

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PROPOSED PLAN OF  
COMPROMISE OR ARRANGEMENT OF  
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES  
CORPORATION, AND LYDIAN U.K. CORPORATION LIMITED**

Applicants

**FIRST REPORT OF THE MONITOR  
ALVAREZ & MARSAL CANADA INC.**

**JANUARY 21, 2020**

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## 1.0 INTRODUCTION

1.1 On December 23, 2019, Lydian International Limited (“**Lydian International**”), Lydian Canada Ventures Corporation (“**Lydian Canada**”) and Lydian U.K. Corporation Limited (“**Lydian U.K.**”) (collectively, the “**Applicants**”) applied for and were granted protection by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). Pursuant to an order of the Court dated December 23, 2019 (the “**Initial Order**”), Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed Monitor (in such capacity, the “**Monitor**”) of the Applicants in the CCAA proceedings (the “**CCAA Proceedings**”). Any capitalized terms not otherwise defined herein have the meanings attributed to them in the Initial Order. A copy of the Initial Order is attached hereto as **Appendix “A”**.

1.2 The Initial Order, among other things:

- a) granted a stay of proceedings until January 2, 2020 (the “**Stay Period**”) as against the Applicants;
- b) provided that during the Stay Period, no proceedings may be commenced or continued against or in respect of Lydian Armenia CJSC (“**Lydian Armenia**”), Lydian International Holdings Limited, Lydian Resources Armenia Limited and Lydian U.S. Corporation (collectively, the “**Non-Applicant Stay Parties**”);
- c) authorized the Applicants to continue to utilize the Cash Management System of the Applicants and Non-Applicant Stay Parties;

- d) authorized the Applicants to pay all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable incurred in the ordinary course of business and consistent with existing compensation policies or arrangements, as well as the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these CCAA Proceedings, at their standard rates and charges whether incurred prior to or after the Initial Order;
- e) granted a first ranking charge (the “**Administration Charge**”) for the benefit of the Monitor, its counsel, and the Applicants’ counsel in the amount of CAD\$460,740 (being US\$350,000 as per the Bank of Canada’s published exchange rate on December 20, 2019) as security for their professional fees and disbursements;
- f) granted a second ranking charge (the “**Directors Charge**”), ranking behind only the Administration Charge, for the benefit of the Applicants’ directors and officers in an amount not to exceed CAD\$263,280 (being US\$200,000 as per the Bank of Canada’s published exchange rate on December 20, 2019) as security for the indemnity by the Applicants in favour of the directors and officers for any obligations or liabilities incurred after the commencement of the CCAA Proceedings, subject to the exceptions set out in the Initial Order; and
- g) authorized the Applicants to continue negotiations with stakeholders in an effort to pursue restructuring options, including refinancing the Business or Property, subject to approval of the Court prior to any material refinancing.

- 1.3 On December 23, 2019, the Applicants sought and obtained a Letter of Request from the Court seeking the assistance of the Royal Court of Jersey (the “**Royal Court**”) to assist the Applicants and the Monitor in advancing these CCAA Proceedings. The Applicants have since been working with the Applicants’ legal counsel in the Bailiwick of Jersey to prepare materials seeking recognition of the CCAA Proceedings by the Royal Court (the “**Jersey Recognition Proceedings**”). A hearing in respect of same is in the process of being scheduled before the Royal Court on or about January 24, 2020. Each of Edward Sellers and the Monitor are filing affidavits with the Royal Court in support of the Jersey Recognition Proceedings.
- 1.4 On January 2, 2020, the Court issued an order (the “**Stay Extension Order**”) extending the Stay in favour of the Applicants and the Non-Applicant Stay Parties to January 23, 2020.
- 1.5 Further information regarding these CCAA Proceedings, including the application record, the Initial Order, Stay Extension Order, affidavits, reports of the Monitor, and all other Court-filed documents and notices in these CCAA Proceedings are available on the Monitor’s website at <http://www.alvarezandmarsal.com/lydian> (the “**Monitor’s Website**”).
- 1.6 The purpose of this first report to the Court (“**First Report**”) is to:
- a) provide the Court with information regarding:
    - i. A&M’s qualifications to act as Monitor, since a pre-filing report of the proposed Monitor was not previously filed;

- ii. background information in respect of the Applicants, the Non-Applicant Stay Parties and the CCAA Proceedings;
- iii. cash flow results for the 3-week period ended January 10, 2020;
- iv. the Applicants' updated cash flow forecast for the 13-week period ending April 10, 2020; and
- v. the additional charge and other amendments sought by the Applicants in the proposed Amended and Restated Initial Order (the "**Amended and Restated Initial Order**"), to the extent such information is available to the Monitor as it relates to the requested Transaction Charge (as defined below) at the time this First Report is finalized, including the results of discussions with the lenders and any other party;

b) support the Applicants' request for:

- i. an order extending the Stay Period to February 25, 2020 and certain ancillary relief (the "**Second Stay Extension Order**");
- ii. the Amended and Restated Initial Order, subject to ongoing discussions and consideration as it relates specifically to the BMO Engagement Letter and Transaction Charge (as each term is defined below) as security for the fees that may become payable to the Applicants' financial advisor. The Amended and Restated Initial Order amends the Initial Order to, among other things: (i) expand the Applicants' restructuring capabilities within the CCAA Proceedings, (ii) expand the Monitor's authority within the CCAA Proceedings, including its interactions with the Non-Applicant Stay Parties in

- specified circumstances, (iii) increase the Administration Charge; and (iv) approve the BMO Engagement Letter and add a Transaction Charge in favour of Applicants' financial advisor;
- iii. a sealing order in respect of the unredacted version of the BMO Engagement Letter; and
- iv. approval of the Monitor's First Report and activities as set out therein; and
- c) provide the Court with the Monitor's recommendations in respect of the foregoing, as applicable.

## **2.0 TERMS OF REFERENCE AND DISCLAIMER**

- 2.1 In preparing this First Report, the Monitor has been provided with and has relied upon, unaudited financial information; books, records and financial information prepared by certain senior management of the Applicants ("**Senior Management**"); and discussions with Senior Management (collectively, the "**Information**").
- 2.2 With respect to any of the Applicants' cash flow forecasts and projections:
- a) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has neither audited nor 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 Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and

- b) any examination or review of such financial forecasts and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.
- 2.3 Future oriented financial information referred to in this First Report was prepared based on management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections. Even if the assumptions materialize, the variations could be significant.
- 2.4 This First Report should be read in conjunction with the affidavits of Edward A. Sellers sworn: (i) December 22, 2019 (the "**Sellers Initial Affidavit**") in support of the Applicants' application for relief under the CCAA, and (ii) January 20, 2020 (the "**Sellers Comeback Affidavit**") in support of the Applicants' motion returnable on January 23, 2020 (the "**Comeback Motion**") for the Amended and Restated Initial Order and the Second Stay Extension Order. Both the Sellers Initial Affidavit and Sellers Comeback Affidavit can be found on the Monitor's Website. Edward A. Sellers is the Interim President and Chief Executive Officer of Lydian International and a director of the other Applicants in these CCAA Proceedings.
- 2.5 Unless otherwise stated, all monetary amounts contained in this First Report are expressed in U.S. dollars.

### **3.0 A&M'S QUALIFICATION TO ACT AS MONITOR**

- 3.1 A&M is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act (Canada)*. The CCAA provides certain restrictions on who may be

appointed as monitor, which are set out in section 11.7(2) of the CCAA and include (i) if the trustee was or related to a director, officer or employee of the debtor company, within the two preceding years; (ii) if the trustee was the auditor, accountant or legal counsel, or a partner or employee of the auditor, accountant or legal counsel of the debtor company within the two preceding years; or (iii) was the trustee under a trust indenture issued by the company or any person related to the company or related to the trustee. None of these restrictions apply to A&M.

- 3.2 The senior A&M professional personnel with carriage of this matter include experienced insolvency and restructuring practitioners who are Chartered Accountants, and/or Chartered Insolvency and Restructuring Professionals and licensed Trustees in Bankruptcy (Canada), all of whom have acted in CCAA matters of a similar nature and scale in Canada.
- 3.3 On September 17, 2018, A&M was engaged by the Applicant to provide consulting services in connection with its restructuring efforts, including providing assistance to the Applicant in preparing for formal restructuring proceedings, should such a filing become necessary, and assessing potential restructuring options.
- 3.4 The Monitor has retained Thornton Grout Finnigan LLP to act as its legal counsel.
- 3.5 A&M has consented to act as Monitor.



## 4.0 BACKGROUND INFORMATION

### Lydian Group

- 4.1 The Applicants' business consists of the exploration and development of a gold mine in south-central Armenia (the "**Amulsar Project**"). Lydian International is a corporation continued under the laws of Jersey, Channel Islands from Alberta. On June 12, 2019, Lydian International's shareholders approved its continuance under the *Canada Business Corporations Act*. The continuance has not yet been implemented, but the Monitor understands that it may be contemplated as part of a sale or recapitalization transaction.
- 4.2 Lydian International is a publicly traded company and its shares trade on the Toronto Stock Exchange. As of December 20, 2019, Lydian International's largest individual shareholders were two of its senior lenders, Resource Capital Fund VI L.P. ("**RCF**") and Orion Co IV (ED) Limited, a division of Orion Capital Management ("**Orion**"), who respectively hold 32% and 11.7% of Lydian International's shareholdings.
- 4.3 The Applicants are part of a corporate group that includes the Non-Applicant Stay Parties and a number of other subsidiaries, all ultimately owned by Lydian International (collectively, the "**Lydian Group**"). The corporate structure of the Lydian Group is attached hereto as **Appendix "B"**.
- 4.4 The Lydian Group is highly integrated, as illustrated by the following:
- i. Substantially all of the strategic business affairs of the Lydian Group, including key decision making, are conducted through personnel who are located in Toronto and Vancouver;

- ii. senior financial personnel of the Lydian Group, including the Chief Financial Officer and Financial Controller, are employed by Lydian U.S. Corporation, a Non-Applicant Stay Party, which is based out of its head office in Greenwood Village, Colorado (the “**Greenwood Office**”) and the majority of the financial records of the Lydian Group are maintained in the Greenwood Office;
- iii. Lydian U.S. Corporation provides certain administrative and technical services to Lydian Armenia pursuant to the Administrative and Technical Services Agreement among the two companies dated January 1, 2015; and
- iv. Lydian International has made intercompany advances to Lydian Armenia, a Non-Applicant Stay Party, on an as-needed basis pursuant to a loan agreement dated January 5, 2008. The operations of Lydian International have been, and continue to be, funded in part by repayments of those advances by Lydian Armenia on an as-needed basis. As described in paragraph 7.5 of this First Report, such funding is contemplated to continue up to the date of the proposed extension of the Stay Period.

### **Amulsar Project**

- 4.5 The Lydian Group obtained an exploration license for the Amulsar Project in 2006 and has since invested more than \$400 million in the project. Lydian Armenia is the principal operating subsidiary in the Lydian Group. By October 2016, Lydian Armenia obtained approval of all environmental assessments required by the Government of the Republic of Armenia (the “**GOA**”) and had commenced construction activities at the Amulsar Project.

- 4.6 After a change in government took place in Armenia on May 8, 2018, demonstrations and road blockades occurred throughout Armenia, including at the Amulsar Project. As a result of the ongoing blockades, Lydian Armenia has been unable to access and complete construction at the Amulsar Project since that time. Further, despite court orders requiring the removal of blockaders, police forces in Armenia have failed to act in accordance with such court orders.
- 4.7 In addition, and as described in more detail in the Sellers Initial Affidavit, the GOA has retroactively altered the requirements by which permits and licenses had been issued to Lydian Armenia, requiring duplicative environmental audits and investigations. Despite the successful results of the additional audits and investigations imposed by the GOA, it has failed to take active steps to remove the blockaders and restore access to the Amulsar Project site.
- 4.8 Further, without prior notice or discussion, the GOA has taken steps to terminate a material water supply previously available to Lydian Armenia. This has left that company without access to its primary operating water source and has added to the inability of the Applicants to commence operations at the site.
- 4.9 The Lydian Group has been working with counsel in Armenia to pursue all available options to resolve the ongoing issues it is facing, which has included the commencement of several local proceedings, reviews and appeals.
- 4.10 As a result of the above factors and actions/inactions by the GOA and the ongoing illegal blockades, Lydian Armenia has been unable to carry out any development or construction work at the Amulsar Project. This has led to (i) extensive delays in the Amulsar Project's

development schedule, (ii) the dismissal of more than 90% of Lydian Armenia's workforce; and (iii) numerous defaults on substantially all of the obligations owing by the Lydian Group to its lenders.

- 4.11 As at December 20, 2019, the Lydian Group employed 63 employees, of which 58 were employed in Armenia. As stated in the Sellers Initial Affidavit, the Lydian Group expects further reductions to its work force as a result of its ongoing financial distress.

### **Capital Structure**

- 4.12 As described in the Sellers Initial Affidavit, the Lydian Group financed the development of the Amulsar Project from a combination of equity funding, debt and a streaming arrangement, which are secured over substantially all of the assets of Lydian Armenia, Lydian International and the shares of various entities of the Lydian Group. The Lydian Group's various loan agreements are as follows:

- a) Credit Agreement between Lydian Armenia, as borrower, and Orion, RCF and Osisko Bermuda Limited ("**Osisko**"), as lenders (collectively, the "**Lenders**"), dated November 30, 2015, as amended, pursuant to which such lenders extended a \$160 million term loan to Lydian Armenia;
- b) Purchase and Sale Agreement between Lydian Armenia, as seller, and Lydian International dated November 30, 2015, as amended, to sell specified quantities of gold and silver mined at the Amulsar Project to Osisko and RCF; and

- c) Separate secured equipment credit facilities with each of Ameriabank Closed Joint Stock Company, Caterpillar Financial Services (UK) Limited and ING Bank N.V. (collectively, the “**Equipment Lenders**”).

4.13 A summary of Lydian Group’s total indebtedness, which exceeds \$360 million, is set out in the Sellers Initial Affidavit.

4.14 As a result of the financial and operational difficulties resulting from the blockades at the mine, the Lydian Group entered into a series of forbearance agreements with its Lenders, commencing in October 2018. The most recent forbearance agreement expired on December 20, 2019, and, despite extensive negotiations, the Lenders did not all agree to extend. This led to the Applicants’ commencement of the CCAA Proceedings.

#### **Treaty Arbitration**

4.15 In March 2019, Lydian U.K. and Lydian Canada delivered letters to the GOA, which triggered their ability to commence arbitration (the “**Treaty Arbitration**”) pursuant to the Agreement between the Government of the United Kingdom and the GOA for the Promotion and Protection of Investments and the Agreement between the Government of Canada and the GOA for the Promotion and Protection of Investments, respectively.

#### **Sale/Refinancing Efforts**

4.16 With the assistance of BMO Nesbitt Burns Inc. (“**BMO**”) in 2018, the Lydian Group carried out a strategic process to canvass potential refinancing or sale options with respect to Lydian Armenia (the “**SISP**”). Although the SISP generated potential interest

from several parties, the continuing illegal blockades and conduct of the GOA prevented any meaningful offers that could be executed upon.

- 4.17 In October of 2019, BMO re-commenced the SISP, which has resulted in ongoing discussions with an interested party. The discussions are expected to continue throughout the period of the requested extended Stay Period.
- 4.18 Further, with the assistance of BMO, the Lydian Group is conducting a process to solicit offers to finance the costs involved in pursuing the Treaty Arbitration, and such process also remains ongoing.

## **5.0 MONITOR'S ACTIVITIES TO DATE**

### **Creditor Notifications**

- 5.1 Pursuant to the Initial order, the Monitor was required to: (i) without delay, publish in *The Globe and Mail* (National Edition), a notice containing the information prescribed under the CCAA; and (ii) within five days after the date of the Initial Order, (a) make the Initial Order publicly available in the manner prescribed under the CCAA; (b) send or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1,000; and (c) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations thereunder.
- 5.2 A notice containing the information prescribed under the CCAA was published in *The Globe and Mail* (National Edition) on December 30, 2019 and January 6, 2020.

5.3 On the date the Initial Order was granted, the Monitor activated the Monitor's Website and thereupon posted a copy of the Initial Order. On December 27, 2019, the Monitor prepared and posted to the Monitor's Website a list showing the names and addresses of every known creditor of the Applicants with a claim of more than \$1,000, excluding the claims, names and addresses of individuals who are creditors. Also on December 27, 2019, a notice was mailed by the Monitor to every known creditor with a claim against the Applicants of more than \$1,000.

#### **Other Activities of the Monitor**

5.4 In addition to those described above, the activities of the Monitor since the date of the Initial Order have included the following:

- a) assisting the Applicants with communications to employees and other parties;
- b) engaging in discussions with the Applicants, their respective legal counsel and other advisors, and the Non-Applicant Stay Parties and their advisors regarding the CCAA Proceedings and matters related to the Treaty Arbitration, financing in respect of same and the SISF;
- c) responding to enquiries from stakeholders;
- d) monitoring receipts, disbursements and commitments of the Applicants and assisting the Applicants to review receipts, disbursements and commitments of Lydian Armenia, which is the Applicants' source of funding up to the proposed extension of the Stay Period;

- e) attending the offices of Lydian Armenia together with the President and Interim CEO of Lydian International to meet with employees of Lydian Armenia in order to understand the cash position and near term forecast cash flows of Lydian Armenia and its ability to fund the Applicants through repayments against its outstanding obligations to Lydian International. This has included assisting management of the Applicants to gain an understanding of, and to quantify potential funding requirements directly associated with Lydian Armenia in the event of the Treaty Arbitration;
- f) engaging in discussions with BMO and the management and advisors of the Applicants in respect of the SISP;
- g) engaging in discussions with management in respect of the potential extension of insurance coverage for the Applicants' directors and officers beyond January 31, 2020, and, together with the interim president and CEO of Lydian International, attending a meeting with the Applicants' insurance broker and underwriters in the U.K. in respect of same;
- h) engaging in consultations with management in respect of the extension of coverage for Cost of Construction insurance, including coverage for on-site equipment until March 31, 2020;
- i) posting non-confidential materials filed with this Court to the Monitor's Website;  
and
- j) completing:



- i. the general noticing required under the CCAA as described above; and
- ii. the statutory filings pursuant to Section 23 of the CCAA, including filing the requisite forms with the Office of the Superintendent of Bankruptcy (Canada).

5.5 Further, since the Initial Order was granted by the Court, the Monitor has assisted the Applicants with their diligent efforts to maintain the stability of their operations. This has included, among other things, continued discussions between the Applicants' and their lenders and other stakeholders, issuing follow up requests to the GOA, and advancing the discussions regarding a potential sale or a financing of the Treaty Arbitration.

## **6.0 CASH FLOW RESULTS RELATIVE TO FORECAST**

6.1 Actual receipts and disbursements for the three-week period from December 21, 2019 to January 10, 2020 (the "**Reporting Period**"), as compared to the Cash Flow Forecast attached as Exhibit "M" to the Sellers Initial Affidavit, are summarized in the following table:

<b>Lydian International Limited., et. al.</b> <b>Schedule of Actual Receipts and Disbursements Compared to the Cash Flow Forecast</b> <b>For the Three-Week Period Ended January 10, 2020</b> <b>(\$ USD)</b>			
	<b>Actual</b>	<b>Forecast</b>	<b>Variance</b>
<b>Cash Receipts</b>			
Miscellaneous receipts	909	-	909
<b>Total Cash Receipts</b>	<b>909</b>	<b>-</b>	<b>909</b>
<b>Cash Disbursements</b>			
Salaries & Benefits	-	-	-
Insurance	-	-	-
Board of Directors	-	-	-
Office, IT & Bank	(1,427)	(2,120)	693
Travel	(12,251)	(19,500)	7,249
Miscellaneous	(558)	(1,625)	1,067
Professional Fees	(600,876)	(796,800)	195,924
Contingency	-	(10,000)	10,000
<b>Total Cash Disbursements</b>	<b>(615,112)</b>	<b>(830,045)</b>	<b>214,933</b>
<b>Net Cash Flow, Before Debt Service</b>	<b>(614,203)</b>	<b>(830,045)</b>	<b>215,842</b>
<b>Beginning Cash Balance</b>	<b>1,060,198</b>	<b>1,060,198</b>	<b>-</b>
Net operating cash flow	(614,203)	(830,045)	215,842
Net drawdown/(repayment)	-	-	-
<b>Ending Cash Balance</b>	<b>445,995</b>	<b>230,153</b>	<b>215,842</b>

6.2 During the Reporting Period:

- a) total receipts were forecast to be nil as, for the reasons described above, the Amulsar Project is not yet in production. The minimal receipts are from the sale of certain chemicals by Lydian Armenia included in its supplies, which were otherwise expiring in the near term; and
- b) total disbursements were approximately \$215,000 less than forecast, largely due to the timing of invoicing by professionals.

- 6.3 Overall, during the Reporting Period, the Applicants experienced a positive net cash flow variance of approximately \$216,000. It is anticipated that this positive variance will decline as timing differences reverse in the near term.
- 6.4 The reports of Management and A&M, prior to its appointment as Monitor, with respect to the Cash Flow Forecast, each dated December 22, 2019, (which was not previously made available to the Court given that this is the Monitor's first report to the Court) are attached hereto as **Appendix "C"**.

## **7.0 UPDATED CASH FLOW FORECAST**

- 7.1 The Applicants, with the assistance of the Monitor, have prepared an updated cash flow forecast (the "**Updated Cash Flow Forecast**") for the 13-week period January 11, 2020 to April 10, 2020 (the "**Cash Flow Period**"). A copy of the Updated Cash Flow Forecast, together with the accompanying notes and management report, is attached to this Report as **Appendix "D"**. A summary of the Cash Flow Forecast is set out in the following table.

<b>Lydian International Limited., et. al.</b> <b>Schedule of Forecast Receipts and Disbursements</b> <b>For the 13-Week Period Ending April 10, 2020</b> <b>(SUSD)</b>			
	<b>Jan 11 to Feb 28</b>	<b>Feb 29 to Apr 10</b>	
	<b>2020</b>	<b>2020</b>	<b>Total</b>
<b>Cash Receipts</b>			
Miscellaneous receipts	-	-	-
<b>Total Cash Receipts</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Cash Disbursements</b>			
Salaries & Benefits	(150,306)	(121,000)	(271,306)
Insurance	(91,694)	(168,847)	(260,541)
Board of Directors	(60,000)	(93,250)	(153,250)
Office, IT & Bank	(8,271)	(4,470)	(12,741)
Travel	(78,056)	(60,000)	(138,056)
Miscellaneous	(4,608)	(3,500)	(8,108)
Professional Fees	(1,002,861)	(1,030,880)	(2,033,741)
Contingency	(30,000)	(30,000)	(60,000)
<b>Total Cash Disbursements</b>	<b>(1,425,797)</b>	<b>(1,511,947)</b>	<b>(2,937,744)</b>
<b>Net Cash Flow, Before Debt Service</b>	<b>(1,425,797)</b>	<b>(1,511,947)</b>	<b>(2,937,744)</b>
<b>Beginning Cash Balance</b>	<b>445,995</b>	<b>199</b>	<b>445,995</b>
Net operating cash flow	(1,425,797)	(1,511,947)	(2,937,744)
Intercompany transfers	980,000	-	980,000
<b>Ending Cash Balance</b>	<b>199</b>	<b>(1,511,748)</b>	<b>(1,511,748)</b>

7.2 Disbursements include payments in the ordinary course, on normal trade terms, including the payment of certain pre-filing amounts, as authorized by the Initial Order.

7.3 During the Cash Flow Period, net cash outflows are forecast to be approximately \$2.9 million. Net of intercompany transfers, net cash outflows during the Cash Flow Period are projected to be approximately \$1.5 million.

7.4 The Applicants are requesting an extension of the Stay Period to February 25, 2020. As illustrated in the table above, net cash outflows during the period up to the date of the

requested stay extension are forecast to be funded by transfers to the Applicants from Lydian Armenia and, in the event of any shortfall, from Lydian U.S. Corporation.

- 7.5 The Initial Order authorized the Applicants to continue to use the centralized Cash Management System previously in place, which provided for funds to be transferred to Lydian International from Lydian Armenia on an as-needed basis as repayments under a loan agreement dated January 5, 2008 between Lydian International and Lydian Armenia. The funds transferred to Lydian International (Applicant) by Lydian Armenia (Non-Applicant Stay Party) during the Cash Flow Period up to the date of the requested extension of the Stay Period are forecast to leave Lydian Armenia with a minimal cash balance at the end of February 2020, absent the receipt of a VAT refund that it has recently applied for that has not yet been reviewed nor approved by the GOA. Accordingly, while there is sufficient cash to fund the Applicants and the Non-Applicant Stay Parties utilizing the same Cash Management System up to the requested Stay Period extension date, the Applicants and Lydian Armenia are forecast to have insufficient funding beyond that date without some form of interim financing being made available. During the period of the proposed extension to the Stay Period, the Applicants must locate a source or sources of additional funding if they are to continue to pursue their restructuring objectives beyond the end of February 2020. The Monitor understands that the Applicants have commenced these discussions with their existing lenders.
- 7.6 Depending on the direction taken by the Applicants during the period of any further extension of the Stay Period, in consultation with their lenders and with oversight by the Monitor, the Applicants will further assess their funding requirements beyond February 25, 2020.

## **8.0 PROPOSED AMENDMENTS TO THE INITIAL ORDER**

### **Proposed Amendments**

8.1 The proposed Amended and Restated Initial Order requested by the Applicants provides for certain amendments to the Initial Order, as follows:

- a) more expansive restructuring provisions to enable the Applicants to take certain steps during the course of the CCAA Proceedings as necessary;
- b) more expansive abilities of the Monitor, as contemplated in the Commercial List Users Committee Model Initial Order, such as advising the Applicants in the development of a Plan of Compromise or Arrangement, holding and administering meetings, as needed, for voting purposes;
- c) expanding the authority of the Monitor to have discussions with the Non-Applicant Stay Parties in respect of certain matters, including for the following purposes:
  - i. monitoring the Non-Applicant Stay Parties' receipts and disbursements to the extent any such party utilizes the Cash Management System, in order to review and consider the cash requirements and reasonableness of the Cash Flow Forecast;
  - ii. having full and complete access to the books, records, data and other financial documents of the Non-Applicant Stay Parties to the extent necessary to adequately assess the Applicants' business and financial affairs and prospects for a restructuring or transaction of any kind,

report on the cash flow forecasts as prepared by the Applicants, or to perform its duties under any Order of the Court; and

iii. requiring the Non-Applicant Stay Parties, to the extent possible and for so long as the stay of proceedings remains in place in favour of such parties, to fully cooperate with the Monitor in respect of the duties describe above;

d) to add protective language in favour of the Monitor, as contemplated in the Model Initial Order;

e) to increase the Administration Charge to \$500,000 and expand it to include BMO's monthly work fee, for its services pursuant to an engagement letter between BMO and the Applicants most recently amended on October 1, 2019 (the "**BMO Engagement Letter**");

f) to add a charge in an amount to be confirmed prior to the return date of the Comeback Motion (the "**Transaction Charge**") to secure BMO's potential transaction fee payable pursuant to the BMO Engagement Letter if a successful transaction is implemented. The Transaction Charge shall rank behind the Administration Charge and Directors' Charge; and

g) to seal the BMO Engagement Letter.

### **BMO Engagement Letter and Transaction Charge**

8.2 With respect to the Applicants' request for approval of the BMO Engagement Letter, the increased Administration Charge and the Transaction Charge, the Monitor understands

that details relating to an indicative calculation of any future transaction fees that may become payable thereunder has very recently been provided to the Lenders and Equipment Lenders. The unredacted BMO Engagement Letter has been provided to the Lenders and Equipment Lenders, each of whom have agreed to maintain the confidentiality of such terms.

- 8.3 The Monitor has not yet had an opportunity to discuss this requested relief with the Lenders and Equipment Lenders. The Monitor intends to do so in advance of the upcoming Comeback Motion in order to assess the positions of the Lenders and Equipment Lenders and whether they have had sufficient time to consider the proposed relief. If concerns exist with the relief being sought that cannot be resolved through discussions among the Applicants, BMO or the Monitor, additional time may be warranted for discussions among such parties to determine whether the concerns can be satisfied or if the additional priority charge will be opposed.
- 8.4 The Monitor has also considered the proposed increase to the Administration Charge (to the amended amount of \$500,000) to cover a monthly work fee set out in the BMO Engagement Letter. The Monitor is supportive of this request since BMO is continuing to assist the Applicants in considering their restructuring options, including a sale transaction and litigation financing options on a month-to-month basis.
- 8.5 The Monitor understands that the BMO Engagement Letter contains commercially sensitive terms which could potentially prejudice BMO in other mandates if the terms were not sealed from public view. Therefore, the Monitor supports the Applicants' request to seal the unredacted BMO Engagement Letter.



## **Monitor's Recommendations on Amended and Restated Initial Order**

8.6 Other than as already discussed above, the Monitor supports the proposed amendments to the Initial Order (subject to reserving its view on the Transaction Charge at this time, which requires further consideration and discussion with affected secured parties) for the following reasons:

- i. the Monitor is of the view that the proposed amendments are necessary to give the Applicants the flexibility required in order to have the best possible chance to implement a successful restructuring;
- ii. given, in particular, the complex integration of the Lydian Group parties as described above and the geographic issues, the Monitor will require the more expansive powers and protections requested in order to carry out its contemplated oversight role in respect of the SISP and/or the potential Treaty Arbitration and financing in respect of same, as well as in the general administration of the CCAA Proceedings;
- iii. with respect to the increase to the Administration Charge, BMO has been working extensively and diligently with Lydian International since its initial engagement and BMO's continued involvement will be important for the successful completion of a transaction; and
- iv. as indicated above, the Applicants have acted in good faith and with due diligence in these CCAA Proceedings since the date of the Initial Order.

8.7 The Monitor will advise the Court further with respect to the Transaction Charge at the return of the Comeback Motion, and may file a supplemental report in that regard.

## **9.0 EXTENSION OF STAY**

9.1 Pursuant to the Stay Extension Order, the Stay Period will expire on January 23, 2020. The Applicants are seeking an extension of the Stay Period to February 25, 2020 in respect of both the Applicants and the Non-Applicant Stay Parties, and certain relief pursuant to the Second Stay Extension Order.

9.2 The Monitor supports extending the Stay Period to February 25, 2020 and the ancillary relief sought in the Second Stay Extension Order for the following reasons:

- a) during the proposed extension of the Stay Period, the Applicants will have an opportunity to:
  - i. attempt to continue discussions with the GOA in an effort to gain access to the Amulsar Project;
  - ii. with the assistance of BMO and the oversight of the Monitor, engage in discussions with a view to negotiating a transaction with a potential purchaser through the SISP;
  - iii. with the assistance of BMO and the oversight of the Monitor, continue to canvass financing options for the Treaty Arbitration; and
  - iv. consider whether, and if so, when to take any steps to advance the Treaty Arbitration.

- b) the Applicants are forecast to have sufficient liquidity to continue operating in the ordinary course of business during the requested extension of the Stay Period;
- c) no creditor of the Applicants would be materially prejudiced by the extension of the Stay Period and the ancillary relief sought by the Applicants; and
- d) the Applicants have acted in good faith and with due diligence in these CCAA Proceedings since the date of the Initial Order.

## **10.0 MONITOR'S RECOMMENDATION**

- 10.1 For the reasons set out in this First Report, and subject to its reserved view at this time as it relates to the Transaction Charge (so no recommendation is included in this First Report with respect to that particular relief), the Monitor is of the view that the relief requested by the Applicants is reasonable and respectfully recommends that this Court grant the relief sought by the Applicants.

\*\*\*\*\*

All of which is respectfully submitted to this Court this 21<sup>st</sup> day of January 2020.

**Alvarez & Marsal Canada Inc., in its capacity  
as Monitor of Lydian International Limited,  
Lydian Canada Ventures Corporation and  
Lydian U.K. Corporation Limited  
and in no other capacity**



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Per: Alan J. Hutchens  
Senior Vice President

# Appendix A

**Initial Order dated December 23, 2019**



Court File No. CV-19-00633392-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE  
CHIEF JUSTICE MORAWETZ

)  
)  
)

MONDAY, THE 23<sup>rd</sup>  
DAY OF DECEMBER, 2019

**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  
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION  
AND LYDIAN U.K. CORPORATION LIMITED**

Applicants

**INITIAL ORDER**

**THIS APPLICATION**, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 130 Queen Street West, Toronto, Ontario.

**ON READING** the affidavit of Edward A. Sellers sworn December 22, 2019 (the "**Sellers Affidavit**") and the Exhibits thereto, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants and counsel for the Monitor, no one appearing for any other party although duly served as appears from the affidavit of service of Sanja Sopic sworn December 23, 2019 and on reading the consent of Alvarez & Marsal Canada Inc. to act as the Monitor,

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

## APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not Applicants, Lydian Armenia CJSC, Lydian International Holdings Limited, Lydian Resources Armenia Limited and Lydian U.S. Corporation (the “**Non-Applicant Stay Parties**”) shall enjoy certain of the benefits and the protections provided herein and as subject to the restrictions as hereinafter set out.

## POSSESSION OF PROPERTY AND OPERATIONS

3. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

4. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to use the central cash management system currently in place as described in the Sellers Affidavit (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.



5. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

7. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected



after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

#### **RESTRUCTURING**

9. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to continue negotiations with stakeholders in an effort to pursue restructuring options for the Applicants including without limitation all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing.

#### **PROCEEDINGS AGAINST THE APPLICANTS, THE NON-APPLICANT STAY PARTIES OR THE PROPERTY**

10. **THIS COURT ORDERS** that until and including January 2, 2020, or such later date as this Court may subsequently order (the "**Stay Period**"), no proceeding or enforcement process in or out of any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court.

11. **THIS COURT ORDERS** that during the Stay Period, no Proceeding shall be commenced or continued against or in respect of the Non-Applicant Stay Parties, or any of their current and future assets, businesses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (collectively, the “**Non-Applicants’ Property**”, and together with the Non-Applicants’ businesses, the “**Non-Applicants’ Property and Business**”) including, without limitation, terminating, making any demand, accelerating, amending or declaring in default or taking any enforcement steps under any agreement or agreements with respect to which any of the Applicants are a party, borrower, principal obligor or guarantor.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

12. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

13. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any Person against or in respect of the Non-Applicant Stay Parties, or affecting the Non-Applicants’ Property and Business, as a result of a Non-Applicants’ Default Event, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Non-Applicant Stay Parties to carry on any business which the Non-Applicant Stay Parties are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.



### **NO INTERFERENCE WITH RIGHTS**

14. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicants or the Non-Applicant Stay Parties (as a result of a Non-Applicants' Default Event) except with the written consent of the Applicants and the Monitor, or leave of this Court.

### **CONTINUATION OF SERVICES**

15. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

16. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

17. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any

of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

18. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

19. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$263,280 (being US\$200,000 as per the Bank of Canada's published exchange rate on December 20, 2019), as security for the indemnity provided in paragraph 18 of this Order. The Directors' Charge shall have the priority set out in paragraphs 29 and 31 herein.

20. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 18 of this Order.

#### **APPOINTMENT OF MONITOR**

21. **THIS COURT ORDERS** that Alvarez & Marsal Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order,



and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

22. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicants in its preparation of the Applicants' cash flow statements;
- (d) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (e) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (f) perform such other duties as are required by this Order or by this Court from time to time.

23. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

24. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of any of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant

to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

25. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

26. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, Canadian counsel to the Applicants and the Applicants' counsel in connection with their recognition proceedings in the United Kingdom and the Bailiwick of Jersey shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants.

27. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

28. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$460,740 (being US\$350,000 as per the Bank of Canada's published exchange rate on December 20, 2019), as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 29 and 31 hereof.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

29. **THIS COURT ORDERS** that the priorities of the Directors' Charge and the Administration Charge as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$460,740);



Second – Directors’ Charge (to the maximum amount of \$263,280).

30. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors’ Charge or the Administration Charge (collectively, the “Charges”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

31. **THIS COURT ORDERS** that each of the Directors’ Charge and the Administration Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “Encumbrances”) in favour of any Person.

32. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors’ Charge and the Administration Charge, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Directors’ Charge and the Administration Charge, or further Order of this Court.

33. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants’ interest in such real property leases.

#### **SERVICE AND NOTICE**

34. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe & Mail a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

35. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <<http://www.alvarezandmarsal.com/Lydian>>.

36. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants’ creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

37. **THIS COURT ORDERS** that the Applicants and the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants’ creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).



## GENERAL

38. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

39. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

40. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, Armenia, the Bailiwick of Jersey, the United Kingdom, or the United States to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

41. **THIS COURT DECLARES** that it shall issue a letter substantially in the form of the letter attached hereto as Schedule "A" to request the assistance of the Royal Court of Jersey in these proceedings.

42. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.


43. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

44. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 8:30 a.m. Eastern Standard/Daylight Time on the date of this Order.

  
C.B. HOROWITZ

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

DEC 24 2019

PER / PAR: 

**SCHEDULE "A"**  
**(Letter of Request for the Royal Court of Jersey)**



Court File No. CV-19-00633392-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION  
AND LYDIAN U.K. CORPORATION LIMITED**

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**LETTER OF REQUEST  
(COMITY APPLICATION)**

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**To: The Bailiff of the Royal Court of Jersey**  
Royal Court Building, Royal Square  
St Helier, Jersey  
JE1 1JG

The Superior Court of Justice (Province of Ontario, Canada) ("**Ontario Court**"), respectfully requests the assistance of the Royal Court of Jersey to provide assistance to the Ontario Court as set out below and assures the Royal Court of Jersey reciprocal assistance in appropriate circumstances.

**WHEREAS:**

1. By an order dated the 23 December 2019 of the Canadian Court ("**CCAA Order**"), Lydian International Limited ("**Lydian International**"), Lydian Canada Ventures Corporation and Lydian U.K. Corporation Limited (collectively, the "**Debtors**") were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (Canada) ("**CCAA**") on the grounds that they were unable to pay their debts. Certain other non-applicant entities were also granted a stay of proceedings<sup>1</sup> (the non-applicant entities together with the Debtors are the "**Lydian Group**"). A copy of the CCAA Order is attached hereto as Schedule "A".

---

<sup>1</sup> Lydian Armenia CJSC, Lydian International Holdings Limited, Lydian Resources Armenia Limited and Lydian U.S. Corporation.



2. The Lydian Group is connected to Jersey by means of Lydian International, a corporation continued under the laws of Jersey from the Province of Alberta, Canada, pursuant to the *Companies (Jersey) Law 1991* (Lydian International was originally incorporated under the *Business Corporations Act* (Alberta)). Lydian International's registered office is located at Bourne House 1st Floor, Francis Street, St Helier, Jersey.

3. Pursuant to paragraphs 2 and 3 of the CCAA Order, the Debtors, including Lydian International, are companies to which the CCAA applies, shall enjoy certain of the benefits and the protections provided for in the CCAA Order, and shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**").

4. Pursuant to paragraph 21 of the CCAA Order, Alvarez & Marsal Canada Inc. was appointed as the monitor (the "**Monitor**"), an officer of the Ontario Court, to monitor the business and financial affairs of the Debtors pursuant to the CCAA.

5. Pursuant to the CCAA and the CCAA Order, the Monitor has broad powers including the authorization to have full and complete access to the Debtor's Property (as the term "Property" is defined in the CCAA Order), including the premises, books, records, data (including in electronic form) and other financial documents of the Debtors, to the extent that is necessary to adequately assess the Debtors' business and financial affairs or to perform its duties arising under the CCAA Order (see e.g. paragraph 22(d) of the CCAA Order).

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

**NOW:**

7. I, the Honourable Geoffrey B. Morawetz, Chief Justice of the Ontario Court, confirm that, as a matter of international comity, the courts of the provinces and territories of Canada will consider giving effect to orders made by the Royal Court of Jersey relating to the

bankruptcy of an individual or company (save for the purpose of enforcing the fiscal laws of Jersey).

8. It having been shown to the satisfaction of the Ontario Court that it is necessary for the purposes of justice and to assist the Debtors and the Monitor with the carrying out of the terms of the CCAA Order, and assist the Monitor in the performance of its duties, pursuant to the CCAA Order of the Ontario Court, I hereby request the assistance of the Royal Court of Jersey, pursuant to its inherent jurisdiction, to act in aid of the Debtors and the Monitor in the conduct of the reorganization of the Debtors and in particular (without prejudice to the generality of the foregoing):

- (a) by recognising the appointment of the Monitor with such appointment to be registered in the Rolls of the Royal Court of Jersey in respect of Lydian International;
- (b) by recognising the rights and powers of the Debtors and Monitor in respect of the Property of Lydian International;
- (c) by declaring that no action shall be taken or proceeded with against Lydian International except by leave of the Ontario Court and subject to such terms as the Ontario Court may impose; and
- (d) by granting such further or other relief as it thinks fit in aid of the Debtors and the Monitor and the reorganization of Lydian International.


Dated: 23 December 2019

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

DEC 24 2019

PER / PAR:

AE

  
The Honourable Geoffrey B. Morawetz,  
Chief Justice of the Ontario Superior Court of  
Justice

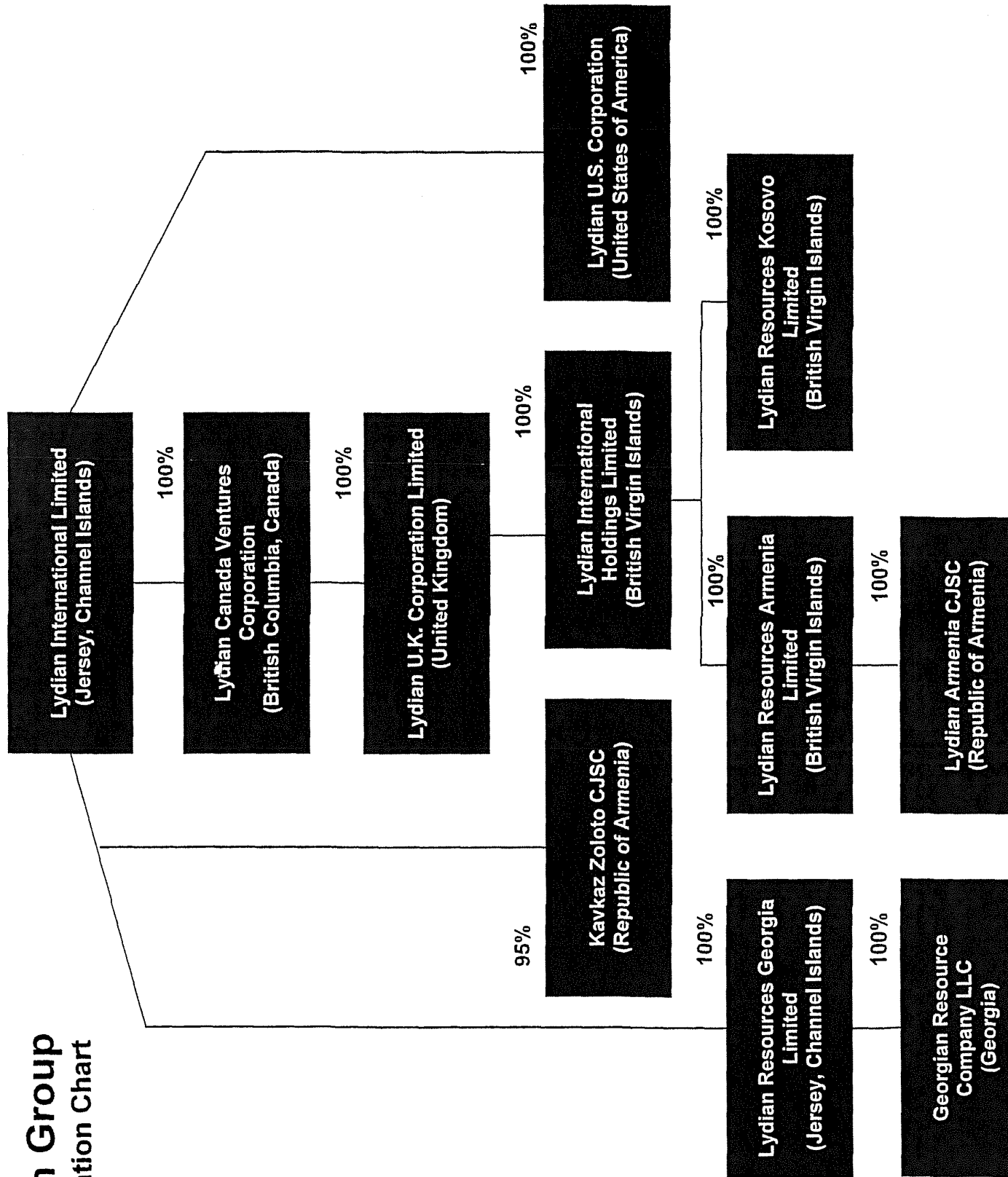
	<b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> <b>(COMMERCIAL LIST)</b> Proceeding commenced at Toronto
	<b>INITIAL ORDER</b>
	<b>Stikeman Elliott LLP</b> Barristers & Solicitors 5300 Commerce Court West 199 Bay Street Toronto, Canada M5L 1B9  <b>Elizabeth Pillon LSO#: 35638M</b> Tel: (416) 869-5623 Email: epillon@stikeman.com  <b>Maria Konyukhova LSO#: 52880V</b> Tel: (416) 869-5230 Email: mkonyukhova@stikeman.com  <b>Sanja Sopic LSO#: 66487P</b> Tel: (416) 869-6825 Email: ssopic@stikeman.com  <b>Nicholas Avis LSO#: 76781Q</b> Tel: (416) 869-5504 Email: navis@stikeman.com Fax: (416) 947-0866  <b>Lawyers for the Applicants</b>

## Appendix B

### Lydian Group Corporate Structure



# Lydian Group Organization Chart



## Appendix C

**Reports with respect to the Cash Flow Forecast dated December 22, 2019**

December 22, 2019

Alvarez & Marsal Canada Inc.  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2900  
Toronto, ON M5J 2J1

Attention: Alan Hutchens

**Re: Proceedings under the *Companies' Creditors Arrangement Act* ("CCAA") Lydian International Limited, Lydian Canada Ventures Corporation, and Lydian U.K. Corporation Limited (collectively, the "Applicants" or "Lydian") – Responsibilities / Obligations and Disclosure with Respect to Cash-flow Projections**

In connection with the application by Applicants for the commencement of proceedings under the CCAA, the management of Lydian, management of the Applicants ("**Management**") has prepared, the attached cash-flow statement and the assumptions on which the cash-flow statement is based.

The Applicants confirm that:

1. The cash-flow statement and the underlying assumptions are the responsibility of Applicants;
2. All material information relevant to the cash-flow statement and to the underlying assumptions has been made available to A&M in its capacity as Monitor; and
3. Management has taken all actions that it considers necessary to ensure:
  - a. That the individual assumptions underlying the cash-flow statement are appropriate in the circumstances; and
  - b. That the assumptions underlying the cash-flow statement, taken as a whole, are appropriate in the circumstances.
  - c. That all relevant assumptions have been properly presented in the cash-flow statement or in the notes accompanying the cash-flow statement.
4. Management understands and agrees that the determination of what constitutes a material adverse change in the projected cash flow or financial circumstances, for the purposes of our monitoring the on-going activities of the Applicants, is ultimately at your sole discretion, notwithstanding that Management may disagree with such determination.
5. Management understands its duties and obligations under the CCAA and that a breach of these duties and obligations could make Management liable to fines and imprisonment in certain circumstances.
6. The cash-flow statement and assumptions have been reviewed and approved by the Applicants' board of directors or management has been duly authorized by the Applicants' board of directors to prepare and approve the cash-flow assumptions.



**Lydian International Limited**

Bourne House 1<sup>st</sup> Floor  
Francis Street, St. Helier, Jersey  
JE2 4QE Channel Islands

Yours truly,

<b>Name</b>	Bill Dean
<b>Title</b>	Chief Financial Officer

## PROPOSED MONITOR'S CONCLUSION ON THE CASH FLOW STATEMENT

1. The proposed Monitor's conclusions from its review of the attached statement of projected cash flow (the "**Cash Flow Statement**") of the Applicants pursuant to Section 23(1)(b) of the CCAA are as follows:
  - a) The Cash Flow Statement attached to this report has been prepared by the Applicants for the purpose described in the notes to the Cash Flow Statement (the "**Notes**") using Probable and Hypothetical Assumptions set out in the Notes.
  - b) The Proposed Monitor's review of the Cash Flow Statement consisted of inquiries, analytical procedures and discussion related to information supplied to the Proposed Monitor by certain of the management and employees of the Applicants, as applicable. Since Hypothetical Assumptions need not be supported, the procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Statement. We have also reviewed the support provided by management of the Applicants, as applicable, for the Probable Assumptions, and the preparation and presentation of the Cash Flow Statement.
  - c) Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:
    - i. the Hypothetical Assumptions are not consistent with the purpose of the Cash Flow Statement;
    - ii. as at the date of this report, the Probable Assumptions developed by management are not Suitably Supported and consistent with the plans of the

Applicants or do not provide a reasonable basis for the Cash Flow Statement, given the Hypothetical Assumptions; or

iii. the Cash Flow Statement does not reflect the Probable and Hypothetical Assumptions.

2. Since the Cash Flow Statement is based on Assumptions regarding future events, actual results will vary from the information presented even if the Hypothetical Assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the Cash Flow Statement will be achieved. We express no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report, of relied upon by us in preparing this report.
3. The Cash Flow Statement has been prepared solely for the purpose described in the Notes on the face of the Cash Flow Statement, and readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto, this 22nd day of December 2019.

**Alvarez & Marsal Canada Inc.**

in its capacity as Proposed Monitor of Lydian International Limited,  
Lydian Canada Ventures Corporation and Lydian U.K. Corporation Limited



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Per: Alan J. Hutchens  
Senior Vice-President

## Appendix D

**Updated Cash Flow Forecast for the 13-Week Period Ending April 10, 202**

## Lydian International Limited., et. al.

### 13 Week Cash Flow Forecast For the Period Ending April 10, 2020

Amounts in USD

Week Ending (Friday) Forecast Week	Notes	17-Jan-20 Wk-1	24-Jan-20 Wk-2	31-Jan-20 Wk-3	7-Feb-20 Wk-4	14-Feb-20 Wk-5	21-Feb-20 Wk-6	28-Feb-20 Wk-7	6-Mar-20 Wk-8	13-Mar-20 Wk-9	20-Mar-20 Wk-10	27-Mar-20 Wk-11	3-Apr-20 Wk-12	10-Apr-20 Wk-13	13 Week Total
<b>Receipts</b>	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>DISBURSEMENTS</b>															
Salaries & Benefits	2	(306)	-	(61,000)	-	(28,000)	-	(61,000)	(30,000)	-	-	(30,000)	(61,000)	-	(271,306)
Insurance	3	-	(4,847)	(82,000)	-	-	(4,847)	-	(82,000)	-	(4,847)	-	(82,000)	-	(260,541)
Board of Directors	4	-	-	(30,000)	-	-	-	(30,000)	-	-	-	-	(93,250)	-	(153,250)
Office, IT & Bank		(152)	(160)	(5,909)	(700)	(200)	(200)	(950)	(1,500)	(200)	(200)	(200)	(1,410)	(960)	(12,741)
Travel	5	(23,056)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(5,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(138,056)
Miscellaneous		(1,108)	(500)	(500)	(625)	(625)	(625)	(625)	(625)	(625)	(625)	(625)	(500)	(500)	(8,108)
Professional Fees	6	(98,074)	(101,000)	(286,141)	(272,057)	(28,590)	(172,000)	(45,000)	(112,700)	(334,590)	(37,000)	(20,000)	(252,000)	(229,590)	(1,988,741)
Contingency		-	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(60,000)
<b>Net Cash Inflows / (Outflows)</b>		(122,696)	(121,507)	(480,550)	(288,382)	(72,415)	(192,672)	(147,575)	(241,825)	(350,415)	(57,672)	(65,825)	(505,160)	(246,050)	(2,892,744)
<b>CASH</b>															
<b>Available Cash (excludes DSR)</b>															
Beginning Available Balance		445,995	323,300	701,793	221,242	412,861	340,446	147,774	199	(241,626)	(592,041)	(649,713)	(715,538)	(1,220,698)	445,995
Net Cash Inflows / (Outflows)		(122,696)	(121,507)	(480,550)	(288,382)	(72,415)	(192,672)	(147,575)	(241,825)	(350,415)	(57,672)	(65,825)	(505,160)	(246,050)	(2,892,744)
Inter-company transfer	7	-	500,000	-	480,000	-	-	-	-	-	-	-	-	-	980,000
<b>Ending Available Balance</b>		323,300	701,793	221,242	412,861	340,446	147,774	199	(241,626)	(592,041)	(649,713)	(715,538)	(1,220,698)	(1,466,748)	(1,466,748)

#### NOTES:

##### Disclaimer:

This cash flow forecast ("Forecast") is based on assumptions about future events and conditions that are not ascertainable. Actual results during the Forecast period will vary from the Forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized.

1. The Company's practice is to only forecast VAT receipts where the VAT return has been approved and funds have been deposited for the benefit of the Company. The Company has recently filed a VAT return however it has not yet been reviewed by the Armenian government.
2. Includes payroll and taxes for certain senior management.
3. Amount is comprised of political violence insurance and director and officer liability insurance payable monthly.
4. Amount is comprised of political violence insurance and director and officer liability insurance ("D&O Insurance"). The insurer has confirmed a one month extension of the D&O Insurance for the month of February. For the purposes of this forecast, further monthly extensions beyond February have been assumed.
5. Travel costs to and within Armenia to oversee activities related to the mine site owned by the Company's Armenian subsidiary
6. Includes payments to the Companies' restructuring advisors, legal counsel, proposed CCAA Monitor, CCAA Monitor's legal counsel and other professionals, including those involved with the Company's public company reporting obligations.
7. As provided for in the Initial Order, the Company has continued to use its existing Cash Management process which provides that the Company may transfer cash in increments from Lydian Armenia, a non-Applicant Stay party to LIL on an as needed basis. These funds have been transferred in accordance with that practice and will erduce an existing intercompany loan from LIL to Lydian Armenia.



**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LYDIAN  
INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION, AND LYDIAN U.K.  
CORPORATION LIMITED**

Court File No.:  
CV-19-00633392-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
Proceeding commenced at Toronto

**MONITOR'S  
FIRST REPORT**

**THORNTON GROUT FINNIGAN LLP**  
Barristers & Solicitors  
Toronto Dominion Centre  
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Fax: 416.304.1313

Lawyers for the Monitor

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PROPOSED PLAN OF  
COMPROMISE OR ARRANGEMENT OF  
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES  
CORPORATION, AND LYDIAN U.K. CORPORATION LIMITED**

Applicants

**SECOND REPORT OF THE MONITOR  
ALVAREZ & MARSAL CANADA INC.**

**FEBRUARY 28, 2020**

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## 1.0 INTRODUCTION

1.1 On December 23, 2019, Lydian International Limited, Lydian Canada Ventures Corporation and Lydian U.K. Corporation Limited (collectively, the “**Applicants**”) applied for and were granted protection by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). Pursuant to an order of the Court dated December 23, 2019 (the “**Initial Order**”), Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed Monitor (in such capacity, the “**Monitor**”) of the Applicants in the CCAA proceedings (the “**CCAA Proceedings**”). Any capitalized terms not otherwise defined herein have the meanings attributed to them in the Initial Order.

1.2 The Initial Order, among other things:

- a) granted a stay of proceedings until January 2, 2020 (the “**Stay Period**”) as against the Applicants;
- b) provided that during the Stay Period, no proceedings may be commenced or continued against or in respect of Lydian Armenia CJSC (“**Lydian Armenia**”), Lydian International Holdings Limited, Lydian Resources Armenia Limited and Lydian U.S. Corporation (“**Lydian U.S.**”) (collectively, the “**Non-Applicant Stay Parties**”);
- c) granted a first ranking charge (the “**Administration Charge**”) for the benefit of the Monitor, its counsel, and the Applicants’ counsel in the amount of CAD\$460,740 (being US\$350,000 as per the Bank of Canada’s published exchange rate on December 20, 2019) as security for their professional fees and disbursements;

- d) granted a second ranking charge, ranking behind only the Administration Charge, for the benefit of the Applicants' directors and officers in an amount not to exceed CAD\$263,280 (being US\$200,000 as per the Bank of Canada's published exchange rate on December 20, 2019) as security for the indemnity by the Applicants in favour of the directors and officers for any obligations or liabilities incurred after the commencement of the CCAA Proceedings, subject to the exceptions set out in the Initial Order; and
  - e) authorized the Applicants to continue negotiations with stakeholders in an effort to pursue restructuring options, including refinancing the Business or Property, subject to approval of the Court prior to any material refinancing.
- 1.3 On January 2, 2020, the Court issued an order extending the Stay Period in favour of the Applicants and the Non-Applicant Stay Parties to January 23, 2020.
- 1.4 At the Applicants' motion returnable on January 23, 2020 (the "**Comeback Motion**"), the Court issued an order extending the Stay Period to March 2, 2020.
- 1.5 Further, at the Comeback Motion, the Court issued an order (the "**Amended and Restated Initial Order**") amending the Initial Order to expand the Applicants' restructuring capabilities within the CCAA Proceedings and to expand the Monitor's authority within the CCAA Proceedings, including its interactions with the Non-Applicant Stay Parties in specified circumstances.
- 1.6 Further information regarding these CCAA Proceedings, including motion materials, orders issued by the Court, affidavits, reports of the Monitor, and all other Court-filed

documents and notices in these CCAA Proceedings are available on the Monitor's website at <http://www.alvarezandmarsal.com/lydian> (the "**Monitor's Website**").

- 1.7 The purpose of this second report to the Court ("**Second Report**") is to provide the Court with information regarding the Applicants request for a brief 3-day extension to the Stay Period from March 2, 2020 to March 5, 2020.
- 1.8 In connection with the Applicants' motion returnable on March 5, 2020 to further extend the Stay Period until and including April 30, 2020, the Monitor will file a more fulsome report that will set out, among other things, the Applicants' and Monitor's activities since the Monitor's First Report to the Court dated January 21, 2020 (the "**First Report**") and provide information to the Court in respect of the relief sought by the Applicants at that time.

## **2.0 TERMS OF REFERENCE AND DISCLAIMER**

- 2.1 In preparing this Second Report, the Monitor has been provided with and has relied upon, unaudited financial information; books, records and financial information prepared by certain senior management of the Applicants ("**Senior Management**"); and discussions with Senior Management (collectively, the "**Information**").
- 2.2 With respect to any of the Applicants' cash flow forecasts and projections:
  - a) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has neither audited nor 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 Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and

b) any examination or review of such financial forecasts and projections, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.

2.3 Future oriented financial information referred to in this Second Report was prepared based on management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections. Even if the assumptions materialize, the variations could be significant.

2.4 Unless otherwise stated, all monetary amounts contained in this Second Report are expressed in U.S. dollars.

### **3.0 BRIEF EXTENSION TO THE STAY PERIOD**

3.1 The Applicants are seeking a brief 3-day extension of the Stay Period from March 2 to March 5, 2020 in respect of both the Applicants and the Non-Applicant Stay Parties. As referenced above, the Applicants have scheduled a motion returnable on March 5, 2020 to request a further extension to the Stay Period until and including April 30, 2020, along with other ancillary relief.

3.2 The Applicants, in consultation with the Monitor, are in the process of advancing discussions with their lenders and other stakeholder groups to determine a viable path forward to maximize stakeholder value. The Applicants have requested the 3-day extension to the Stay Period in order to provide the Applicants with additional time to continue these discussions, as they relate to certain of the relief to be sought by the Applicants.

3.3 The discussions currently taking place among the Applicants and their lenders and other stakeholder groups, in consultation with the Monitor, address the following issues: (i) certain governance changes to be undertaken in respect of the Applicants and the Non-Applicant Stay Parties; (ii) a further extension of the Stay Period to April 30, 2020; (iii) the quantum and terms of debtor-in-possession financing for the duration of the requested extension to the Stay Period; (iv) the objection filed by Caterpillar Financial Services (UK) Limited in connection with the Comeback Motion and a motion to lift the stay to allow the retrieval of their equipment; and (v) advancing the sale and investment solicitation process commenced by the Applicants. The Applicants will benefit from the brief additional time requested to continue and advance these discussions.

#### **4.0 UPDATED CASH FLOW FORECAST**

4.1 The Applicants, with the assistance of the Monitor, have prepared an updated cash flow forecast (the “**Updated Cash Flow Forecast**”) for the 3-week period February 15 to March 6, 2020 (the “**Cash Flow Period**”) to correlate with the requested extension of the Stay Period. A copy of the Updated Cash Flow Forecast, together with the accompanying notes, is attached to this Report as **Appendix “A”**. A summary of the Cash Flow Forecast is set out in the following table.



<b>Lydian International Limited., et. al.</b> <b>Schedule of Forecast Receipts and Disbursements</b> <b>For the 3-Week Period Ending March 6, 2020</b> <b>(\$ USD)</b>	
	<b>Amount (\$)</b>
<b>Cash Receipts</b>	
Miscellaneous receipts	-
<b>Total Cash Receipts</b>	-
<b>Cash Disbursements</b>	
Salaries & Benefits	(91,000)
Insurance	(92,194)
Board of Directors	(30,000)
Office, IT & Bank	(2,650)
Travel	(30,000)
Miscellaneous	(1,875)
Professional Fees	(622,272)
Contingency	(10,000)
<b>Total Cash Disbursements</b>	<b>(879,991)</b>
<b>Net Cash Flow, Before Debt Service</b>	<b>(879,991)</b>
<b>Beginning Cash Balance</b>	<b>1,147,449</b>
Net operating cash flow	(879,991)
Net drawdown/(repayment)	185,000
<b>Ending Cash Balance</b>	<b>452,459</b>

- 4.2 Disbursements include payments in the ordinary course, on normal trade terms, including the payment of certain pre-filing amounts, as authorized by the Amended and Restated Initial Order.
- 4.3 During the Cash Flow Period, net cash outflows are forecast to be approximately \$880,000. Net of intercompany transfers, net cash outflows during the Cash Flow Period are projected to be approximately \$695,000.
- 4.4 The Applicants are requesting an extension of the Stay Period to March 5, 2020. As illustrated in the table above, the Applicants are forecast to have sufficient cash to operate during that period. Net cash outflows during the period up to the date of the requested stay

extension are forecast to be funded by transfers to the Applicants from Lydian Armenia and from Lydian U.S.

- 4.5 The Amended and Restated Initial Order authorized the Applicants to continue to use the centralized Cash Management System previously in place among the Applicants, the Non-Applicant Stay Parties and any other entities in the Lydian group, as described in the Sellers Initial Affidavit, which provided for funds to be transferred to Lydian International from Lydian Armenia and/or Lydian U.S. on an as-needed basis.
- 4.6 The Monitor will file a longer-term cash flow forecast up to the week ended May 15, 2020 in the Monitor's Third Report to the Court, to be filed in connection with the Applicants' motion returnable on March 5, 2020.

## **5.0 MONITOR'S RECOMMENDATION**

- 5.1 For the reasons set out in this Second Report, the Monitor is of the view that a brief 3-day extension to the Stay Period from March 2, 2020 to March 5, 2020 is reasonable and the Applicant and stakeholders will benefit from the additional time to finalize matters to be addressed on the return date of the motion, and respectfully recommends that this Court grant the relief sought by the Applicants.

\*\*\*\*\*

All of which is respectfully submitted to this Court this 28<sup>th</sup> day of February 2020.

**Alvarez & Marsal Canada Inc., in its capacity  
as Monitor of Lydian International Limited,  
Lydian Canada Ventures Corporation and  
Lydian U.K. Corporation Limited  
and in no other capacity**

  
Per: Alan J. Hutchens  
Senior Vice President

# Appendix “A”

## Lydian International Limited., et. al.

### 3 Week Cash Flow Forecast For the Period Ending Mar 6, 2020

Amounts in USD

Week Ending (Friday)	Notes	21-Feb-20	28-Feb-20	6-Mar-20	13 Week
Forecast Week		Wk-1	Wk-2	Wk-3	Total
<b>Receipts</b>		-	-	-	-
<b>Disbursements</b>					
Salaries & Benefits	1	-	(61,000)	(30,000)	(91,000)
Insurance	2	(4,847)	(82,500)	(4,847)	(92,194)
Board of Directors		-	(30,000)	-	(30,000)
Office, IT & Bank		(200)	(950)	(1,500)	(2,650)
Travel	3	(10,000)	(10,000)	(10,000)	(30,000)
Miscellaneous		(625)	(625)	(625)	(1,875)
Professional Fees	4	(309,972)	(249,599)	(62,700)	(622,272)
Contingency		-	(5,000)	(5,000)	(10,000)
<b>Net Cash Inflows / (Outflows)</b>		<b>(325,644)</b>	<b>(439,674)</b>	<b>(114,672)</b>	<b>(879,991)</b>
<b>Available Cash</b>					
Beginning Available Balance		1,147,449	916,805	477,131	1,147,449
Net Cash Inflows / (Outflows)		(325,644)	(439,674)	(114,672)	(879,991)
Financing Draws / (Repayments)		-	-	-	-
Inter-company transfer	5	95,000	-	90,000	185,000
<b>Ending Available Balance</b>		<b>916,805</b>	<b>477,131</b>	<b>452,459</b>	<b>452,459</b>

#### NOTES:

##### Disclaimer:

This cash flow forecast ("Forecast") is based on assumptions about future events and conditions that are not ascertainable. Actual results during the Forecast period will vary from the Forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized.

1. Includes payroll and taxes for certain senior management as well as payment obligations to certain former employees of the Companies.
2. Comprised of political violence insurance and director and officer liability insurance. D&O insurance is assumed to be \$82K for the period up to March 2, 2020 and \$41K for the two week period thereafter. D&O insurance is assumed to be unavailable beyond mid-March. Political violence insurance is approximately \$5K/mo. Management is investigating coverage availability for any remaining directors in the group and is discussion options in respect of same with the lenders.
3. Travel costs to and within Armenia to oversee activities related to the mine site owned by the Company's Armenian subsidiary.
4. Includes payments to the Companies' restructuring advisors, legal counsel, CCAA Monitor, CCAA Monitor's legal counsel and other professionals, including those involved with the Company's public company reporting obligations.
5. As provided for in the Initial Order, the Company may transfer cash in increments from the non-Applicant Stay parties Lydian Armenia and Lydian U.S. Corporation.

<b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> <b>COMMERCIAL LIST</b> Proceeding commenced at Toronto	
<b>MONITOR'S</b> <b>SECOND REPORT</b>	
<b>THORNTON GROUT FINNIGAN LLP</b> Barristers & Solicitors Toronto Dominion Centre 100 Wellington Street W., Suite 3200 Toronto, Canada M5K 1K7	
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Lawyers for the Monitor	

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PROPOSED PLAN OF  
COMPROMISE OR ARRANGEMENT OF  
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES  
CORPORATION, AND LYDIAN U.K. CORPORATION LIMITED**

Applicants

**THIRD REPORT OF THE MONITOR  
ALVAREZ & MARSAL CANADA INC.**

**MARCH 10, 2020**

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- Appendix G**    **Affidavit of D.J. Miller, sworn March 9, 2020**

## 1.0 INTRODUCTION AND STATUS OF CCAA PROCEEDINGS

1.1 On December 23, 2019, Lydian International Limited (“**Lydian International**”), Lydian Canada Ventures Corporation (“**Lydian Canada**”) and Lydian U.K. Corporation Limited (“**Lydian U.K.**”) (collectively, the “**Applicants**”) applied for and were granted protection by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). Pursuant to an order of the Court dated December 23, 2019 (the “**Initial Order**”), Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed Monitor (in such capacity, the “**Monitor**”) of the Applicants in the CCAA proceedings (the “**CCAA Proceedings**”). Any capitalized terms not otherwise defined herein have the meanings attributed to them in the Initial Order.

1.2 The Initial Order, among other things:

- a) granted a stay of proceedings until January 2, 2020 (the “**Stay Period**”) as against the Applicants;
- b) provided that during the Stay Period, no proceedings may be commenced or continued against or in respect of Lydian Armenia CJSC (“**Lydian Armenia**”), Lydian International Holdings Limited, Lydian Resources Armenia Limited and Lydian U.S. Corporation (“**Lydian U.S.**”) (collectively, the “**Non-Applicant Stay Parties**”);
- c) granted a first ranking charge (the “**Administration Charge**”) for the benefit of the Monitor, its counsel, and the Applicants’ counsel in the amount of

CAD\$460,740 (being US\$350,000 as per the Bank of Canada's published exchange rate on December 20, 2019) as security for their professional fees and disbursements;

- d) granted a second ranking charge (the “**Directors’ Charge**”), ranking behind only the Administration Charge, for the benefit of the Applicants’ directors and officers in an amount not to exceed CAD\$263,280 (being US\$200,000 as per the Bank of Canada’s published exchange rate on December 20, 2019) as security for the indemnity by the Applicants in favour of the directors and officers for any obligations or liabilities incurred after the commencement of the CCAA Proceedings, subject to the exceptions set out in the Initial Order; and
- e) authorized the Applicants to continue negotiations with stakeholders in an effort to pursue restructuring options, including refinancing the Business or Property, subject to approval of the Court prior to any material refinancing.

1.3 On January 2, 2020, the Court issued an order extending the Stay Period in favour of the Applicants and the Non-Applicant Stay Parties to January 23, 2020.

1.4 The First Report to Court of the Monitor, dated January 21, 2020 (the “**First Report**”) was filed in support of the Applicants’ motion returnable on January 23, 2020 (the “**Comeback Motion**”). The First Report, among other things, provided the Court with:

- a) background information in respect of the Applicants, the Non-Applicant Stay Parties, and the CCAA Proceedings;

- b) cash flow results for the 3-week period ended January 10, 2020 and the Applicants' updated cash flow forecast for the 13-week period ending April 10, 2020; and
  - c) relief sought by the Applicants in the Comeback Motion and the Monitor's recommendations in respect of same.
- 1.5 At the Comeback Motion, the Court issued an order extending the Stay Period to March 2, 2020.
- 1.6 At the Comeback Motion, the Court also issued an order (the “**Amended and Restated Initial Order**”) amending the Initial Order to expand the Applicants' restructuring capabilities within the CCAA Proceedings and to expand the Monitor's authority within the CCAA Proceedings, including its interactions with the Non-Applicant Stay Parties in specified circumstances.
- 1.7 In connection with the Applicants' motion returnable on March 2, 2020, the Monitor filed its second report to Court (the “**Second Report**”) dated February 28, 2020, to provide the Court with information regarding the Applicants' request for a brief 3-day extension to the Stay Period from March 2 to 5, 2020. As a result of, among other things, the Court's availability to hear the motion to extend the Stay Period, on March 2, 2020, the Court issued an order to extend the Stay Period to March 11, 2020.
- 1.8 Further information regarding these CCAA Proceedings, including motion materials, orders issued by the Court, affidavits, reports of the Monitor, and all other Court-filed

documents and notices in these CCAA Proceedings are available on the Monitor's website at <http://www.alvarezandmarsal.com/lydian> (the "**Monitor's Website**").

1.9 The purpose of this third report to the Court ("**Third Report**") is to:

a) provide the Court with:

- i. information in respect of the status of the CCAA Proceedings to date;
- ii. cash flow results relative to forecast in respect of the cash flow forecast set out in the First Report; and
- iii. the Applicants' updated cash flow forecast for the 8-week period ending May 1, 2020; and

b) support the Applicants' request for an order (the "**Stay Extension Order**"), among other things:

- i. extending the Stay Period in respect of the Applicants and the Non-Applicant Stay Parties to April 30, 2020;
- ii. authorizing the Applicants to continue the engagement of BMO Nesbitt Burns Inc. ("**BMO**"), the Applicants' financial advisor, on the terms and conditions set out in the Engagement Letter between BMO, the Applicants and Lydian Armenia dated February 21, 2020 (the "**Revised BMO Engagement Letter**");
- iii. increasing the Administration Charge to CAD\$658,200 (being US\$500,000 as per the Bank of Canada's published exchange rate on December 20, 2019) as security for the professional fees and disbursements of the Applicants' counsel,

BMO (in respect of its monthly fee provided for in the Revised BMO Engagement Letter), the Monitor and counsel to the Monitor;

- iv. adding a Transaction Charge (as defined below) in favour of BMO to secure the Recapitalization Fee (as defined in the Sellers Affidavit, which is defined below) as provided for in the Revised BMO Engagement Letter;
- v. sealing the Revised BMO Engagement Letter and the Affidavit of Ed Sellers sworn March 10, 2020 describing the terms of the Revised BMO Engagement Letter (the “**Sellers BMO Affidavit**”);
- vi. approving the Applicants’ ability to enter into the DIP Agreement (as defined below), which provides debtor-in-possession financing (pursuant to which the Applicants will obtain access to a DIP Facility (as defined below) to fund certain obligations of the Applicants and the Non-Applicant Stay Parties through the extension of the Stay Period, to be secured by the DIP Charge (as defined below) and an order sealing the unredacted version of the DIP Agreement;
- vii. approving the fees and disbursements of the Monitor and its legal counsel and sealing (A) Confidential Exhibit “1” to the Hutchens Affidavit (as defined below), which contains unredacted copies of the invoices issued by the Monitor; and (B) Confidential Exhibit “1” to the Miller Affidavit (as defined below), which contains unredacted copies of the invoices issued by the Monitor’s legal counsel; and

- viii. approving the Monitor's Second Report and Third Report and activities as set out therein; and
- c) provide the Court with the Monitor's recommendations in respect of the foregoing, as applicable.

## **2.0 TERMS OF REFERENCE AND DISCLAIMER**

2.1 In preparing this Third Report, the Monitor has been provided with and has relied upon, unaudited financial information; books, records and financial information prepared by certain senior management of the Applicants ("**Senior Management**"); and discussions with Senior Management (collectively, the "**Information**").

2.2 With respect to any of the Applicants' cash flow forecasts and projections:

- a) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has neither audited nor 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 Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and
- b) any examination or review of such financial forecasts and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.

2.3 Future oriented financial information referred to in this Third Report was prepared based on management's estimates and assumptions. Readers are cautioned that since projections

are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections. Even if the assumptions materialize, the variations could be significant.

2.4 This Third Report should be read in conjunction with the affidavit of Edward A. Sellers sworn March 10, 2020 (the “**Sellers Affidavit**”) in support of the Applicants’ motion returnable on March 11, 2020 for the relief described above. The Sellers Affidavit can be found on the Monitor’s Website. Edward Sellers is the Interim President and Chief Executive Officer of Lydian International and a director of the other Applicants in these CCAA Proceedings.

2.5 Unless otherwise stated, all monetary amounts contained in this Third Report are expressed in U.S. dollars.

### **3.0 JERSEY RECOGNITION PROCEEDINGS**

3.1 On December 23, 2019, as amended on January 23, 2020, the Applicants sought and obtained a Letter of Request from the Court seeking the assistance of the Royal Court of Jersey (the “**Royal Court**”) to assist the Applicants and the Monitor in advancing these CCAA Proceedings. Jersey is the jurisdiction of incorporation of the “topco” within the Lydian Group, and is a publicly-traded entity.

3.2 The Applicants have since worked with their legal counsel in the Bailiwick of Jersey to prepare, finalize and file materials seeking recognition of the CCAA Proceedings by the Royal Court (the “**Jersey Recognition Proceedings**”), including supporting affidavits from each of the Monitor, Edward Sellers and the Applicants’ Canadian and Jersey legal



counsel (collectively, the “**Jersey Recognition Affidavits**”) and a Representation of Lydian International (the “**Representation**”).

3.3 On February 25, 2020, the Royal Court issued an Order (the “**Recognition Order**”), giving effect to the Initial Order, which provided that:

- a) A&M be appointed as the monitor of Lydian International with such appointment registered in the rolls of the Royal Court and the appointment of the Monitor notified to the Jersey Financial Services Commission;
- b) Lydian International is to remain in possession and control of its current and future assets undertakings and properties of every nature and kind whatsoever in Jersey;
- c) subject to further order of the Court, Lydian International shall continue to carry on its business in a manner consistent with the preservation of its business and property;
- d) no proceeding or enforcement process in or out of any court or tribunal be commenced or continued against or in respect of Lydian International, or affecting its business or the property, except with the written consent of Lydian International and the Monitor, or with leave of the Ontario Court; and
- e) Lydian International and any party affected by the Recognition Order, including the creditors of Lydian International, shall have liberty to apply.

3.4 The Recognition Order provides that reasons will be set out in a judgment to be delivered by the Deputy Bailiff at a later date, which the Monitor will report on in a subsequent

report to the Court. The Monitor will also report on any corporate, structural or governance changes that may be undertaken as it relates to Lydian International.

- 3.5 A copy of the Jersey Recognition Affidavits, Representation and Recognition Order are attached hereto as **Appendix “A”**.

#### **4.0 BACKGROUND OF THE APPLICANTS**

- 4.1 As advised in the First Report, the Applicants’ business consists of the exploration and development of a gold mine in south-central Armenia (the “**Amulsar Project**”).
- 4.2 The Lydian Group obtained an exploration license for the Amulsar Project in 2006 and Lydian Armenia had obtained approval of all environmental assessments required by the Government of the Republic of Armenia and had commenced construction activities at the Amulsar Project by October 2016. Since shortly after a change in government in Armenia on May 8, 2018, there have been ongoing blockades of the Amulsar Project which have prevented Lydian Armenia from completing construction.
- 4.3 As at December 20, 2019, the Lydian Group employed 63 staff, of which 58 were employed in Armenia, 20 of whom were retained on a contract basis. The existing employee count includes staff working in the areas of accounting, legal, human resources, security, translation, maintenance, public relations and those who would otherwise support a transition to resume activity. As stated in the Sellers Initial Affidavit, the Lydian Group expects further reductions to its work force as a result of its ongoing financial distress. Since the commencement of the CCAA Proceedings, there have been personnel reductions

of 14 people in Armenia, which take effect in April, and five corporate level employees and contract employees, which take effect in mid-March.

- 4.4 A summary of Lydian Group's total indebtedness, exceeding \$360 million, was set out in the Sellers Initial Affidavit.

## **5.0 CORPORATE GOVERNANCE**

### **Incorporation of 11910728 Canada Inc.**

- 5.1 As described in more detail in the Sellers Affidavit, effective on February 21, 2020, the Applicants implemented certain governance changes.
- 5.2 To reduce the risk of material potential director or officer liability arguments under Armenian law, and to address this concern and related governance issues, Lydian Canada incorporated 11910728 Canada Inc. ("**DirectorCo**"), a new wholly-owned subsidiary, under the laws of the *Canada Business Corporations Act*. Subsequently, all of the directors and officers of Lydian International Holdings Limited and Lydian Resources Armenia Limited resigned and DirectorCo was appointed as the sole director of each entity. Further, all directors and officers of Lydian Armenia, other than Hayk Aloyan in his capacity as officer, resigned and DirectorCo was named the sole shareholder representative of Lydian Armenia in accordance with Armenian law requirements. An updated organization chart of the Lydian Group, which includes DirectorCo, is attached hereto as **Appendix "B"**.

### **Closure of Greenwood Office**

- 5.3 As described in the First Report and the Initial Sellers Affidavit, Lydian U.S. is based out of an office in Greenwood Village, Colorado (the “**Greenwood Office**”) and employs three full time and two contract employees, including the Chief Financial Officer and the Financial Controller who perform the accounting and reporting functions for the Lydian Group.
- 5.4 As a result of the significant decrease in corporate activity since the Greenwood Office was established, the Applicants have determined that it is no longer practical or economical to maintain Lydian U.S. and accordingly, plan to close the Greenwood Office effective March 13, 2020.
- 5.5 These closure plans include: (i) having entered into an agreement with the landlord for the Greenwood Office to settle the payment of the remaining lease term at a reduced rate and to have the premises vacated by March 31, 2020; (ii) the termination of all remaining Lydian U.S. employees (full time and contract) effective March 13, 2020 and the payment of all employee obligations up to that date; and (iii) the transfer of all required paper records to the offices of the Applicants’ legal counsel.
- 5.6 The Applicants are in the process of making arrangements to engage one of the existing accounting personnel, as well as an interim manager in order to ensure that the accounting and reporting function of the Lydian Group at its current level of activity continues to be maintained, including supporting the reporting requirements under the proposed DIP Facility (described and defined below), ensuring all required tax and other filings are made, and providing any general support required for the Applicants’ sale and investment

solicitation process (the “SISP”) process that is not otherwise provided by Lydian Armenia.

- 5.7 The closure of the Greenwood Office necessitates changes to the existing Cash Management System, the continued use of which was provided for in the Amended and Restated Initial Order.

### **Planned Additional Governance Changes**

- 5.8 The Applicants may effect additional governance changes and are in the process of considering same, in consultation with the Monitor and each of its senior lenders, being Resource Capital Fund VI L.P., Orion Co IV (ED) Limited, a division of Orion Capital Management, and Osisko Bermuda Limited (collectively, the “**Lenders**”). The Monitor understands that the contemplated governance changes are for the purposes of cost efficiency, streamlining governance and expediency. The Monitor further understands that the governance changes that are contemplated are not intended to amend or alter the contractual rights of any of the Lenders as same may currently exist. If requested, the Monitor will assist in addressing any governance concerns or further changes that may be requested by the Lenders.
- 5.9 It is anticipated that each of the directors of Lydian International, other than Edward Sellers and Victor Flores, will resign. Edward Sellers will remain as CEO of Lydian International pursuant to an agreement entered into prior to the CCAA Proceedings, a copy of which has been provided to the Lenders. Further, it is anticipated that, other than Edward Sellers, each of the directors and officers of Lydian Canada and Lydian U.K. will resign and Victor Flores will be appointed as a director of those entities. Victor Flores

will also be appointed as a director of DirectorCo. A third director may also be appointed in the future to one or more of the boards of Lydian International, Lydian Canada, Lydian U.K. and DirectorCo following consultation with the Lenders.

- 5.10 The Applicants have been in discussions with their insurer for the extension of insurance coverage for their directors and officers until the end of April, 2020. Provided that certain conditions are met, including financial support through the extension of the Stay Period, a further extension of the insurance coverage is available. The payment for such coverage is reflected in the Updated Cash Flow Forecast (as defined below).

## **6.0 EQUIPMENT LESSORS**

- 6.1 On January 22, 2020, as supplemented on February 19, 2020, Caterpillar Financial Services (UK) Limited (“CAT”) filed a Motion Record in connection with the Comeback Motion objecting to the Applicants’ request to extend the Stay Period, on the basis that CAT sought to take immediate possession of its equipment located at the Amulsar site.
- 6.2 At the Comeback Motion, CAT consented to adjourn the hearing of its objection to March 5, 2020. The Applicants have since been advised by ING Bank N.V, and AB Svensk Exportkredit (publ) (“ING”) that it intends to file a similar objection. Since the Comeback Motion, the Applicants and each of CAT and ING have reached consensual resolutions, which are acceptable to the Lenders, whereby their equipment can remain at the Amulsar site through to the proposed extension of the Stay Period. The terms of the settlements with each of CAT and ING are confidential and the Applicants will be filing same with the Court under seal.

## **7.0 SISP UPDATE**

- 7.1 BMO and the Applicants, in consultation with the Monitor, continue to advance discussions with the Lenders with respect to the SISP. The Monitor has requested to be involved and be kept apprised of all aspects in respect of the SISP so that it can effectively monitor and report to the Court.

## **8.0 MONITOR'S ACTIVITIES SINCE THE FIRST REPORT**

- 8.1 In addition to the activities described elsewhere in this Third Report, the activities of the Monitor since the date of the First Report (January 21, 2020) have included:
- a) assisting the Applicants with communications to employees and other parties;
  - b) engaging in discussions with the Applicants, their respective legal counsel and other advisors, and the Non-Applicant Stay Parties and their advisors regarding the CCAA Proceedings, financing in respect of same, the SISP and the DIP Agreement (as defined below);
  - c) facilitate and participate in discussions among the Applicants and their Lenders with respect to the DIP Agreement, governance structure and various work streams being undertaken;
  - d) responding to enquiries from stakeholders and participating in discussions with certain stakeholders;

- e) monitoring receipts, disbursements and commitments of the Applicants and assisting the Applicants to review receipts, disbursements and commitments of Lydian Armenia and Lydian U.S. which are sources of funding to the Applicants;
- f) assisting management of the Applicants to gain an understanding of, and to quantify potential funding requirements directly associated with Lydian Armenia;
- g) assisting management of the Applicants to prepare the Updated Cash Flow Forecast (as defined below);
- h) engaging in discussions with BMO and management and advisors of the Applicants in respect of the SISP and funding;
- i) consulting with management in respect of the potential extension of insurance coverage for the Applicants' directors and officers beyond March 2, 2020 and the extension of coverage for Course of Construction insurance, including coverage for on-site equipment until March 31, 2020, following which, no such coverage is currently available;
- j) updating the service list in respect of the CCAA Proceedings;
- k) posting non-confidential materials filed with this Court to the Monitor's Website;
- l) responding via email to the correspondence dated February 28, 2020 from Arpine Galfayan, on behalf of the Armenian Environmental Front Civil Initiative, sent to the Monitor, the Applicants and the Court (the "**AEF Letter**") (as further discussed below) to advise that the AEF Letter has been brought to the Court's



attention and that the Monitor will be referencing the AEF Letter in this Third Report;

m) attending the Comeback Motion and motion returnable on March 2, 2020; and

n) preparing the Second Report and this Third Report.

8.2 Further, since the date of the First Report, the Monitor has assisted the Applicants and the Non-Applicant Stay Parties with their diligent efforts to maintain the stability of their operations. This has included, among other things, continued discussions between the Applicants and their lenders and other stakeholders and advancing the discussions regarding a potential sale as well as DIP funding.

## **9.0 AEF LETTER**

9.1 As mentioned above, the Monitor received the AEF Letter on February 28, 2020, a copy of which was also sent to the Court. The AEF Letter: (i) alleges that the Sellers Initial Affidavit contained factual misrepresentations, and (ii) the Court should be aware of certain actions taken by Lydian. The AEF Letter provides that: (a) the statement in the Sellers Initial Affidavit that the police in Armenia failed to act on court orders requiring the removal of blockaders is inaccurate since the police did comply with the removals required in the court orders; (b) Lydian Armenia inappropriately entered into a settlement agreement with the Jermuk Health Centre CJSC (the “**Jermuk Health Centre**”) related to the termination of a long term lease agreement and such settlement vastly exceeded the initial claims by the Jermuk Health Centre; and (c) the findings contained in the August 7, 2019 report of Earth Link and Advanced Resources Development (“**ELARD**”), following

the environmental audit conducted by ELARD in 2019 were not as conclusive as stated in the Sellers Initial Affidavit.

- 9.2 At the Applicants' motion returnable on March 2, 2020, the Monitor advised the Court that it would review the situation and report to the Court with respect to same, based on all information that may be available to it, recognizing that Lydian Armenia is not an Applicant in the CCAA Proceedings.
- 9.3 As mentioned above, by email dated March 7, 2020 (the "**Monitor's Responding Email**"), the Monitor responded to the email from Arpine Galfayan to advise that the Monitor will be addressing the AEF Letter in this Third Report. A copy of the AEF Letter and Monitor's Responding Email are attached hereto as **Appendix "C"**.
- 9.4 The Monitor understands that the Applicants refute these allegations and have provided the Monitor with certain preliminary information with respect to the issues raised. The Applicants have advised the Monitor that they will be providing additional information to the Monitor. However, the provision of this information has been delayed given the intensive discussions and negotiations to date with respect to the Applicants' request for funding, the DIP Agreement (as defined below) and considerations as to the governance structure. Therefore, the Monitor is currently reviewing and considering the information provided to date, will review additional information as it is received, and intends to thoroughly consider same and assess the allegations set forth in the AEF Letter. The Monitor is not aware of anything at this time to suggest that the Applicants are not acting in good faith and with due diligence, however, the Monitor will consider the specific allegations raised in the AEF Letter and report further to the Court.

## 10.0 DEBTOR-IN-POSSESSION FINANCING

- 10.1 The Applicants are seeking approval of the Sixteenth Amending Agreement (the “**DIP Agreement**”) between the Lenders, Lydian Armenia, as Borrower, and the Applicants, remaining Non-Applicant Stay Parties and remaining members of the Lydian group (collectively, the “**Lydian Group Members**”) as guarantors, dated March 10, 2020. The DIP Agreement further amends the Credit Agreement dated November 30, 2015, as amended (the “**Existing Credit Agreement**”) to provide for additional funding to Lydian Armenia under the existing Term Facility B (such facility, the “**DIP Facility**”).
- 10.2 Given the current structure of Term Facility B and the Cash Management System, funds made available through Lydian Armenia facilities are available to be transferred to and used by the Applicants. In accordance with the original loan structure in Term Facility B, the Applicants are not borrowers under the DIP Facility, but participate as guarantors of the DIP Facility.
- 10.3 Any capitalized terms not otherwise defined in this section have the meanings set forth in the Existing Credit Agreement or DIP Agreement, as applicable.
- 10.4 **DIP Facility:** Pursuant to the DIP Agreement, the Lenders will provide the DIP Facility up to the Maximum Amount.
- 10.5 **DIP Cash Flow Forecast:** The DIP Facility is provided in accordance with the cash flow forecast appended to the DIP Agreement (the “**DIP Cash Flow Forecast**”). The Monitor notes that the DIP Cash Flow Forecast differs from the Updated Cash Flow Forecast (as defined below) as the Updated Cash Flow Forecast demonstrates the cash flow for only

the Applicants, whereas the DIP Cash Flow Forecast demonstrates the funding needs for both the Applicants and Non-Applicant Stay Parties.

10.6 **DIP Charge:** Pursuant to the DIP Agreement, the Lenders require a super-priority Court-ordered charge (the “**DIP Charge**”) on the assets, undertakings and properties of the Applicants in respect of the guarantees given by each of the Applicants in favor of the Lenders, up to the aggregate amount outstanding under the DIP Facility, which charge shall be in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, but shall be subordinate to the Administration Charge, the Directors’ Charge and the Transaction Charge. The DIP Charge does not purport to extend to any assets, undertakings and properties that are subject to the liens in favour of Ameriabank Closed Joint Stock Company, CAT and ING (collectively, the “**Equipment Lenders**”). It is a condition precedent to any advances under the DIP Facility that an Order of the Court approving the DIP Facility and granting the DIP Charge be granted. The DIP Agreement further provides that the DIP Charge cannot be enforced without an Order of the Court, including following an Event of Default thereunder.

10.7 **Advances:** The DIP Agreement provides that Advances under the DIP Facility will be available to the Borrower on a bi-weekly basis in such amounts as requested by the Borrower, provided that: (i) the amount of the requested Advance is in accordance with the DIP Cash Flow Forecast, subject to immaterial or timing variances; and (ii) all conditions precedent to such Advance have been satisfied or waived by the Lenders.

10.8 The current DIP Agreement is on the same terms as the Term Facility B, including with respect to interest rates, under the Existing Credit Agreement.

10.9 A copy of the redacted DIP Agreement is attached hereto as **Appendix “D”**. The Monitor understands that the Applicants will file an unredacted copy of the DIP Agreement, which appends the DIP Cash Flow Forecast, with the Court under seal.

## **11.0 COURT ORDERED CHARGES**

### **Stay Extension Order**

11.1 The proposed Stay Extension Order requested by the Applicants provides for amendments to the Initial Order to:

- a) increase the Administration Charge and expand it to include BMO’s monthly work fee, for its services pursuant to the Revised BMO Engagement Letter;
- b) add a charge in the maximum amount of \$4.5 million (the “**Transaction Charge**”) to secure BMO’s potential transaction fee payable pursuant to the Revised BMO Engagement Letter if a successful transaction is implemented. The Transaction Charge shall rank behind the Administration Charge and Directors’ Charge;
- c) add the DIP Charge; and
- d) seal the unredacted DIP Agreement, Revised BMO Engagement Letter and the Sellers BMO Affidavit.

### **BMO Engagement Letter, increased Administration Charge and Transaction Charge**

- 11.2 With respect to the Applicants' request for approval of the Revised BMO Engagement Letter, the increased Administration Charge and the Transaction Charge, details relating to an indicative calculation of any future transaction fees that may become payable thereunder have been provided to the Lenders and Equipment Lenders, who are supportive of the increased Administration Charge and the Transaction Charge. The unredacted Revised BMO Engagement Letter has been provided to the Lenders and Equipment Lenders, each of whom have agreed to maintain the confidentiality of such terms.
- 11.3 The Monitor has also considered the proposed increase to the Administration Charge (to the amended amount of \$500,000) to cover a monthly work fee set out in the BMO Engagement Letter. The Monitor is supportive of this request since BMO is continuing to assist the Applicants in considering their restructuring options, including a sale transaction on a month-to-month basis. Further, BMO's continued involvement will be important for the successful completion of a transaction.
- 11.4 The Monitor understands that the Revised BMO Engagement Letter contains commercially sensitive terms which could potentially prejudice BMO in other mandates if the terms were not sealed from public view. Therefore, the Monitor supports the Applicants' request to seal the unredacted Revised BMO Engagement Letter.

### **DIP Charge**

- 11.5 As mentioned above, the Applicants are seeking approval of a DIP Charge as security for outstanding advances to be made under the proposed DIP Facility. It is a condition of the

DIP Facility that the DIP Charge be granted by the Court. Such charges are customary when a DIP Facility has been approved by the Court.

- 11.6 The Monitor is of the view that the DIP Facility represents necessary financing which affords the Applicants, as well as the Non-Applicant Stay Parties, the opportunity to continue to pursue the SISP and/or otherwise reorganize their affairs and it does not appear that there would be material financial prejudice to other stakeholders as a result of this financing. The requested DIP Charge does not secure any advances made by the Lenders prior to the commencement of the CCAA proceedings.
- 11.7 The Monitor recommends that the Court approve the DIP Agreement, DIP Facility and accordingly, also supports the granting of the DIP Charge.

#### **Priority of Charges Created by the Initial Order**

- 11.8 The priorities of the Charges are proposed to be as follows:
- a) First – Administration Charge (to the maximum amount of \$500,000);
  - b) Second – Directors’ Charge (to the maximum amount of \$200,000);
  - c) Third – Transaction Charge (to the maximum amount of \$4.5 million); and
  - d) Fourth – DIP Charge.
- 11.9 In summary, the Monitor has assisted in the preparation and/or reviewed the calculations that support the Administration Charge, the Directors’ Charge, the Transaction Charge and the DIP Charge and believes the amounts are reasonable in the circumstances. The Charges will not attach to the property owned by the Equipment Lenders. Further, the Lenders support the quantum and priority ranking of all proposed charges.

## 12.0 CASH FLOW RESULTS RELATIVE TO FORECAST

12.1 Actual receipts and disbursements for the period from January 10 to March 6, 2020 (the “Reporting Period”), as compared to the cash flow forecast that was attached as Appendix “D” to the First Report are summarized in the following table:

<b>Lydian International Limited., et. al.</b> <b>Schedule of Actual Receipts and Disbursements Compared to the Cash Flow Forecast</b> <b>For the Eight-Week Period Ended March 6, 2020</b> <b>(\$ USD)</b>			
	<b>Actual</b>	<b>Forecast</b>	<b>Variance</b>
<b>Cash Receipts</b>			
Miscellaneous receipts	-	-	-
<b>Total Cash Receipts</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Cash Disbursements</b>			
Salaires, benefits and taxes	(149,343)	(180,306)	30,963
Insurance	(129,586)	(173,694)	44,108
Board of Directors	(112,904)	(60,000)	(52,904)
Office, IT and bank fees	(20,199)	(9,771)	(10,427)
Travel	(52,274)	(88,056)	35,782
Miscellaneous	(7,395)	(5,233)	(2,162)
Professional fees	(1,320,440)	(1,115,561)	(204,878)
Contingency	-	(35,000)	35,000
<b>Total Cash Disbursements</b>	<b>(1,792,141)</b>	<b>(1,667,622)</b>	<b>(124,520)</b>
<b>Net Cash Flow, Before Debt Service</b>	<b>(1,792,141)</b>	<b>(1,667,622)</b>	<b>(124,520)</b>
<b>Beginning Cash Balance</b>	<b>445,995</b>	<b>445,995</b>	<b>-</b>
Net operating cash flow	(1,792,141)	(1,667,622)	(124,520)
Intercompany transfers	1,528,000	980,000	548,000
<b>Ending Cash Balance</b>	<b>181,854</b>	<b>(241,626)</b>	<b>423,480</b>

12.2 During the Reporting Period:

- a) salaries, benefits and tax payments were approximately \$31,000 lower than forecast due to a timing difference in the payment of certain tax obligations. Management expects this to reverse in the coming weeks;



- b) insurance related disbursements were approximately \$44,000 less than forecast due to a delay in obtaining an extension of D&O insurance coverage that was provided for in the forecast;
- c) Board of Director fees were approximately \$53,000 greater than forecast due to the earlier than forecast payment of quarterly fees as a result of the pending resignation of the majority of the Board members in advance of month end. This is a timing difference and will reverse by the end of March 2020;
- d) professional fees were approximately \$205,000 greater than forecast. Approximately \$30,000 of this is due to the timing of invoicing and is expected to reverse in the coming weeks. The remaining \$175,000 is due to unanticipated complexities in respect of the Jersey Recognition Proceedings and various governance related matters; and
- e) despite the above noted items contributing to an overall net operating cash outflow greater than forecast of approximately \$125,000, the Applicants had sufficient cash to fund operations during the Reporting Period due to the greater than forecast intercompany transfers provided by Lydian Armenia as a result of Lydian Armenia having received a VAT refund of approximately \$1 million that was not forecast.

12.3 As provided in the Amended and Restated Initial Order, the Applicants and Non-Applicant Stay Parties continue to utilize the existing Cash Management System which provides for intercompany transfers to the Applicants by Lydian Armenia and Lydian U.S.

### 13.0 UPDATED CASH FLOW FORECAST

13.1 The Applicants, with the assistance of the Monitor, have prepared an updated cash flow forecast (the “**Updated Cash Flow Forecast**”) for the 8-week period March 7 to May 1, 2020 (the “**Cash Flow Period**”) in respect of the Applicants. A copy of the Updated Cash Flow Forecast, together with the accompanying notes, is attached to this Report as **Appendix “E”**. A summary of the Cash Flow Forecast is set out in the following table.

<b>Lydian International Limited., et. al.</b> <b>Schedule of Forecast Receipts and Disbursements</b> <b>For the 8-Week Period Ending May 1, 2020</b> <b>(\$ USD)</b>	
	<b>Total</b>
<b>Cash Receipts</b>	<b>-</b>
<b>Cash Disbursements</b>	
Salaries and benefits	(210,000)
Insurance	(127,847)
Board of Directors	(60,000)
Office, IT and bank	(8,700)
Travel	(75,000)
Miscellaneous	(4,375)
Professional fees	(1,324,005)
Contingency	(40,000)
<b>Total Cash Disbursements</b>	<b>(1,849,927)</b>
<b>Net Cash Flow, Before Debt Service</b>	<b>(1,849,927)</b>
<b>Beginning Cash Balance</b>	<b>181,854</b>
Net cash flow from above	<b>(1,849,927)</b>
Intercompany transfers	<b>1,669,000</b>
<b>Ending Cash Balance</b>	<b>927</b>

13.2 Disbursements include payments in the ordinary course within the CCAA Proceedings, on normal trade terms.

13.3 Insurance related disbursements include the payment of premiums in respect of director and officer liability insurance to April 30, 2020, which the insurer has indicated it will provide on the basis that the Lydian Group has sufficient funding available to support its operations.

13.4 During the Cash Flow Period, net cash outflows are forecast to be approximately \$1.85 million, which are anticipated to be funded through intercompany advances from Lydian Armenia.

#### **14.0 APPROVAL OF FEES AND DISBURSEMENTS OF MONITOR AND MONITOR'S COUNSEL**

14.1 The Amended and Restated Initial Order requires the Monitor and its legal counsel to pass their accounts from time to time and refer their accounts to a judge of the Court.

14.2 Attached hereto as **Appendix "F"** is the Affidavit of Alan J. Hutchens sworn March 10, 2020 (the "**Hutchens Affidavit**"), attesting to the fees and disbursements of the Monitor for the period December 23, 2019 to February 29, 2020 in the aggregate amount of \$208,837.49.

14.3 Attached hereto as **Appendix "G"** is the Affidavit of D.J. Miller, a partner with Thornton Grout Finnigan LLP ("**TGF**"), counsel to the Monitor, sworn March 9, 2020 (the "**Miller Affidavit**"), attesting to the fees and disbursements of TGF, for the period from December 18, 2019 to February 29, 2020 in the amount of \$207,039.39, including HST. The Monitor confirms that the fees and disbursements set out in TGF's invoices relate to advice sought by the Monitor and that, in the Monitor's view, TGF's fees and disbursements are reasonable.

14.4 The Applicants and the Monitor also request that the Court grant an order sealing (i) Confidential Exhibit “1” to the Hutchens Affidavit which includes the unredacted version of A&M’s invoices attached at Exhibit “A” to the Hutchens Affidavit; and (ii) Confidential Exhibit “1” to the Miller Affidavit which includes the unredacted version of TGF’s invoices attached at Exhibit “A” to the Miller Affidavit. Certain dockets in the invoices were redacted to maintain confidentiality and privilege.

14.5 It is the Monitor’s view that its fees and disbursements described in the Hutchens Affidavit, as well as those of TGF described in the Miller Affidavit, are fair and reasonable in the circumstances. The Monitor therefore requests that this Court (i) approve its fees and disbursements and the fees and disbursements of its legal counsel; (ii) seal Confidential Exhibit “1” to the Hutchens Affidavit; and (iii) seal Confidential Exhibit “1” to the Miller Affidavit.

## **15.0 EXTENSION OF STAY**

15.1 The Stay Period will expire on March 11, 2020. The Applicants are seeking an extension of the Stay Period to April 30, 2020 in respect of both the Applicants and the Non-Applicant Stay Parties, and certain relief pursuant to the Stay Extension Order.

15.2 The Monitor supports extending the Stay Period to April 30, 2020 and the ancillary relief sought in the Stay Extension Order for the following reasons:

a) during the proposed extension of the Stay Period, the Applicants will have an opportunity to:

i. attempt to continue discussions with the Government of Armenia in an

effort to gain access to the Amulsar Project;

ii. with the assistance of BMO and the oversight of the Monitor, engage in discussions with a view to negotiating a transaction with a potential purchaser through the SISP;

iii. in consultation with the Lenders and with the assistance and oversight of the Monitor, develop and implement further corporate governance changes to simplify the corporate structure and minimize on-going costs of the Lydian Group; and

iv. consider further steps to preserve and advance the Treaty Arbitration (as defined in the Monitor's First Report);

b) with the proposed DIP Facility, the Applicants and the Non-Applicant Stay Parties are forecast to have sufficient liquidity to continue operating in the ordinary course of business and make the payments reflected in the Cash Flow Forecast to be made during the requested extension of the Stay Period;

c) the Monitor is of the view that the proposed Stay Extension Order is necessary to give the Applicants the flexibility required in order to have the best possible chance to implement a successful restructuring;

d) no creditor of the Applicants would be materially prejudiced by the extension of the Stay Period and the ancillary relief sought by the Applicants; and

- e) the Applicants have acted in good faith and with due diligence in these CCAA Proceedings since the date of the Initial Order.

## **16.0 MONITOR'S RECOMMENDATION**

- 16.1 For the reasons set out in this Third Report, the Monitor is of the view that the relief requested by the Applicants is reasonable and respectfully recommends that this Court grant the relief sought by the Applicants.

\*\*\*\*\*

All of which is respectfully submitted to this Court this 10<sup>th</sup> day of March 2020.

**Alvarez & Marsal Canada Inc., in its capacity  
as Monitor of Lydian International Limited,  
Lydian Canada Ventures Corporation and  
Lydian U.K. Corporation Limited  
and in no other capacity**



Per: Alan J. Hutchens  
Senior Vice President

## APPENDIX A



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

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

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

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**REPRESENTATION**

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The Representation of Lydian International Limited ("**Lydian International**") shows as follows THAT:

1. This is a Representation by Lydian International, pursuant to the principles of comity and reciprocity, for the recognition of Canadian insolvency proceedings to which it is subject.
2. By this Representation, Lydian International seeks orders that:
  - a. the appointment and powers of its Ontario Court (as defined below) appointed officer, the Monitor (as defined below) be recognised in Jersey;
  - b. The directions and orders of the Ontario Court that no proceeding or enforcement process in or out of any court or tribunal be commenced or continued against or in respect of Lydian International or the Monitor, except with the written consent of Lydian International and the Monitor, or with leave of the Ontario Court, be recognised;
  - c. The directions and orders of the Ontario Court that Lydian International shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever in Jersey be recognised;

- d. The directions and orders of the Ontario Court that Lydian International shall continue to carry on business in a manner consistent with the preservation of its business and property, be recognised;
  - e. The directions and orders of the Ontario Court that Lydian International is authorised and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons, be recognised.
2. Lydian International is a corporation continued under the laws of Jersey from the Province of Alberta, Canada pursuant to the *Companies (Jersey) Law 1991* (Lydian International was originally incorporated under the *Business Corporations Act* (Alberta)). Lydian International's registered number is 99477 and its registered office is located at Bourne House 1st Floor, Francis Street, St Helier, Jersey.
3. By an order dated the 23 December 2019 ("**CCAA Order**") of the Ontario Superior Court of Justice ("**Ontario Court**") granted by Chief Justice of Ontario Geoffrey Morawetz, Lydian International, Lydian Canadian Ventures Corporation, and Lydian U.K Corporation Limited (collectively, the "**Debtors**") were granted protection from their creditors in Canada under the federal *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (Canada) ("**CCAA**") on the grounds that they were unable to pay their debts. Certain other non-applicant entities were also granted a stay of proceedings<sup>1</sup> (together with the Debtors, the non-applicant entities are the "**Lydian Group**").
4. Alvarez & Marsal Canada Inc. was appointed by the Ontario Court as the monitor (the "**Monitor**"), an officer of the Ontario Court, to monitor the business and financial affairs of the Debtors pursuant to the CCAA and to report to the Ontario Court from time to time.
5. The CCAA Order granted a "Stay Period" until 2 January 2020, whereby no creditor enforcement or other actions could be taken against the Debtors to alter the status quo. By a further order dated 2 January 2020, the Ontario Court extended the stay of proceedings until 23 January 2020, subject to further order of the Ontario Court. A further order was made by the Ontario Court at a return hearing on 23 January 2020, extending the stay of proceedings until 2 March 2020.

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<sup>1</sup> Lydian Armenia CJSC, Lydian Resources Armenia Limited, Lydian International Holdings Limited and Lydian U.S. Corporation.

6. The CCAA Order provides, *inter alia*, that:-
- a. The Debtors, including Lydian International, are companies to which the CCAA applies, shall enjoy certain of the benefits and the protections provided for in the CCAA Order, and shall remain in possession and control of their current and future assets, undertakings, and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof "the **Property**" (paragraphs 2 and 3 of the CCAA Order) without interference by any person or party;
  - b. The Monitor has broad powers including full and complete access to the Debtor's Property including the premises, books, records, data (including in electronic form) and other financial documents of the Debtors in order to assess the Debtor's business and financial affairs or to perform its duties arising under the CCAA Order (see e.g. paragraph 22(d) of the CCAA Order) and to report to the Ontario Court in respect thereof; and
  - c. Pursuant to paragraph 42, the Debtors and the Monitor are authorised to apply to the Royal Court of Jersey for recognition and assistance in carrying out the terms of the CCAA Order. The same paragraph provides that "*the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada*".
7. By the CCAA Order the Honourable Geoffrey B. Morawetz, Chief Justice of the Ontario Court issued a letter of request to the Royal Court of Jersey asking the Royal Court of Jersey to assist the Ontario Court.
8. At the return hearing on 23 January 2020 the Ontario Court, of its own volition, revised the letter of request by making certain minor amendments to it and issued a replacement version (the "**Letter of Request**"). The Letter of Request asks for the Royal Court to make orders in the following terms:-
- a. By recognising the appointment of the Monitor by the Ontario Court with such appointment to be registered in the Rolls of the Royal Court of Jersey in respect of Lydian International;
  - b. By recognising the rights and powers of the Debtors and Monitor in respect of the Property and business of Lydian International;

- c. By declaring that no action shall be taken or proceeded with against Lydian International except by leave of the Ontario Court on notice to all affected parties, the Debtors and the Monitor, and subject to such terms as the Ontario Court may impose; and
  - d. By granting such further or other relief as it thinks fit and in aid of the Debtors and the Monitor and the reorganisation of Lydian International.
- 9. Pursuant to paragraph 7 of the Letter of Request, the Honourable Geoffrey B. Morawetz, Chief Justice of the Ontario Court, has confirmed that, as a matter of international comity, the courts of Canada may give effect to orders made by the Royal Court of Jersey relating to the bankruptcy of an individual or company (save for the purpose of enforcing the fiscal laws of Jersey).
- 10. The Ontario Court has sought, by the Letter of Request, for the rights and powers of the Debtors and Monitor pursuant to the CCAA Order to be recognised in respect of Lydian International (see paragraph 7(b) above). However, the terms of the CCAA Order are wide-ranging and grant powers that are not immediately required in Jersey. Accordingly, the orders sought to be recognised by this Representation are necessarily narrower in scope than the terms of the Letter of Request; with liberty to apply to the Royal Court for further assistance in due course. The specific orders sought afford Lydian International protection from its creditors, recognise the appointment of the Monitor in Jersey, and specifically provide that its business and assets are to remain in its own possession (consistent with the wider CCAA reorganisation taking place in Canada).
- 11. The Lydian Group's loan agreements are governed primarily by the laws of the Province of Ontario. It is a holding company and carries out no substantive business activities. Its lenders and substantial creditors are all based in Canada. The nominal assets that it may own in Jersey are office effects and files at its offices. Mourant Ozannes is a creditor in Jersey, albeit its fees are being paid from time to time. Link Asset Services provides Lydian International with registered office services in Jersey and its fees are also being paid from time to time.
- 12. Lydian International has been advised that the Royal Court has power to give sanction to the Letter of Request and the contents of this Representation by exercise of its inherent jurisdiction in insolvency matters and having regard to the principles of comity.

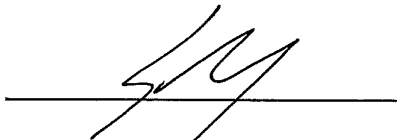
**WHEREFORE Lydian International prays that the Royal Court do make the following Orders and declarations:**

13. That the substantive hearing of the Representation be listed for 2pm on 25 February 2020;
14. That Alvarez & Marsal Canada Inc., in its capacity as the Monitor of Lydian International, Lydian Canada Ventures Corporation and Lydian U.K. Corporation Limited be convened to the hearing of this Representation and served with the Representation and Affidavits in support thereof;
15. That Lydian International provide notice of these proceedings to the creditors identified in the CCCA Order and that Lydian International shall further inform such creditors that if they wish to participate in the proceedings, they will be required to apply to the Royal Court for permission to do so on or before 18 February 2020;
16. That at the substantive hearing of the Representation, the Royal Court makes the following orders:
  - a. The appointment of Alvarez & Marsal Canada Inc. as the Monitor of Lydian International pursuant to the CCAA Order, as an officer of the Ontario Court, be recognised and the appointment of the Monitor be notified to the Jersey Financial Services Commission.
  - b. The directions and orders of the Ontario Court that Lydian International shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever in Jersey be recognised.
  - c. The directions and orders of the Ontario Court that, subject to further Order of the Ontario Court, Lydian International shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property, be recognised.
  - d. The directions and orders of the Ontario Court that Lydian International is authorised and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable

in the ordinary course of business or for the carrying out of the terms of the CCAA Order, be recognised.

- e. The directions and orders of the Ontario Court that no proceeding or enforcement process in or out of any court or tribunal be commenced or continued against or in respect of Lydian International or the Monitor, or affecting the Business or the Property, except with the written consent of Lydian International and the Monitor, or with leave of the Ontario Court, be recognised.
- 17. Such further or other relief as the Royal Court thinks fit in aid of the Monitor and Lydian International Limited;
- 18. Lydian International and any party affected by this Representation shall have liberty to apply; and
- 19. Such orders as to costs as the Royal Court deems fit.

Dated this 31<sup>st</sup> day of January 2020



**Advocate Stephen Alexander**  
**Advocate for Lydian International**

**Lydian International's address for service is:**

Mourant Ozannes  
22 Grenville Street  
St Helier  
Jersey  
JE4 8PX

Ref: Advocate Stephen Alexander/ Max Galt



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

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

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

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**AFFIDAVIT OF EDWARD A. SELLERS**

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I, Edward A. Sellers, of the Town of Rosseau, in the Province of Ontario, Canada hereby make oath and say as follows:-

**Introduction**

1. I am the Interim President and Chief Executive Officer of the Representor, Lydian International Limited ("**Lydian International**"). I have been the President and Chief Executive Officer of Lydian International since June 12, 2019. I have been on the Board of Directors of Lydian International since November 1, 2018, and was appointed to the Board of Directors of the other Debtors (as defined below) after June 12, 2019.
2. The contents of this affidavit are true to the best of my knowledge, information and belief and are, unless otherwise stated, within my personal knowledge. There is now produced and shown to me and marked "**ES1**" a paginated bundle of true copy documents (or extracts from true copy documents) to which I refer.
3. The purpose of this affidavit is to set out the factual matters relied upon by Lydian International in support of the orders sought in the Representation.

**My background**

4. I have extensive experience serving as a director, advisor and lawyer to large public and private enterprises, having done so for over 30 years. I currently serve as President and Managing Director of Black Swan Advisors Inc. ("**Black Swan**")



**Advisors**"), providing independent interim governance support and leadership to enterprises in transition, decline or distress. Prior to establishing Black Swan Advisors in 2016, I served as a partner and Chair of the national restructuring practice at a leading Canadian law firm.

5. I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records, press releases, and public filings of Lydian International and have spoken with certain of the directors, officers and/or employees of the Debtors, as necessary. Where I have relied upon information from others, I believe the information to be true and I have stated the source of that information.

#### **The Canadian proceedings**

6. On 23 December 2019 Lydian International, Lydian Canadian Ventures Corporation ("**Lydian Canada**"), and Lydian U.K Corporation Limited ("**Lydian UK**") (collectively, the "**Debtors**") applied for protection from their creditors in Canada under the federal insolvency and restructuring statute *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (Canada) ("**CCAA**") on the grounds that they were unable to pay their debts (the "**CCAA Application**"). Certain other non-applicant entities were also granted a stay of proceedings<sup>1</sup> (together with the Debtors, the non-applicant entities are the "**Lydian Group**").
7. Exhibited hereto are certain of the documents filed by the Debtors with the Ontario Court in support of the CCAA Application:-
  - (a) Notice of Application at **Tab 1**; and
  - (b) Affidavit of Edward A. Sellers sworn on 22 December 2019 along with its exhibits (the "**22 December Affidavit**") at **Tab 2**.
8. By an order dated the 23 December 2019 ("**CCAA Order**") of the Ontario Superior Court of Justice ("**Ontario Court**"), the Ontario Court granted the orders in substantially the form sought by the Debtors. A copy of the CCAA Order is exhibited hereto at **Tab 3**.

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<sup>1</sup> Lydian Armenia CJSC, Lydian Resources Armenia Limited, Lydian International Holdings Limited and Lydian U.S. Corporation (together known as the "**Non-Applicant Stay Parties**").

9. The CCAA Order granted a stay of proceedings (the "**Stay Period**") in favour of the Debtors until 2 January 2020, whereby the Debtors including Lydian International were granted protection from their creditors.
10. On 26 December 2019 the Debtors applied for an extension of the Stay Period by an Amended Notice of Motion (exhibited hereto at **Tab 4**). By a further order dated 2 January 2020 (exhibited hereto at **Tab 5**) (the "**2 January CCAA Order**"), the Ontario Court extended the Stay Period until 23 January 2020, subject to further order of the Ontario Court.
11. On 23 January 2020 the Debtors applied for a further extension of the Stay Period by a Notice of Motion (exhibited hereto at **Tab 6**). Filed in support of the Notice of Motion was the Affidavit of Edward Sellers dated 22 January 2020 (exhibited hereto at **Tab 7**). Two further orders were made by the Ontario Court at the return hearing on 23 January 2020: (a) an order extending the stay of proceedings until 2 March 2020 (exhibited hereto at **Tab 8**) (together the "**23 January CCAA Order**"); and (b) an order amending and restating the terms of the CCAA Order (exhibited hereto at **Tab 9**).

### **Background**

12. The facts and matters which have caused the Debtors to seek the assistance of the Ontario Court, and by this Representation the Royal Court of Jersey, are as set out in my 22 December Affidavit which, as previously mentioned, is exhibited at **Tab 2**. I summarise below certain key facts and matters from my 22 December Affidavit.
13. Capitalised terms used herein but not otherwise defined have the meanings ascribed to them in my 22 December Affidavit. The references in square brackets below are to the paragraphs of my 22 December 2019, where further details of the matters described below may be found.

### The Lydian Group

14. The following is a brief overview of the Applicants and their corporate structure. A diagram of this structure is exhibited at **Tab 10**.

#### *Lydian International*

15. Lydian International is a corporation continued under the laws of the Jersey, from the Province of Alberta pursuant to the *Companies (Jersey) Law 1991*. Lydian International was originally incorporated under the *Business Corporations Act (Alberta)* on February 14, 2006 as "Dawson Creek Capital Corp.", which became Lydian International on December 12, 2007.
16. Lydian International's registered office is located at Bourne House 1st Floor, Francis Street, St. Helier, Jersey. On June 12, 2019, Lydian International's shareholders approved its continuance under the Canada Business Corporations Act, but the continuance back to Canada has not yet been implemented.
17. Lydian International has had two types of securities listed on the Toronto Stock Exchange ("**TSX**"): (i) ordinary shares trading under the symbol LYD, which are currently suspended from trading and subject to de-listing procedures by the TSX; and (ii) warrants that were, until their expiry in 2017, traded under the symbol LTD.WT.
18. Lydian International has no material assets or unsatisfied creditors situated in Jersey. It is a holding company and carries out no substantive business activities. The Lydian Group's loan agreements are governed primarily by the laws of the Province of Ontario. The nominal assets that it may own in Jersey are office effects and files at its offices. Mourant Ozannes is a creditor in Jersey, albeit its fees are being paid from time to time. Link Asset Services provides Lydian International with registered office services in Jersey and its fees are also being paid from time to time.

#### *Lydian Canada*

19. Lydian Canada is a direct, wholly owned subsidiary of Lydian International. Lydian Canada is incorporated under the Business Corporations Act (British Columbia) and has a registered head office at 5300 Commerce Court West, 199 Bay Street, Toronto, Ontario. Its registered and records office is located at Park Place, 666 Burrard Street, Suite 1700, Vancouver, British Columbia.

#### *Lydian UK*

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

#### *The Lydian Group*

21. The Debtors are part of the Lydian Group with a number of other subsidiaries ultimately owned by Lydian International. In addition to the Debtors, the Lydian Group includes the following entities:
  - (a) Lydian U.S. Corporation ("**Lydian US**"): a corporation incorporated under the laws of the State of Colorado, United States, which is a direct, wholly owned subsidiary of Lydian International;
  - (b) Lydian International Holdings Limited ("**Lydian Holdings**"): a corporation incorporated under the laws of the British Virgin Islands, which is a direct, wholly owned subsidiary of Lydian UK;
  - (c) Lydian Resources Armenia Limited ("**Lydian Resources**"): a corporation incorporated under the laws of the British Virgin Islands, which is a direct, wholly owned subsidiary of Lydian Holdings; and
  - (d) Lydian Armenia CJSC ("**Lydian Armenia**"): a corporation incorporated under the laws of the Republic of Armenia, which is a direct, wholly owned subsidiary of Lydian Resources. Lydian Armenia owns and operates the Amulsar Project (defined below).

#### Integrated Nature of the Lydian Group

22. The Lydian Group is highly integrated, and its business and affairs are directed primarily out of Canada. Substantially all the strategic business affairs of the Lydian Group, including key decision making, are conducted through personnel who are located in Toronto and Vancouver.
23. Three of the six members of the Board of Directors of Lydian International are resident Canadians, two of whom are located in Toronto. Only resident Canadians

serve on the Special Committee assembled recently by the Board of Lydian International to direct the Lydian Group's restructuring efforts, two of whom are again located in Toronto.

24. All material entities within the Lydian Group are borrowers or guarantors of the Lydian Group's key secured indebtedness. The Lydian Group's loan agreements are governed primarily by the laws of the Province of Ontario. All of the Lydian Group's material professional advisory relationships (including its legal and audit firm engagement partners) are with professionals based in Toronto. The Lydian Group's primary insurance brokerage relationships are located in Toronto and Calgary.
25. Lydian International's shares are currently listed on the TSX and it is governed by the regulatory regime imposed on public companies by the Province of Ontario and enforced by the Ontario Securities Commission.
26. The Lydian Group's forbearance and restructuring efforts have been directed out of Toronto.

#### The Amulsar Gold Mine

27. The Lydian Group is focused on constructing its wholly owned development-stage gold mine in Armenia (the "**Amulsar Project**"). The Amulsar Project was funded by a combination of equity and debt capital, and financing arrangements particular to the mining industry known as "stream financing". The debt and stream financing arrangements are secured over substantially all the assets of Lydian Armenia and Lydian International and the shares of various entities of the Lydian Group.
28. Construction of the Amulsar Project began in October 2016 and was over 75% complete by June 2018. However, since June 2018 and continuing to the present time Lydian Armenia has been unable to access and complete construction at the Amulsar Project due to blockades and arbitrary actions by the Government of Armenia ("**GOA**"), as described in detail in my 22 December Affidavit starting at paragraph 43, and including:
  - (a) unlawful blockades at the Amulsar Project;
  - (b) improper, unsupported and retroactive challenges by GOA officials to previously granted mining rights, mining agreements and water permits held by Lydian Armenia; and



- (c) failure by the police and GOA to act in removing unlawful protestors and granting Lydian Armenia access to the Amulsar Project.
29. As a result of this hardship, the Lydian Group has taken various steps to maintain stability over its financial position and seek financial alternatives. These steps have included:
- (a) multiple attempts to resolve issues with the GOA and Armenian police, including taking action in the Armenian courts to seek re-entry to the Amulsar Project;
  - (b) negotiating several forbearance agreements with its lenders, the most recent of which expired on 20 December 2019;
  - (c) cost reduction efforts, including a reduction in the Lydian Group's workforce by over 90% (as of 20 December 2019, the Lydian Group employed a total of 63 full time and contract employees);
  - (d) considering numerous re-start options, including the development of a revised National Instrument 43-101 Technical Report to assess the impact of the blockade on construction, and the assessment of sale or refinancing options (National Instrument 43-101 is a national instrument for the Standards of Disclosure for Mineral Projects within Canada. The Instrument is a codified set of rules and guidelines for reporting and displaying information related to mineral properties owned by, or explored by, companies which report these results on stock exchanges within Canada);
  - (e) canvassing the market for refinancing or sale options;
  - (f) retaining various experts;
  - (g) preparing for the Treaty Arbitration (as described below) against the GOA; and
  - (h) commencing a solicitation process for parties interested in financing the Treaty Arbitration.

30. In total, the challenges at the Amulsar Project have generated dislocation costs of approximately \$101 million. Further dislocation expenses are expected to be incurred.
31. The Lydian Group is considering commencing international investment arbitration proceedings against the GOA pursuant to bilateral investment treaties, on the basis that the GOA's actions and inactions have seriously undermined the value of the Lydian Group's investment in the Amulsar Project (the "**Treaty Arbitration**").

Creditor interests

32. The Debtors brought the CCAA Application to obtain the breathing room necessary to maximise value for all stakeholders and creditors. The CCAA Application was made to allow the Debtors to:-
- (a) continue discussions with the GOA to ensure an end to the actions which have resulted in Lydian Armenia's inability to access the Amulsar Project;
  - (b) continue negotiations with existing lenders on a consensual path forward;
  - (c) complete negotiations on a potential sale and/or refinancing of Lydian Armenia;
  - (d) consider the appropriate corporate vehicle structure to implement a refinancing and/or sale; and
  - (e) finalise financing discussions and potential commencement of the Treaty Arbitration.

**2 January CCAA Order and 23 January CCAA Order**

33. Pursuant to paragraph 2 and 3 of the CCAA Order, the Debtors including Lydian International are companies to which the CCAA applies, shall enjoy certain of the benefits and the protections provided for in the CCAA Order, and shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**") and the business undertaken by the Debtors (the "**Business**").

34. Pursuant to paragraphs 10 to 14 of the CCAA Order, the Debtors including Lydian International are afforded wide ranging protection from their creditors, such that no proceedings can be continued or commenced against them or the Monitor, or affecting the Business or Property, until 2 January 2020 (extended to 2 March 2020 by the 2 January CCAA Order as set out below), all being subject to further orders that may be made by the Ontario Court.
35. Pursuant to paragraph 21 of the CCAA Order, Alvarez & Marsal Canada Inc. was appointed by the Ontario Court as the monitor (the "**Monitor**"), an officer of the Ontario Court, to monitor the Business and financial affairs of the Debtors pursuant to the CCAA and the CCAA Order, and to report to the Ontario Court.
36. Pursuant to the CCAA and the CCAA Order, the Monitor has broad powers including the authorization to have full and complete access to the Property (as defined in the CCAA Order), including the premises, books, records, data (including in electronic form) and other financial documents of the Debtors, to assess the Debtors' Business and financial affairs and to perform its duties arising under the CCAA Order (see e.g. paragraph 22(d) of the CCAA Order).
37. Pursuant to paragraphs 10 to 17 of the CCAA Order, the Ontario Court made wide-ranging orders preventing proceedings being brought against the Debtors or specified members of the Lydian Group and related orders.
38. Pursuant to paragraph 42 of the CCAA Order, the Debtors and Monitor were authorized "to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of [the CCAA Order] and for assistance in carrying out the terms of [the CCAA Order]". The same paragraph further provides that "the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada."
39. Pursuant to paragraph 1 of the 2 January CCAA Order, the Stay Period was extended until 23 January 2020. By the 23 January CCAA Order, the Stay Period was extended until 2 March 2020.

#### **Issuance of Letter of Request by Ontario Court**

40. The Lydian Group determined to include Lydian International as an applicant in the CCAA proceedings to ensure that a holistic and flexible restructuring regime was



available to preserve optionality and potential value for all stakeholders and creditors, particularly if a restructuring outcome or the Treaty Arbitration yields value to the Lydian Group's public shareholders.

41. I and the Lydian Group's Canadian legal counsel have been advised by Jersey counsel that the Jersey courts have jurisdiction to recognise and enforce foreign insolvency processes, even when such processes have no equivalent under Jersey domestic law.
42. By the CCAA Order, the Honourable Geoffrey B. Morawetz, Chief Justice of the Ontario Court issued a letter of request asking the Royal Court of Jersey to assist the Ontario Court. By the 23 January CCAA Order the Ontario Court, of its own volition, revised the letter of request by making certain minor amendments to it and issued a replacement version (the **Letter of Request**). A copy of the Letter of Request is exhibited hereto at **Tab 11**. The Letter of Request asks for the Royal Court to make orders in the following terms:-
  - a. By recognising the appointment of the Monitor;
  - b. By recognising the rights and powers of the Debtors and Monitor in respect of the Property and business of Lydian International;
  - c. By declaring that no action shall be taken or proceeded with against Lydian International except by leave of the Ontario Court on notice to all affected parties, the Debtors and the Monitor, and subject to such terms as the Ontario Court may impose; and
  - d. By granting such further or other relief as it thinks fit and in aid of the Debtors and the Monitor of Lydian International.
43. Pursuant to paragraph 7 of the Letter of Request, the Ontario Court has confirmed that, as a matter of international comity, the courts of Canada may give effect to orders made by the Royal Court of Jersey relating to the bankruptcy of an individual or company (save for the purpose of enforcing the fiscal laws of Jersey).

#### **Orders sought in the Representation**

44. The orders sought to be recognised by the Representation are slightly narrower in scope than the terms of the Letter of Request, to reflect the specific needs of Lydian at this juncture, with liberty to apply to the Royal Court for further assistance in

due course. The specific orders sought afford Lydian international protection from its creditors, recognise the appointment of the Monitor in Jersey, and specifically provide that its business and assets are to remain in its own possession (consistent with the wider CCAA reorganisation taking place in Canada).

45. For the reasons set out above, Lydian International seeks the orders and declarations set out at the prayer for relief in the Representation.

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

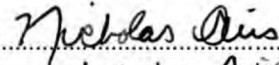
**EDWARD A. SELLERS**

At Toronto, Ontario

This 30<sup>th</sup> day of January 2020

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BEFORE ME

  
.....  
Nicholas Aulis  
Commissioner for Oaths/Practising Solicitor  
Associate, Stikeman Elliott LLP  
Barristers & Solicitors  
199 Bay St, 5300 Comm. Crt. W  
Toronto, Ontario  
Canada

1. Representor
2. Edward Sellers
3. First Affidavit
4. Sworn on

**COURT FILE NO.[ ]**

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

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

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


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**EXHIBIT "ES1"**

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This is the exhibit marked "ES1" referred to in the First Affidavit of Edward A. Sellers.

BEFORE ME

  
.....  
Nicholas Avis  
Commissioner for Oaths/Practising Solicitor



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

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

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

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**AFFIDAVIT OF ALAN J. HUTCHENS**

---

I, Alan J. Hutchens, of A&M (as defined below) located at Royal Bank Plaza, South Tower 200, Bay Street, Suite 2900, P.O Box 22, Toronto, Ontario, M5J 2J1 hereby make oath and say as follows:-

1. I am a Senior Vice-President of Alvarez & Marsal Canada Inc. (**A&M**) in Toronto. I have more than 20 years of turnaround and restructuring experience. I am a Chartered Professional Accountant, Chartered Insolvency and Restructuring Professional, and a Licensed Insolvency Trustee. I am a member of the Insolvency Institute of Canada, Canadian Association of Insolvency and Restructuring Professionals, and the Turnaround Management Association. I am duly authorized on behalf of A&M, in its capacity as the court-appointed Monitor, as defined below, of Lydian International Limited (**Lydian International**), to swear this affidavit seeking foreign recognition of the CCAA Order in these proceedings.
2. The contents of this affidavit are true to the best of my knowledge, information and belief and are, unless otherwise stated, within my personal knowledge. There is now produced and shown to me and marked "**AH1**" a paginated bundle of true copy documents (or extracts from true copy documents) to which I refer.
3. In this Affidavit I adopt, for convenience, the terms which are defined in Mr Sellers' Affidavit dated January 30, 2020 (**Mr Sellers' Affidavit**), a copy of which is exhibited at Exhibit AH1. Capitalised words in this Affidavit derive their meaning from Mr Sellers' Affidavit, unless otherwise stated.



4. As stated in Mr Sellers' Affidavit, pursuant to paragraph 21 of the CCAA Order, A&M was appointed by the Ontario Superior Court of Justice (Commercial List) as the Monitor. The Monitor is appointed as an officer of the Ontario Court, to monitor the business and financial affairs of the Debtors pursuant to the CCAA and the CCAA Order, and to report to the Ontario Court. I have now read the Affidavit of Edward Sellers dated January 30, 2020 (**Mr Sellers' January Affidavit**) and the Representation of Lydian International dated January 30, 2020 filed herein. Mr. Sellers' January Affidavit is consistent with the contents of Mr. Sellers' Affidavit which was accepted by the Ontario Court in granting the CCAA Order.

#### **Overview of the CCAA**

5. The following provides a brief overview of the process available to insolvent companies under Canada's main restructuring statute. It is not an exhaustive description, but an overview provided for context.
6. The CCAA is a Canadian federal statute allowing insolvent corporations that owe their creditors in excess of CDN\$5 million to restructure their business and financial affairs. The CCAA has a broad remedial purpose, allowing a company to continue in business while it seeks to develop and obtain the approval of compromises or arrangements with its creditors or sale(s) of its assets. Canadian courts have held that the main purpose of the CCAA is to avoid, where possible, the social and economic consequences of bankruptcy, and to allow a company to carry on business. CCAA proceedings are carried out under supervision of the Court.
7. The process begins when a company makes an initial application to the Court for protection under the CCAA. As part of an Order issued by the Court commencing the CCAA proceeding, the Court appoints a monitor to oversee the proceeding and report to the Court. The monitor is a licensed trustee under Canada's federal statutes and acts "as the eyes and ears of the Court". If the application is granted, the Court issues an order (an **initial order**) that, among other things, appoints the monitor and prohibits creditors and stakeholders from taking any enforcement steps against the company for an initial period of 10 days (the **stay of proceedings**). The stay of proceedings typically prohibits any steps being taken against the company to enforce security, require payment of existing debts or terminate contracts.

8. The company is prohibited from making most payments to creditors in respect of amounts owing as at the date the CCAA proceeding was commenced, subject to court approval in certain instances. While the stay of proceedings is in place, the company can continue to operate, pay its employees and service its customers in the ordinary course under Court supervision, with the goal of emerging from CCAA protection as a viable going concern business. The stay of proceedings can be extended by the Court so long as the debtor company continues to act in good faith and with due diligence and so long as such extension is supported by the monitor and the Court is satisfied that there is sufficient cash available to the company to continue to meet its obligations during the period of the requested extension.
9. As an officer of the Court, the monitor's role is to monitor the company's business and financial affairs to ensure compliance with the law, initial order and any other orders granted by the Court and the terms of any Plan of Compromise or Arrangement (a **Plan**). The Monitor reports to the Court, provides information to creditors regarding the proceedings, the claims process and creditors' meetings (if any), posts all relevant documents to a website maintained by the monitor, reviews and reports on the company's cash flow forecasts, assists the debtor company in its discussions with stakeholders and with preparation of any Plan to be put to its creditors, and oversees voting at a meeting of creditors. The monitor does not take possession or control of the company's assets, and the company remains in possession and control of its assets.
10. During the CCAA proceeding the company may terminate or assign unwanted contracts, terminate employees, sell assets (usually up to a maximum monetary threshold), negotiate new credit terms, change its corporate structure and take other steps to allow it to restructure its affairs. These actions typically require the support of the monitor, an Order of the Court, or both.
11. The debtor company may ultimately put forward to its creditors a Plan outlining how it intends to deal with the issues facing the company. Once a proposed Plan has been negotiated by the parties, the debtor company will request the Court to order a meeting of creditors to formally vote on the Plan. Creditors may be separated into various classes based on a commonality of interest for the purpose of voting on the Plan. For a Plan to be accepted, it must be approved by a majority of creditors, representing at least 2/3 in value, in each class that are present and voting. In addition, creditors voting to accept the Plan must represent at least two thirds of the total value of the creditors' claims in that class. If the Plan is accepted

and approved by the Court, creditors will be paid or treated in accordance with the terms of the Plan, under the oversight of the monitor.

12. Rather than proposing a Plan, the debtor company may choose to pursue a sale process in respect of some or all of its assets under the supervision of the monitor and the Court, with the proceeds of sale to be distributed to its creditors in accordance with their respective priorities, all being subject to court Order. That is commonly referred to as a "liquidating CCAA".

#### **First Report and 23 January Order**

13. In support of the proceedings the Monitor submitted a First Report, dated 21 January 2020, to the Ontario Court (exhibited hereto at **Tab 8**) (the "**First Report of the Monitor**"). The purpose of the report was to provide the Ontario Court with information regarding, *inter alia*, the Monitor's qualifications to act as Monitor; cash flow information and background information in respect of the Lydian Group and other parties to the proceedings. By a further Order of the Ontario Court on 23 January to extend the stay of proceedings to 2 March 2020 (exhibited hereto at **Tab 7**) (the "**23 January CCAA Order**"), the Monitor's First Report was approved.

#### **Support of the Monitor**

14. For the reasons set out above, the Monitor, in its capacity as court-appointed officer of the Ontario Court, on behalf of Lydian International, supports the orders and declarations set out at the prayer for relief in the Representation.

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

**ALAN J. HUTCHENS**

At TORONTO, ONTARIO

This 31<sup>ST</sup> day of JANUARY 2020

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)

*AJ Hutchens*

BEFORE ME

*R Bengino*

*Rachel Bengino*

Commissioner for Oaths/Practising Solicitor

Associate, Thornton Grant Finnigan LLP

100 Wellington St. W. Suite 3200

Toronto, Ontario M5V 3N5



1. Representor
2. Alan J. Hutchens
3. First Affidavit
4. Sworn on

**COURT FILE NO.[ ]**

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

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

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

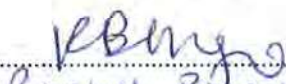
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**EXHIBIT "AH1"**

---

This is the exhibit marked "AH1" referred to in the First Affidavit of Alan J. Hutchens.

BEFORE ME

  
.....  
Rachel Bengio  
Commissioner for Oaths/Practising Solicitor

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

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

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

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**AFFIDAVIT OF EDWARD A. SELLERS**

---

I, Edward A. Sellers, of the Town of Rosseau, in the Province of Ontario, Canada hereby make oath and say as follows:-

**Introduction**

1. I am the Interim President and Chief Executive Officer of the Representor, Lydian International Limited ("**Lydian International**"). I have been the President and Chief Executive Officer of Lydian International since June 12, 2019. I have been on the Board of Directors of Lydian International since November 1, 2018, and was appointed to the Board of Directors of the other Debtors (as defined below) after June 12, 2019.
2. The contents of this affidavit are true to the best of my knowledge, information and belief and are, unless otherwise stated, within my personal knowledge. There is now produced and shown to me and marked "**ES1**" a paginated bundle of true copy documents (or extracts from true copy documents) to which I refer.
3. The purpose of this affidavit is to set out the factual matters relied upon by Lydian International in support of the orders sought in the Representation.

**My background**

4. I have extensive experience serving as a director, advisor and lawyer to large public and private enterprises, having done so for over 30 years. I currently serve as President and Managing Director of Black Swan Advisors Inc. ("**Black Swan**")

**Advisors**"), providing independent interim governance support and leadership to enterprises in transition, decline or distress. Prior to establishing Black Swan Advisors in 2016, I served as a partner and Chair of the national restructuring practice at a leading Canadian law firm.

5. I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records, press releases, and public filings of Lydian International and have spoken with certain of the directors, officers and/or employees of the Debtors, as necessary. Where I have relied upon information from others, I believe the information to be true and I have stated the source of that information.

#### **The Canadian proceedings**

6. On 23 December 2019 Lydian International, Lydian Canadian Ventures Corporation ("**Lydian Canada**"), and Lydian U.K Corporation Limited ("**Lydian UK**") (collectively, the "**Debtors**") applied for protection from their creditors in Canada under the federal insolvency and restructuring statute *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (Canada) ("**CCAA**") on the grounds that they were unable to pay their debts (the "**CCAA Application**"). Certain other non-applicant entities were also granted a stay of proceedings<sup>1</sup> (together with the Debtors, the non-applicant entities are the "**Lydian Group**").
7. Exhibited hereto are certain of the documents filed by the Debtors with the Ontario Court in support of the CCAA Application:-
  - (a) Notice of Application at **Tab 1**; and
  - (b) Affidavit of Edward A. Sellers sworn on 22 December 2019 along with its exhibits (the "**22 December Affidavit**") at **Tab 2**.
8. By an order dated the 23 December 2019 ("**CCAA Order**") of the Ontario Superior Court of Justice ("**Ontario Court**"), the Ontario Court granted the orders in substantially the form sought by the Debtors. A copy of the CCAA Order is exhibited hereto at **Tab 3**.

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<sup>1</sup> Lydian Armenia CJSC, Lydian Resources Armenia Limited, Lydian International Holdings Limited and Lydian U.S. Corporation (together known as the "**Non-Applicant Stay Parties**").

9. The CCAA Order granted a stay of proceedings (the "**Stay Period**") in favour of the Debtors until 2 January 2020, whereby the Debtors including Lydian International were granted protection from their creditors.
10. On 26 December 2019 the Debtors applied for an extension of the Stay Period by an Amended Notice of Motion (exhibited hereto at **Tab 4**). By a further order dated 2 January 2020 (exhibited hereto at **Tab 5**) (the "**2 January CCAA Order**"), the Ontario Court extended the Stay Period until 23 January 2020, subject to further order of the Ontario Court.
11. On 23 January 2020 the Debtors applied for a further extension of the Stay Period by a Notice of Motion (exhibited hereto at **Tab 6**). Filed in support of the Notice of Motion was the Affidavit of Edward Sellers dated 22 January 2020 (exhibited hereto at **Tab 7**). Two further orders were made by the Ontario Court at the return hearing on 23 January 2020: (a) an order extending the stay of proceedings until 2 March 2020 (exhibited hereto at **Tab 8**) (together the "**23 January CCAA Order**"); and (b) an order amending and restating the terms of the CCAA Order (exhibited hereto at **Tab 9**).

### **Background**

12. The facts and matters which have caused the Debtors to seek the assistance of the Ontario Court, and by this Representation the Royal Court of Jersey, are as set out in my 22 December Affidavit which, as previously mentioned, is exhibited at **Tab 2**. I summarise below certain key facts and matters from my 22 December Affidavit.
13. Capitalised terms used herein but not otherwise defined have the meanings ascribed to them in my 22 December Affidavit. The references in square brackets below are to the paragraphs of my 22 December 2019, where further details of the matters described below may be found.

### The Lydian Group

14. The following is a brief overview of the Applicants and their corporate structure. A diagram of this structure is exhibited at **Tab 10**.

*Lydian International*

15. Lydian International is a corporation continued under the laws of the Jersey, from the Province of Alberta pursuant to the *Companies (Jersey) Law 1991*. Lydian International was originally incorporated under the *Business Corporations Act (Alberta)* on February 14, 2006 as "Dawson Creek Capital Corp.", which became Lydian International on December 12, 2007.
16. Lydian International's registered office is located at Bourne House 1st Floor, Francis Street, St. Helier, Jersey. On June 12, 2019, Lydian International's shareholders approved its continuance under the Canada Business Corporations Act, but the continuance back to Canada has not yet been implemented.
17. Lydian International has had two types of securities listed on the Toronto Stock Exchange ("TSX"): (i) ordinary shares trading under the symbol LYD, which are currently suspended from trading and subject to de-listing procedures by the TSX; and (ii) warrants that were, until their expiry in 2017, traded under the symbol LTD.WT.
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#### *The Lydian Group*

21. The Debtors are part of the Lydian Group with a number of other subsidiaries ultimately owned by Lydian International. In addition to the Debtors, the Lydian Group includes the following entities:
- (a) Lydian U.S. Corporation ("**Lydian US**"): a corporation incorporated under the laws of the State of Colorado, United States, which is a direct, wholly owned subsidiary of Lydian International;
  - (b) Lydian International Holdings Limited ("**Lydian Holdings**"): a corporation incorporated under the laws of the British Virgin Islands, which is a direct, wholly owned subsidiary of Lydian UK;
  - (c) Lydian Resources Armenia Limited ("**Lydian Resources**"): a corporation incorporated under the laws of the British Virgin Islands, which is a direct, wholly owned subsidiary of Lydian Holdings; and
  - (d) Lydian Armenia CJSC ("**Lydian Armenia**"): a corporation incorporated under the laws of the Republic of Armenia, which is a direct, wholly owned subsidiary of Lydian Resources. Lydian Armenia owns and operates the Amulsar Project (defined below).

#### Integrated Nature of the Lydian Group

22. The Lydian Group is highly integrated, and its business and affairs are directed primarily out of Canada. Substantially all the strategic business affairs of the Lydian Group, including key decision making, are conducted through personnel who are located in Toronto and Vancouver.
23. Three of the six members of the Board of Directors of Lydian International are resident Canadians, two of whom are located in Toronto. Only resident Canadians



serve on the Special Committee assembled recently by the Board of Lydian International to direct the Lydian Group's restructuring efforts, two of whom are again located in Toronto.

24. All material entities within the Lydian Group are borrowers or guarantors of the Lydian Group's key secured indebtedness. The Lydian Group's loan agreements are governed primarily by the laws of the Province of Ontario. All of the Lydian Group's material professional advisory relationships (including its legal and audit firm engagement partners) are with professionals based in Toronto. The Lydian Group's primary insurance brokerage relationships are located in Toronto and Calgary.
25. Lydian International's shares are currently listed on the TSX and it is governed by the regulatory regime imposed on public companies by the Province of Ontario and enforced by the Ontario Securities Commission.
26. The Lydian Group's forbearance and restructuring efforts have been directed out of Toronto.

#### The Amulsar Gold Mine

27. The Lydian Group is focused on constructing its wholly owned development-stage gold mine in Armenia (the "**Amulsar Project**"). The Amulsar Project was funded by a combination of equity and debt capital, and financing arrangements particular to the mining industry known as "stream financing". The debt and stream financing arrangements are secured over substantially all the assets of Lydian Armenia and Lydian International and the shares of various entities of the Lydian Group.
28. Construction of the Amulsar Project began in October 2016 and was over 75% complete by June 2018. However, since June 2018 and continuing to the present time Lydian Armenia has been unable to access and complete construction at the Amulsar Project due to blockades and arbitrary actions by the Government of Armenia ("**GOA**"), as described in detail in my 22 December Affidavit starting at paragraph 43, and including:
  - (a) unlawful blockades at the Amulsar Project;
  - (b) improper, unsupported and retroactive challenges by GOA officials to previously granted mining rights, mining agreements and water permits held by Lydian Armenia; and

- (c) failure by the police and GOA to act in removing unlawful protestors and granting Lydian Armenia access to the Amulsar Project.
29. As a result of this hardship, the Lydian Group has taken various steps to maintain stability over its financial position and seek financial alternatives. These steps have included:
- (a) multiple attempts to resolve issues with the GOA and Armenian police, including taking action in the Armenian courts to seek re-entry to the Amulsar Project;
  - (b) negotiating several forbearance agreements with its lenders, the most recent of which expired on 20 December 2019;
  - (c) cost reduction efforts, including a reduction in the Lydian Group's workforce by over 90% (as of 20 December 2019, the Lydian Group employed a total of 63 full time and contract employees);
  - (d) considering numerous re-start options, including the development of a revised National Instrument 43-101 Technical Report to assess the impact of the blockade on construction, and the assessment of sale or refinancing options (National Instrument 43-101 is a national instrument for the Standards of Disclosure for Mineral Projects within Canada. The Instrument is a codified set of rules and guidelines for reporting and displaying information related to mineral properties owned by, or explored by, companies which report these results on stock exchanges within Canada);
  - (e) canvassing the market for refinancing or sale options;
  - (f) retaining various experts;
  - (g) preparing for the Treaty Arbitration (as described below) against the GOA; and
  - (h) commencing a solicitation process for parties interested in financing the Treaty Arbitration.



30. In total, the challenges at the Amulsar Project have generated dislocation costs of approximately \$101 million. Further dislocation expenses are expected to be incurred.
31. The Lydian Group is considering commencing international investment arbitration proceedings against the GOA pursuant to bilateral investment treaties, on the basis that the GOA's actions and inactions have seriously undermined the value of the Lydian Group's investment in the Amulsar Project (the "**Treaty Arbitration**").

#### Creditor interests

32. The Debtors brought the CCAA Application to obtain the breathing room necessary to maximise value for all stakeholders and creditors. The CCAA Application was made to allow the Debtors to:-
- (a) continue discussions with the GOA to ensure an end to the actions which have resulted in Lydian Armenia's inability to access the Amulsar Project;
  - (b) continue negotiations with existing lenders on a consensual path forward;
  - (c) complete negotiations on a potential sale and/or refinancing of Lydian Armenia;
  - (d) consider the appropriate corporate vehicle structure to implement a refinancing and/or sale; and
  - (e) finalise financing discussions and potential commencement of the Treaty Arbitration.

#### **2 January CCAA Order and 23 January CCAA Order**

33. Pursuant to paragraph 2 and 3 of the CCAA Order, the Debtors including Lydian International are companies to which the CCAA applies, shall enjoy certain of the benefits and the protections provided for in the CCAA Order, and shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**") and the business undertaken by the Debtors (the "**Business**").

34. Pursuant to paragraphs 10 to 14 of the CCAA Order, the Debtors including Lydian International are afforded wide ranging protection from their creditors, such that no proceedings can be continued or commenced against them or the Monitor, or affecting the Business or Property, until 2 January 2020 (extended to 2 March 2020 by the 2 January CCAA Order as set out below), all being subject to further orders that may be made by the Ontario Court.
35. Pursuant to paragraph 21 of the CCAA Order, Alvarez & Marsal Canada Inc. was appointed by the Ontario Court as the monitor (the "**Monitor**"), an officer of the Ontario Court, to monitor the Business and financial affairs of the Debtors pursuant to the CCAA and the CCAA Order, and to report to the Ontario Court.
36. Pursuant to the CCAA and the CCAA Order, the Monitor has broad powers including the authorization to have full and complete access to the Property (as defined in the CCAA Order), including the premises, books, records, data (including in electronic form) and other financial documents of the Debtors, to assess the Debtors' Business and financial affairs and to perform its duties arising under the CCAA Order (see e.g. paragraph 22(d) of the CCAA Order).
37. Pursuant to paragraphs 10 to 17 of the CCAA Order, the Ontario Court made wide-ranging orders preventing proceedings being brought against the Debtors or specified members of the Lydian Group and related orders.
38. Pursuant to paragraph 42 of the CCAA Order, the Debtors and Monitor were authorized "to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of [the CCAA Order] and for assistance in carrying out the terms of [the CCAA Order]". The same paragraph further provides that "the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada."
39. Pursuant to paragraph 1 of the 2 January CCAA Order, the Stay Period was extended until 23 January 2020. By the 23 January CCAA Order, the Stay Period was extended until 2 March 2020.

#### **Issuance of Letter of Request by Ontario Court**

40. The Lydian Group determined to include Lydian International as an applicant in the CCAA proceedings to ensure that a holistic and flexible restructuring regime was

available to preserve optionality and potential value for all stakeholders and creditors, particularly if a restructuring outcome or the Treaty Arbitration yields value to the Lydian Group's public shareholders.

41. I and the Lydian Group's Canadian legal counsel have been advised by Jersey counsel that the Jersey courts have jurisdiction to recognise and enforce foreign insolvency processes, even when such processes have no equivalent under Jersey domestic law.
42. By the CCAA Order, the Honourable Geoffrey B. Morawetz, Chief Justice of the Ontario Court issued a letter of request asking the Royal Court of Jersey to assist the Ontario Court. By the 23 January CCAA Order the Ontario Court, of its own volition, revised the letter of request by making certain minor amendments to it and issued a replacement version (the **Letter of Request**). A copy of the Letter of Request is exhibited hereto at **Tab 11**. The Letter of Request asks for the Royal Court to make orders in the following terms:-
  - a. By recognising the appointment of the Monitor;
  - b. By recognising the rights and powers of the Debtors and Monitor in respect of the Property and business of Lydian International;
  - c. By declaring that no action shall be taken or proceeded with against Lydian International except by leave of the Ontario Court on notice to all affected parties, the Debtors and the Monitor, and subject to such terms as the Ontario Court may impose; and
  - d. By granting such further or other relief as it thinks fit and in aid of the Debtors and the Monitor of Lydian International.
43. Pursuant to paragraph 7 of the Letter of Request, the Ontario Court has confirmed that, as a matter of international comity, the courts of Canada may give effect to orders made by the Royal Court of Jersey relating to the bankruptcy of an individual or company (save for the purpose of enforcing the fiscal laws of Jersey).

#### **Orders sought in the Representation**

44. The orders sought to be recognised by the Representation are slightly narrower in scope than the terms of the Letter of Request, to reflect the specific needs of Lydian at this juncture, with liberty to apply to the Royal Court for further assistance in

due course. The specific orders sought afford Lydian international protection from its creditors, recognise the appointment of the Monitor in Jersey, and specifically provide that its business and assets are to remain in its own possession (consistent with the wider CCAA reorganisation taking place in Canada).

45. For the reasons set out above, Lydian International seeks the orders and declarations set out at the prayer for relief in the Representation.

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

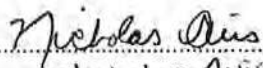
**EDWARD A. SELLERS**

At Toronto, Ontario

This 30<sup>th</sup> day of January 2020

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BEFORE ME

  
.....  
Nicholas Aulis  
Commissioner for Oaths/Practising Solicitor  
Associate, Stikeman Elliott LLP  
Barristers & Solicitors  
199 Bay St, 5300 Comm. Crt. W  
Toronto, Ontario  
Canada

1. Representor
2. Edward Sellers
3. First Affidavit
4. Sworn on

COURT FILE NO.[ ]

IN THE ROYAL COURT OF JERSEY  
(SAMEDI DIVISION)

IN THE MATTER OF THE REPRESENTATION OF LYDIAN INTERNATIONAL

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

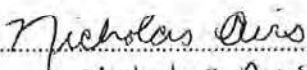
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EXHIBIT "ES1"

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This is the exhibit marked "ES1" referred to in the First Affidavit of Edward A. Sellers,

BEFORE ME

  
.....  
Nicholas Avis  
Commissioner for Oaths/Practising Solicitor





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

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

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

---

**AFFIDAVIT OF ELIZABETH PILLON**

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I, Elizabeth Pillon, of the law firm, Stikeman Elliott LLP ("**Stikeman**"), of the City of Oakville, Ontario, Canada hereby make oath and say as follows:-

**Introduction**

1. I adopt for convenience the defined terms from the Affidavit of Edwards A. Sellers dated 30 January 2020.
2. I am partner at Stikeman and am Head of the Restructuring Group in the Toronto office. Stikeman has acted for the Lydian Group in relation to the insolvency proceedings.
3. The contents of this affidavit are true to the best of my knowledge, information and belief and are, unless otherwise stated, within my personal knowledge.
4. The purpose of this affidavit is to explain the jurisdictional basis upon which we asked the Ontario Court to place Lydian International into CCAA proceedings in Canada.

**My background**

5. I have extensive experience as a commercial litigator and restructuring professional and over the course of my career, spanning over 25 years, I have specialised in commercial litigation with an emphasis on restructuring and insolvency matters. I also have experience of cross-border insolvency matters. I have represented debtor companies, Court Officers such as monitors and receivers, secured creditors and

purchasers of distressed assets. I frequently appear before the Ontario Court as well as courts throughout Canada.

### **Background to the CCAA Order**

6. The background to the CCAA Order is set out in the Affidavit of Edward Sellers' dated 30 January 2020 (**Mr Sellers' 30 January Affidavit**), and I refer in particular paragraphs 12 to 32 of that Affidavit. I also refer to the following relevant facts:
  - (a) As the Lydian Group dealt with a number of financial and operational challenges, it entered into a series of forbearance agreements with its lenders commencing in October 2018 through to 20 December 2019. Despite extensive negotiations, the lenders did not agree to extend the forbearance agreement. The expiration of the latest forbearance agreement on 20 December 2019 meant that the bringing of the CCAA application in Canada was urgent and, unfortunately, there was no time to seek a Letter of Request from the Jersey Court in advance of the CCAA Application being brought. The aforementioned details of the forbearance agreements are set out in paragraphs 80 to 84 of the Affidavit of Edward Sellers dated 22 December 2019 (which is exhibited to Mr Sellers' 30 January Affidavit); and
  - (b) Mourant Ozannes were engaged in December 2019 to provide advice as to the mechanics of determining how the CCAA Order would be placed before the Royal Court of Jersey for recognition pursuant to the principles of comity and reciprocity as soon as reasonably practicable;
  - (c) Mr Sellers' 30 January Affidavit explains the role of Lydian International in the Lydian Group at paragraphs 15 to 18.

### **Cross-border jurisdictional**

7. In seeking the Ontario Court's assistance and oversight with the Lydian Group, including the Ontario Court placing foreign companies within Canadian insolvency proceedings, we relied on a number of factors including the Ontario Commercial List's experience in dealing with cross border proceedings with a number of jurisdictions, and the flexibility and accessibility to the Ontario Courts to deal with matters on a time sensitive basis.



8. In determining whether to include a foreign debtor as an applicant in a CCAA proceeding, Canadian courts will consider objective factors ascertainable by third parties, including: (i) the location of the debtor's headquarters or head office functions, (ii) the location of those who manage the debtor's business, (iii) the location of primary assets and operations, and (iv) the location that the significant creditors recognize as being the "nerve centre" of the debtor. In some cases these factors could conflict and a Canadian court may need to put more or less weight on a given factor. Canadian courts have on previous occasions included a foreign debtor as an applicant in CCAA proceedings where the foreign debtor formed part of an integrated corporate group which was managed out of Canada.
9. In the Lydian CCAA proceedings, the Ontario Court was presented with the following evidence to consider in determining whether Lydian International was a proper CCAA applicant: (i) the Lydian Group's business and affairs are completely integrated, and are directed out of Canada, (ii) substantially all of the strategic business affairs and key decision making with respect to the Lydian Group are conducted out of Canada, (iii) of Lydian International six directors, three are resident Canadians, and the remaining three do not have a common resident nationality, (iv) Lydian International's Special Committee, created to direct the Lydian Group's restructuring efforts, is composed exclusively of resident Canadians, (v) each of Lydian International, Lydian Canada and Lydian UK have assets in Ontario, (vi) the Lydian Group's loan agreements are governed by Ontario law, (vii) Lydian International's shares traded on the Toronto Stock Exchange, and (viii) the Lydian Group's material professional advisory relationships are with professionals based out of Canada.

#### **Judgment of the Ontario Court**

10. The Ontario Court found that Lydian International had a strong nexus to Ontario and that, in the circumstances described, it was appropriate for the Ontario Court to issue a Letter of Request to the Royal Court of Jersey. A copy of Chief Justice Morawetz's endorsement is attached hereto and marked as Exhibit "A" to this my

affidavit and notes:

[41] With respect to whether Ontario is the appropriate venue for this proceeding, Lydian Canada's registered head office is located in Toronto and its registered and records offices are located in Vancouver. In my view, Ontario has jurisdiction over Lydian Canada. The registered head offices for Lydian International and Lydian UK are in Jersey and the UK respectively, however, both entities have assets in Ontario, those being funds on deposit with the Bank of Nova Scotia in Toronto. Further, it seems to me that both Lydian International and Lydian UK have a strong nexus to Ontario and accordingly I am satisfied that Ontario is the appropriate jurisdiction to hear this application.

[42] I am also satisfied that, in these circumstances, it is appropriate for this court to issue to the Royal Court of Jersey a letter of request as referenced in the application record.

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

**Elizabeth Pillon**

At Toronto, ON

This 18<sup>th</sup> day of February 2020

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BEFORE ME

Nicholas Avis

Nicholas Avis, Associate

Commissioner for Oaths/Practising Solicitor

Stikeman Elliott LLP

Barristers + Solicitors

5300 Commerce Court W

199 Bay St

Toronto ON M5L 1B9

Canada

IN THE ROYAL COURT OF JERSEY  
(SAMEDI DIVISION)

IN THE MATTER OF THE REPRESENTATION OF LYDIAN INTERNATIONAL

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

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**EXHIBIT "EP1"**

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This is the exhibit marked "EP1" referred to in the First Affidavit of Elizabeth Pillon.

BEFORE ME



Commissioner for Oaths/Practising Solicitor

**CITATION:** Lydian International Limited (Re), 2019 ONSC 7473  
**COURT FILE NO.:** CV-19-00633392-00CL  
**DATE:** 2019-12-24

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGMENT OF  
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES  
CORPORATION AND LYDIAN U.K. CORPORATION LIMITED**

**Applicants**

**BEFORE:** Chief Justice Geoffrey B. Morawetz

**COUNSEL:** *Elizabeth Pillon, Sanja Sopic, and Nicholas Avis*, for the Applicants

*Pamela Huff*, for Resource Capital Fund VI L.P.

*Alan Merskey*, for OSISKO Bermuda Limited

*D.J. Miller*, for Alvarez & Marsal Canada Inc. proposed Monitor

*David Bish*, for ORION Capital Management

*Bruce Darlington*, for ING Bank N.V./ABS Svensk Exportkredit (publ)

**HEARD and DETERMINED:** December 23, 2019

**REASONS RELEASED:** December 24, 2019

**ENDORSEMENT**

**Introduction**

[1] Lydian International Limited ("Lydian International"), Lydian Canada Ventures Corporation ("Lydian Canada") and Lydian UK Corporation Limited ("Lydian UK", and collectively, the "Applicants") apply for creditor protection and other relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA"). The Applicants seek an initial order, substantially in the form attached to the application record. No party attending on the motion opposed the requested relief.