

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N°: 500-11-057094-191

DATE: September 9, 2019

PRESIDING: THE HONOURABLE LOUIS J. GOUIN, J.S.C.

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

STORNOWAY DIAMOND CORPORATION

-&-

STORNOWAY DIAMONDS (CANADA) INC.

-&-

ASHTON MINING OF CANADA INC.

-&-

FCDC SALES AND MARKETING INC.

Petitioners

-&-

COMPUTERSHARE TRUST COMPANY OF CANADA

-&-

DIAQUEM INC.

-&-

FONDS DE SOLIDARITÉ DES TRAVAILLEURS DU QUÉBEC

-&-

**FONDS RÉGIONAL DE SOLIDARITÉ F.T.Q. NORD-DU-QUÉBEC, SOCIÉTÉ EN
COMMANDITE**

-&-

500-11-057094-191

CREE NATION OF MISTISSINI

-&-

GRAND COUNCIL OF THE CREES (EYYOU ISTCHEE)

-&-

CREE NATION GOVERNMENT

-&-

CATERPILLAR FINANCIAL SERVICES LIMITED

-&-

CHUBB LIFE INSURANCE COMPANY OF CANADA

-&-

BANK OF NOVA SCOTIA

-&-

XEROX CANADA LTD.

-&-

ATLAS COPCO CANADA INC.

-&-

CWB NATIONAL LEASING INC.

-&-

OSISKO GOLD ROYALTIES LTD.

-&-

CDPQ RESSOURCES INC.

-&-

1078243 CANADA LIMITED

-&-

ALBION EXPLORATION FUND LLC

-&-

WASHINGTON STATE INVESTMENT BOARD

-&-

TSX INC.

-&-

ATTORNEY GENERAL OF CANADA

-&-

QUEBEC REVENUE AGENCY

Mises-en-cause

DELOITTE RESTRUCTURING INC.

Proposed Monitor

INITIAL ORDER

[1] **THE COURT**, upon reading the Petitioners' "*Motion for (i) the Issuance of an Initial Order, (ii) the Granting of an Administration Charge, (iii) the Granting of a Directors and Officers Charge & (iv) Leave to Enter into an Interim Facility with Corresponding Interim Lenders' Charge (DIP)*" pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36 (as amended the "**CCAA**") the exhibits and the affidavit of Mr. Patrick Godin filed in support thereof (the "**Petition**"), the consent of *Deloitte Restructuring Inc.* to act as monitor (the "**Monitor**"), relying upon the submissions of counsel and being advised that the interested parties, including secured creditors who are likely to be affected by the charges created herein were given prior notice of the presentation of the Petition;

[2] **GIVEN** the provisions of the CCAA;

WHEREFORE, THE COURT:

[3] **GRANTS** the Petition.

[4] **ISSUES** an order pursuant to the CCAA (the "**Order**"), divided under the following headings:

- a) Definitions;
- b) Service;
- c) Application of the CCAA and Procedural Consolidation;
- d) Effective Time;
- e) Plan of Arrangement;
- f) Stay of Proceedings against the Petitioners and the Property;

500-11-057094-191

- g) Stay of Proceedings against the Directors and Officers;
- h) Possession of Property and Operations;
- i) No Exercise of Rights or Remedies;
- j) No Interference with Rights;
- k) Continuation of Services;
- l) Non-Derogation of Rights;
- m) Interim Financing (DIP);
- n) Directors' and Officers' Indemnification and Charge;
- o) SISP Managers Charge;
- p) Restructuring;
- q) Powers of the Monitor;
- r) Priorities and General Provisions Relating to CCAA Charges;
- s) General.

A. Definitions

[5] **ORDERS** that unless otherwise defined herein, all capitalized terms shall have the definition attributed to them in the Petition.

B. Service

[6] **ORDERS** that any prior delay for the presentation of this Petition is hereby abridged and validated so that the Petition is properly returnable today and hereby **DISPENSES** with further service thereof.

[7] **DECLARES** that sufficient prior notice of the presentation of this Petition has been given by the Petitioners to interested parties, including the secured creditors who are likely to be affected by the charges created herein.

C. Application of the CCAA and Procedural Consolidation

[8] **DECLARES** that the Petitioners are debtor companies to which the CCAA applies.

- [9] **ORDERS** that the consolidation of these CCAA proceedings in respect of the Petitioners shall be for administrative purposes only and shall not effect a consolidation of the assets and property of each of the Petitioners including, without limitation, for the purposes of any Plan or Plans that may be hereafter proposed.

D. Effective Time

- [10] **DECLARES** that this Order and all of its provisions are effective as of 12:01 a.m. Montreal time, province of Quebec, on the date of this Order (the "**Effective Time**").

E. Plan of Arrangement

- [11] **DECLARES** that the Petitioners shall have the authority to file with this Court and to submit to its creditors one or more plans of compromise or arrangement (collectively, the "**Plan**") in accordance with the CCAA.

F. Stay of Proceedings against the Petitioners and the Property

- [12] **ORDERS** that, until and including **October 9, 2019** (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Petitioners, or affecting the Petitioners' business operations and activities (the "**Business**") or the Property (as defined herein), including as provided in paragraph [20] herein except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.

- [13] **ORDERS** that during the Stay Period (as may be extended from time to time by this honourable Court), Petitioner *Stornoway Diamond Corporation* ("**SWY**") is relieved from any and all continuous disclosure, reporting and filing obligations (including with respect to the preparation and mailing of financial statements and reports) of and audit committee requirements applicable to Petitioner SWY as a result of its status as a reporting issuer in each of the provinces of Canada, pursuant to Canadian securities laws, rules, regulations, national instruments and policy statements, and the *Canada Business Corporations Act*.

- [14] **ORDERS** that all meetings of the shareholders of Petitioner SWY be postponed and extended pending further order of this Court.

- [15] **ORDERS** that the rights of Her Majesty in right of Canada and Her Majesty in right of a Province are suspended in accordance with the terms and conditions of subsection 11.09 CCAA.

G. Stay of Proceedings against Directors and Officers

[16] **ORDERS** that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against any former, present or future director or officer of the Petitioners nor against any person deemed to be a director or an officer of any of the Petitioners under subsection 11.03(3) CCAA (each, a "**Director**", and collectively the "**Directors**") in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the Petitioners where it is alleged that any of the Directors is under any law liable in such capacity for the payment of such obligation.

H. Possession of Property and Operations

[17] **ORDERS** that the Petitioners shall remain in possession and control of their present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the "**Property**"), the whole in accordance with the terms and conditions of this order including, but not limited, to paragraph [40] hereof.

[18] **ORDERS** that the Petitioners shall be entitled to pay the following expenses (whether incurred prior to or after this Order), provided that such expenses are made in strict accordance with the Interim Financing Term Sheet, the Interim Financing Documents (as such terms are defined below) and the Projections filed as **Exhibit R-27** to the Petition, or with the prior written consent of the Interim Lenders:

- a) outstanding and future wages, salaries, expenses and, benefits payable to the Petitioners' employees 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;
- b) the fees and disbursements of any agents retained or employed by the Petitioners in respect of these proceedings, at their standard rates and charges; and
- c) amounts owing for goods or services actually supplied to the Petitioners either prior to or after the date of this Order by third party suppliers, if, in the opinion of the Petitioners, the supplier is essential to the business and ongoing operations of the Petitioners.

[19] **ORDERS** that the Petitioners shall remit, in accordance with legal requirements, or pay the following expenses, provided that such expenses are made in strict accordance with the Interim Financing Term Sheet, the Interim Financing Documents (as such terms are defined below) and the Projections filed as

Exhibit R-27 to the Petition or with the prior written consent of the Interim Lenders:

- 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) Québec Pension Plan, and (iv) income taxes; and
- b) all goods and services, harmonized sales or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Petitioners and in connection with the sale of goods and services by the Petitioners but only where such Sales Taxes are accrued or collected after the date of this Order.

I. No Exercise of Rights or Remedies

[20] **ORDERS** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies, including, but not limited to modifications of existing rights and events deemed to occur pursuant to any agreement to which any of the Petitioners is a party as a result of the insolvency of the Petitioners and/or these CCAA proceedings, any events of default or non-performance by the Petitioners or any admissions or evidence in these CCAA proceedings, of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Petitioners, or affecting the Business, the Property or any part thereof are hereby stayed and suspended except with leave of this Court.

[21] **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods including, without limitation, to file grievances relating to the Petitioners or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Petitioners, or any of them, become(s) bankrupt or a receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") is appointed in respect of the Petitioners, the period between the date of this Order and the day on which the Stay Period ends shall not be calculated in respect of the Petitioners in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

J. No Interference with Rights

[22] **ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioners except with the written consent of the Monitor, or with leave of this Court.

K. Continuation of Services

[23] **ORDERS** that during the Stay Period and subject to paragraph [25] hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Petitioners or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available to the Petitioners, 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 Petitioners, and that the Petitioners shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, 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 Petitioners, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners, as applicable, with the consent of the Monitor, or as may be ordered by this Court.

[24] **ORDERS** that, notwithstanding anything else contained herein and subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Petitioners 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 make further advance of money or otherwise extend any credit to the Petitioners.

[25] **ORDERS** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by any Petitioners with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of this Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by Petitioners and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments

deposited into a Petitioners' account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

L. Non-Derogation of Rights

[26] **ORDERS** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the "**Issuing Party**") at the request of the Petitioners shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of this Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from this Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid.

M. Interim Financing (DIP)

[27] **ORDERS** that the Petitioners be and are hereby authorized to borrow from the Working Cap Lenders (as this term is defined in the *Working Cap Facility Agreement* filed in support of the Petition as **Exhibit R-27** (the "**Interim Financing Term Sheet**" - hereinafter the "**Interim Lenders**") such amounts from time to time as Petitioners may consider necessary or desirable, up to a maximum principal amount of **\$20 million** outstanding at any time, on the terms and conditions as set forth in the Interim Financing Term Sheet and in the Interim Financing Documents (as defined hereinafter), to fund the ongoing expenditures of Petitioners and to pay such other amounts as are permitted by the terms of this Order and the Interim Financing Documents (as defined hereinafter) (the "**Interim Facility**").

[28] **ORDERS** that the Petitioners are hereby authorized to execute and deliver such credit agreements, security documents and other definitive documents (collectively the "**Interim Financing Documents**") as may be required by the Interim Lenders in connection with the Interim Facility and the Interim Financing Term Sheet, and Petitioners are hereby authorized to perform all of their obligations under the Interim Financing Documents.

[29] **ORDERS** that the Petitioners shall pay to the Interim Lenders, when due, all amounts owing (including principal, interest, fees and expenses, including without limitation, all reasonable fees and disbursements of counsel and all other reasonably required advisers to or agents of the Interim Lenders on a full indemnity basis (the "**Interim Lenders Expenses**") under the Interim Financing Documents and shall perform all of their other obligations to the Interim Lenders pursuant to the Interim Financing Term Sheet, the Interim Financing Documents and this Order.

[30] **DECLARES** that all of the Property of the Petitioners is hereby subject to a charge and security for an aggregate amount of **\$25 million** (such charge and

security is referred to herein as the "**Interim Lenders Charge**") in favour of the Interim Lenders as security for all obligations of the Petitioners to the Interim Lenders with respect to all amounts owing (including principal, interest and the Interim Lenders Expenses) under or in connection with the Interim Financing Term Sheet and the Interim Financing Documents. Interim Lenders Charge shall have the priority established by paragraphs [54] and [55] of this Order.

- [31] **ORDERS** that the claims of the Interim Lenders, the Streamers and Diaquem pursuant to the Interim Financing Term Sheet, the Interim Financing Documents, the Bridge Financing Agreement, the Streaming Agreements, Senior Credit Agreement, the Diaquem Royalty Agreement and any other contract or agreement entered into between the Petitioners (or any of them) on the one hand, and the Interim Lenders (or any of them), the Streamers or Diaquem on the other hand, shall not be compromised or arranged pursuant to the Plan (or these proceedings) or pursuant to any proposal (a "**Proposal**") to be filed pursuant to the BIA or any other proceedings to be initiated thereunder, and the Interim Lenders, the Streamers and Diaquem shall remain and be treated as unaffected creditors in these proceedings (including with respect to the stay of provisions ordered in this Order) or any proceedings under the BIA, and in any Plan or Proposal.
- [32] **ORDERS** that the Interim Lenders may:
- a) notwithstanding any other provision of this Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the Interim Lenders Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate; and
 - b) notwithstanding the terms of the paragraph to follow, refuse to make any advance to Petitioners if the Petitioners fail to meet the provisions of the Interim Financing Term Sheet and the Interim Financing Documents.
- [33] **ORDERS** that in the event of a default under the Interim Financing Term Sheet and/or the Interim Financing Documents, the Interim Lenders shall be entitled to exercise and enforce any and all of their rights under the Interim Financing Term Sheet, the Interim Financing Documents, the Interim Lenders Charge and/or at law, including by applying to the Court to appoint a receiver and/or an interim receiver to the assets of the Petitioners, without having to send any demands under Section 244 of the BIA.
- [34] **ORDERS** that, subject to further order of this Court, no order shall be made varying, rescinding, or otherwise affecting paragraphs [27] to [34] hereof unless either (a) notice of a motion for such order is served on the Interim Lenders by the moving party within seven (7) days after that party was served with this Order or (b) the Interim Lenders apply for or consents to such order.

N. Directors' and Officers' Indemnification and Charge

- [35] **ORDERS** that the Petitioners shall indemnify their Directors from all claims relating to any obligations or liabilities they may incur and which have accrued as of **September 9, 2019** by reason of or in relation to their respective capacities as directors or officers of the Petitioners after the Effective Time, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, wilful misconduct or gross or intentional fault as further detailed in Section 11.51 CCAA.
- [36] **ORDERS** that the Directors of the Petitioners shall be entitled to the benefit of and are hereby granted a charge and security in the Property, except the "*Stream Collateral*", as such terms are defined in the Amended and Restated PSA filed under seal as **Exhibit R-4** to the Petition (the "**Stream Collateral**"), to the extent of the aggregate amount of **\$5.2 million** (the "**Directors' Charge**"), as security for the indemnity provided in paragraph [35] of this Order as it relates to obligations and liabilities that the Directors may incur in such capacity after September 9, 2019. The Directors' Charge shall have the priority set out in paragraphs [54] and [55] of this Order.
- [37] **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 Directors 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 for which the Directors are entitled to be indemnified in accordance with paragraph [35] of this Order.

O. SISP Managers Charge

- [38] **ORDERS** that *TD Securities Inc.* (hereinafter "**TD**") and *Scotia Capital Inc.* (collectively "**SISP Managers**") shall be entitled to the benefit of and are hereby granted a charge and security in the Petitioners' Property, except the Stream Collateral, to the extent of the aggregate amount of **\$750,000** (the "**SISP Managers Charge**"), as security for the amounts they may be entitled to pursuant to the SISP Managers Agreements filed in support of the Petition as **Exhibit R-20**.
- [39] **ORDERS** that the SISP Managers Charge shall have the priority set out in paragraphs [54] and [55] of this Order.

P. Restructuring

- [40] **DECLARES** that, to facilitate the orderly restructuring of their business and financial affairs (the "**Restructuring**") but subject to such requirements as are

imposed by the CCAA, the Petitioners, subject to prior approval of the Monitor or further order of the Court, as the case may be, shall have the right to:

- a) permanently or temporarily cease, downsize or shut down any of their operations or locations as they deem appropriate and make provision for the consequences thereof in the Plan;
- b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject to further order of the Court and sections 11.3 and 36 CCAA, and under reserve of subparagraph (c);
- c) convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, with the prior written consent of the Interim Lenders and of the Monitor, and provided that Court approval is obtained;
- d) terminate the employment of such of their employees or temporarily or permanently lay off such of their employees as they deem appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Petitioner and such employee, or failing such agreement, make provision to deal with, any consequences thereof in the Plan, as the Petitioners may determine;
- e) subject to the provisions of section 32 CCAA, disclaim or resiliate, any of their agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the Petitioners, as applicable, and the relevant party, or failing such agreement, to make provision for the consequences thereof in the Plan; and
- f) subject to section 11.3 CCAA, assign any rights and obligations of Petitioners.

[41] **DECLARES** that, if a notice of disclaimer or resiliation is given to a landlord of any of the Petitioners pursuant to section 33 of the CCAA and subsection [40]e) of this Order, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours by giving such Petitioners and the Monitor 24 hours prior written notice and (b) at the effective time of the disclaimer or resiliation, the landlord shall be entitled to take possession of any such leased premises and re-lease any such leased premises to third parties on such terms as any such landlord may determine without waiver of, or prejudice to, any claims or rights of the landlord against the Petitioners, provided nothing

herein shall relieve such landlord of their obligation to mitigate any damages claimed in connection therewith.

- [42] **ORDERS** that the Petitioners, as applicable, shall provide to any relevant landlord notice of the intention of any of the Petitioners to remove any fittings, fixtures, installations or leasehold improvements at least seven (7) days in advance. If a Petitioner has already vacated the leased premises, it shall not be considered to be in occupation of such location pending the resolution of any dispute between such Petitioner and the landlord.
- [43] **DECLARES** that, in order to facilitate the Restructuring, the Petitioners may, subject to the approval of the Monitor, or further order of the Court, settle claims of customers and suppliers that are in dispute.
- [44] **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, the Petitioners are permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in their possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to their advisers (individually, a "**Third Party**"), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Petitioners or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of the Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioners.
- [45] **ORDERS** that pursuant to clause 3(c)(i) of the *Electronic Commerce Protection Regulations*, made under *An Act to Promote the Efficiency and Adaptability of the Canadian Economy by Regulating Certain Activities that Discourage Reliance on Electronic Means of Carrying Out Commercial Activities, and to Amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*, S.C. 2010, c. 23, the Petitioners and the Monitor are authorized and permitted to send, or cause or permit to be sent, commercial electronic messages to an electronic address of prospective purchasers or bidders and to their advisers but only to the extent desirable or

required to provide information with respect to any sales process in these CCAA proceedings.

Q. Powers of the Monitor & Administration Charge

[46] **ORDERS** that *Deloitte Restructuring Inc.* is hereby appointed to monitor the business and financial affairs of the Petitioners as an officer of this Court (the "**Monitor**") and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:

- a) shall, as soon as practicable, (i) publish once a week for two (2) consecutive weeks or as otherwise directed by the Court, in *La Presse+*, the *Globe & Mail National Edition* and (ii) within five (5) business days after the date of this Order (A) post on the Monitor's website (the "**Website**") a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against a Petitioner of more than \$1,000, advising them that this Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective 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;
- b) shall monitor the Petitioners' receipts and disbursements;
- c) shall assist the Petitioners, to the extent required by the Petitioners, in dealing with their creditors and other interested Persons during the Stay Period;
- d) shall assist the Petitioners with the preparation of their cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
- e) shall advise and assist the Petitioners with the review of the Petitioners' business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- f) shall assist the Petitioners, to the extent required by the Petitioners, with the Restructuring and in their negotiations with their creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan;
- g) shall report to the Court on the state of the business and financial affairs of the Petitioners or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time

as considered appropriate by the Monitor or as the Court may order and may file consolidated Reports for the Petitioners;

- h) shall report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Monitor's assessment of, and recommendations with respect to, the Plan;
- i) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of this Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- j) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under this Order or under the CCAA;
- k) may act as a "foreign representative" of any of the Petitioners or in any other similar capacity in any insolvency, bankruptcy or reorganisation proceedings outside of Canada;
- l) may give any consent or approval as may be contemplated by this Order or the CCAA;
- m) may hold and administer funds in connection with arrangements made among the Petitioners, any counter-parties and the Monitor, or by Order of this Court; and
- n) may perform such other duties as are required by this Order or the CCAA or by this Court from time to time.

[47] **ORDERS** that the Petitioners and their current and former shareholders, officers, Directors, agents and representatives shall fully cooperate with the Monitor in the exercise of its powers and discharge if its duties, rights and obligations as provided and set out in this Order.

[48] **ORDERS** that, without limiting the generality of anything herein, the Petitioners and their Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of this Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Petitioners in connection with the Monitor's duties and responsibilities hereunder.

[49] **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the Petitioners with information in response to requests made by

500-11-057094-191

them in writing addressed to the Monitor and copied to the Petitioners' counsel. In the case of information that the Monitor has been advised by the Petitioners is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Petitioners unless otherwise directed by this Court.

- [50] **DECLARES** that Section 215 of the BIA applies *mutatis mutandis* and that no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying out of the provisions of any order of this Court, except with prior leave of this Court, on at least seven (7) days' notice to the Monitor and its counsel.
- [51] **DECLARES** that the powers of the Monitor shall be exercised pursuant to its sole discretion and judgment.
- [52] **ORDERS** that the Petitioners shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the Petitioners' legal counsel, directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after this Order, and shall provide each with a reasonable retainer in an amount to be approved by the Interim Lenders in advance on account of such fees and disbursements, if so requested.
- [53] **DECLARES** that the Monitor, the Monitor's legal counsel, the Petitioners' legal counsel, the Monitor's and the Petitioners' respective advisers, as security for the professional fees and disbursements incurred both before and after the making of this Order and directly related to these proceedings, the Plan and the Restructuring, be entitled to the benefit of and are hereby granted a charge and security in the Property, except the Stream Collateral, to the extent of the aggregate amount of **\$500,000** (the "**Administration Charge**"), having the priority established by paragraphs [54] and [55] of this Order.

R. Priorities and General Provisions Relating to CCAA Charges

- [54] **DECLARES** that the priorities of the Administration Charge, the SISP Managers Charge and the Directors' Charge and the Interim Lenders Charge (collectively, the "**CCAA Charges**"), as between them with respect to any Property to which they apply, shall be as follows:
- a) first, the Administration Charge;
 - b) second, the Directors' Charge,
 - c) third, the SISP Managers Charge; and
 - d) fourth, the Interim Lenders Charge.

- [55] **DECLARES** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, options, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property, whether or not such Encumbrances have been registered as against the Property, save in respect to (a) the Stream Collateral, which shall only be charged by the Interim Lenders' Charge, in accordance with and with the priority set forth in this Order (namely as provided above in this paragraph), and (b) any monies in account # 63081-0461210 (the "**Cash Collateral Account**") held at The Bank of Nova Scotia's ("**BNS**") branch located at 1800 avenue McGill College, 12th Floor, Montreal, QC H3A 3K9 by or on behalf of Stornoway Diamonds (Canada) inc. ("**SDC**") which shall not be subject to the CCAA Charges and shall remain subject to the existing liens in favour of BNS in connection with SDC's obligations to BNS in connection with certain pre-filing Letters of Credit issued by BNS, and as well as overdrafts and related liabilities arising from cash-consolidation, electronic funds transfer arrangements, treasury, depository and cash management services or in connection with any automated clearing house transfers of funds in an aggregate amount not to exceed **\$2,000,000** (the "**BNS LC and Cash Management Obligations**").
- [56] **DECLARES** that notwithstanding any stay of proceedings imposed by this Order, BNS shall be entitled to seize and dispose of any collateral on deposit in the Cash Collateral Account and apply such proceeds to any and all outstanding BNS LC and Cash Management Obligations, provided that, notwithstanding anything herein, upon payment and satisfaction of the BNS LC and Cash Management Obligations in full and the return of any remaining collateral in the Cash Collateral Account to SDC, such collateral shall then form part of the Property charged by the CCAA Charges.
- [57] **ORDERS** that, except as otherwise expressly provided for herein, the Petitioners shall not grant any Encumbrances in or against any other Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless the Petitioners, as applicable, obtain the prior written consent of the Monitor and the prior approval of the Court.
- [58] **DECLARES** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Petitioners, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.
- [59] **DECLARES** that the CCAA Charges and the rights and remedies of the beneficiaries of the CCAA Charges, as applicable, shall be valid and enforceable and not otherwise be limited or impaired in any way by (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to

such applications or any assignments in bankruptcy made or deemed to be made in respect of any Petitioners; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease or other arrangement which binds the Petitioners (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:

- a) the creation of any of the CCAA Charges shall not create nor be deemed to constitute a breach by the Petitioners of any Third Party Agreement to which any of the Petitioners is a party; and
- b) the beneficiaries of the CCAA Charges shall not have any liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.

[60] **DECLARES** that notwithstanding: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any Petitioners, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by any Petitioners pursuant to this Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

[61] **DECLARES** that the CCAA Charges shall be valid and enforceable as against all Property of the Petitioners (except the Stream Collateral for the Administration Charge, the D&O Charge and the SISP Managers Charge) and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioners.

S. General

[62] **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, legal counsel or financial advisers of the Petitioners or of the Monitor in relation to the Business or Property of the Petitioners, without first obtaining leave of this Court, upon five (5) calendar days' written notice to the Petitioners' counsel, the Monitor's counsel, and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.


[63] **ORDERS** that, subject to further Order of this Court, all motions in these CCAA proceedings are to be brought on not less than five (5) calendar days' notice to all Persons on the service list. Each motion shall specify a date (the "**Initial Return Date**") and time (the "**Initial Return Time**") for the hearing.

- [64] **ORDERS** that any Person wishing to object to the relief sought on a motion in these CCAA proceedings must serve responding motion materials or a notice stating the objection to the motion and the grounds for such objection (a "**Notice of Objection**") in writing to the moving party, the Petitioners and the Monitor, with a copy to all Persons on the service list, no later than 5 p.m. Montreal Time on the date that is three (3) calendar days prior to the Initial Return Date (the "**Objection Deadline**").
- [65] **ORDERS** that, if no Notice of Objection is served by the Objection Deadline, the Judge having carriage of these proceedings (the "**Presiding Judge**") may determine: (a) whether a hearing is necessary; (b) whether such hearing will be in person, by telephone or by written submissions only; and (c) the parties from whom submissions are required (collectively, the "**Hearing Details**"). In the absence of any such determination, a hearing will be held in the ordinary course.
- [66] **ORDERS** that, if no Notice of Objection is served by the Objection Deadline, the Monitor shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The Monitor shall thereafter advise the service list of the Hearing Details and the Monitor shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the Monitor's next report in these proceedings.
- [67] **ORDERS** that, if a Notice of Objection is served by the Objection Deadline, the interested parties shall appear before the Presiding Judge on the Initial Return Date at the Initial Return Time, or such earlier or later time as may be directed by the Court, to, as the Court may direct: (a) proceed with the hearing on the Initial Return Date and at the Initial Return Time; or (b) establish a schedule for the delivery of materials and the hearing of the contested motion and such other matters, including interim relief, as the Court may direct.
- [68] **DECLARES** that this Order and any proceeding or affidavit leading to this Order, shall not, in and of themselves, constitute a default or failure to comply by the Petitioners under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
- [69] **DECLARES** that, except as otherwise specified herein, the Petitioners and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Petitioners and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if by ordinary mail.

- [70] **DECLARES** that the Petitioners and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Petitioners shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.
- [71] **DECLARES** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served a Notice of Appearance on the solicitors for the Petitioners and the Monitor and has filed such notice with this Court, or appears on the service list prepared by the Monitor, the Petitioners or their respective attorneys, save and except when an order is sought against a Person not previously involved in these proceedings.
- [72] **DECLARES** that the Petitioners or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other.
- [73] **DECLARES** that any interested Person may apply to this Court to vary or rescind this Order or seek other relief upon five (5) calendar days' notice to the Petitioners, the Monitor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order, such application or motion shall be filed by no later than fifteen (15) days from the date hereof, unless otherwise ordered by this Court.
- [74] **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [75] **AUTHORIZES** the Monitor or any of the Petitioners, and in the case of the Monitor, with the prior consent of the Petitioners, to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order and any subsequent orders of this Court and, without limitation to the foregoing, any orders under Chapter 15 of the U.S. Bankruptcy Code, including an order for recognition of these CCAA proceedings as "Foreign Main Proceedings" in the United States of America (the "**Chapter 15 Relief**"), and for which the Monitor or any of the Petitioners shall be the foreign representative of the Petitioners (in such capacity, the "**Foreign Representative**"). All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Monitor and the Petitioners as may be deemed necessary or appropriate for that purpose.

500-11-057094-191

- [76] **REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America and any court or administrative body elsewhere, to give effect to this Order and to assist the Petitioners, 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 Petitioners and the Monitor as may be necessary or desirable to give effect to this Order, including by recognizing the present CCAA proceedings as "Foreign Main Proceedings" for the purpose of the Chapter 15 Relief, to grant representative status to the Foreign Representative in any foreign proceeding, to assist the Petitioners and the Monitor, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order.
- [77] **DECLARES** that, for the purposes of the Chapter 15 Relief and/or any applications authorized by paragraphs [75] and [76], Petitioners' centre of main interest is located in the province of Québec, Canada.
- [78] **ORDERS** that Exhibits R-4, R-5, R-6, R-9, R-10, R-11, R-13, R-18, R-19, R-20, R-21, R-22, R-23, R-24 and R-25 be kept under seal until further order from this Court.
- [79] **ORDERS** the provisional execution of this Order notwithstanding any appeal.


The Honourable Louis J. Guoin, J.S.C.

COPIE CERTIFIÉE CONFORME AU
DOCUMENT DÉTENU PAR LA COUR


PERSONNE DÉSIGNÉE PAR LE GREFFIER
EN VERTU DE 67 C.P.C.