out in her Notice of Motion.

Motion by VDL

VDL, as foreign representative of VDL in the Chapter 11 Case seeks an order recognizing and enforcing in Canada certain Orders entered by the U.S. Bankruptcy Court. This motion is unopposed.

The Orders sought to be recognized are described in the First Report of the Information Officer at Appendix F, section B.

I am satisfied that the requested recognition order should be made.

Order to issue in form of order signed by me.

Motion by Francine De Sousa

The relief sought by Ms. De Sousa that is contentious is her motion for an order (i) appointing representative counsel for all securities claimants and current shareholders of VDL impacted in the proceeding commenced in this Court pursuant to the *Companies' Creditors Arrangement Act*, as amended (the "*CCAA*") and the U.S. Proceeding, to be funded by the charge on the estate of VDL; and (ii) allowing for the creation of an equity committee in the CCAA proceeding from which representative counsel shall take instructions, which will include the appointment of Ms. De Sousa as one of its members, to represent the VDL Shareholders.

Background

VDL is a public company traded on the Toronto Stock Exchange. Through its wholly-owned US subsidiary entities, Voyager Digital, LLC, and Voyager Digital Holdings, Inc., VDL and its subsidiaries operated a non-custodial cryptocurrency exchange.

Ms. De Sousa is a shareholder of VDL. She is the proposed representative plaintiff in the proposed class action against VDL and other defendants. In the proposed class action, Ms. De Sousa alleges, on her own behalf and on behalf of all persons and entities who purchased VDL shares on the secondary market from October 28, 2021 to July 5, 2022, that the defendants made misrepresentations related to the crypto asset loans made by VDL and that, as a result of these misrepresentations, she and other class members suffered financial losses.

On July 5, 2022 VDL and other related debtors commenced voluntary reorganization proceedings pursuant to Chapter 11 of the US Bankruptcy Code before the US Bankruptcy Court. On July 8, 2022, the US Bankruptcy Court granted various interim and final orders including an order authorizing VDL to act as foreign representative of the debtors in a proceeding to be commenced in this Court pursuant to the *CCAA*. On July 11, 2022, VDL, as foreign representative, brought an application before this court for certain relief pursuant to Part IV the *CCAA*. On July 12, 2022, VDL obtained two Orders of this Court: an initial recognition order and a supplemental order.

On July 19, 2022, this Court conducted a hearing with respect to determination of whether (i) the U.S. Proceeding is a "foreign main proceeding" or a "foreign non-main proceeding", and (ii) whether VDL's centre of main interest ("COMI") is the United States. On August 4, 2022, this Court issued an endorsement declaring that the U.S. Proceeding is a "foreign main proceeding" and that VDL's COMI is the United States.

In the U.S. Proceeding, the U.S. Bankruptcy Court appointed the Official Committee of Unsecured Creditors. This committee represents all unsecured creditors of the debtors in the U.S. Proceeding, including VDL. The Official Committee has retained Canadian counsel to represent its interests in the Canadian proceeding.

Analysis

Ms. De Sousa submits that this Court has jurisdiction to grant the requested order pursuant to the broad powers conferred by s. 11 of the *CCAA*. Ms. De Sousa submits that she meets the tests set out in the jurisprudence for the appointment of representative counsel and that this Court should grant the requested order.

I first address the preliminary objection raised by VDL, which is supported by the Official Committee of Unsecured Creditors, that is, that this motion is brought in the wrong court, and that it should properly have been brought to the U.S. Bankruptcy Court.

Ms. De Sousa submits that there is no legal requirement, under the CCAA or otherwise, for her to bring this motion in the U.S. Bankruptcy Court. She submits that her motion is properly brought to this Court. Ms. De Sousa submits that she and other the shareholders would be treated inequitably if she is required to move in the U.S. Proceeding for an order appointing representative counsel.

Ms. De Sousa points to the Order made by the U.S. Bankruptcy Court authorizing VDL to act as foreign representative in which the debtors are authorized to pay the costs of the Information Officer and its counsel, consistent with any orders of the Canadian Court. No charge is ordered. A charge was ordered in this court.

Ms. De Sousa submits that a charge to secure payment of fees of Canadian representative counsel would have to be ordered by this Court, in the first instance. Ms. De Sousa submits that that it would be a waste of judicial resources to require her to first seek an order appointing representative counsel from the U.S. Bankruptcy Court and then to come to this Court to seek recognition of this Order and an Order authorizing a charge.

Ms. De Sousa accepts that if an order is made in the Canadian proceeding appointing representative counsel, one role of representative counsel will be to retain and instruct U.S. counsel, and she assures the court that steps would be taken to ensure that there is no unnecessary duplication of work. Therefore, Ms. De Sousa accepts that there will be a need for representation of VDL shareholders in the U.S. Proceeding. Nevertheless, she submits, there will be a role for Canadian counsel given that VDL is a public company listed on the TSX and the shareholders' claims will be determined under Ontario law which will require advice from Canadian counsel.

Ms. De Sousa submits that there is authority for this Court to grant an order appointing representative counsel in ancillary Canadian proceedings that are alongside foreign main proceedings initiated under Chapter 11 of

the U.S. Bankruptcy Code. Ms. De Sousa cites as authority an order appointing representative counsel that is referenced in *Grace Canada Inc., Re*, [2008] O.J. 4208.

In *Grace*, W.R. Grace and its subsidiaries filed a joint Chapter 11 plan of reorganization with the U.S. Bankruptcy Court. Two days after the Chapter 11 proceedings were commenced, Grace Canada, Inc. commenced proceedings under the *CCAA* seeking ancillary relief to facilitate and coordinate the U.S. proceedings in Canada. By 2005, ten class actions were commenced across Canada in relation to the manufacture, distribution and sale of a certain product. In his decision, at para. 22, Farley J. noted that an order was made appointing Canadian counsel as representative counsel on behalf of the Canadian claimants to advocate their interests in the restructuring process.

I do not regard the Order made in the *Grace* proceeding to be a helpful authority for several reasons. First, unlike this motion, the motion was made by the Canadian applicant, Grace Canada, Inc., and not by the class representative in any of the class actions. Second, there is no analysis in the decision of Farley J. of the issue before me. Third, the Canadian proceedings were not subject to Part IV of the CCAA, as these amendments were not yet in force.

The U.S. Proceeding has been recognized as the foreign main proceeding and it is the plenary proceeding. The U.S. Bankruptcy Court is the is the forum within which the restructuring of VDL and the other debtors will take place. The requested order, even if it were to be granted, would still require a motion to the U.S. Bankruptcy Court for the appointment of representative counsel to represent the interests of the VDL shareholders in relation to the U.S. Proceeding, including any restructuring plan, so any efficiencies in having this motion heard in this Court are limited.

In my view, given that the U.S. Bankruptcy Court is presiding over the plenary proceeding, and this Court has recognized the U.S. Proceeding as the foreign main proceeding under Part IV of the CCAA, the requested order to appoint representative counsel should be sought from the U.S. Bankruptcy Court and not from this Court. This is consistent with the scheme of Part IV of the CCAA. It is open to the U.S. Bankruptcy Court to seek the assistance and cooperation of this Court in respect of any such request, including recognition of any Order made in the U.S. Proceeding and a request for consideration of any ancillary Order in the Canadian proceeding that may be needed to give effect in Canada to such an Order.

Disposition

For these reasons, Ms. De Sousa's motion for an Order appointing representative counsel to be funded by a charge on the estate of VDL is dismissed, without prejudice to her right to seek such relief from the U.S. Bankruptcy Court in the U.S. proceeding.

Ms. De Sousa advises that other relief requested in her Notice of Motion has been or is likely to be resolved and she does not seek this relief on this motion. If this relief is not, as expected, resolved on a consensual basis, Ms. De Sousa may renew her motion.

APPENDIX “B”

Voyager Completes Successful Auction and Announces Agreement for FTX to Acquire Its Assets

September 26, 2022 09:54 PM EST

Voyager Digital Ltd. ("Voyager" or the "Company") (OTC Pink VYGVQ; FRA: UCD2) announced today that after multiple rounds of bidding in a highly competitive auction process that lasted two weeks, its operating company Voyager Digital LLC, selected West Realm Shires Inc. (“FTX US”) as the highest and best bid for its assets. The Official Committee of Unsecured Creditors (“UCC”) participated actively in the competitive auction and supports FTX US’s winning bid.

FTX US’s bid is valued at approximately $1.422 billion, comprised of (i) the fair market value of all Voyager cryptocurrency at a to-be-determined date in the future, which at current market prices is estimated to be $1.311 billion, plus (ii) additional consideration that is estimated as providing approximately $111 million of incremental value. The Company’s claims against Three Arrows Capital remain with the bankruptcy estate, which will distribute any available recovery on such claims to the estate’s creditors.

FTX US’s bid maximizes value and minimizes the remaining duration of the Company’s restructuring by providing a clear path forward for the Debtors to consummate a chapter 11 plan and return value to their customers and other creditors. FTX US’s market-leading, secure trading platform will enable customers to trade and store cryptocurrency after the conclusion of the Company’s chapter 11 cases.

The asset purchase agreement between Voyager Digital LLC and FTX US will be presented for approval to the United States Bankruptcy Court for the Southern District of New York on Wednesday, October 19, 2022 and the objection deadline to the transaction is October 12, 2022 at 4:00 p.m. prevailing Eastern Time. The sale to FTX US will be consummated pursuant to a chapter 11 plan, which will be subject to a creditor vote and is subject to other customary closing conditions. FTX US and the Company will work to close the transaction promptly following approval of the chapter 11 plan by the Bankruptcy Court.

The auction follows Voyager’s July 5, 2022 entrance into a voluntary restructuring process aimed at returning maximum value to customers. Since the Company’s chapter 11 filing, in furtherance of this objective, Voyager has engaged in a dual-track process, considering both a potential sale and a standalone reorganization. In-line with the process outlined in court filings, Voyager received multiple bids contemplating sale and reorganization alternatives, held an auction and, based on the results of the auction, has

determined that the sale transaction with FTX is the best alternative for Voyager stakeholders.

Additional information about the timeline and customer access to crypto will be shared as it becomes available. A copy of the Bidding Procedures, Bidding Procedures Order, Bidding Procedures Motion and other pleadings filed in this case may be obtained free of charge by visiting the Voyager case website https://cases.stretto.com/Voyager.

The results of the auction do not change the Bar Date nor the need for customers to determine whether to file a claim. More information can be found here. Customers can file a claim on Voyager's case website here. The deadline for filing a claim is October 3, 2022, at 5:00 PM ET.

Voyager was advised by Kirkland & Ellis LLP, Moelis & Company LLC, and Berkeley Research Group. FTX US was advised by Sullivan & Cromwell LLP. The UCC was advised by McDermott Will & Emery LLP and FTI Consulting.

Forward Looking Statements

Certain information in this press release, including, but not limited to, statements regarding future growth and performance of the business, momentum in the businesses, future adoption of digital assets, and the Company's anticipated results may constitute forward looking information (collectively, forward-looking statements), which can be identified by the use of terms such as "may," "will," "should," "expect," "anticipate," "project," "estimate," "intend," "continue" or "believe" (or the negatives) or other similar variations. Forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause Voyager's actual results, performance or achievements to be materially different from any of its future results, performance or achievements expressed or implied by forward-looking statements. Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. In light of these risks, uncertainties, and assumptions, the future events and trends discussed in this press release may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements. Forward looking statements are subject to the risk that the global economy, industry, or the Company's businesses and investments do not perform as anticipated, that revenue or expenses estimates may not be met or may be materially less or more than those anticipated, that parties to whom the Company lends assets are able to repay such loans in full and in a timely manner, that trading momentum does not continue or the demand for trading solutions declines, customer acquisition does not increase as planned, product and international expansion do not occur as planned, risks of compliance with laws and regulations that currently apply or become applicable to the business and those other

risks contained in the Company's public filings, including in its Management Discussion and Analysis and its Annual Information Form (AIF). Factors that could cause actual results of the Company and its businesses to differ materially from those described in such forward-looking statements include, but are not limited to, a decline in the digital asset market or general economic conditions; changes in laws or approaches to regulation, the failure or delay in the adoption of digital assets and the blockchain ecosystem by institutions; changes in the volatility of crypto currency, changes in demand for Bitcoin and Ethereum, changes in the status or classification of cryptocurrency assets, cybersecurity breaches, a delay or failure in developing infrastructure for the trading businesses or achieving mandates and gaining traction; failure to grow assets under management, an adverse development with respect to an issuer or party to the transaction or failure to obtain a required regulatory approval. Readers are cautioned that Assets on Platform and trading volumes fluctuate and may increase and decrease from time to time and that such fluctuations are beyond the Company's control. Forward-looking statements, past and present performance and trends are not guarantees of future performance, accordingly, you should not put undue reliance on forward-looking statements, current or past performance, or current or past trends. Information identifying assumptions, risks, and uncertainties relating to the Company are contained in its filings with the Canadian securities regulators available at www.sedar.com. The forward-looking statements in this press release are applicable only as of the date of this release or as of the date specified in the relevant forward-looking statement and the Company undertakes no obligation to update any forward-looking statement to reflect events or circumstances after that date or to reflect the occurrence of unanticipated events, except as required by law. The Company assumes no obligation to provide operational updates, except as required by law. If the Company does update one or more forward-looking statements, no inference should be drawn that it will make additional updates with respect to those or other forward-looking statements, unless required by law. Readers are cautioned that past performance is not indicative of future performance and current trends in the business and demand for digital assets may not continue and readers should not put undue reliance on past performance and current trends.

SOURCE Voyager Digital, Ltd.

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APPENDIX “C”

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Counsel to the Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: VOYAGER DIGITAL HOLDINGS, INC. *et al.*, Debtors.	Chapter 11 Case No. 22-10943 (MEW) (Jointly Administered)
VOYAGER DIGITAL HOLDINGS, INC. *et al.*, Plaintiffs, v. FRANCINE DE SOUSA, et al, Defendants.	Adv. Pro. No. 22-_____

DEBTORS' ADVERSARY COMPLAINT TO EXTEND AUTOMATIC STAY OR, IN THE ALTERNATIVE, FOR INJUNCTIVE RELIEF ENJOINING PROSECUTION OF PENDING LITIGATION AGAINST THE DEBTORS' DIRECTORS AND OFFICERS

The Debtors[1] in the above-captioned Chapter 11 case ("Plaintiffs," and together with their debtor-affiliates, directors, and officers, the "Debtors"), through their undersigned proposed counsel, hereby file this adversary complaint for an extension of the automatic stay pursuant to Section 362(a) or Section 105(a) of the Bankruptcy Code.

PRELIMINARY STATEMENT

1. Voyager Digital Ltd., one of the Debtors, and certain of the Debtors' current and former directors and officers have been named as defendants in a putative class-action lawsuit, filed in Canada, arising from the Debtor's cryptocurrency ("crypto") trading, lending, and selling activities (the "Canadian Class Action"). A copy of the Notice of Action is attached as Exhibit A hereto.

2. The Canadian Class Action is brought against Voyager Digital Ltd. as well as certain of the Debtors' current and former directors and officers: Stephen Ehrlich (Debtors' CEO and co-founder), Philip Eytan (Debtors' non-executive Chairman and a director), Evan Psaropoulos (Debtors' Chief Commercial Officer), Lewis Bateman (Debtors' former Chief International Officer), Krisztian Toth (Debtor's director), Jennifer Ackart (Debtor's director), Glenn Stevens (Debtors' director), and Brian Brooks (Debtors' director) (collectively, the "D&Os").

3. The Canadian Class Action alleges claims against the Debtor's D&Os for statutory secondary market liability under Canadian securities law, and common-law negligent misrepresentation.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Voyager Digital Holdings, Inc. (7687); Voyager Digital Ltd. (7224); and Voyager Digital, LLC (8013). The location of Debtors' principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

4. The Canadian Class Action is dependent on, and inextricably intertwined with, the Debtors' alleged conduct. To prove many of the claims in that suit, the plaintiffs must first establish the underlying liability of the named directors and officers, which allegedly requires a vicarious finding of underlying wrongdoing by the Debtor, Voyager Digital Ltd. The Canadian Class Action may also require a determination as to whether the Debtors' crypto-based financial products are securities at all—an unsettled legal issue in Canada and the United States.

5. The Canadian Class Action is currently stayed against Debtor Voyager Digital Ltd. pursuant to the automatic stay provided by Section 362. This Court should extend the automatic stay pursuant to Section 362, or issue an injunction pursuant to Section 105 to enjoin the continuation of the Canadian Class Action as against the D&Os for the following reasons:

a. ***First***, the Debtors will be exposed to a significant risk of collateral estoppel, *stare decisis*, and evidentiary prejudice if the Canadian Class Action is permitted to proceed. The Debtors' D&Os' alleged conduct is the foundation for the Canadian Class Action's claims, and any judicial decision on the claims against the D&Os could be used against all the Debtors (not just Voyager Digital Ltd.)

b. ***Second***, some D&Os named in the Canadian Class Action are critical to the restructuring efforts of the Debtors, and particularly given the fast pace and anticipated short timetable of these chapter 11 cases, the Debtors need their D&Os focused on the restructuring, not defending a class action lawsuit in Canada.

c. ***Third***, the Debtors will face likely indemnification claims if the Canadian Class Action is allowed to continue. The Articles of Voyager Digital Ltd. require indemnification of its directors for liabilities incurred in the course of their business as directors, and if the Canadian Class Action results in such liability, Voyager

Digital Ltd. could be required to pay for such indemnification. As such, the Debtors could be directly affected should the Canadian Class Action proceed against the D&Os.

d. ***Fourth***, the Debtors' estates own property which may be depleted if the Canadian Class Action proceeds. Voyager Digital Ltd., the other Debtors, and the D&Os share insurance coverage for the Canadian Class Action. If prosecution of the Canadian Class Action continues, the Debtors and the D&Os will incur defense costs that could draw down these insurance policies, depleting an asset that the Debtors contend is the estates' property.

6. For these reasons, the Debtors request that the Court extend the automatic state pursuant to Section 362 or issue an injunction pursuant to Section 105 to stay or enjoin the prosecution of the Canadian Class Action against the D&Os and Voyager Digital, Ltd. until the effective date of a restructuring plan in these Chapter 11 cases.

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334.

8. This adversary proceeding is a core proceeding within the meaning of one or more subsections of 28 U.S.C. § 157(b).

9. Venue in this district is proper pursuant to 28 U.S.C. § 1409.

10. Pursuant to Federal Bankruptcy Rule of Procedure 7008, the Debtors consent to the entry of a final order or judgment by the Bankruptcy Court.

PARTIES

11. The Debtors are plaintiffs in this adversary proceeding.

12. Francine De Sousa is the named plaintiff in the Canadian Class Action. This Complaint is being served on the attorneys that filed the Canadian Class Action on her behalf.

RELIEF REQUESTED

13. By this Complaint, the Debtors seek a declaratory judgment pursuant to Sections 105 and 362 of the Bankruptcy Code to extend the automatic stay under Sections 362(a)(1) and 362(a)(3) to the Action, or in the alternative, stay and enjoin the Canadian Class Action pursuant to Section 105 of the Bankruptcy Code during the pendency of the Debtors' Chapter 11 cases.

FACTUAL BACKGROUND

14. On July 5, 2022 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under Chapter 11, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), with the United States Bankruptcy Court for the Southern District of New York (the "Court"). These cases are being jointly administered pursuant to Bankruptcy Rule 1015(b).

15. On July 19, 2022, the United States Trustee for Region 2 (the "U.S. Trustee") appointed an eight-member official committee of unsecured creditors (the "Creditors Committee"). (ECF No. 102).

16. The Debtors and certain of their non-Debtor affiliates (collectively, "Voyager," or "the Company") are a crypto-based financial platform that provides brokerage services that allows customers to buy, sell, trade, and store cryptocurrency on an easy-to-use and "accessible-to-all" platform. Voyager's customers can earn rewards on their cryptocurrency assets stored on the Company's platform and trade over 100 unique digital assets. Voyager's mobile application has been downloaded millions of times and currently had over 3.5 million active users at its peak. A detailed description of Voyager's business operations, capital and debt structure, and the facts and circumstances leading to these Chapter 11 cases is set forth in the *Declaration of Stephen Ehrlich,*

Chief Executive Officer of Voyager Digital Holdings, Inc., in Support of Chapter 11 Petitions and First Day Motions (the "Ehrlich Declaration"), (ECF No. 15) (July 6, 2022).

17. Debtor Voyager Digital Ltd. and certain of the Debtors' current and former directors and officers have been named as a defendant in a putative class-action proceeding filed in Toronto, Canada, captioned *De Sousa v. Voyager Digital Ltd., et al.*, No. CV-22-00683699-00CP (Ontario Superior Court of Justice Ct. July 6, 2022). Plaintiff Francine De Sousa, as proposed class representative, asserts claims against the D&Os and Voyager Digital Ltd. for allegedly violating Canadian securities laws. Ex. A, Notice of Action ¶¶ 27–44.

18. The Notice of Action asserts that Voyager Digital Ltd. is vicariously liable for the acts or omissions of the D&Os. *Id.* ¶¶ 45–48. For example, the Notice of Action alleges that in written and oral statements, Voyager Digital Ltd. falsely represented its exposure to the Terra/Luna collapse, the exposure of its lendees to the Terra/Luna collapse, and the extent of Voyager Digital Ltd.'s liquidity issues, all of which are alleged to be "misrepresentations" under Ontario securities law. *Id.* ¶¶ 10–14.

19. Parallel with these Chapter 11 cases, Debtor Voyager Ltd. commenced recognition proceedings under Part IV of the *Companies' Creditors Arrangement Act* (Canada) pending in the Ontario Superior Court of Justice (Commercial List). Those proceedings bear the caption *In the Matter of Voyager Digital Ltd.*, Court File No. CV-22-00683820-00CL.

20. On July 12, 2022, the Canadian Court recognized the Chapter 11 case of Debtor, Voyager Digital, Ltd., as a foreign proceeding, subject to a further determination as to whether such Chapter 11 case is a foreign main proceeding.

21. On August 9, 2022, the Canadian court made a determination that the "centre of main interest" of Debtor, Voyager Digital, Ltd. is in the United States and that the Chapter 11

cases of Voyager Digital, Ltd. would be recognized as a "foreign main proceeding" under Canadian law. *In the Matter of Voyager Digital Ltd.*, 2022 ONSC 4553 ¶¶ 3, 15–16 (quoting Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, § 47(2)). *See* Exhibit B. Pursuant to the Amended and Restated Initial Recognition Order of the Canadian Court dated July 12, 2022, and the amended and restated August 5, 2022 Order, and the Supplemental Order of the Canadian Court dated July 12, 2022, all suits in Canada against Voyager Digital Ltd. are stayed, absent a further order of that court. *Id.* ¶ 55; *see* Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, § 48(1) (requiring the stay after ordering recognition of a foreign main proceeding).

22. Despite the Canadian Court's orders, and that the filing of a notice of action does not, by itself, require any response or other active proceedings in the Canadian court,[2] counsel for the plaintiff has made it clear that the plaintiff intends to pursue the action quickly. Indeed, counsel for the Canadian Class Action plaintiff has already filed a motion in the Canadian insolvency case that would, if granted and among other relief, require Voyager Digital Ltd. to provide certain discovery, create an equity committee to which the Canadian Class Action plaintiff would be appointed, and appoint the Canadian lawyers for the Canadian Class Action plaintiff as representative counsel on behalf of equity holders. *See* Exhibit C.

The D&O Insurance Coverage

23. The Debtors and their directors and officers share a common primary Executive and Corporate Securities Liability Insurance Policy and a common excess insurance policy. The Policy provides coverage for claims made against directors and executives of both Voyager Digital

[2] Under Ontario Rule of Civil Procedure 14.03, a plaintiff may commence a case with a "notice of action" "that contains a short statement of the nature of the claim," which must then be followed by a full "statement of claim" "within thirty days after the notice of action is issued." Rules of Civil Procedure, R.R.O. 1990, Reg. 194, at Rule 14.03. The statement of claim and notice of action are then served together. *Id.* Service must take place "within six months after the notice of action is issued." *Id.* Rule 14.08.

Ltd. and its subsidiaries, including, but not limited to, non-indemnified losses of officers and directors under Insuring Agreement (A); losses of the Company or those of its directors and officers that the Company indemnifies, under Insuring Agreement (B); and the Company's losses from securities claims, under Insuring Agreement (C).

24. The Company and its officers and directors are entitled to use the proceeds of that policy for "damages, judgments, settlements, pre-judgment and post-judgment interest or other amounts … that any Insured is obligated to pay and Defense Expenses," subject to a few non-relevant limitations. If made, such payments could deplete proceeds available to the estates.

Voyager Digital Ltd.'s Indemnification Obligations

25. The Articles of Voyager Digital Ltd. obligate it to indemnify its "director[s], former director[s], [and] alternate director[s]," and their "heirs and legal personal representatives" for any "judgment, penalty or fine awarded or imposed in, or an amount paid in settlement of," any "legal proceeding or investigative action … in which a director, former director or alternate director…, by reason of the eligible party being or having been a director or alternate director … is or may be joined as a party; or is or may be liable for in respect of a judgment, penalty or fine in, or expenses, related [thereto]." Ex. D, Articles of Voyager Digital Ltd. art. 21.1–21.2.

THE CONTINUATION OF THE ACTIONS AGAINST THE D&Os WILL BE DETRIMENTAL TO THE DEBTORS' ESTATES

26. If the Canadian Class Action continues, and is not stayed or enjoined, the Debtors' estate and reorganization will be harmed.

27. ***First***, the Debtors will be exposed to a significant risk of collateral estoppel, *stare decisis*, and/or evidentiary prejudice if the Canadian Class Action against the D&Os is allowed to continue. The Canadian Class Action raises many legal issues that will be central to the Chapter 11 proceedings. The Debtors' alleged conduct is the foundation for the allegations against the

D&Os in the Canadian Class Action. Thus, any judicial decision—whether on the merits or on procedural issues—could be used later against the Debtors.

28. ***Second***, if the Canadian Class Action continues, an asset of the Debtors' estate—namely the insurance policy and proceeds that Debtors share with the D&Os—will be depleted. Because the insurance proceeds are paid on a first-billed, first-paid basis, allowing the Canadian Class Action to continue against the D&Os will reduce the proceeds available to the Debtors, and, once exhausted, increase the Debtors' indemnification obligations.

29. ***Third***, the Canadian Class Action will create indemnification obligations for the Debtors. In addition to the Debtors' contractual indemnification obligations to the D&Os, the Articles of Voyager Digital Ltd. obligate it to indemnify its "director[s], former director[s], [and] alternate director[s]," and their "heirs and legal personal representatives" for any "judgment, penalty or fine awarded or imposed in, or an amount paid in settlement of," any "legal proceeding or investigative action … in which a director, former director or alternate director…, by reason of the eligible party being or having been a director or alternate director … is or may be joined as a party; or is or may be liable for in respect of a judgment, penalty or fine in, or expenses, related [thereto]." Exhibit D, Articles of Voyager Digital Ltd. art. 21.1–21.2. The Canadian Class Action raises claims against the Debtors' directors and officers, who will then have direct claims against the Debtors' estate for their defense costs and any settlement or judgment.

30. ***Fourth***, certain of the D&Os are critical to any successful restructuring, and they will be distracted from their bankruptcy-related obligations to deal with the Canadian Class Action. The D&Os have the overriding responsibility to shepherd the Debtors through their restructuring, and they will necessarily be distracted from this responsibility if they are obligated to devote time to responding to discovery demands and litigating claims against them. These chapter 11 cases

are proceeding at a rapid pace, and the Debtors need their officers and directors focused on the restructuring, not on defending a class action lawsuit in Canada.

FIRST CLAIM FOR RELIEF

(Section 362 Declaratory Judgment)

31. The Debtors repeat and re-allege the allegations contained in paragraphs 1-30 of this Complaint as if fully set forth herein.

32. The Debtors seek an order staying the continuation of the Canadian Class Action until the effective date of a restructuring plan in these Chapter 11 cases, pursuant to sections 362(a)(1) and 362(a)(3) of the Bankruptcy Code.

33. Extension of the stay is warranted because continuation of the Canadian Class Action against the D&Os would expose the Debtors to a risk of collateral estoppel, *stare decisis*, and evidentiary prejudice.

34. Extension of the stay is further warranted because continuation of the Canadian Class Action against the D&Os would expose the Debtors to burdensome discovery obligations. Discovery from the Debtors would consume significant time and resources, distract their management, eviscerate the benefits of the automatic stay, and frustrate their ability to restructure successfully.

35. Extension of the stay is additionally warranted because continuation of the Canadian Class Action against the D&Os could deplete the Debtors' insurance coverage.

36. Extension of the stay is likewise warranted because continuation of the Canadian Class Action against the D&Os would expose the Debtors to indemnification claims by the D&Os, further jeopardizing property of the Debtors' estate.

37. If the Canadian Class Action is allowed to continue, the Debtors' prospects for confirming their restructuring plan will be impaired, thwarting the Congressional purpose of

providing the Debtors with a breathing spell from litigation pressures in their efforts to confirm a plan of reorganization. Accordingly, the automatic stay should extend to the Canadian Class Action that name D&Os as defendants or respondents.

38. Based on the foregoing, the Debtors seek a declaratory judgment extending the stay under sections 362(a)(1) and 362(a)(3) of the Bankruptcy Code to the continuation of the Canadian Class Action against the D&Os.

SECOND CLAIM FOR RELIEF

(Section 105 Injunctive Relief)

39. The Debtors repeat and re-allege the allegations contained in paragraphs 1–38 of this Complaint as if fully set forth herein.

40. The Debtors seek an injunction enjoining the continued prosecution of the Canadian Class Action against the D&Os under section 105(a) of the Bankruptcy Code until the effective date of a restructuring plan or further order of this Court.

41. Section 105(a) of the Bankruptcy Code authorizes the Court to issue "any order, process or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

42. Relief under section 105 of the Bankruptcy Code is particularly appropriate in a Chapter 11 case when necessary to protect a debtor's ability to effectively confirm a restructuring plan and to preserve the property of the debtor's estates.

43. For the reasons stated herein, this Court should apply section 105 of the Bankruptcy Code to enjoin the continuation of the Canadian Class Action against the Debtors because the continuation of that case against the Debtors will harm the Debtors' efforts to successfully restructure and will interfere with the property of the Debtors' Chapter 11 estate.

44. The likelihood of irreparable harm to the Debtors in the absence of injunctive relief far outweighs any harm to the parties in the Canadian Class Action. The plaintiffs in the Canadian Class Action will suffer little if any harm if the Canadian Class Action is enjoined until the effective date of the Debtors' restructuring plan.

45. If the Canadian Class Action against the Debtors is not enjoined, the Debtors will likely suffer harm and their restructuring efforts will be threatened, including:

a. The risk of collateral estoppel, *stare decisis*, issue preclusion, or other findings that could impair the Debtors' ability to defend themselves in subsequent litigation;

b. The risk that a finding of liability against the D&Os will harm the Debtors' estate because a finding of liability against the D&Os will result in indemnification claims against the Debtors;

c. The risk that continuation of the Canadian Class Action against the D&Os will result in depletion of insurance policies and proceeds through payment of the D&Os' defense costs and any settlement or judgment against them; and

d. The fact that the D&Os will be distracted by the Canadian Class Action during a time period they should be completely focused on shepherding the Debtors through these Chapter 11 cases.

PRAYER FOR RELIEF

WHEREFORE, the Debtors as Plaintiffs demand judgment against the Defendants and respectfully request relief as follows:

i. The entry of a declaratory judgment that the continuation of the Canadian Class Action against the D&Os is stayed under Bankruptcy Code Sections 362(a)(1) and/or 362(a)(3) until the effective date of a restructuring plan or further order of this Court; and/or

ii. In the alternative, the entry of an Order granting an injunction pursuant to Bankruptcy Code Section 105(a) enjoining and prohibiting the continuation of the Canadian Class Action against the D&Os until the effective date of a restructuring plan or further order of this Court; and/or

iii. Such other relief as this Court deems just and proper under the circumstances.

Dated: August 10, 2022
New York, New York

/s/ Joshua A. Sussberg

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Certificate of Service

I HEREBY CERTIFY that on this 10th day of August, 2022, I caused a true and correct copy of the foregoing to be served by e-mail upon the following:

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: VOYAGER DIGITAL HOLDINGS, INC. *et al.*, Debtors.	Chapter 11 Case No. 22-10943 (MEW) (Jointly Administered)
VOYAGER DIGITAL HOLDINGS, INC. *et al.*, Plaintiffs, v. FRANCINE DE SOUSA, et al, Defendants.	Adv. Pro. No. 22-01133 MEW)

THE DEBTORS' MOTION TO EXTEND AUTOMATIC STAY OR, IN THE ALTERNATIVE, FOR INJUNCTIVE RELIEF ENJOINING PROSECUTION OF CERTAIN PENDING LITIGATION AGAINST THE DEBTORS' DIRECTORS AND OFFICERS

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The Debtors[1] seek an extension of the automatic stay to the continued prosecution of one lawsuit against one of the Debtors, Voyager Digital Ltd., and the Debtors' directors and officers, which is based on allegations regarding the Debtors' selling, lending, and trading of cryptocurrency and other financial products. Without an extension of the automatic stay pursuant to section 362(a) or section 105(a) of the Bankruptcy Code, the litigation would nullify the protections provided by the automatic stay, and would threaten the Debtor's restructuring efforts.

PRELIMINARY STATEMENT

Voyager Digital Ltd., one of the Debtors, and certain of the Debtors' current and former directors and officers have been named as defendants in a putative class-action lawsuit, filed in Canada, arising from the Debtor's cryptocurrency ("crypto") trading, lending, and selling activities (the "Canadian Class Action"). The suit is brought against Voyager Digital Ltd. as well as certain of the Debtors' current and former directors and officers: Stephen Ehrlich (the Debtors' CEO and co-founder), Philip Eytan (the Debtors' non-executive Chairman and a director), Evan Psaropoulos (the Debtors' Chief Commercial Officer and former Chief Financial Officer), Lewis Bateman (the Debtors' former Chief International Officer), Krisztian Toth (Debtor's director), Jennifer Ackart (Debtor's director), Glenn Stevens (the Debtors' director), and Brian Brooks (the Debtors' director) (collectively, the "D&Os"). Its causes of action include alleged statutory secondary market liability under Canadian securities law, and common-law negligent misrepresentation.

The Canadian Class Action is dependent on, and inextricably intertwined with, the Debtors' alleged conduct. To prove many of the claims in that suit, the plaintiffs must first establish

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[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Voyager Digital Holdings, Inc. (7687); Voyager Digital Ltd. (7224); and Voyager Digital, LLC (8013). The location of Debtors' principal place of business is 33 Irving Place, Suite 3060, New York, NY 10003.

the underlying liability of the named directors and officers, which allegedly requires a vicarious finding of underlying wrongdoing by the Debtor Voyager Digital Ltd. The Canadian Class Action may also require a determination whether the Debtors' crypto-based financial products are securities at all—an unsettled legal issue in both Canada and the United States that is of great importance to the Debtors' future business.

The Canadian Class Action is currently stayed pursuant to the automatic stay under section 362 as it applies to Voyager Digital Ltd. This Court should extend the automatic stay pursuant to section 362, or issue an injunction pursuant to section 105 to enjoin the continuation of the Canadian Class Action as against the D&Os for the following reasons:

First, the Debtors will be exposed to a significant risk of collateral estoppel, *stare decisis*, and evidentiary prejudice if the Canadian Class Action is allowed to continue. The Debtors' D&Os' alleged conduct is the foundation for the Canadian Class Action's claims, and any judicial decision on the claims against the D&Os will inevitably be used against all the Debtors (not just Voyager Digital Ltd.).

Second, some of the D&Os named in the Canadian Class Action are critical to the restructuring efforts of the Debtors, and the Debtors' efforts to move this bankruptcy case forward as quickly as possible would be impaired if it proceeded. For example, the Debtors possess much of the information necessary to defend against the Canadian claims (and for the plaintiffs to attempt to prosecute them); that plaintiffs will seek discovery from the Debtors is inevitable. Such discovery would consume significant time and resources, distract the Debtors' management, and effectively eliminate the benefits of the automatic stay.

Third, the Debtors will face likely indemnification claims if the Canadian Class Action is allowed to continue. In addition to certain contractual indemnities, the Articles of Voyager Digital

Ltd. require indemnification of its directors for liabilities incurred in the course of their business as directors, and if the Canadian Class Action results in such liability, Voyager Digital Ltd. could be required to pay for such indemnification. As such, the Debtors could be directly affected should the Canadian Class Action go forward against the D&Os.

Fourth, property of the Debtors' estate may be depleted if the Canadian Class Action is allowed to continue. Voyager Digital Ltd., the other Debtors, and the D&Os share insurance coverage for the Canadian Class Action. If the Canadian Class action is allowed to continue, the Debtors and the D&Os will incur defense costs and losses that could draw down these insurance policies, depleting an asset that the Debtors contend is property of the estate.

For these reasons, the Debtors request that the Court extend the automatic stay pursuant to section 362 or issue an injunction pursuant to section 105 to stay or enjoin the prosecution of the Canadian Class Action (identified on Appendix A to this Motion) against the D&Os and Voyager Digital, Ltd. until the effective date of a restructuring plan in these chapter 11 cases.

STATEMENT OF FACTS

The Debtors and certain non-Debtor affiliates (collectively, "Voyager" or "the Company") provide several services, including allowing customers to buy, sell, and trade cryptocurrency on the Voyager platform; providing custodial services for these customers to store their cryptocurrency; and providing loans to counterparties in the cryptocurrency sector, the interest on which is passed on to customers. *See* Decl. of Stephen Ehrlich, Chief Executive Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Motions ¶¶ 2, 4 (July 6, 2022) (ECF No. 15) (the "Ehrlich Decl."). Voyager's mobile-application platform has been downloaded millions of times, had over 3.5 million active users at its peak, and was one of the top ten most downloaded cryptocurrency mobile applications in the world in 2021. *Id.* ¶ 2.

A. Voyager Overview

1. Voyager's Business Operations

At a basic level, cryptocurrency is a digital currency designed to serve as a medium of exchange or store of value, not necessarily tied to any government or physical asset. *See id.* ¶ 13–14. It is used to execute transactions on a "blockchain," a digital technology that verifies transactions through a fully-decentralized, community-driven, rigorous mathematical process. *Id.* The blockchain is often referred to as a digital "ledger" because it records every transaction ever made with the cryptocurrency. *Id.* Though transactions themselves are anonymized, the blockchain is freely viewable by any member of the public. *Id.* ¶ 14.

Voyager was founded in 2018 by a group of Wall Street and Silicon Valley entrepreneurs with extensive experience in the technology and finance sectors. It was founded to bring choice, transparency, and cost efficiency to cryptocurrency investors and designed to be "accessible to all" by focusing on the needs of retail investors. *Id.* ¶ 18. Though the onset of the COVID-19 pandemic was followed by a sharp drop in the price of cryptocurrencies, including a fall in the price of Bitcoin of over 50% from February to March 2020, Voyager continued to provide trading services, and customers were able to trade on the platform despite extreme market volatility, while yield rewards were paid to qualifying customers. *Id.* ¶ 38. Between 2020 and 2022, the number of users on Voyager's platform grew from over 120,000 to over 3.5 million. As of July 5, 2022 (the "Petition Date"), Voyager's primary operations consisted of (i) trading services, (ii) custodial services through which customers earn interest and other rewards on sorted cryptocurrency assets, and (iii) lending programs. *Id.* ¶ 20.

2. Events Leading to the Chapter 11 Cases

While Voyager experienced rapid growth and success, it also faced challenges. Unanticipated global events, like the COVID-19 pandemic's lingering effect, inflation, and a world economy grappling with the impact of the war in Ukraine, contributed to a widespread selloff in cryptocurrency. *Id.* ¶¶ 42–43. Distressed situations faced by two industry participants—Terra and Three Arrows Capital—exacerbated this "cryptocurrency winter." *Id.* ¶ 44.

Terra is an open-source blockchain protocol created by Terraform Labs, which issued two cryptocurrencies, Luna and TerraUSD ("UST"). UST is an algorithmic stablecoin, which was designed to trade at $1 by being "pegged" to Luna via an arbitrage mechanism whereby one UST could be traded for $1 worth of Luna. If UST traded above $1, arbitrageurs bought $1 of Luna and exchanged it for one UST, netting the difference in profit, and vice versa if UST traded below $1. Arbitrage trades were intended to keep the price of UST at $1, and to keep the tokens equally scare, limiting over- or undersupply of the two tokens. *Id.* ¶ 46.

But on May 7, 2022, $2 billion of UST was immediately sold, moving UST's price down to $0.91. UST traders rushed to sell off their coins, but found that only $100 million of UST could be burned in exchange for Luna per day, which was insufficient to "re-peg" UST to $1. *Id.* ¶ 47. This selling pressure led traders to redeem UST for Luna and then to sell their Luna, creating a "death spiral" that pushed the price of Luna from $82.55 to $0.000001 in one week, erasing over $18 billion of value and leading to further selloffs in the sector. *Id.* ¶ 48–49.

In March 2022, Voyager had entered into a master loan agreement (the "3AC Loan") with Three Arrows Capital ("3AC") under which Voyager agreed to lend 15,250 Bitcoins and 350 million USD Coin ("USDC")[2], callable at any time by Voyager. 3AC fully drew down on the

[2] USDC is a stablecoin pegged 1:1 to the U.S. dollar.

15,250 Bitcoin and 350 million USDC. *Id.* ¶ 55. Proceeds from Voyagers loans to 3AC and others were used to provide customers with a yield on the assets they store with Voyager. *Id.* ¶ 53. After the Luna crash, Voyager began to assess 3AC's ability to repay the 3AC loan, making an initial request for a repayment of $25 million of USDC by June 24, 2022, and subsequently requested repayment of the entire outstanding balance of Bitcoin and USDC by June 27, 2022 *Id.* ¶ 56. 3AC paid neither amount, and on June 27, 2022, Voyager issued a notice of default to 3AC for failing to make the required payments under the 3AC Loan. *Id.*

Additionally, Voyager saw a significant uptick in customer withdrawals, putting additional strain on the Company's business, after Celsius Network, a cryptocurrency lender with over $11 billion of assets under management, announced it was pausing all account withdrawals. *Id.* ¶ 62. On June 23, Voyager reduced its daily withdrawal maximum from $25,000 to $10,000 per user per day, which was necessary to ensure the Company could effectuate trades for customers, and stabilize the Company's business while it engaged in discussions with potential third-party sponsors. *Id.* ¶ 63.

But as the cryptocurrency markets continued to trend down, the Company realized that further steps were required to preserve customer investments, avoid irreparable damage to the Debtors' business, and ensure that its trading platform operated smoothly for all customers. Accordingly, on July 1, 2022, the Company froze all withdrawals and trading activity on its platform. *Id.* ¶ 64.

Voyager's management team also sought sources of liquidity to ensure Voyager remained adequately capitalized. On June 22, 2022, Voyager Digital Holdings entered into an agreement for a revolving credit facility with Alameda Ventures Ltd. ("Alameda"), under which Alameda provided Voyager with $200 million cash and USDC and 15,000 Bitcoin subject to certain

restrictions (the "Alameda Loan Facility"). *Id.* ¶¶ 33, 57–58. The Alameda Loan Facility, however, was only a partial solution to the Company's liquidity issues. Several weeks later, having sought investor interest outside of court in a sale of the Debtors' entire business or a capital raise whereby a third party would provide a capital infusion into the Company's enterprise, *id*. ¶¶ 59–60, the Debtors initiated these cases.

B. The Canadian Class Action

As described above, Debtor Voyager Digital Ltd. and certain of the Debtors' current and former directors and officers have been named as a defendant in a putative class-action proceeding filed in Toronto, Canada, captioned *De Sousa v. Voyager Digital Ltd., et al.*, No. CV-22-00683699-00CP (Ontario Superior Court of Justice. July 6, 2022). Plaintiff Francine De Sousa, as proposed class representative, asserts claims against the D&Os and Voyager Digital Ltd. for allegedly violating Canadian securities laws by making written and oral misrepresentations that they allegedly knew to be false (or about which they deliberately avoided knowledge of their falsity), or that making these statements amounted to gross misconduct; and that the statements constituted negligent misrepresentation. Notice of Action ¶¶ 27–44, *De Sousa v. Voyager Digital Ltd.*, No. CV-22-00683699-00CP (Ontario Superior Court Of Justice July 6, 2022) (the "Notice of Action," appended as Exhibit A to the Declaration of Michael B. Slade filed with this motion ("Slade Decl."")). The Notice of Action asserts that Voyager Digital Ltd. is vicariously liable for the acts or omissions of the D&Os. *Id.* ¶¶ 45–48. For example, the Notice of Action alleges that in written and oral statements, Voyager Digital Ltd. falsely represented its exposure to the Terra/Luna collapse, the exposure of its lendees to the Terra/Luna collapse, and the extent of Voyager Digital Ltd.'s liquidity issues, all of which De Souza claims to be "misrepresentations" under Ontario securities law. *Id.* ¶¶ 10–14.

Parallel with these chapter 11 cases, Debtor Voyager Ltd. commenced recognition proceedings under Part IV of the *Companies' Creditors Arrangement Act* (Canada) pending in the Ontario Superior Court of Justice (Commercial List). Those proceedings bear the caption *In the Matter of Voyager Digital Ltd.*, Court File No. CV-22-00683820-00CL. On July 12, 2022 the Canadian court recognized the Chapter 11 case of Debtor, Voyager Digital Ltd. as a foreign proceeding, subject to a further determination as to whether such chapter 11 case is a foreign main proceeding. On August 9, 2022, the Canadian court made a determination that the "centre of main interest" of Voyager Digital Ltd. is in the United States and that the chapter 11 case of Voyager Digital Ltd. would be recognized as a "foreign main proceeding" under Canadian law. *In the Matter of Voyager Digital Ltd.*, 2022 ONSC 4553 ¶¶ 3, 15–16 (quoting Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, § 47(2)) (Slade Decl. Ex. B). Pursuant to the Amended and Restated Initial Recognition Order of the Canadian court dated July 12, 2022 and amended and restated August 5, 2022, and the Supplemental Order of the Canadian court dated July 12, 2022, all suits in Canada against Voyager Digital Ltd. are stayed, absent a further order of that court. *Id.* ¶ 55; *see* Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, § 48(1) (requiring the stay after ordering recognition of a foreign main proceeding).

Despite the Canadian court's orders, and that the filing of a notice of action does not, by itself, require any response or other active proceedings in the Canadian court,[3] counsel for the plaintiff has made it clear that the plaintiff intends to pursue the action quickly. Indeed, counsel

[3] Under Ontario Rule of Civil Procedure 14.03, a plaintiff may commence a case with a "notice of action" "that contains a short statement of the nature of the claim," which must then be followed by filing of a full "statement of claim" "within thirty days after the notice of action is issued." Rules of Civil Procedure, R.R.O. 1990, Reg. 194, at Rule 14.03. The statement of claim and notice of action are then served together. *Id.* Service must take place "within six months after the notice of action is issued." *Id.* Rule 14.08.

for the Canadian Class Action plaintiff has already filed a motion in the Canadian insolvency case that would, if granted and among other relief, require Voyager Digital Ltd. to provide discovery, create an equity committee to which the Canadian Class Action plaintiff would be appointed, and appoint the Canadian lawyers for the Canadian Class Action plaintiff as representative counsel on behalf of equity holders, in each case to be funded by Debtor Voyager Digital Limited. Notice of Motion at 1–4 (attached as Slade Decl. Ex. C). The motion of the Canadian Class Action plaintiff is scheduled to be heard by the Canadian court on August 11, 2022.

C. The D&O Insurance Coverage

The Debtors and their directors and officers share a common primary Executive and Corporate Securities Liability Insurance Policy and a common excess insurance policy. The Policy provides coverage for claims made against directors and executives of both Voyager Digital Ltd. and its subsidiaries, including, but not limited to, non-indemnified losses of officers and directors under Insuring Agreement (A); losses of the Company or those of its directors and officers that the Company indemnifies, under Insuring Agreement (B); and the Company's losses from securities claims, under Insuring Agreement (C).[4] The Company and its officers and directors are entitled to use the proceeds of that policy for "damages, judgments, settlements, pre-judgment and post-judgment interest or other amounts … that any Insured is obligated to pay and Defense Expenses," subject to a few non-relevant limitations. If made, those payments would deplete proceeds available to all the Debtors in these cases.

D. Voyager Digital Ltd.'s Indemnification Obligations

The Articles of Voyager Digital Ltd. obligate it to indemnify its "director[s], former director[s], [and] alternate director[s]," and their "heirs and legal personal representatives" for any

[4] The Debtors will be filing a motion seeking to file their insurance policies under seal.

"judgment, penalty or fine awarded or imposed in, or an amount paid in settlement of," any "legal proceeding or investigative action … in which a director, former director or alternate director…, by reason of the eligible party being or having been a director or alternate director … is or may be joined as a party; or is or may be liable for in respect of a judgment, penalty or fine in, or expenses, related [thereto]." Articles of Voyager Digital Ltd. art. 21.1–21.2, included as Slade Decl. Ex. D.

ARGUMENT

Section 362(a)(1) of the Bankruptcy Code prohibits "the commencement or continuation … of a judicial … action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title." 11 U.S.C. § 362(a)(1). Section 362(a)(3) similarly prevents "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3). The automatic stay is "one of the fundamental debtor protections provided by the bankruptcy laws." *Midlantic Nat'l Bank v. N.J. Dep't of Envtl. Prot.*, 474 U.S. 494, 503 (1986); *accord E. Refractories Co. v. Forty Eight Insulations Inc.*, 157 F.3d 169, 172 (2d Cir. 1998); *In re Residential Capital, LLC*, 2014 WL 3798622, at *8 (Bankr. S.D.N.Y. July 31, 2014); *In re Madoff*, 2012 WL 990829, at *7 (S.D.N.Y. Mar. 26, 2012); *In re Johns-Manville Corp.*, 26 B.R. 420, 425 (Bankr. S.D.N.Y. 1983). A primary purpose of the stay is to "provide[] the debtor with 'a breathing spell from his creditors'" so that its restructuring efforts can proceed in an efficient, coordinated manner. *Teachers Ins. & Annuity Ass'n of Am. v. Butler*, 803 F.2d 61, 64 (2d Cir. 1986) (quoting S. Rep. No. 989, 95th Cong. 2d Sess. 54-55 (1978)); *accord In re Ionosphere Clubs, Inc.*, 922 F.2d 984, 989 (2d Cir. 1990); *In re Calpine Corp.*, 354 B.R. 45, 49 (Bankr. S.D.N.Y. 2006).

Courts have extended the automatic stay pursuant to Bankruptcy Code sections 362 and 105 in order to stay the continued prosecution of claims against non-debtors where failure to do so

would have an adverse economic impact on the debtors or would impair their restructuring efforts. *See, e.g.*, *Queenie, Ltd. v. Nygard Int'l*, 321 F.3d 282, 287-88 (2d Cir. 2003); *In re Calpine Corp.*, 365 B.R. 401, 410 (S.D.N.Y. 2007); *In re 1031 Tax Grp., LLC*, 397 B.R. 670, 686 (Bankr. S.D.N.Y. 2008). Courts extend the automatic stay in such circumstances because permitting such claims to go forward would effectively eviscerate the protections that the automatic stay affords debtors. *See, e.g.*, *In re United Health Care Org.*, 210 B.R. 228, 233 (S.D.N.Y. 1997).

In order to effectuate the purpose of the automatic stay and provide the Debtors the protections it affords, this Court should stay or enjoin the continuation of the Canadian Class Action pursuant to sections 362 and 105 of the Bankruptcy Code.

I. THE AUTOMATIC STAY OF SECTION 362 SHOULD BE EXTENDED TO STAY THE CANADIAN CLASS ACTION.

Pursuant to section 362(a)(1), the Second Circuit has affirmed the extension of the automatic stay in order to stay actions against non-debtors where there is such an identity of interest that the action against the non-debtor would have an adverse impact on the debtor's estate or its efforts to restructure. *See Queenie*, 321 F.3d at 287-88. The Second Circuit has also affirmed the extension of the automatic stay pursuant to section 362(a)(3) to stay actions against non-debtors that would otherwise "obtain possession … or … exercise control" of the estate's property. *See In re 48th St. Steakhouse, Inc.*, 835 F.2d 427, 430–31 (2d Cir. 1987).

This Court should extend the automatic stay to the Canadian Class Action pursuant to both 362(a)(1) and 362(a)(3) for the reasons that follow.

A. The Canadian Class Action Should Be Stayed Under Section 362(a)(1) Given the D&Os' Identity of Interest with the Debtors.

The automatic stay of section 362(a)(1) should be extended to stay actions against non-debtors "where 'there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant.'" *Queenie*, 321 F.3d at 287-88 (quoting *A.H.*

Robins Co. v. Piccinin, 788 F.2d 994, 999 (4th Cir. 1986)); *accord In re Durr Mechanical Const., Inc.*, 604 B.R. 131, 137 (2019); *In re N. Star Contracting Corp.*, 125 B.R. 368, 370 (S.D.N.Y. 1991) ("[I]n circumstances where the debtor and the non-bankrupt party can be considered … as having a unitary interest, a section 362(a)(1) stay may suspend an action against a non-bankrupt party."); *In re Lomas Fin. Corp.*, 117 B.R. 64, 67-68 (S.D.N.Y. 1990); *In re Calpine*, 354 B.R. at 49. The rule prevents "a claim against the non-debtor [that] will have an immediate adverse economic consequence for the debtor's estate." *Queenie*, 321 F.3d at 287; *Tenas-Reynard v. Palermo Taxi, Inc.*, 2016 WL 1276451, at *6 (S.D.N.Y Mar. 30, 2016) (extending stay where claim against non-debtor will "constitute a claim (and hence, an 'immediate adverse economic consequence')" against debtor's estate).

There is a clear identity of interest here between the Debtors and the D&Os. The claims in the Canadian Class Action are inextricably intertwined with the legal issues that will be raised in the bankruptcy proceeding, and bear on the Debtors' alleged conduct. Indeed, the Canadian Class Action asserts liability against Voyager Digital Ltd. on the grounds of vicarious liability for the acts of the D&Os. Thus, the continuation of the Canadian Class Action against the D&Os will adversely impact the Debtors' estate: that suit will result in decisions that amount to decisions against the Debtors; it will inevitably lead to burdensome discovery from the Debtors; and it will create significant indemnification obligations for the Debtors.

1. Continuation of the Canadian Class Action Could Result in Decisions that Could be Used Against the Debtors.

The automatic stay should be extended to non-debtors where "there is such identity between the debtor and the third-party defendant" that a finding or "judgment against the third-party defendant will in effect be a judgment or finding against the debtor." *A.H. Robins*, 788 F.2d at 999; *accord Queenie*, 321 F.3d at 288. This Court has confirmed that "a stay should be provided

to codefendants when the claims against them and the claims against the debtor are inextricably interwoven, presenting common questions of law and fact, which can be resolved in one proceeding." *In re Ionosphere Clubs, Inc.*, 111 B.R. 423, 434 (Bankr. S.D.N.Y. 1990).

The same is true here. For instance, the Canadian Class Action may tee up a legal question that is unsettled in ***any*** jurisdiction: Whether crypto-based financial products—including those brokered by, held by, and loaned by Voyager—are securities under each jurisdiction's relevant securities laws. If so, if the Canadian Class Action goes forward against the Ds&Os, the Debtors would be forced to either watch from the sidelines at great risk of prejudice to their interests on this issue, or jettison one of the principal benefits of the stay and involve themselves in the Canadian Class Action to protect those interests at great cost to the restructuring efforts. Decisions from the Canadian (or any other) court on that issue could also have significant regulatory ramifications, to the Debtors and others. The centrality of this important legal question to both the Debtors in the regulation of their (and other cryptocurrency companies') activities and in the resolution of the Canadian Class Action is reason enough on its own to extend the stay.

Beyond this legal question, the theories and factual allegations underlying the claims against the D&Os are "inextricably interwoven" with the theories and factual allegations underlying the claims against the Debtors. For one thing, the Canadian Class Action predicates its claims against Voyager Digital Ltd. on the D&Os' allegedly wrongful conduct. De Sousa's primary theory of liability against Voyager Digital Ltd. is that Voyager Digital Ltd.'s acts or omissions were "authorized, ordered and done by the [D&Os] and other agents, employees, and representatives of Voyager Digital, while engaged in the management, direction, control and transaction of the business and affairs of Voyager Digital." Notice of Action ¶ 46. According to De Sousa, the D&Os actions are attributable to Voyager Digital Ltd. by "virtue of the relationship

between the [D&Os] and Voyager Digital," but the D&Os are also independently, personally liable to the putative class for the same actions. *Id.* ¶¶ 47–48.

Given the identity of interests between all the Debtors and the D&Os, any decision against the D&Os would effectively amount to a decision against all the Debtors. Courts have extended the automatic stay to cover claims against non-debtors because of the risk that a decision against the non-debtors will be given collateral estoppel effect and applied against the debtors. *See, e.g.*, *In re Calpine*, 354 B.R. at 50 (extending the automatic stay to claims against non-debtor where not doing so would "expos[e] Calpine to a significant risk of collateral estoppel"); *In re Calpine*, 2007 WL 1302604, at *3 (Bankr. S.D.N.Y. Apr. 30, 2007) (same); *In re Ionosphere Clubs*, 111 B.R. at 434-35 (extending stay to action against debtor's chairman); *In re Johns-Manville*, 26 B.R. at 429 (noting that debtor "could be collaterally estopped in subsequent suits from relitigating issues determined against its officers and directors"). Even if collateral estoppel arguably would not apply, *stare decisis* would still burden the Debtors with findings and decisions rendered against the D&Os, warranting an extension of the automatic stay. *See, e.g.*, *In re Calpine*, 354 B.R. at 50.

Moreover, if the Canadian Class Action is allowed to proceed, the testimony and other evidence generated in those cases would inevitably be used later against the Debtors. That risk of evidentiary prejudice alone is sufficient to warrant extending the automatic stay to non-debtors. *See In re Johns-Manville Corp.*, 40 B.R. 219, 225 (S.D.N.Y. 1984) (noting that a "witness may be confronted with his prior testimony under oath in a future proceeding directly involving [the debtor], whether or not [the debtor] was a party to the record on which the initial testimony was taken"); *In re Lion Capital Grp.*, 44 B.R. 690, 703 (Bankr. S.D.N.Y. 1984) ("[T]he risk that testimony by employees or agents might be subsequently employed against the debtor … warranted the issuance of a stay.").

Because Voyager Digital Ltd.'s alleged liability is based on, and derivative of, the D&Os' alleged conduct, any decision or evidence gleaned against latter will be used against the Voyager Digital Ltd. and the other Debtors. That identity of interest, together with the collateral estoppel, *stare decisis*, and evidentiary prejudice to the Debtors, warrants extending the automatic stay to prohibit the continuation of the Canadian Class Action.

2. Continuation of the Canadian Class Action Could Create Significant Indemnification Obligations for the Debtors' Estate.

Courts have extended the automatic stay pursuant to section 362(a)(1) "where an action against one party is essentially an action against the bankruptcy debtor, as in the case where a third-party is entitled to indemnification by the debtor for any judgment taken against it." *In re W.R. Grace & Co.*, 2004 WL 954772, at *2 (Bankr. D. Del. Apr. 29, 2004); *accord A.H. Robins*, 788 F.2d at 999 (extension of automatic stay to non-debtors appropriate where "there is such identity between the debtor and the third-party defendant" that a finding or "judgment against the third-party defendant will in effect be a judgment or finding against the debtor"); *Queenie*, 321 F.3d at 288; *see also In re Calpine*, 354 B.R. at 50; *In re United Health*, 210 B.R. at 232. Courts analyzing this issue have indicated that even the "mere possibility of indemnification obligations warrants extension of the automatic stay." *In re LTL Management, LLC*, 638 B.R. 291, 312 (Bankr. D.N.J. 2022) (emphasis added) (citations omitted).

There exists more than the "mere possibility" of indemnification here. Separate and apart from contractual indemnity, as set forth in the operative policies and articles of incorporation, the defendant directors are entitled to indemnification from Voyager Digital Ltd. for a broad variety of claims, including those made in the Canadian Class Action, and these policies are also shared by the other Debtors. Allowing the Canadian Class Action against to proceed could thus create indemnification claims against the estate.

These broad indemnification obligations warrant an extension of the stay in this case. *See In re Durr Mechanical Const., Inc.*, 604 B.R. 131, 137–38 (S.D.N.Y. Bankr. 2019). Where indemnification obligations are necessarily implicated and even cover things like "costs" and "charges," continuing the lawsuit would risk an "immediate, adverse economic impact on the estate and its unsecured creditors." *Id.* at 137. Refusing to apply the statutory stay "would defeat the very purpose and intent" of the statute. *A.H. Robins*, 788 F.2d at 999. Pursuant to section 362(a)(1), this Court should thus extend the automatic stay to the D&Os in the Canadian Class Action. *See, e.g.*, *Queenie*, 321 F.3d at 287; *In re Calpine*, 354 B.R. at 50.

B. The Canadian Class Action Should Be Stayed Under Section 362(a)(3) in Order to Preserve and Protect the Estate's Property.

Section 362(a)(3) protects the bankruptcy estate's assets by automatically staying "any act to obtain possession … or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3). This provision "prohibits interference with the disposition of the assets that are under the Court's wing—*whether or not the Debtor is named as a defendant as part of the effort*." *In re Adelphia Commc'ns Corp.*, 345 B.R. 69, 76 (Bankr. S.D.N.Y. 2006) (emphasis added). Thus, section 362(a)(3) directs the stay of any action whether against the debtor or non-debtors that would have an adverse impact on the property of the bankruptcy estate. *See In re 48th St. Steakhouse*, 835 F.2d at 431 ("If action taken against the non-bankrupt party would inevitably have an adverse impact on property of the bankrupt estate, then such action should be barred by the automatic stay."); *see also Queenie*, 321 F.3d at 287 (automatic stay applies to non-debtors when claim against non-debtor will have "adverse economic consequence for the debtor's estate").

The Canadian Class Action could adversely impact property that the Debtors submit is part of their estate, and thus should be stayed pursuant to section 362(a)(3). As discussed above, the Debtors share a common director-and-officer liability policy. The Policy provides independent

director insurance to the D&Os, on the one hand, and indemnity coverage related to indemnity claims by the D&Os, and securities coverage to the Debtors, on the other hand. Where, like here, liability insurance policies provide direct coverage to both the D&Os *and* the Debtors, courts have held that "the proceeds will be property of the estate if depletion of the proceeds would have an adverse effect on the estate to the extent the policy actually protects the estate's other assets from diminution." *In re Downey Fin. Corp.*, 428 B.R. 595, 603 (Bankr. D. Del. 2010) (quoting *In re Allied Digital Techs. Corp.*, 306 B.R. 505, 512 (Bankr. D. Del. 2004)).

In *In re Quigley Co., Inc.*, 676 F.3d 45 (2d Cir. 2012), the Second Circuit confirmed that insurance policies and proceeds that cover debtors and their non-debtor affiliates are property of the estate. *Id.* at 57; *see also In re Johns-Manville Corp.*, 600 F.3d 135, 152 (2d Cir. 2010) ("[T]he insurance policies that Travelers issued to Manville are the estate's most valuable asset."); *MacArthur Co. v. Johns-Manville Corp.*, 837 F.2d 89, 92 (2d Cir. 1988) (agreeing with "[n]umerous courts [that] have determined that a debtor's insurance policies are property of the estate"); *In re MF Global Holdings Ltd.*, 469 B.R. 177, 190 (Bankr. S.D.N.Y. 2012) (same); *In re 1031 Tax Grp.*, 397 B.R. at 677–78 (shared insurance policy was property of estate). The proceeds of such shared insurance policies are "property of the estate if depletion of the proceeds would have an adverse effect on the estate to the extent the policy actually protects the estate's other assets from diminution." *In re Downey Fin. Corp.*, 428 B.R. 595, 603 (Bankr. D. Del. 2010) (quoting *In re Allied Digital Techs. Corp.*, 306 B.R. 505, 512 (Bankr. D. Del. 2004)); *accord In re Quigley*, 676 F.3d at 52; *In re MF Global*, 2012 WL 1191892 at *10; *In re First Cent. Fin. Corp.*, 238 B.R. 9, 16 (Bankr. E.D.N.Y. 1999) ("[T]he estate's property interest in the proceeds of a typical liability policy is an unstated given," particularly where "the debtor is also the beneficiary of the liability insurance coverage.").

Courts have thus extended the automatic stay in situations to claims against the non-debtor where a debtor and non-debtor share a joint insurance policy; failure to do so would allow access to the estate's assets by the non-debtor. *See A.H. Robins Co. v. Piccinin,* 788 F.2d 994, 1001–02 (4th Cir. 1986) (proceedings against non-debtors "who qualify as additional insureds under the [insurance] policy are to be stayed under section 362(a)(3)"); *see also Raudonis as trustee for Walter J. Raudonis 2016 Revocable Tr. v. RealtyShares, Inc.*, 507 F. Supp. 3d 378 (D. Mass. 2020) ("Because courts generally recognize insurance policy as 'property' under 11 U.S.C. § 541(a)(1)—and thus find such policies subject to an automatic stay pursuant to 11 U.S.C. § 362(a)(3)—the defendants' shared insurance contract arguably sweeps [non-debtors] into the reach of the automatic stay."). The result should be the same here. The Policy in this case allows the D&Os to draw down the shared insurance proceeds to pay for their defense costs and any settlements or judgments. The shared insurance proceeds are paid on a first billed, first paid basis, such that payments on behalf of the D&Os would deplete the proceeds available to the Debtors. As such, every insurance dollar paid on behalf of the D&Os leaves one fewer dollar of insurance coverage available to the Debtors' estate. *See Quigley*, 676 F.3d at 53-58; *see also In re First Cent. Fin.*, 238 B.R. at 16-17; *In re 1031 Tax Group*, 397 B.R. at 684-85. That alone warrants extending the stay pursuant to section 362(a)(3) to stop prosecution of the Canadian Class Action.

II. THE CONTINUED PROSECUTION OF THE CANADIAN CLASS ACTION SHOULD BE ENJOINED UNDER SECTION 105.

This Court should also enjoin the continued prosecution of the Canadian Class Action as against the D&Os pursuant to section 105(a).

Section 105(a), which authorizes the bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [title 11]," gives this Court broad powers to enjoin actions against non-debtors. *See In re Chateaugay Corp.*, 93 B.R. 26, 29

(S.D.N.Y. 1988) ("[T]he Bankruptcy Court has authority under § 105 broader than the automatic stay provisions of § 362 and may use its equitable powers to assure the orderly conduct of the reorganization proceedings."); *Haw. Structural Ironworkers Pension Trust Fund v. Calpine Corp. Inc.*, 2006 WL 3755175, at *4 (S.D.N.Y. Dec. 20, 2006) ("Section 105 may support the issuance of an injunction to parties who do not fall within the scope of section 362(a)."); *In re 1031 Tax Grp.*, 397 B.R. at 684 ("Section 105 authorizes a bankruptcy court to exercise power outside the bounds of the automatic stay."). "[T]he Second Circuit, courts in this District, and courts in other circuits have 'construed [section 105] liberally to enjoin suits that might impede the reorganization process,'" including actions against non-debtors. *In re Adelphia Commc'ns Corp.*, 298 B.R. 49, 54 (S.D.N.Y. 2003) (quoting *MacArthur*, 837 F.2d at 93); *see also In re Calpine Corp.*, 365 B.R. at 409, 413-14; *Haw. Structural*, 2006 WL 3755175, at *6; *In re Lyondell Chem. Co.*, 402 B.R. 571, 588-89 (Bankr. S.D.N.Y. 2009); *In re 1031 Tax Grp.*, 397 B.R. at 684-86; *In re Calpine Corp.*, 354 B.R. at 50; *In re Calpine Corp.*, 2007 WL 1302604, at *4; *In re N. Star Contracting*, 125 B.R. at 370 n.1; *In re Ionosphere Clubs*, 111 B.R. at 434.

A debtor's request for an injunction pursuant to section 105 is treated as a request for a preliminary injunction. *See In re Calpine Corp.*, 365 B.R. at 409. But a debtor "need not satisfy the more rigorous requirements for a preliminary injunction under Rule 65 of the Federal Rules of Civil Procedure" to obtain an injunction pursuant to section 105. *In re Chateaugay*, 201 B.R. 48, 71 (Bankr. S.D.N.Y. 1996). Instead, courts in this district apply the "traditional preliminary injunction standard as modified to fit the bankruptcy context." *In re Calpine*, 365 B.R. at 409. That standard involves evaluating four factors, none of which is determinative:

1. whether there is an imminent irreparable harm to the debtor's estate in the absence of an injunction;

2. whether there is a likelihood of a successful restructuring;

3. whether the balance of harms tips in favor of the moving party; and

4. whether the public interest weighs in favor of an injunction.

See id.; *In re United Health Care Org.*, 210 B.R. at 233; *Haw. Structural*, 2006 WL 3755175, at *4. As outlined below, the Debtors satisfy all four of these factors.

A. Continuation of the Canadian Class Action Will Irreparably Harm the Debtors.

The Debtors will suffer irreparable harm to both their estate and their ability to successfully restructure if the Canadian Class Action against the D&Os is not stayed, as continuation of the Canadian Class Action will "burden, delay or otherwise impede the reorganization proceedings." *In re Lyondell Chem.*, 402 B.R. at 590. In assessing whether an injunction is necessary to preserve the estate or protect the restructuring efforts, courts in this district have focused on three factors: (1) whether the debtors' estate would be harmed in the absence of an injunction; (2) whether the debtors face a risk of binding rulings or evidentiary prejudice if the cases proceed against the non-debtors; and (3) whether the litigation against the non-debtors would distract the debtors' key personnel and frustrate their efforts to restructure. *See In re Calpine Corp.*, 354 B.R. at 50; *In re Calpine Corp.*, 2007 WL 1302604 at *3–4; *In re Lomas Fin.*, 117 B.R. at 66-67; *Malm v. Goldin*, 1993 WL 330489, at *2 (S.D.N.Y. Aug. 27, 1993); *see also In re 1031 Tax Grp.*, 397 B.R. at 684-85. Absent an injunction here, the Debtors would be irreparably harmed in each of these respects.

First, enjoining the Canadian Class Action is necessary to preserve the property of the Debtors' estate. As set forth above, the shared insurance policy, and their proceeds, are assets of the estate. If the Canadian Class Action are allowed to proceed, the D&Os may draw down those insurance policies, depleting the proceeds available and causing irreparable harm to the estate. *See In re 1031 Tax Grp.*, 397 B.R. at 685 (finding irreparable harm because "[i]f the Colorado Lawsuits

go forward, insurance proceeds recoverable by the estate from these wasting policies may be diminished by defense costs of the [non-debtor]").

In addition, the Debtors could face substantial indemnification obligations for any attorneys' fees/expenses and losses that the defendant directors incur in the Canadian Class Action. These potential indemnification claims also constitute irreparable harm. *See In re 1031 Tax Grp.*, 397 B.R. at 685 (finding irreparable harm where "there is a substantial risk that the Debtors face liability for indemnification if the Colorado Lawsuits are permitted to continue"); *In re Calpine*, 354 B.R. at 50; *In re United Health*, 210 B.R. at 232 ("One example of a situation where such an injunction would be permitted would be a suit against a third party who is entitled to absolute indemnity by the debtor on account of any judgment that might result against it in the case.").

Second, the risk of collateral estoppel, *stare decisis*, and evidentiary prejudice to the Debtors also warrants an injunction. As detailed above, a number of the claims against Voyager Digital Ltd. are premised on theories of vicarious liability. Thus, any findings and rulings against the D&Os, and any evidence generated, could be used against the Debtors.

The Debtors therefore would be in a difficult position if the Canadian Class Action is allowed to proceed against the D&Os: either take advantage of the protections of the automatic stay and be saddled with the evidence generated, findings made, and decisions rendered; or participate in the defense of the case to protect their litigation interests and lose the benefits of the automatic stay. Either option constitutes irreparable harm. *In re Calpine Corp.*, 354 B.R. at 50 ("In light of the identity of interest between [the debtor] and [the non-debtor], [the debtor] will suffer irreparable harm if the Nevada Litigation continues through the risk of collateral estoppel and evidentiary prejudice…."); *In re Barney's Inc.*, 200 B.R. 527, 531 (Bankr. S.D.N.Y. 1996) ("Courts apply section 105 of the Bankruptcy Code to enjoin litigation against non-debtors when

an adverse judgment in that litigation will collaterally estop the debtor in subsequent litigation."); *In re Lomas Fin.*, 117 B.R. at 67 ("The threat of collateral estoppel would force [the debtor's key personnel] to participate in the [action] … thus causing the corporation and its reorganization plan irreparable harm."); *In re Ionosphere Clubs*, 111 B.R. at 435 (same); *see also In re S.W. Bach. & Co.*, 425 B.R. 78, 102 (Bankr. S.D.N.Y. 2010).

Finally, even if the Debtors chose not to participate actively in the litigation of the Canadian Class Action, they may face substantial burdens. As set forth above, plaintiffs must obtain discovery from the Debtors to prove their claims against the D&Os, and in turn the D&Os would have to obtain discovery from the Debtors to defend against the claims. It bears noting that these chapter 11 cases anticipate an extremely fast timetable to benefit all stakeholders. The Debtors need the D&Os to be focused 100% on their restructuring efforts—not on defending a class action lawsuit in Canada.

Courts have found that debtors would suffer irreparable harm where the failure to stay an action against a non-debtor would result in material obligations on the debtors that would frustrate their efforts to restructure successfully. *Haw. Structural*, 2006 WL 3755175, at *5 (affirming extension of stay to halt claims against non-debtors where "the logistical stress on Calpine from attempting to simultaneously undertake a massive reorganization while monitoring and producing documents in the State Court Action threatened to irreparably impair the company's reorganization process"); *In re Lomas Fin. Corp.*, 117 B.R. at 67 (upholding extension of automatic stay where "key personnel would be distracted from participating in the reorganization process").

B. There Is a Reasonable Likelihood the Debtors Will Successfully Restructure.

Courts in this district have found a reasonable likelihood of a successful reorganization where "the Debtors are proceeding on track, and there is no reason to believe or suspect that their reorganization will fail—unless, of course, the acts sought to be enjoined cause it to fail." *In re*

Lyondell Chem., 402 B.R. at 590. In evaluating this factor "in the earliest weeks" of the complex reorganization of Lyondell Chemical Company, a court in this district found that "the Debtors have so far been successful in doing everything they've needed to do to date," and because they "have met the challenges they have faced so far, that is sufficient." *Id.*; *see also In re Soundview Elite Ltd.*, 543 B.R. 78, 119 (S.D.N.Y. 2016) ("Courts do not demand certainty of a successful reorganization; they expect only reasonable prospects of such.").

The Debtors here are similarly "proceeding on track" toward a successful restructuring in its early stages. Despite the challenges and complexities of restructuring one of the largest crypto based finance platforms in the world, the Debtors and their D&Os have spent the weeks since the Petition Date dedicated to finding a path to successful restructuring. To date, this Court has granted first- and second-day relief (*see, e.g.*, various orders, ECF Nos. 53–60, 233, 235, 236–39) and approved proposed bidding procedures on August 5, 2022 (ECF No. 248)—and multiple indications of interest have been received. The Debtors are "proceeding on track and have met the challenges they have faced" thus far, so there is a reasonable likelihood they will successfully restructure. *See In re Lyondell Chem*., 402 B.R. at 590.

C. The Balance of Harms Favors an Injunction.

The balance of harms weighs in favor of issuing an injunction. As described above, the harm to the Debtors would be irreparable if this Court does not enjoin the Canadian Class Action against the D&Os. The Debtors would risk rulings that could be used against them; the estate's resources would be depleted; and the Debtors' efforts to restructure would be harmed.

By contrast, there would be only *de minimis* harm to De Sousa and the putative class she represents if the Canadian Class Action is enjoined. The Canadian Class Action is in its very early stages—the full statement of claim has not been issued or served. And the Debtors do not anticipate these chapter 11 cases dragging on, so the stay sought here is temporary. Thus, even if

an injunction were to delay a final decision on the merits in the Canadian Class Action, a modest delay is insufficient to overcome the potential harm to the Debtors: "The inability of [the defendant] to obtain a hypothetical recovery sooner … is not a harm—and is certainly not an irreparable harm sufficient to outweigh the irreparable harm that [the debtors] will suffer if the … litigation were permitted to proceed." *In re Calpine Corp.*, 365 B.R. at 413; *accord In re Am. Film Techs.*, 175 B.R. 847, 849 (Bankr. D. Del. 1994) (same); *In re Johns-Manville Corp.*, 26 B.R. at 430-31.

D. An Injunction Serves the Public Interest.

Finally, an injunction would serve the public interest. "[I]n the context of bankruptcy proceedings, the 'public interest' element means the promoting of a successful reorganization." *In re OMC, Inc.*, 2010 WL 4026097, at *5 (Bankr. S.D.N.Y. Oct. 13, 2010); *accord In re Calpine Corp.*, 365 B.R. at 413; *Haw. Structural*, 2006 WL 3755175, at *6. Enjoining the Canadian Class Action as against the D&Os to avoid harm to the Debtors and allow them to restructure successfully is a far greater public interest than allowing De Sousa to continue pursuing claims against the D&Os that are in the earliest stages of litigation. *See Haw. Structural*, 2006 WL 3755175, at *4 ("If an action against a non-debtor would frustrate the goal of debtor reorganization, section 105(a) provides the statutory authority for an injunction staying the action against the non-debtor."); *In re Adelphia Commc'ns*, 298 B.R. at 54 ("It is well settled that bankruptcy courts, under [section 105], may extend the automatic stay to enjoin suits by third parties against third parties if they threaten to thwart or frustrate the debtor's reorganization efforts.").

CONCLUSION

For the foregoing reasons, the Debtors respectfully request that this Court enter an order extending the automatic stay to the Canadian Class Action as against the D&Os pursuant to section 362, or, in the alternative, enjoining the continuation of the Canadian Class Action as against the

D&Os pursuant to Section 105, until the effective date of a restructuring plan in these chapter 11 cases, and grant such other and further relief as this Court deems just and proper.

Dated: August 10, 2022
New York, New York

/s/ Joshua A. Sussberg

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of August, 2022, I caused a true and correct copy of the foregoing to be served by e-mail upon the following:

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APPENDIX “D”

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: VOYAGER DIGITAL HOLDINGS, INC. *et al.*, Debtors.	Chapter 11 Case No. 22-10943 (MEW) (Jointly Administered)
VOYAGER DIGITAL HOLDINGS, INC. *et al.*, Plaintiffs, v. FRANCINE DE SOUSA *et al.*, Defendants.	Adv. Pro. No. 22-1133 (MEW)

STIPULATION

Whereas, Francine De Sousa, on behalf of a putative class, is the plaintiff in a class-action proceeding currently pending in the Ontario Superior Court of Justice, captioned *De Sousa v. Voyager Digital Ltd., et al.*, No. CV-22-00683699-00CP (the "Canadian Class Action"); and

Whereas, the Debtors in the above-captioned jointly-administered chapter 11 cases filed this adversary proceeding seeking to extend the automatic stay under section 362 of the Bankruptcy Code (11 U.S.C. § 362) to the Canadian Class Action, or, in the alternative, to enjoin prosecution of the Canadian Class Action pursuant to section 105 of the Bankruptcy Code (11 U.S.C. § 105); and

Whereas, the Canadian court handling the Debtors' CCAA proceedings stayed the Canadian Class Action in its order recognizing these chapter 11 cases as a "foreign main proceeding" under Canadian law (the "Canadian Stay"); and

Whereas, counsel for De Sousa do not currently intend to seek to lift the Canadian Stay or attempt to prosecute the Canadian Class Action during the course of these Chapter 11 cases in the absence of an order lifting the Canadian Stay, and counsel for De Sousa informed counsel for Plaintiffs to that effect in writing on August 18, 2022;

Now, therefore, the Debtors and De Souza, by and through their undersigned counsel, have agreed that:

1. The Debtors will adjourn their Motion to Extend Automatic Stay or, in the Alternative, for Injunctive Relief Enjoining Prosecution of Certain Pending Litigation Against the Debtors' Directors and Officers (ECF No. 3) (the "Motion"), initially to November 15, 2022, at 11:00 am EST, and thereafter as appropriate, subject to the below terms and conditions.

2. Until and unless De Souza and/or her counsel seeks and receives written permission from the Debtors or an order to the contrary from this Bankruptcy Court, they will refrain from taking any steps against any and all defendants in the Canadian Class Action.

3. De Souza and her counsel agree that prior to taking any steps or proceedings in the Canadian Class Action, they will seek relief from this Stipulation by agreement of the Debtors or proper motion filed in this Court, with notice given no fewer than twenty-one days prior to the hearing on such motion.

.

Dated: August 19, 2022

/s/ Michael Slade

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Court File No.:CV-22- 00683820-00CL

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF VOYAGER DIGITAL LTD.

APPLICATION OF VOYAGER DIGITAL LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

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