

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

**SUPERIOR COURT**

Commercial Division  
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended)

N°: 500-

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

**STORNOWAY DIAMOND CORPORATION**, a duly incorporated company having its domicile at 2500-1 Place Ville Marie, in the city and district of Montreal, province of Québec, H3B 1R1

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**STORNOWAY DIAMONDS (CANADA) INC.**, a duly incorporated company having its domicile at 2500-1 Place Ville Marie, in the city and district of Montreal, province of Québec, H3B 1R1

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**ASHTON MINING OF CANADA INC.**, a duly incorporated company having its elected domicile at 2500-1 Place Ville Marie, in the city and district of Montreal, province of Québec, H3B 1R1

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**FCDC SALES AND MARKETING INC.**, a duly incorporated company having its domicile at 2500-1 Place Ville Marie, in the city and district of Montreal, province of Québec, H3B 1R1

Petitioners

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**COMPUTERSHARE TRUST COMPANY OF CANADA**, a duly incorporated company having its principal place of business at 100 University Ave., 9<sup>th</sup> Floor, North Tower, in the city of Toronto, Province of Ontario, H5J 2Y1

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**DIAQUEM INC.**, a duly incorporated company having its elected domicile at 1500-600 de la Gauchetière Street West, in the city and district of Montréal, province of Québec, H3B 4L8

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**INVESTISSEMENT QUÉBEC**, a corporation duly constituted under the *Act respecting Investissement Québec and La Financière du Québec* (CQLR c I-16.0.1), having its head office at 600, de la Gauchetière West, Suite 1500, in the city and district of Montréal, province of Québec, H3B 4L8

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**FONDS DE SOLIDARITÉ DES TRAVAILLEURS DU QUÉBEC**, a duly incorporated company having its head office at 200-545 Crémazie East Blvd., in the city and district of Montréal, province of Québec, H2M 2W4

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**FONDS RÉGIONAL DE SOLIDARITÉ F.T.Q. NORD-DU-QUÉBEC, SOCIÉTÉ EN COMMANDITE**, acting through its general partner, **FONDS RÉGIONAUX DE SOLIDARITÉ FTQ**, a legal person existing under the *Business Corporations Act* (Québec) having its head office at 545 Crémazie Blvd. East, Suite 620, Montréal, Québec, H2M 2W4

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**CREE NATION OF MISTISSINI**, 187, Main street, Mistissini (Québec), G0W 1C0

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**GRAND COUNCIL OF THE CREES (EYYOU ISTCHEE)**, 2 Lakeshore Road, Nemaska (Québec), J0Y 3B0

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**CREE NATION GOVERNMENT**, 2 Lakeshore Road, Nemaska (Québec), J0M 1C0

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**CATERPILLAR FINANCIAL SERVICES LIMITED**, a duly incorporated company having its head office at 2-3457 Superior Court, in the city of Oakville, province of Ontario, L6L 04C

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**CHUBB LIFE INSURANCE COMPANY OF CANADA**, a duly incorporated company having its elected domicile at 2700-1250, René-Lévesque West Blvd., in the city and district of Montréal, province of Québec, H3B 4W8

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**THE BANK OF NOVA SCOTIA**, chartered bank having its elected domicile at 900-500, Grande Allée East, in the city and district of Québec, province of Québec, G1R 2J7

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**XEROX CANADA LTD.**, a duly incorporated company having its head office at 500-20 York Mills Road, in the city of Toronto, province of Ontario, M2P 2C2

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**ATLAS COPCO CANADA INC.**, a duly incorporated company having its elected domicile at 5060, Levy Street, in the city and district of Montréal, province of Québec, H4R 2P1

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**CWB NATIONAL LEASING INC.**, duly incorporated company having its head office at 3000-10303 Jasper Avenue, in the city of Edmonton, province of Alberta, T5J 3X6

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**OSISKO GOLD ROYALTIES LTD.**, duly incorporated company having a place of business at 300-1100, des Canadiens-de-Montréal Ave. in the city and district of Montréal, province of Québec H3B 2S2

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**CDPQ RESSOURCES INC.**, a duly incorporated company having its registered office at 1000 Place Jean-Paul-Riopelle, Bloc A-12th Floor, in the city and district of Montreal, province of Québec, H2Z 2B3

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**1078243 CANADA LIMITED**, a duly incorporated company having its head office at 161 Bay Street, Suite 4535, in the city of Toronto, province of Ontario, M5J 2S1

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**ALBION EXPLORATION FUND LLC**, a duly incorporated company having a place of business at c/o Albion River LLC, 10122 River Road, Suite 205, in Potomac, in the State of Maryland, United States of America, 20854

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**WASHINGTON STATE INVESTMENT BOARD**, a duly incorporated company having a place of business at 100 Evergreen Park Drive S.W., Suite 100, Olympia, State of Washington, United States of America, 98502

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**TSX INC.**, a duly incorporated company having its head office at 300-100 Adeleine Street West, in the city of Toronto, province of Ontario, M5H 1S3

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**ATTORNEY GENERAL OF CANADA**, representing **CANADA REVENUE AGENCY**, having an establishment at Complexe Guy-Favreau, East Tower, 9<sup>th</sup> Floor – 200 René-Lévesque West Blvd., in the city and district of Montréal, province of Québec, H2Z 1X4

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**QUEBEC REVENUE AGENCY**, having an establishment at 3, Complexe Desjardins, 22nd Floor, in the city and district of Montréal, province of Québec, H5B 1A7

Mises-en-cause

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**DELOITTE RESTRUCTURING INC.**, a duly incorporated company having a place of business at 500-1190 des Canadiens-de-Montréal, in the city and district of Montreal, province of Québec, H3B 0M7

Proposed Monitor

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**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)**

*(Companies' Creditors Arrangement Act, R.S.C. (1985), ch. C-36, Sections 4, 5, 9, 10, 11, 11.02, 11.03, 11.2, 11.51, 11.52 and 11.7(hereinafter the "CCAA"))*

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION FOR THE DISTRICT OF MONTRÉAL, THE PETITIONERS RESPECTFULLY SUBMIT:**

**1. INTRODUCTION**

1. The Petitioners *Stornoway Diamond Corporation* (hereinafter "**SWY**"), *Stornoway Diamonds (Canada) Inc.* (hereinafter "**SDCI**"), *Ashton Mining of Canada Inc.* (hereinafter "**Ashton**") and *FCDC Sales and Marketing Inc.* (hereinafter "**FCDC**", and collectively with SWY, SDCI and Ashton, the "**CCAA Parties**" or the "**Petitioners**") are related companies for which protection is hereby sought under the CCAA;
2. SWY is a corporation with active mining operations continued under the *Canada Business Corporations Act*, RSC 1985, ch. C-44 (hereinafter the "**CBCA**") listed on the Toronto Stock Exchange ("**TSX**") whose domicile is located in Montreal, Québec. SWY's principal focus is its fully-owned Renard diamond mine located in north-central Québec (hereinafter the "**Renard Mine**");
3. SDCI, Ashton and FCDC are subsidiaries of SWY. Their respective domicile and/or elected domicile is located in Montreal, Québec;
4. SDCI owns **100%** of the Renard Mine, the Petitioners' main and sole operating asset, as stated in greater details below. The Renard Mine is the first diamond mine in Québec, and one of only four in Canada;
5. The CCAA Parties are experiencing serious liquidity issues and no longer have the ability to meet their liabilities as they become due and are insolvent;
6. Following a thorough review of their alternatives and the conduct of a SISP (as defined hereinafter) that did not lead to the materialization of a third party transaction (as described in greater details hereinafter), the CCAA Parties hereby seek creditor protection under the CCAA in order to, *inter alia*, effect a comprehensive restructuring in respect of their business and assets through the implementation of the Participating Streamers/Diaquem Contemplated Transaction (as defined hereinafter), that will ensure that the Renard Mine will continue operating in the normal course of business, for the greater benefit of their stakeholders;
7. It is currently expected that, if the Participating Streamers/Diaquem Contemplated Transaction (as defined hereinafter) is approved by this Court and successfully implemented, all mine-level trade obligations will remain unaffected and ultimately paid in the normal course and all employment will be preserved;

8. The CCAA Parties have also secured a **\$20 million** working capital financing facility (which can be increased to **\$50 million** subject to the lenders consent) from the group of secured creditors sponsoring the Participating Streamers/Diaquem Contemplated Transaction. This financing will initially be used as interim financing and if and when the Participating Streamers/Diaquem Contemplated Transaction is implemented, will be converted into an exit financing facility;
9. As of the date of the present Motion, the Petitioners employ an aggregate of approximately **540** employees;
10. The CCAA Parties hereby seek the issuance of a CCAA initial order substantially in the form and substance of the draft Initial Order communicated herewith as **EXHIBIT R-1** (hereinafter the **“Draft Initial Order”**), providing for, *inter alia*, the following relief:
  - a) Application of the CCAA:
    - i) A declaration that the Petitioners are *“debtor companies”* to whom the CCAA applies;
    - ii) A stay of proceedings in favour of the Petitioners and their respective directors and officers and other general CCAA relief pursuant to, *inter alia*, sections 11, 11.02 and 11.03 thereof for an initial period of thirty (30) days, i.e. until **October 9, 2019** (hereinafter the **“Initial Period”**); and
    - iii) The authorization for the Petitioners to continue to conduct their business activities and operations in order to preserve their assets and to make payments related to the conduct of their business activities and operations, in accordance with the Projections (as this term is defined hereinafter);
  - b) Proposed Monitor: The appointment of the proposed monitor, *Deloitte Restructuring Inc.*, as Monitor pursuant to section 11.7 of the CCAA (hereinafter the **“Proposed Monitor”**);
  - c) CCAA Charges:
    - i) The granting of an Administration Charge (as defined hereinafter) to secure the Petitioners’ obligations towards its legal advisors (*Norton Rose Fulbright Canada LLP*), the Proposed Monitor (*Deloitte Restructuring Inc.*) and the Proposed Monitor’s legal advisors (*Osler Hoskin & Harcourt LLP*);
    - ii) The granting of a D&O Charge (as defined hereinafter) to secure the Petitioners’ obligations towards its directors and officers in respect of potential liabilities that could arise after the Initial Order has been issued, but only to the extent that such potential liability is not covered by existing insurance policies; and
    - iii) The granting of a SISF Managers Charge (as defined hereinafter) to secure the payment of the SISF Managers Fees (as defined hereinafter);

- d) Interim/DIP Financing: The authorization to enter into the Interim Facility (as defined hereinafter) and the granting to the Interim Lenders (as defined hereinafter) of an Interim Lenders' Charge (as defined hereinafter) to secure the repayment of the Interim Facility (as defined hereinafter); and
- e) Orders regarding Continuous Disclosure, Reporting and Related Obligations: The issuance of orders suspending any and all continuous disclosure, reporting and filing obligations of, and audit committee requirements applicable to, SWY as a result of its status as a reporting issuer of each of the provinces in Canada subject to Canadian securities laws, rules, regulations and policy statements, and the requirements of the TSX.

A version comparing the model CCAA Initial Order developed by the Liaison Committee of the Commercial Division of the Superior Court of Québec with the Draft Initial Order is communicated herewith as **EXHIBIT R-2**;

- 11. As is more fully described herein:
  - a) The CCAA Parties are faced with a liquidity crisis and are insolvent; and
  - b) The aggregate amount of their outstanding indebtedness is far greater than the CCAA **\$5 million** threshold;
- 12. A SISP (as defined hereinafter) was implemented and conducted by the CCAA Parties with the support of their principal secured creditors, i.e. the Streamers (as defined hereinafter) and Diaquem (as defined hereinafter);
- 13. In the context of the SISP (as defined hereinafter), a single third party bidder (hereinafter "**Bidder 1**") submitted Bid 1 (as defined hereinafter), whereas the Streamers (as defined hereinafter) and Diaquem (as defined hereinafter) submitted the Participating Streamers/Diaquem LOI (as defined hereinafter), as further detailed below;
- 14. After careful consideration of the terms and conditions of Bid 1 and the Streamers/Diaquem Contemplated LOI (as defined hereinafter), the CCAA Parties, in consultation with their principal secured creditors (as required under the terms of the SISP) and their advisors, concluded that the Participating Streamers/Diaquem Contemplated Transaction (as defined hereinafter) offers the highest level of certainty in respect of deal completion and the best possible outcome for their stakeholders under the circumstances, allowing the CCAA Parties' business to continue operating on a going concern basis and preserving approximately **540** jobs;
- 15. The requested relief is necessary so as to allow, *inter alia*:
  - a) The CCAA Parties to maintain their operations on a going concern basis;
  - b) The CCAA Parties, the Streamers (as defined hereinafter) and Diaquem (as defined hereinafter) to complete and implement the transactions contemplated pursuant to the Participating Streamers/Diaquem Contemplated Transaction (as defined hereinafter);

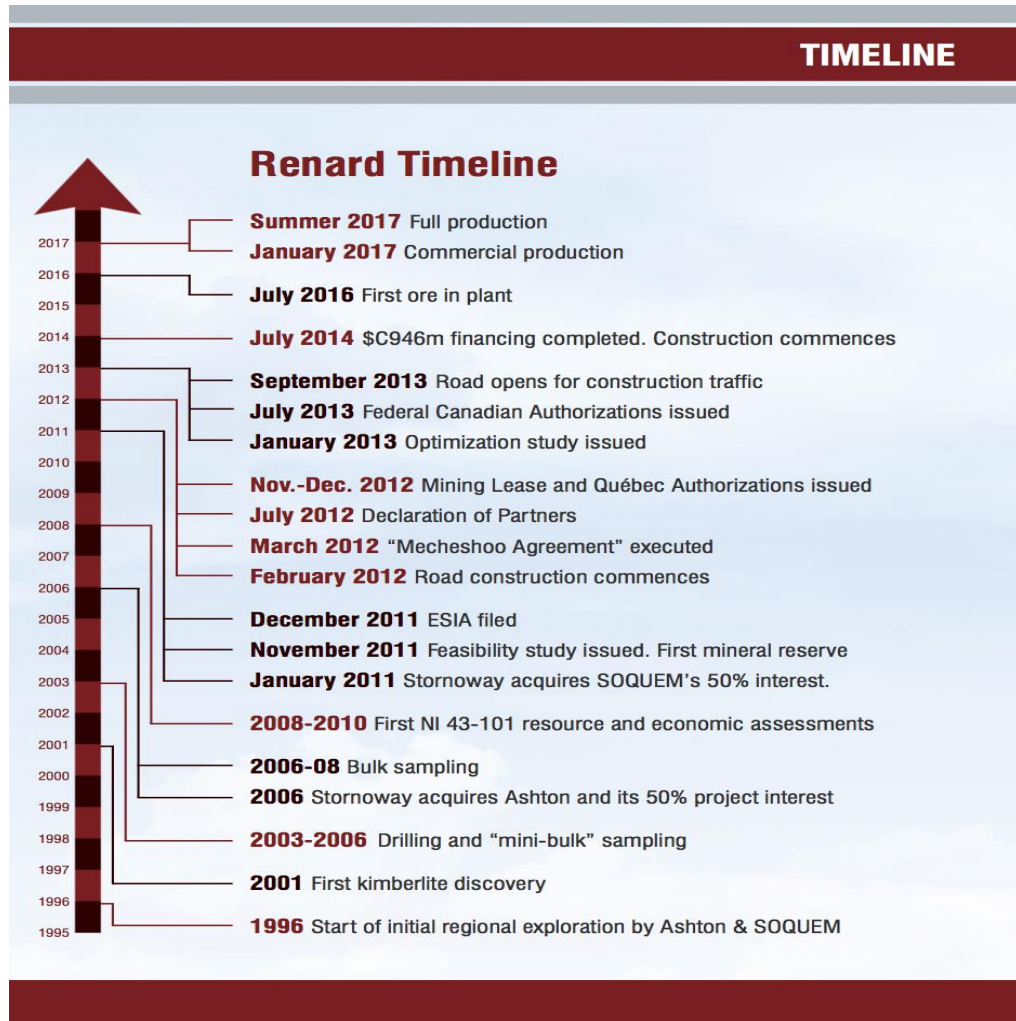
- c) The financing required by the CCAA Parties until the completion of the Participating Streamers/Diaquem Contemplated Transaction (as defined hereinafter) to be secured through the Interim Facility (as defined hereinafter);
  - d) The continued employment and retention of the highly qualified and in-demand workforce of the CCAA Parties;
  - e) The crucial assistance of the CCAA Parties' directors and officers to effectuate an efficient transition as a result of the Participating Streamers/Diaquem Contemplated Transaction (as defined hereinafter), to be secured through the D&O Charge; and
  - f) The ability of the CCAA Parties to count on the crucial assistance of their advisors to assist in the implementation of the Participating Streamers/Diaquem Contemplated Transaction (as defined hereinafter) to be secured through the Administration Charge;
16. The CCAA Parties believe that an orderly process under the CCAA will be beneficial to all stakeholders, facilitating *inter alia* the completion and the implementation of the Participating Streamers/Diaquem Contemplated Transaction (as defined hereinafter);
17. The consolidation of proceedings in respect of the Petitioners is for administrative purposes only and shall not effect a consolidation of the assets and property of the CCAA Parties, including for the purposes of any plan or plans of arrangement that may be hereafter proposed. Unless provided in the order sought herein, the CCAA Parties will continue to maintain their separate property and assets;

**2. BACKGROUND & DESCRIPTION OF THE CCAA PARTIES' BUSINESS**

18. The CCAA Parties are a group of companies whose focus is the operation of their fully-owned Renard Mine, Québec's first diamond mine, located approximately 250 km north of the Cree community of Mistissini and 350 km north of Chibougamau in the James Bay region of north-central Québec, approximately 800 km north of Montréal;
19. The Renard Mine is a flagship component of what is commonly referred to as Québec's "*Plan Nord*", an initiative of the government whose objective is to enable the development of the northern part of the province and its local communities, including indigenous, rich resources area, for the benefit of its populations and of the whole of Québec, through an exemplary form of sustainable development based on a comprehensive, integrated, consistent and responsible approach, the whole by 2035;
20. The Renard Mine is one of only four diamond mines in Canada, employing approximately **540** people;
21. The Renard Mine combines open-pit and underground mine operations and, to date, nine kimberlite pipes have been identified over a 2 km<sup>2</sup> area in the Renard Cluster of which three are in production;



22. The following timeline indicates the major historical milestones of the Renard Mine project:



23. Mine construction at the Renard Mine commenced on July 10, 2014, following the successful completion of a comprehensive **\$946 million** financing package designed to fully fund the project to completion, i.e. the Financing Transactions (as further detailed below);
24. The Renard Mine financing was the largest single project financing transaction for a publicly listed diamond company in Canada, and included equity, senior and convertible debt, equipment financing and the world's first ever diamond stream financing, as further detailed below;
25. First ore processing was achieved on July 15, 2016, and commercial production was formally achieved and declared on January 1, 2017;

26. The Renard Mine benefits from a strong social acceptance, as evidenced *inter alia* from the following agreements entered into before the Financing Transactions were implemented:

- a) Mecheshoo Agreement: The March 2012 Mecheshoo Agreement with the Cree Nation of Mistissini, the Grand Council of the Crees (Eeyou Istchee), the Cree Regional Authority (now, the Cree Nation Government) (hereinafter the "**Mecheshoo Agreement**").

The Mecheshoo Agreement was entered into with a view to providing training, employment and business opportunities for Crees during project construction, operation and closure, as well as setting out social, cultural and environmental principles under which the mine ought to be managed and respected.

The Mecheshoo Agreement also includes a mechanism by which the Cree parties financially benefit from the success of the Renard Mine on a long-term basis, consistent with the mining industry's best practices for engagement with First Nations communities; and

- b) Partnership Agreement: The July 2012 Partnership Agreement with the communities of Chibougamau and Chapais (hereinafter the "**Partnership Agreement**").

The Partnership Agreement was entered into with the host communities of Chapais and Chibougamau, historically important regional centres in civil and mining services.

The Partnership Agreement provides a framework to address the issues and initiatives of common interest such as communications, employment, economic diversification and attracting newcomers to the region.

Pursuant to the Partnership Agreement, the Renard Liaison Committee was created with a view to allow parties to foster cooperation and communication between the parties, to oversee, maintain and strengthen relationships throughout the life of the Renard Diamond Project;

27. Year round access to the Renard Mine was made possible by the extension of Route 167, which became accessible in September 2013, allowing the Petitioners to access the Renard Mine with significantly reduced costs and operating risk;

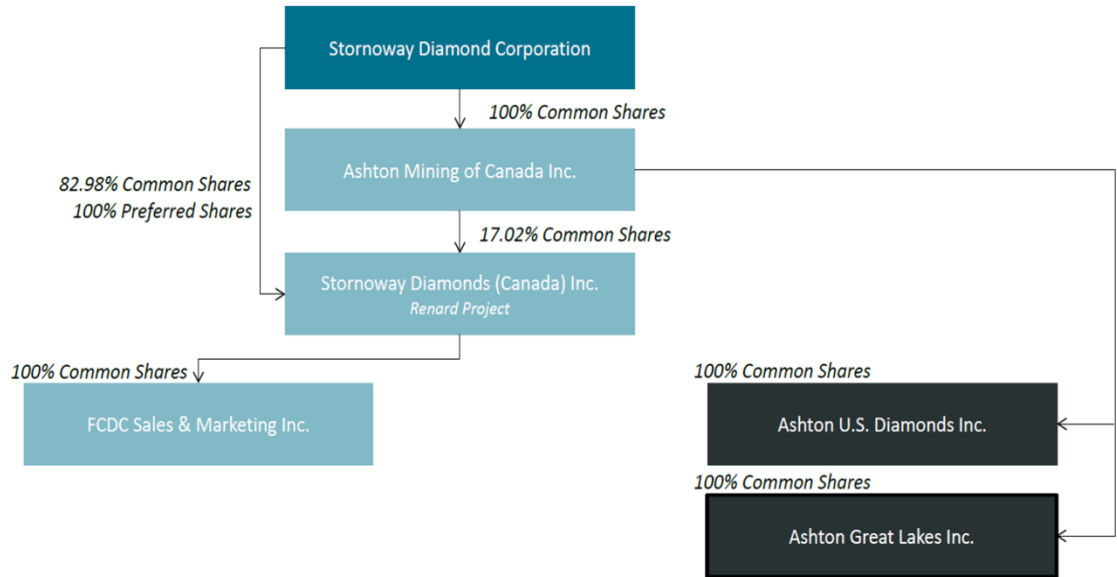
28. The Petitioners are required to maintain a financial guarantee in favour of the Québec Government in the amount of **\$15.2 million** to deal with the costs associated with the ultimate closure of the Renard Mine and the related reclamation obligations. In this regard, the CCAA Parties benefit from a surety bond with *Chubb insurance Company* in favour of the *Ministère du Développement durable, de l'Environnement, de la Faune et des Parcs* (hereinafter the "**MDDEF**"), as appears from a copy of the bond communicated herewith as **EXHIBIT R-3**;

29. In addition to the Renard Mine, and the surrounding land package, the CCAA Parties also have a portfolio of historical exploration properties, many of which host previously

discovered kimberlite bodies, all of which are considered to have no economic value under current market conditions;

### 3. THE CCAA PARTIES' CORPORATE STRUCTURE

30. The corporate structure of the CCAA Parties is as follows:



31. The Petitioners are operated on a consolidated basis by SWY. Management of the Petitioners is centralized in SWY and certain executive officers of SWY are the directors and officers of Ashton, SDCI and FCDC;

32. In light of the above, the procedural consolidation of these CCAA Proceedings for administrative purposes in respect of the CCAA Parties is appropriate and necessary;

#### 3.1 SWY

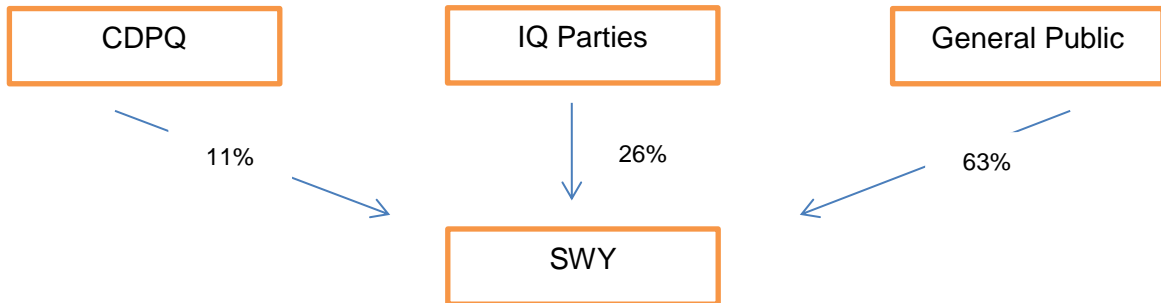
33. SWY is a Canadian corporation continued under the CBCA and listed on the TSX (TSX – SWY). SWY is a holding company and has no significant operations of its own. Instead, it conducts business through its subsidiaries: Ashton, SDCI and FCDC;

34. Since April 1, 2011, SWY has held a **100%** interest in the Renard Mine through its wholly-owned subsidiary, SDCI;

35. On July 8, 2014, Stornoway completed the Financing Transactions (as defined hereinafter), which were intended to provide a comprehensive funding package for the construction and development of the Renard Mine;

36. As a result of the Financing Transactions (as defined hereinafter), *Investissement Québec* (hereinafter "**IQ**"), the Québec government's main industrial and financial holding company, through certain of its subsidiaries (collectively, hereinafter the "**IQ Parties**"), maintained a significant shareholding in SWY;

37. On the same date, SWY entered into an *Amended and Restated Investor Agreement* (hereinafter the “**Amended and Restated Investor Agreement**”) with Orion, the IQ Parties and *Caisse de dépôt et placement du Québec* (hereinafter “**CDPQ**”);
38. As at August 31, 2019, SWY’s equity structure is summarized as follows:



### 3.2 SDCI

39. SDCI is a Canadian corporation incorporated pursuant to the CBCA. 82.98% of the voting common shares of SDCI are held directly by SWY, which also holds 100% of SDCI’s non-voting preferred shares, and 17.02% of the voting common shares are held through Ashton;
40. SDCI owns and operates the Renard Mine;
41. In April 2011, *Diaquem Inc.* (“**Diaquem**”) obtained a direct royalty interest of **2%** on future diamond production at the Renard Mine (hereinafter the “**Diaquem Royalty**”);
42. SDCI is the sole owner of the mining lease issued by the *Québec Ministère des Ressources naturelles* in October 2012 (hereinafter the “**Mining Lease**”) and the mineral titles on diamonds to be extracted from the Renard Mine (hereinafter the “**Mineral Titles**”), including any Subject Diamond (as defined hereinafter) to be extracted from the Renard Mine in accordance with the Streaming Agreements (as defined hereinafter);
43. In 2012, SDCI was granted a Québec Certificate of Authorization issued by the *Ministère du Développement durable, de l’Environnement, de la Faune et des Parcs* (hereinafter the “**MDDEF**”) in respect of the Renard Mine;

### 3.3 FCDC & THE STREAMING AGREEMENTS

44. FCDC is a wholly-owned subsidiary of SDCI and is incorporated pursuant to the CBCA;
45. On July 8, 2014, the CCAA Parties entered into the *Purchase and Sale Agreement* with Orion Co-Investments I (Stream) LLC, as purchaser, and Computershare Trust Company of Canada (hereinafter “**Computershare**”) acting as stream agent, which Purchase and Sale Agreement was subsequently assigned by *Orion Co-Investments I (Stream) LLC* and subsequent purchasers to *Osisko Gold Royalties Ltd.*, CDPQ Ressources Inc. (as successor in interest to CDPQ), 1078243 Canada Limited (as

successor in interest to *Triple Flag Mining Finance Bermuda Ltd.*), *Albion Exploration Fund LLC* and *Washington State Investment Board* (hereinafter collectively the “**Streamers**”), and the Purchase and Sale Agreement was amended on March 30, 2015 and further amended and restated on October 2, 2018 and further amended on March 29, 2019 among the CCAA Parties, the Streamers and Computershare (as amended and restated, the “**Amended and Restated PSA**”), a copy of the Amended and Restated PSA is communicated herewith under seal as **EXHIBIT R-4**;

46. In connection with the Amended and Restated PSA, the SWY Parties entered into (i) the *Co-Ownership Agreement*, dated July 8, 2014, a copy of which is communicated herewith under seal as **EXHIBIT R-5** (hereinafter the “**COA**”) and (ii) the *Marketing and Sales Agreement* dated July 8, 2014 is communicated herewith under seal as **EXHIBIT R-6** (hereinafter the “**MSA**”) (collectively, the “**Streaming Agreements**”);
47. The Streaming Agreements purport to deal with the interaction between the Streamers, the Petitioners and their respective rights and interest in respect to the Subject Diamonds and Subject Diamonds Interests, as further described herein;

### **3.4** ASHTON

48. Ashton is a corporation incorporated pursuant to the laws of Ontario. As discussed previously, SWY acquired its initial **50%** interest in the Renard Mine through its acquisition of Ashton in January 2007;
49. Ashton is also the parent company of two U.S. corporations, namely Ashton U.S. Diamonds Inc., incorporated in Delaware, and Ashton Great Lakes Inc., incorporated in Michigan, which are not in operation;

## **4.** EMPLOYEES

### **4.1** EMPLOYEE HEAD COUNT

50. As mentioned above, the CCAA Parties have an aggregate of approximately **540** non-unionized employees, the vast majority of which are employed by SDCI;
51. The CCAA Parties firmly believe that a substantial portion of the value of their business lies in part in their specialized and dedicated workforce;
52. The CCAA Parties are not contemplating significant changes in the employee headcount during these proceedings;
53. No significant changes in the employee headcount are contemplated following the completion of the Participating Streamers/Diaquem Contemplated Transaction (as defined hereinafter);
54. In fact, after consulting with Streamers and Diaquem, in conjunction with the Bridge Financing (as defined hereinafter), the CCAA Parties have implemented a retention program for certain key employees with a view of securing their essential contribution during the SISP (as defined hereinafter) until completion of any transaction that may result therefrom (hereinafter the “**KERP**”);

55. Pursuant to the KERP a monthly incentive was segregated in a trust account held for the sole benefit of the key employees, payable upon the earlier of (i) September 30, 2019, or (ii) the completion of a restructuring transaction, pursuant to a Trust Agreement (hereinafter the "**KERP Trust Agreement**");
56. As of the date of the present Motion, and in accordance with the KERP Trust Agreement, an amount of approximately **\$300,000** was segregated in a trust account in respect to the monthly incentive, for the sole benefit of the key employees;
57. As provided for in the Projections, and in accordance with the KERP Trust Agreement, a final instalment of **\$100,000** is scheduled to be segregated during the Initial Period;
58. The amounts owed to the key employees pursuant to the KERP will be remitted to the key employees on October 1, 2019;

#### **4.2 EMPLOYEE ENTITLEMENTS**

59. As of the date hereof, the CCAA Parties are current in their payroll obligations, including accrued and unpaid wages. In addition, there are no pension plans in place;
60. As appears from the cash flow projections communicated herewith as **EXHIBIT R-7** (hereinafter the "**Projections**"), employees retained by the CCAA Parties for services to be rendered after the issuance of the initial order shall be paid in the normal course of business;
61. As appears from the Participating Streamers/Diaquem Contemplated Transaction (as defined hereinafter), Streamers and Diaquem shall assume employee entitlements after completion of the transactions contemplated pursuant thereto;

#### **5. INDEBTEDNESS**

##### **5.1 OVERVIEW**

62. As described in greater detail below, as of August 31, 2019, excluding contingent liabilities, the CCAA Parties have estimated outstanding liabilities, on a consolidated basis, of approximately **\$715 million**;

##### **5.2 THE FINANCING TRANSACTIONS**

63. Between 2012 and 2014, the Petitioners entered into definitive agreements which were intended to provide a comprehensive funding package for the construction and development of the Renard Mine;
64. In total, gross proceeds of approximately **\$946 million** were funded, or committed to funding, through a combination of senior and subordinated debt facilities, equity issuance, the Streaming Agreements, and an equipment finance facility, evidenced, *inter alia*, through the following agreements (collectively hereinafter the "**Financing Transactions**"):
  - a) SWY Financing Agreements:

- i) **Unsecured Debentures:** An Indenture entered into between SWY and Computershare, acting as trustee on behalf of unsecured debenture holders, on July 8, 2014, as amended, provided SWY with an amount of approximately **US\$82 million** (hereinafter the **“Indenture”**). A copy of the Indenture is communicated herewith as **EXHIBIT R-8**;
  - ii) **Unsecured FTQ/Diaquem Loan:** A Loan Agreement entered into between SWY and *Fonds de Solidarité des Travailleurs du Québec (F.T.Q.), Fonds Régional de Solidarité F.T.Q. Nord-Du-Québec S.E.C.* (together hereinafter the **“FTQ Parties”**) and Diaquem on May 3, 2012, as amended, provided SWY with an amount of **\$20 million** (hereinafter the **“Unsecured FTQ/Diaquem Loan”**). A copy of the Unsecured FTQ/Diaquem Loan is communicated herewith under seal as **EXHIBIT R-9**;
- b) SDCI/FCDC Financing Agreements:
- i) **Secured Streaming Agreements:** The Streaming Agreements provided the CCAA Parties with access to the Deposit upon the fulfilment of certain specified conditions and milestones, all of which were achieved, i.e. approximately **US\$285 million**. More particularly:
    - 1) Pursuant to the Amended and Restated PSA, (i) SDCI and FCDC agreed to sell to the Streamers a 20% undivided interest in all diamonds to be generated from the Renard Mine during its lifespan (hereinafter the **“Subject Diamonds Interest”**); and (ii) Streamers agreed to pay a purchase price to FCDC, comprised of up-front payments totaling approximately US\$285 million, representing a prepayment of a portion of the purchase price payable for Subject Diamonds Interest produced by the Renard Mine (hereinafter the **“Deposit”**) and sale proceeds equal to the lesser of (a) 40% of the achieved sales price or (b) US\$40 per carat for any given sale of Subject Diamonds Interest, with the balance of purchase price payable by the Streamers, if any, being paid by way of offset against the up-front Deposit.

The Amended and Restated PSA also provides, inter alia, that upon the occurrence of various specific events of defaults, a “Settlement Amount” (as defined under the Amended and Restated PSA), shall become immediately due and payable to the Streamers in the circumstances set out in the Amended and Restated PSA;
    - 2) Pursuant to the COA, when the Subject Diamonds Interests are exported outside Canada (the **“Time of Sale”**) to the Approved Commissionaire (as defined hereinafter), the Streamers and FCDC become un-divided co-owners of same, in a proportion of **20%** for Streamers and **80%** for FCDC (hereinafter the **“Subject Diamond Co-Ownership Ratio”**);

- 3) Pursuant to the MSA, *Bonas-Couzyn (Antwerp) N.V.* (hereinafter "**Bonas**" or the "**Approved Commissionaire**"), is appointed as exclusive Approved Commissionaire to sell all of the Subject Diamonds Interests produced by the Renard Mine through a tender process in Antwerp (Belgium) and upon receipt of the sale proceeds of any given sale of Subject Diamonds Interests, Bonas must remit the net proceeds to each of FCDC and the Streamers, in accordance with the formula detailed in both the MSA and the COA, directly to their respective bank accounts (hereinafter the "**Stream Net Proceeds Payment**");
- ii) **Secured Diaquem Senior Credit Agreements:** A Credit Agreement entered into between Diaquem and SDCI on July 8, 2014, as amended through a First Amending Agreement dated October 2, 2018, a Second Amending Agreement dated March 29, 2019 and a Consent and Amendment dated June 10, 2019 (hereinafter collectively the "**Senior Credit Agreement**"), provided the CCAA Parties with an amount of approximately **\$120 million**. A copy of the Senior Credit Agreement is communicated herewith under seal as **EXHIBIT R-10**;
- iii) **Secured Caterpillar Agreement:** A Master Lease Agreement entered into between *Caterpillar Financial Services Limited* (hereinafter "**Caterpillar**") and SDCI on July 25, 2014, as amended from time to time (hereinafter the "**Caterpillar Agreements**"), provided SDCI with an amount of **US\$75 million** to finance the acquisition of the mining equipment to be used on site at the Renard Mine. A copy of the Caterpillar Agreements, as amended, is communicated herewith under seal as **EXHIBIT R-11**;
- iv) **Unsecured Road Loan:** A Loan Agreement entered into between the *Québec Minister of Finance and Economy* and SDCI on December 6, 2012, as amended from time to time, provided SDCI with an amount of **\$77 million** for the construction of the extension of Road 167 to grant year round access to the Renard Mine (hereinafter the "**Road Loan**"). A copy of the Road Loan is communicated herewith as **EXHIBIT R-12**;

### **5.3**            **THE BRIDGE FINANCING**

65. On June 10, 2019, the Petitioners entered into a Bridge Financing Agreement (hereinafter the "**Bridge Financing**") with, *inter alia*, the Streamers and Diaquem pursuant to which a secured credit facility of up to approximately **\$21.5 million** was made available to the Petitioners to allow it to continue to operate and conduct the SISP (as defined hereinafter), as appears from a copy of the Bridge Financing, as amended on August 13, 2019 and September 8, 2019, communicated herewith under seal as **EXHIBIT R-13**;
66. The Bridge Financing is secured by first ranking hypothecs over the universality of the CCAA Parties' assets;



67. The purpose of the Bridge Financing was to provide short term financing in order to address the Petitioners' immediate/short term liquidity needs and allow the Petitioners to conduct the SISP (as defined hereinafter);

**5.4 FISCAL LIABILITIES**

68. As of the date hereof, the CCAA Parties are current in their source deductions and other GST/QST obligations;

69. As appears from the Projections, source deductions and other GST/QST obligations in connection with services rendered/products supplied after the issuance of the initial order shall be paid in the normal course of business;

**5.5 SECURED LIABILITIES**

70. The outstanding secured liabilities of the CCAA Parties as of today totals approximately **\$600 million** which can be summarized as follows (creditors identified in the following chart are hereinafter collectively defined as "**Secured Lenders**") :

<u>Creditor</u>	<u>Debtor(s) / Grantor(s)</u>	<u>Agreement</u>	<u>Amount of Security</u>	<u>Description of Collateral (Summary)</u>
<b>Computershare (acting either as:</b> <ul style="list-style-type: none"> <li>• security trustee and/or as <i>fondé de pouvoir</i> under Article 2692 of the <i>Civil Code of Québec</i> of <b>Streamers</b>; <u>or</u></li> <li>• security trustee and/or as <i>fondé de pouvoir</i> under Article 2692 of the <i>Civil Code of Québec</i> of <b>Diaquem</b>)</li> </ul>	SWY	Deeds executed before Lisa Erin Susser, Notary, on July 4, 2014  <b>14-0614276-0004</b> , July 8, 2014; <b>14-0614276-0005</b> , July 8, 2014	<b>\$700,000,000</b> with interest at the rate of 20% per annum (Computershare acting as security trustee and/or as <i>fondé de pouvoir</i> under Article 2692 of the <i>Civil Code of Québec</i> of Streamers)  <b>\$600,000,000</b> with interest at the rate of 20% per annum (Computershare acting as security trustee and/or as <i>fondé de pouvoir</i> under Article 2692 of the <i>Civil Code of Québec</i> of Diaquem)	All the Grantor's right, title and interest in and to (i) all the Securities it owns in the Material Subsidiaries, and (ii) all present and future claims and accounts arising under Affiliated Company Subordinated Debt, all hypothecary or other rights related thereto and all contracts, instruments, agreements, and books and records evidencing same, and all replacements, substitutions and, increases, additions and accessions thereto and all proceeds therefrom.  The \$600,000,0000 security also includes (iii) the Advanced Stage Projects and all replacements, substitutions and, increases, additions and accessions thereto and all proceeds therefrom.
	SDCI	Deeds executed before Lisa Erin Susser, Notary, on July 3, 2014  <b>14-0614276-0001</b> , July 8, 2014; <b>14-0614276-0007</b> , July 8, 2014	<b>\$700,000,000</b> with interest at the rate of 20% per annum (Computershare acting as security trustee and/or as <i>fondé de pouvoir</i> under Article 2692 of the <i>Civil Code of Québec</i> of Streamers),  <b>\$600,000,000</b> with interest at the rate of 20% per annum (Computershare	The universality of all of its property, movable and immovable, personal and real, corporeal and incorporeal, tangible and intangible, present and future, of whatever nature and wherever situated.

<u>Creditor</u>	<u>Debtor(s) / Grantor(s)</u>	<u>Agreement</u>	<u>Amount of Security</u>	<u>Description of Collateral (Summary)</u>
			acting as security trustee and/or as <i>fondé de pouvoir</i> under Article 2692 of the <i>Civil Code of Québec</i> of Diaquem)	
	Ashton	Deeds executed before Lisa Erin Susser, Notary, on July 4, 2014  <b>14-0614276-0003</b> , July 8, 2014; <b>14-0614276-0006</b> , July 8, 2014	<b>\$700,000,000</b> with interest at the rate of 20% per annum (Computershare acting as security trustee and/or as <i>fondé de pouvoir</i> under Article 2692 of the <i>Civil Code of Québec</i> of Streamers)  <b>\$600,000,000</b> with interest at the rate of 20% per annum (Computershare acting as security trustee and/or as <i>fondé de pouvoir</i> under Article 2692 of the <i>Civil Code of Québec</i> of Diaquem)	All the Grantor's right, title and interest in and to (i) all the Securities it owns in the Material Subsidiaries, and (ii) all present and future claims and accounts arising under Affiliated Company Subordinated Debt, all hypothecary or other rights related thereto and all contracts, instruments, agreements, and books and records evidencing same, and all replacements, substitutions and, increases, additions and accessions thereto and all proceeds therefrom.
	FCDC	Deeds executed before Lisa Erin Susser, Notary, on July 4, 2014  <b>14-0614276-0002</b> , July 8, 2014; <b>14-0614276-0008</b> , July 8, 2014	<b>\$700,000,000</b> with interest at the rate of 20% per annum (Computershare acting as proxy of Streamers)  <b>\$600,000,000</b> with interest at the rate of 20% per annum (Computershare acting as proxy of Diaquem)	The universality of all of its property, movable and immovable, personal and real, corporeal and incorporeal, tangible and intangible, present and future, of whatever nature and wherever situated.
<b>Diaquem</b>	SDCI	Deed executed before Mona Golabi, Notary, on April 1, 2011  <b>11-0218278-0001</b> ; April 1, 2011	<b>\$40,000,000</b> (plus an additional hypothec of \$8,000,000) with interest at the rate of 25% per annum	(i) Certain mining titles listed in Schedule "A"; (ii) the universality of all present and future mining titles, of any form whatsoever whether they have been acquired by staking or by card designation), allowed mineral exploration, mining leases, research permits, exploitation leases, mining concessions or any other mining right, title or mining interest under the <i>Mining Act</i> , L.R.Q. c. M13.1 deriving from the Mining Securities from time to time (the Other rights "); and (iii) the universality of all renewals, staking or substitutions of the Mining titles and of the Other rights.
<b>Fonds de Solidarité des Travaillleurs du</b>		Deed executed before Naomi Rabinovitch,	<b>\$20,000,000</b> (plus an additional hypothec of 20%)	(i) The mining titles listed in Schedule "A"; (ii) the universality of all present and future mining titles, of any form

<u>Creditor</u>	<u>Debtor(s) / Grantor(s)</u>	<u>Agreement</u>	<u>Amount of Security</u>	<u>Description of Collateral (Summary)</u>
<p><b>Québec</b></p> <p><b>Fonds Régional de Solidarité F.T.Q. Nord-du-Québec, Société en Commandite</b></p> <p><b>Diaquem</b></p>		<p>Notary, on May 7, 2012</p> <p><b>12-0392128-0001;</b> May 18, 2012</p>	with interest at the rate of 25% per annum	whatsoever whether they have been acquired by staking or by card designation), allowed mineral exploration, mining leases, research permits, exploitation leases, mining concessions or any other mining right, title or mining interest issued under the Mining Act, L.R.Q. c. M13.1 deriving from the Mining Securities from time to time (the Other rights "); and (iii) the universality of all renewals, staking or substitutions of the Mining titles and of the Other rights.
<p><b>Nation Crie de Mistissini</b></p> <p><b>Grand Conseil des Cris (Eeyou Istchee)</b></p> <p><b>Administration Régionale Crie</b> (collectively, hereinafter the "<b>Cree Parties</b>")</p>		<p>Deed executed before Shalini Sangani, Notary, on September 24, 2013</p> <p><b>13-0851769-0001;</b> September 26, 2013</p>	<p><b>\$48,376,000</b> (plus an additional hypothec of \$9,675,200) with interest at the rate of 25% per annum</p>	The universality of all immovable and movable rights of the Grantor in the mining lease granted by the Minister for Natural Resources to the Grantor on October 16, 2012 in connection with Renard Diamond Mine.
<b>Caterpillar</b>		<p>Private deed executed on July 25, 2014</p> <p><b>14-0699485-0001;</b> July 31, 2014</p>	<p><b>\$75,000,000</b> (plus additional hypothec of \$15,000,000) with interest at the rate of 25% per annum</p>	The universality of certain movables
<b>Chubb Insurance (successor to ACE INA Insurance)</b>		<p>Private deed executed on August 29, 2014</p> <p><b>14-0819326-0001;</b> September 4, 2014</p>	<p><b>\$15,000,000</b> with interest at the interest rate of Royal Bank of Canada plus 2%</p>	The universality of certain rights and claims
<b>The Nova Scotia Bank</b>	SDCI	<p>Private deed executed on February 11, 2016</p> <p><b>16-0122115-0001;</b> February 15, 2016</p>	<b>\$2,000,000</b>	Movable hypothec covering funds on deposit in the amount of CDN\$2,000,000.00 which may be held in the name of and/or on behalf of the Grantor and for its benefit, with the Bank of Nova Scotia from time to time.

71. A summary report of the above registrations in the *Registre des droits personnels et réels mobiliers* is communicated herewith for additional information as **EXHIBIT R-14**;
72. Diaquem, the FTQ Parties, the Cree Parties and Computershare (acting as security trustee and/or as *fondé de pouvoir* under Article 2692 of the *Civil Code of Québec* of Diaquem or Streamers) have also registered or inscribed certain deeds of hypothec affecting, as the case may be, the Mining Lease, mining claims and surface right leases at the Land Registry Office for the Registration Division of Sept-Îles, the Register of real rights of State resource development within the meaning of Article 2972.2 of the *Civil*

*Code of Québec* for the Registration Division of Sept-Îles and the Register of real and immovable mining rights and known as “Gestim”, the mining title management system kept by the Ministry of Energy and Natural Resources, as it appears more fully from copies of said deeds of hypothec which are communicated herewith *en liasse* as **EXHIBIT R-15** which includes (i) the index of immovables relating to the Mining Lease reflecting the registration of such hypothecs against the Mining Lease, (ii) an example of a land file relating to one mining claim reflecting the registration of certain hypothecs against such mining claim, (iii) an example of a land file relating to one surface right lease reflecting the registration of certain hypothecs against such surface right lease and (iv) the file at Gestim relating to the Mining Lease;

73. Independent review of the validity and enforceability of certain security interests listed in the table above has yet to be concluded by the Proposed Monitor’s counsel;

## **5.6 TRADE LIABILITIES**

74. As of August 31, 2019, the CCAA Parties’ indebtedness to its suppliers and other creditors not holding a security interest amounts to approximately **\$8,4 million**;

75. As appears from the Projections, to preserve the going concern value of its operations, SDCI will continue to pay its mine-level trade suppliers during these proceedings regardless of whether services or supplies were rendered/supplied before or after the filing of this Petition;

76. It is the CCAA parties understanding that pursuant to the Participating Streamers/Diaquem Contemplated Transaction (as defined hereinafter), amounts owed to SDCI’s mine-level trade suppliers will continue to be paid in the normal course of business or assumed, regardless of whether services or supplies were rendered/supplied before or after the filing of this Petition;

## **6. EVENTS LEADING TO THE CCAA PROCEEDINGS**

### **6.1 OVERVIEW**

77. The construction of the Renard Mine commenced immediately following the closing of the Financing Transactions in July of 2014;

78. First ore was delivered on July 15, 2016, the first sale of diamonds occurred in November 2016 and the CCAA Parties formally declared commencement of commercial production on January 1, 2017;

79. The latest audited financial statements audited by *PricewaterhouseCoopers LLP*, for the period ending on December 31, 2018, a copy of which is communicated herewith as **EXHIBIT R-16** (hereinafter the “*F/S 2018*”) indicate, *inter alia*, that:

- a) The Petitioners’ ability to maintain their going concern operations and fund their planned activities is dependent on their ability to secure additional financing;
- b) The Petitioners’ accumulated deficit amounts to approximately **\$660 million**;
- c) The losses for the 2018 fiscal year totaled approximately **\$330 million**;

- d) The Petitioners on a consolidated basis are not currently profitable;
  - e) The Petitioners' revenues have been in decline (as a result of the diamond price's decline) while expenses have been increasing;
80. The latest financial results available, for the period ending on June 30, 2019 indicate that the Petitioners have incurred an additional net loss of **\$346.3 million**, as appears from a copy of the Stornoway Second Quarter 2019 Report communicated herewith as **EXHIBIT R-17**;
81. The Petitioners' working capital is not sufficient to allow them to meet their obligations, commitments and budgeted expenditures through December 31, 2019 in the current low rough diamond price environment;
82. The events leading to the CCAA Parties' insolvency and the challenges same have posed for CCAA Parties are further detailed below (hereinafter collectively the "**Stornoway Group Challenges**");

**6.2 RAMP-UP ISSUES, LOWER PRODUCTION AND LOWER CARAT RECOVERY**

83. During the first two years of production following commencement of commercial production (2017), delayed underground mine ramp-up (due to unexpected rock condition) coupled with lower-grade ore in the initial panels of underground mined and higher than anticipated levels of diamond breakage resulted in carat production falling short of projections by approximately **600,000** carats on a run-of-mine basis;
84. The Renard Mine's diamond recovery profile has also been characterized by the liberation and recovery of a higher proportion of small diamonds (less than 1 carat), and by the lower recovery of coarse diamonds than expected when compared to the size distribution frequency of the Renard Mine feasibility study;
85. The lower production and carat recoveries in 2018 were primarily affected by delays in the ramp-up of the Renard 2 underground mine, the processing of low-grade stockpiles to curtail the shortfall in mined tonnes during the transition from open pit to underground operations, and the mining of lower than expected grades at the margin of the orebody during the initial phase of the underground ramp-up;
86. Impact of lower production and lower carat recoveries, and the cash flow challenges arising thereto, are evidenced throughout the F/S 2018, notably:
- a) Current assets of the Petitioners depreciated by approximately **15%** as compared to 2017;
  - b) Current liabilities increased by approximately **26%** as compared to 2017; and
  - c) Operational net losses from operating activities almost tripled as compared to 2017;
87. Simply put: lower production and lower carats recovery had a negative and direct impact on the Petitioners' cash flow availability;

### **6.3 MARKET VARIATION IN THE ROUGH DIAMOND PRICE**

88. As mentioned above, the Petitioners sell their diamond production in an open market by tender in Antwerp, Belgium, in accordance with the MSA entered into with the Approved Commissionaire Bonas;
89. At the time of the Financing Transaction, the projected Renard Mine diamond average price was set at **US\$147/ct**;
90. Since the commencement of its commercial production in 2017, the Renard Mine's diamonds have generated an average price return ranging between **US\$85.81/ct** and **US\$88.30/ct** (hereinafter the "**Renard Diamond Average Price**"), as appears from a report prepared by Bonas, the Approved Commissionaire communicated herewith under seal as **EXHIBIT R-18** (hereinafter the "**Bonas Report**");
91. The second half of 2018 saw a rough market price correction. This market decline was partly attributed to the further weakening Indian Rupee, the lack of available credit available to Indian diamantaires, excess of polished inventory in India and lowering margins in manufacturing;
92. The rough diamond market price correction has continued into 2019 and the average pricing achieved in the second quarter of 2019 was **US\$76/ct**, with a continued downward trend;

### **7. RESTRUCTURING EFFORTS TO ADDRESS STORNOWAY GROUP CHALLENGES**

93. In response to the Stornoway Group Challenges, Petitioners' management focused their efforts, *inter alia*, on addressing the breakage issue referred to above in order to improve the carat recovery and, in addition thereto, have more recently focused on the following financial measures:
- a) Seeking additional financing and relief from certain stakeholders;
  - b) Securing the Bridge Financing; and
  - c) Implementing and conducting the SISP (as defined hereinafter) in accordance with the SISP Procedures (as defined hereinafter).
94. These efforts from Petitioners' management team allowed the CCAA Parties to conduct the SISP and ultimately secure the Participating Streamers/Diaquem Contemplated Transaction (as defined hereinafter) which ought to allow their business to continue on a going concern basis, preserving approximately **540** jobs;

#### **7.1 ADDRESSING THE BREAKAGE ISSUE TO IMPROVE THE CARAT RECOVERY**

95. Since the commencement of production, Petitioners' management have been addressing the breakage issue referred to above to improve the carat recovery;
96. In 2017, the Petitioners approved the construction of an ore waste sorting plant as one of the mitigation solutions to diamond breakage affecting carat recovery, ultimately leading to an additional **\$22 million** of capital expenditures;

97. Diamond breakage levels have since been reduced to sustainable levels and are amongst the lowest in the industry;
98. The recovery of coarse diamonds remains lower than what was expected at the time of the Renard Mine feasibility study;

## **7.2 SEEKING ADDITIONAL FINANCING AND RELIEF FROM THEIR MAIN STAKEHOLDERS**

99. On October 2, 2018 and December 7, 2018, the Petitioners announced a series of supplemental financing transactions with lenders and key stakeholders designed to provide greater financial and operating flexibility (hereinafter the “**2018 Financing Package**”);
100. In total, the 2018 Financing Package provided the Petitioners with additional consideration and liquidity for an amount of **\$129 million**, including the deferral of certain loan principal repayments representing debt service cost deferral of up to **\$54 million**;

## **7.3 THE SISP & THE BRIDGE FINANCING**

### **7.3.1 OVERVIEW**

101. Unfortunately, the above-noted measures alone proved to be insufficient;
102. Lower production and carat recoveries, combined with lower than expected rough diamond pricing and an additional **\$22 million** of capital expenditures for the ore waste sorting circuit designed as a mitigation measure for diamond breakage levels, challenged the Petitioners’ liquidity during 2018;
103. Nonetheless, by the end of 2018:
  - a) Ramp-up of underground production at Renard 2 was completed, and a steady feed was achieved from underground operations;
  - b) Recovered grade improved by **39%** and **45%** in the third and fourth quarters of 2018, respectively compared to the previous quarters. Carat recoveries improved by **47%** in both the third and fourth quarters;
104. Despite improving production and carat recovery, implementing certain other operational changes and securing additional financial support from its principal stakeholders, the current debt structure does not allow Petitioners to operate the Renard Mine in a profitable manner;
105. In this regard, it should be noted that the Bonas Report projects that the average price per carat for Renard Diamond is likely to steadily improve between now and 2023, up to **US\$106.06/ct**, due notably to a projected decline in global production as a result of depletion and end of life of major mining projects across the globe (**1-2%** per year until 2030);
106. Considering the Petitioners’ actual debt and equity structure, in order for operations of the Renard Mine to be profitable, the average rough diamond price must exceed

**US\$107/ct**, as evidenced by the preliminary report submitted by the Proposed Monitor dated April 25, 2019, a copy of which is communicated herewith under seal as **EXHIBIT R-19**;

107. In light of the foregoing, the CCAA Parties, in consultation with the Streamers and Diaquem, concluded that without a comprehensive restructuring of existing capital structure they would not be able to operate the Renard Mine with profitability;
108. This led to the implementation of a *Sale and Investment Solicitation Process* (hereinafter the “**SISP**”) and a related funding package, the Bridge Financing, to allow for the SISP to be implemented by the CCAA Parties;
109. With the support of the Streamers and Diaquem, Petitioners conducted the SISP to canvass the market and seek the interest of potential partners/investors/acquirers interested in their business and/or property/assets/undertakings;

### **7.3.2 THE BRIDGE FINANCING**

110. As indicated above, to allow the CCAA Parties to conduct the SISP and to continue their operations on a going concern basis, the Streamers and Diaquem agreed to provide additional financing for an amount of approximately **\$21.5 million** through the Bridge Financing, secured by first ranking hypothecs over the universality of the CCAA Parties’ assets;

### **7.3.3 THE SISP MANAGERS AND THE SISP PROCEDURES**

111. The CCAA Parties retained *TD Securities Inc.* (hereinafter “**TD**”) and *Scotia Capital Inc.* (hereinafter “**Scotia**”) to act as SISP manager (together, hereinafter the “**SISP Managers**”) and assist in the optimal conduct of the SISP, as appears from a copy of the agreement entered into between the CCAA Parties and the SISP Managers communicated herewith under seal as **EXHIBIT R-20** (hereinafter the “**SISP Managers Agreements**”);
112. The SISP Managers were selected given their respective experience in implementing and conducting SISPs in the mining industry;
113. Essentially, pursuant to the SISP Managers Agreements:
  - a) The SISP Managers, with the assistance of Management, managed all SISP related documents (target list, teaser, NDAs, etc.) and provide all required information to potential bidders;
  - b) The SISP Managers’ compensation is established as follows (hereinafter the “**SISP Managers Fees**”):
    - i) In the event of a transaction taking the form of a credit bid by Streamers and Diaquem:
      - 1) An amount of **\$750,000** for TD;
      - 2) No amount payable for Scotia;



or

ii) In the event of a transaction other than a credit bid by Streamers and Diaquem:

- 1) An amount equivalent to **0.70%** of “Transaction Value” (as defined in the SISP Managers Agreements) for TD;
- 2) An amount equivalent to **0.30%** of “Transaction Value” (as defined in the SISP Managers Agreements) for Scotia;

114. The SISP was conducted in accordance with procedures to which the CCAA Parties, the Streamers and Diaquem agreed, as appears from a copy of the document entitled “*Sale and Investor Solicitation Procedures*”, as amended, communicated herewith under seal as **EXHIBIT R-21** (hereinafter the “**SISP Procedures**”);

115. Essentially, pursuant to the SISP Procedures:

- a) A list of potential bidders was to be determined by the CCAA Parties with the assistance and guidance of the SISP Managers, and the Streamers and Diaquem were entitled to identify additional potential bidders;
- b) A teaser letter inviting potential bidders to submit a bid in respect to the CCAA Parties’ business was sent to potential bidders, as appears from a copy of the teaser communicated herewith under seal as **EXHIBIT R-22**;
- c) Potential bidders who signed a confidentiality agreement had access to a virtual data room to conduct their due diligence process. A list of the documents available in the virtual data room is communicated herewith under seal as **EXHIBIT R-23**;
- d) The SISP was conducted in two (2) phases (capitalized terms have the meaning ascribed to same in the SISP Procedures);
  - i) Phase 1:
    - Potential Bidders were invited to submit a Non-Binding Indication of Interest at the latest by 5:00 p.m. (Montréal Time) on **July 15, 2019** (the Phase 1 Bid Deadline – Section 4.1 of SISP Procedures);
    - In consultation with Streamers and Diaquem, Petitioners were to determine if any of the Non-Binding Indication of Interest qualified as a Qualified Non-Binding Indication of Interest, justifying the need to proceed with Phase 2;
    - Non-binding indications of interest were required to indicate the anticipated structure of the contemplated transaction (Sale Proposal (vesting order) vs Investment Proposal (sponsored plan of arrangement));

- Petitioners in consultation with Streamers and Diaquem, were able to waive compliance in respect to non-compliant Non-Binding Indication of Interest (Section 4.2 (2) of SISP Procedures);
- ii) Phase 2:
- In consultation with Streamers and Diaquem, CCAA Parties would determine if any Non-Binding Indication of Interest was satisfactory and would warrant a Phase 2 in the context of which the qualified Phase 1 Qualified Bidder would be invited to firm up their non-binding indication of interest with a view to completing a transaction by **September 16, 2019** at the latest;
  - In consultation with Streamers and Diaquem, Petitioners would determine if any of the Qualified Bids may be selected as a Successful Bid (Section 5.5 of SISP Procedures);
- e) It is explicitly provided in the SISP Procedures that the Streamers and Diaquem may credit bid for the full amount of their outstanding secured debt at any time during the SISP (Section 5.11 of the SISP Procedures);
116. The SISP resulted in two **(2)** bids: Bid 1 (as defined hereinafter) and the Streamers/Diaquem Bid (as defined hereinafter), as further detailed below;
117. On August 13, 2019, the July 15<sup>th</sup> - Phase 1 Bid Deadline was extended to September 16, 2019 by the Petitioners, after consulting with Streamers and Diaquem;
- 8. BIDDER 1 AND THE BIDDER 1 CONTEMPLATED TRANSACTION**
118. As appears from a copy of a report prepared by SISP Managers, communicated herewith under seal as **EXHIBIT R-24** (hereinafter the **“SISP Managers Report”**):
- a) Fifty-one **(51)** potential bidders were approached and received a teaser letter;
  - b) Forty-six **(46)** potential bidders declined the opportunity;
  - c) Three **(3)** potential bidders signed a confidentiality agreement giving them access to the virtual data room to advance their due diligence process but did not accept the SISP; and
  - d) Only one **(1)** potential bidder, Bidder 1, submitted a non-binding indication of interest with its Bid 1 (as defined hereinafter);
119. On July 15, 2019, prior to the initial expiry of the Phase 1 Bid Deadline, Bidder 1 (a third party) submitted to the CCAA Parties a non-binding indication of interest to acquire the assets of the CCAA Parties, as appears from a copy of Bid 1 communicated herewith under seal as **EXHIBIT R-25** (hereinafter the **“Bid 1”**);
120. Essentially, pursuant to Bid 1 (hereinafter collectively the **“Bidder 1 Contemplated Transaction”**):

- a) Bidder 1 offered to acquire all of the property, assets and undertakings of the Petitioner SDCl;
  - b) The aggregate consideration offered by Bidder 1 was significantly less than the aggregate secured indebtedness owing to the Streamers and Diaquem, and payable in shares of Bidder 1 and partial assumption of the CCAA Parties' secured obligations, without any injection of new cash or financing;
  - c) No consideration was payable to the unsecured creditors;
  - d) The transactions contemplated pursuant to Bid 1 were conditional upon, *inter alia*:
    - i) No payments in respect of any Stream Net Proceeds Payments that may be due until December 31, 2020;
    - ii) The Streaming Agreements being amended significantly to reduce the Subject Diamonds Co-Ownership Ratio and corresponding Subject Diamond Interest;
    - iii) The conversion of the Bridge Financing in an amount of common shares of Bidder 1;
    - iv) Completion of a due diligence process; and
    - v) Implementation of the transactions through the necessary CCAA orders;
121. Bid 1 led to certain exchanges, discussions and negotiations between the Streamers, Diaquem, the CCAA Parties and Bidder 1, but ultimately, after consulting with Streamers and Diaquem, the CCAA Parties came to the conclusion that:
- a) There was no clear and successful mechanism to implement the Bidder 1 Contemplated Transaction; and
  - b) When compared with the Participating Streamers/Diaquem Contemplated Transaction (as defined hereinafter), the Bidder 1 Contemplated Transaction was significantly lower and not in the best interest of the CCAA Parties' stakeholders;
- 9. THE PARTICIPATING STREAMERS/DIAQUEM LOI AND THE PARTICIPATING STREAMERS/DIAQUEM CONTEMPLATED TRANSACTION**
122. The SISP Procedures specifically provide that each of the Streamers and Diaquem are deemed to be a qualified bidder even if they do not submit a non-binding indication of interest, but only to the extent of the amount of their respective secured claims (Section 4.3 (5) of the SISP Procedures);
123. The rationale behind such deemed qualified bid concept stems from the fact that Streamers and Diaquem wanted to preserve their ability to credit bid for the assets and property of the CCAA Parties in the event that the offers submitted pursuant to the SISP sought a compromise of their secured claims and/or of the Streaming Agreements;

124. To safeguard the integrity of the SISP, the SISP Procedures, which were provided to all potential bidders and made public on the *System for Electronic Document Analysis and Retrieval* (SEDAR) under SWY's profile, specifically indicated that:
- a) Streamers and Diaquem would be entitled to submit a credit bid at any time during the SISP (Section 5.11 (1) of the SISP Procedures);
  - b) Streamers and Diaquem undertook not to submit a bid for a price exceeding their respective secured claims (Section 5.11 (2) of the SISP Procedures); and
  - c) Streamers and Diaquem would be authorized to have discussions and exchanges with potential bidders with proper prior notice being given (Section 5.11 (3) of the SISP Procedures);
125. Once the Streamers and Diaquem concluded that the Bidder 1 Contemplated Transaction would not satisfy their requirements under the current circumstances, the Streamers, Diaquem and CCAA Parties started to work on the terms and conditions upon which the credit bid would be implemented from a transactional standpoint;
126. These exchanges, discussions and negotiations were driven by the desire to provide the CCAA Parties' business with the proper capital and equity structure, allowing it to be in a better position to face difficult and challenging market conditions;
127. On September 8, 2019, in accordance with the SISP Procedures, the Osisko, CDPQ Ressources and 1078243 Canada Limited (the "**Participating Streamers**") and Diaquem submitted a letter of intent to the CCAA Parties outlining the main terms and conditions of the proposed transaction, as appears from a copy of such letter of intent communicated herewith as **EXHIBIT R-26** (hereinafter the "**Participating Streamers/Diaquem LOI**");
128. Essentially, pursuant to the Participating Streamers/Diaquem LOI (hereinafter the "**Participating Streamers/Diaquem Contemplated Transaction**"):
- a) The Participating Streamers and Diaquem contemplate acquiring indirectly, through an entity to be formed by them (hereinafter "**AcquisitionCo**") substantially all of the property, assets and undertakings of the CCAA Parties, through the acquisition of **100%** of the equity interest in SDCl;
  - b) The consideration payable under the Participating Streamers/Diaquem Contemplated Transaction is the assumption of the following liabilities of the CCAA Parties, which on a combined measure and subject to adjustments, total approximately **\$540 million** (hereinafter collectively the "**Assumed Liabilities**"):
    - i) All obligations of the CCAA Parties under the Interim Facility (as defined below) in the amount of up to **\$20 million, including [\$7 million to be drawn upon issuance of the Initial Order]**;
    - ii) All obligations of the CCAA Parties under the Bridge Financing (approx. **\$21.5 million**);

- iii) All obligations of the CCAA Parties under the Amended and Restated PSA (forming part of the Streaming Agreements - approx. **\$330.9 million, plus the Settlement Amount of \$100 million payable in the circumstance set forth in the Amended and Restated PSA**);
  - iv) All obligations of the CCAA Parties under the Diaquem Loan Agreement (approx. **\$111.7 million**);
  - v) All obligations of the CCAA Parties under the Diaquem Royalty (approx. **\$400,000**);
  - vi) All obligations of the CCAA Parties under the Caterpillar Agreements (approx. **\$42,7 million**), subject to such modifications and amendments thereto as shall negotiated and agreed upon between AcquisitionCo and Cat, prior to the closing of the Participating Streamers/Diaquem Contemplated Transaction;
  - vii) All obligations of the CCAA Parties under the Mecheshoo Agreement (approx. **\$10,5 million**);
  - viii) All obligations of the CCAA Parties in respect to identified agreements, subject to the payment of cure costs, as the case may be;
  - ix) All obligations of the CCAA Parties towards its employees;
- c) The Participating Streamers/Diaquem Contemplated Transaction is conditional upon the issuance of an order by this Honourable Court providing for *inter alia*:
- i) The approval of the Participating Streamers/Diaquem Contemplated Transaction and the implementation thereof in the context of these CCAA proceedings;
  - ii) The vesting of any and all Excluded Assets (as defined in the Participating Streamers/Diaquem LOI) as well as any and all claims and liabilities of the CCAA Parties, which are not Assumed Liabilities, in and to an entity to be incorporated by the Petitioners (which itself shall become subject to these CCAA Proceedings) in a manner which allows AcquisitionCo to acquire the property, assets and undertakings of the CCAA Parties free and clear from any such Excluded Assets and excluded liabilities and encumbrances;
  - iii) The transfer and assumption of certain key agreements to which the CCAA Parties are party to; and
  - iv) A full and final release (to the extent permitted by law) of the directors and officers of the CCAA Parties;
- d) The Participating Streamers/Diaquem Contemplated Transaction is not conditional upon:
- i) Financing; or

ii) Due diligence process;

129. Streamers and Diaquem, with the CCAA Parties, are working on finalizing the mechanism to allow for the Participating Streamers/Diaquem Contemplated Transaction to be implemented in the most efficient manner;
130. The CCAA Parties anticipate seeking Court approval of the Participating Streamers/Diaquem Contemplated Transaction within the Initial Period;

## **10. RELIEF SOUGHT**

### **10.1 GENERAL**

131. The CCAA Parties require the benefit of the relief requested in this Motion, including a stay of proceedings (except as it relates to the Streamers and Diaquem), in order to:
- a) Allow them to complete the Participating Streamers/Diaquem Contemplated Transaction under the stability and guidance of a court-supervised process; and
  - b) Address urgent need for liquidities to maintain the going concern operations of SDCI by implementing the Interim Facility,
- for the benefit of all stakeholders;
132. Notwithstanding the significant efforts of management, the CCAA Parties are currently insolvent, with limited cash resources to pay liabilities as they become due;
133. Based on the Projections, the CCAA Parties do not anticipate to have sufficient funding and liquidity to cover anticipated post-filing costs and expenses during the Initial Period unless the Interim Facility is approved and the Interim Lenders Charge is granted;
134. The CCAA Parties are deeply concerned that unless a stay of proceedings is granted pursuant to the terms of the CCAA, certain suppliers, creditors and other stakeholders may attempt to take steps to try to improve their positions in comparison to other similarly situated stakeholders;
135. This would not only jeopardize and potentially deplete the value of the CCAA Parties' estates to the detriment of all stakeholders, but it could also jeopardize the completion of the Participating Streamers/Diaquem Contemplated Transaction;
136. The CCAA stay will preserve the status quo and permit the CCAA Parties to continue operating, while completing and implementing the Participating Streamers/Diaquem Contemplated Transaction, for the benefit of all of its stakeholders;
137. CCAA proceedings are therefore necessary to preserve the value of the business of the Petitioners with minimal disruption while they seek to complete and implement the Participating Streamers/Diaquem Contemplated Transaction;
138. In the event of a forced and disorderly liquidation and permanent termination of operations, the value of the CCAA Parties' assets would be substantially impaired and approximately **540** jobs would be lost;

139. It is the CCAA Parties' view that pursuing the completion and implementation of the Participating Streamers/Diaquem Contemplated Transaction under the CCAA will yield significantly better results for the diverse group of stakeholders than any conceivable liquidation scenario;
140. The CCAA Parties seek an initial stay period of thirty days. As indicated above, Petitioners anticipate that they will be seeking court approval of the Participating Streamers/Diaquem Contemplated Transaction before the expiry of the Initial Period;
141. The Petitioners therefore request a stay of proceedings until **October 9, 2019**, the whole as set forth in the Draft Initial Order (**Exhibit R-1**);

## **10.2 APPOINTMENT OF THE PROPOSED MONITOR**

142. *Deloitte Restructuring Inc.* (hereinafter "**Deloitte**") has been retained by the CCAA Parties to act as Monitor in the event of an Initial Order being granted in these CCAA proceedings;
143. Deloitte is prepared to act as Monitor during these CCAA proceedings and to assist the CCAA Parties with all aspects of their restructuring pursuant to and subject to the terms of the Initial Order of the Court and the statutory provisions of the CCAA;
144. Deloitte is also prepared to monitor the operations of the CCAA Parties, to oversee the completion and implementation of the Streamers/Diaquem Transaction, and to generally assist the CCAA Parties with their restructuring efforts;
145. Deloitte is a licensed trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act* (Canada). Deloitte is not subject to any of the restrictions on who may be appointed monitor as set out in section 11.7(2) of the CCAA;
146. At no time during the preceding two years has Deloitte been:
  - a) A director, officer or employee of the CCAA Parties;
  - b) Related to the CCAA Parties or to any former director or officer of the CCAA Parties; or
  - c) The CCAA Parties' auditor, accountant or legal counsel, or a partner or employee of the auditor, accountant or legal counsel of the CCAA Parties.
147. Therefore, Petitioners respectfully submit that Deloitte is qualified to act as Monitor and there is no restriction on Deloitte being appointed Monitor in these CCAA proceedings;

## **10.3 GRANTING OF CCAA CHARGES**

### **10.3.1 ADMINISTRATION CHARGE**

148. The Proposed Monitor, its counsel and counsel for the CCAA Parties are essential to the restructuring efforts contemplated in these proceedings. Their assistance in completing the Participating Streamers/Diaquem Contemplated Transaction is crucial;

149. They have each advised that they are prepared to provide or continue to provide professional services to the CCAA Parties only if they are protected by a charge over the assets of the CCAA Parties, in accordance with the Draft Initial Order (**Exhibit R-1**) (hereinafter the “**Administration Charge**”);
150. It is contemplated that the CCAA Parties will be invoiced and pay fees and expenses of the beneficiaries of the Administration Charge on a weekly basis and the Administration Charge is sought as security for the fees and disbursements relating to services rendered up to a maximum amount of **\$500,000** with the priority set out in the Draft Initial Order (**Exhibit R-1**);
151. The amount of the charge has been determined not on the basis of the total fees payable to these professionals during the proceedings but on an assessment of what could be an amount outstanding to these professionals at any given time in the proceedings;
152. The CCAA Parties believe that the amount of the Administration Charge is fair and reasonable in the circumstances;

### **10.3.2        D&O CHARGE**

153. The continued active implication of the directors and officers of the CCAA Parties is essential to the restructuring efforts of the CCAA Parties, especially in securing an efficient transition in the completion and implementation of the Participating Streamers/Diaquem Contemplated Transaction;
154. The CCAA Parties maintain primary and excess directors’ and officers’ liability insurance policies for the directors and officers of its subsidiaries (together, the “**D&O Insurance**”);
155. The D&O Insurance contains limits and exclusions that could potentially affect the total amount of insurance available to the Director of the CCAA Parties;
156. The directors and officers of the CCAA Parties have expressed concern with respect to potential personal liability if they continue in their current capacities through this restructuring process. The CCAA Parties submit that, it is essential for the Initial Order sought herein to grant a charge as security for the CCAA Parties’ obligations to their directors and officers;
157. The CCAA Parties propose that a charge in favour of the directors and officers be granted over the assets of the CCAA Parties, in accordance with the Draft Initial Order (**Exhibit R-1**), in the amount of **\$5,2 million** (hereinafter the “**D&O Charge**”) with the priority set out in the Draft Initial Order (**Exhibit R-1**) to the extent such claims are not covered by the D&O Insurance, in order to provide a reasonable level of protection to the Directors and Officers:
158. The CCAA Parties believe that the amount of the D&O Charge is fair and reasonable in the circumstances;



**10.3.3 SISP MANAGERS CHARGE**

159. Considering the Participating Streamers/Diaquem Contemplated Transaction, the SISP Managers will be entitled to a SISP Managers Fee of approximately **\$750,000** (provided and subject to the Participating Streamers/Diaquem Contemplated Transaction being completed) calculated in accordance with the SISP Managers;
160. The SISP Managers have requested that the SISP Managers Fee be guaranteed by a charge over the assets of the CCAA Parties, in accordance with the Draft Initial Order (**Exhibit R-1**) (hereinafter the **“SISP Managers Charge”**);
161. The CCAA Parties submit to this honourable Court that the SISP Managers Charge is appropriate and should be granted in accordance with the Draft Initial Order;

**10.4 WORKING CAP FACILITY AGREEMENT - INTERIM FINANCING (“DIP”)**

162. As appears from the Projections, during the Initial Stay Period, CCAA Parties’ business requires an injection of capital in the amount of approximately **\$20 million**;
163. Participating Streamers and Diaquem (hereinafter collectively the **“Interim Lenders”**) have offered to provide financing to the CCAA Parties in accordance with the terms and conditions set forth in a Working Cap Facility Agreement, a copy of which is filed herewith as **EXHIBIT R-27** (hereinafter the **“Interim Facility”**);
164. Essentially, the Interim Facility is mirroring the Bridge Financing, as amended, which is outstanding. For purpose of clarity, the Interim Facility is an additional investment by the Streamers and Diaquem, over and above the Bridge Financing;
165. This financing provided through the Interim Facility will initially be used as interim financing and if and when the Participating Streamers/Diaquem Contemplated Transaction is implemented, will be converted into an exit financing facility;
166. The main terms and conditions of the Interim Facility may be summarized as follows:
  - a) Non-revolving loans of up to an aggregate amount of **\$20 million** (with option to increase up to **\$50 million**);
  - b) Interest rate of **12.5% per annum**, compounded monthly and payable monthly; and
  - c) Payment of DIP Lenders’ Expenses;
  - d) Repayment secured by a charge in the amount of **\$25 million** (Initial **\$20 million + 25%**) hereinafter the **“Interim Lenders’ Charge”**), against the universality of the CCAA Parties’ property;
167. The CCAA Parties are of the view that the Interim Facility, the Interim Lenders’ Charge and the pricing and covenants set out in the Interim Facility are reasonable taking into account:
  - a) The Interim Lenders are comprised of Streamers and Diaquem;

- b) The purpose of the Interim Facility is to allow for the preservation of the going concern of CCAA Parties' business until completion of the Participating Streamers/Diaquem Contemplated Transaction;
  - c) The Interim Facility is an assumed liabilities pursuant to the Participating Streamers/Diaquem Contemplated Transaction;
168. The financing provided through the Interim Facility is essential to allow the CCAA Parties to continue their operations and for the completion and implementation of the Participating Streamers/Diaquem Contemplated Transaction, for the benefit of all stakeholders involved;
169. The CCAA Parties believe that the Interim Facility provides sufficient liquidity and time for them to complete/implement the Participating Streamers/Diaquem Contemplated Transaction in the best of circumstances;
170. Based on the Projections and subject to the underlying assumptions therein, the CCAA Parties believe that the Interim Facility will provide sufficient liquidity to fund these CCAA Proceedings during the Initial Period, if the present Motion is granted pursuant to its conclusions;
171. Accordingly, the CCAA Parties respectfully request that this honourable Court should authorize the execution of the Interim Facility and grant the Interim Lenders' Charge, in accordance with the Draft Initial Order (**Exhibit R-1**);

**11. CONCLUSIONS**

172. The Petitioners believe that it is wholly appropriate for the orders requested herein to be made forthwith seeing as they find themselves in dire financial circumstances, are insolvent, are not able to meet their obligations and require a stay of proceedings for the benefit of their creditors and other stakeholders;
173. Furthermore, the issuance of the orders requested pursuant hereto are essential to allow for the eventual completion and the implementation of the Participating Streamers/Diaquem Contemplated Transaction, which will allow for the CCAA Parties to continue their business on a going concern basis, thus promoting its long term viability for the benefit of all stakeholders;
174. The Participating Streamers/Diaquem Contemplated Transaction will require the issuance of an order from this honourable Court, as per the Participating Streamers/Diaquem LOI;
175. The CCAA Parties are hopeful that the transactional path analysis and related documents will be completed the coming weeks and that as such, it will seek approval of the Participating Streamers/Diaquem Contemplated Transaction within the Initial Period;
176. The main secured creditors of the Petitioners, i.e. Streamers and Diaquem, have informed the CCAA Parties that they are supportive of the present Motion provided that the reliefs sought pursuant thereto is granted in accordance with the Draft Initial Order (**Exhibit R-1**);

177. The Proposed Monitor has informed the CCAA Parties that it supports the present Motion and the issuance of an order taking substantially the form of the Draft Initial Order, as appears from a copy of the Proposed Monitor's Report communicated herewith as **EXHIBIT R-28**;
178. Considering the foregoing, it is in the Petitioners' best interest and the best interest of all of its stakeholders, that the present Motion be granted by this honourable Court, in accordance with the Draft Initial Order;
179. The present Motion is well-founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**GRANT** the present Motion;

**ISSUE** an order in the form of the Draft Initial Order communicated in support hereof as **EXHIBIT R-1**;

**THE WHOLE WITHOUT COSTS**, save and except in case of contestation.

Montréal, September 8, 2019

*(s) Norton Rose Fulbright Canada*

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**AFFIDAVIT**

I, the undersigned, Patrick Godin, President and Chief Executive Officer, duly authorized director of the Petitioners, having my professional domicile at 1111 Blvd. Saint-Charles West, suite 400, Longueuil, province of Québec, J4K 5G4, solemnly declare that all the facts alleged in the present Motion are true.

AND I HAVE SIGNED

---

Patrick Godin

SOLEMNLY DECLARED before me in  
Montreal, province of Québec  
this 9<sup>th</sup> day of September 2019

---

Commissioner of Oaths for the Province of  
Québec

## NOTICE OF PRESENTATION

- TO Mr. Benoit Clouatre [bclouatre@deloitte.ca](mailto:bclouatre@deloitte.ca)  
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**XEROX CANADA LTD.**  
*Mise-en-cause*

500-20 York Mills Road  
Toronto, Ontario, M2P 2C2

**TAKE NOTICE** that the present “*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*” will be presented for adjudication before the Honourable Justice Louis J. Gouin of the Superior Court of Québec in the Montréal Courthouse located at 1, Notre-Dame Street East, Montréal, Québec, on **September 9, 2019, at 9:00 am, in room 15.11.**

**DO GOVERN YOURSELF ACCORDINGLY.**

Montréal, September 8, 2019

*(s) Norton Rose Fulbright Canada*

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CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

N°: 500-

**SUPERIOR COURT**

Commercial Division  
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended)

**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.**

-&-

**INVESTISSEMENT QUÉBEC**

-&-

**FONDS DE SOLIDARITÉ DES TRAVAILLEURS DU  
QUÉBEC**

-&-

**FONDS RÉGIONAL DE SOLIDARITÉ F.T.Q. NORD-DU-  
QUÉBEC, SOCIÉTÉ EN COMMANDITE**, acting through  
its general partner, **FONDS RÉGIONAUX DE  
SOLIDARITÉ FTQ**

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**CREE NATION OF MISTISSINI**

-&-

**GRAND COUNCIL OF THE CREES (EEYOU ISTCHEE)**

-&-

**CREE NATION GOVERNMENT**

-&-

**CATERPILLAR FINANCIAL SERVICES LIMITED**

-&-

**CHUBB LIFE INSURANCE COMPANY OF CANADA**

-&-

**THE BANK OF NOVA SCOTIA**

-&-

**XEROX CANADA LTD.**

-&-

**ATLAS COCTO 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.**

-&-

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**ATTORNEY GENERAL OF CANADA**

-&-

**QUEBEC REVENUE AGENCY**

Mises-en-cause

-&-

**DELOITTE RESTRUCTURING INC.**

Proposed Monitor

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**LIST OF EXHIBITS**

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- Exhibit R-1:** Draft Initial Order;
- Exhibit R-2:** Version comparing the model CCAA Initial Order developed by the Liaison Committee of the Commercial Division of the Superior Court of Québec with the Draft Initial Order;
- Exhibit R-3:** Surety bond with Chubb insurance Company in favour of the MDDEF, obtained by the Petitioners, including amendment and renewal certificate;
- Exhibit R-4:** **UNDER SEAL** - Amended and Restated Purchase and Sale Agreement dated October 2, 2018 with Streamers and Computershare Trust Company of Canada acting as stream agent for the Streamers, as amended on March 29, 2019;
- Exhibit R-5:** **UNDER SEAL** - The Co-Ownership Agreement, dated July 8, 2014;
- Exhibit R-6:** **UNDER SEAL** - Marketing and Sales Agreement, dated July 8, 2014, as amended on October 2, 2018;
- Exhibit R-7:** Cash Flow Projections;
- Exhibit R-8:** Indenture agreement entered into between SDCI and Computershare, acting as trustee, on July 8, 2014, provided the CCAA Parties with an amount of approximately US\$82 million, as amended by a first supplemental indenture dated June 27, 2019;
- Exhibit R-9:** **UNDER SEAL** - Loan Agreement between SWY and Fonds de Solidarité des Travailleurs du Québec (F.T.Q.), Fonds Régional de Solidarité F.T.Q. Nord-Du-Québec S.E.C. and Diaquem entered into on May 3, 2012 and amended pursuant to a first amending agreement dated October 2, 2018, providing the Petitioners with an amount of \$20 million;
- Exhibit R-10:** **UNDER SEAL** - Credit Agreement entered into between Diaquem and SDCI on July 8, 2014, as amended on October 2, 2018, March 29, 2019 and June 10, 2019;

- Exhibit R-11:** UNDER SEAL -Master Lease Agreement entered into between Caterpillar Financial Services Limited, as lessor, SDCI, as lessee, and Stornoway and Ashton, as guarantors, on July 25, 2014, as amended from time to time;
- Exhibit R-12:** Loan Agreement entered into between the Quebec Minister of Finance and Economy and SDCI on December 6, 2012, together with its addenda, providing the Petitioners with an amount of \$77 million for the construction of the extension of Road 167 to grant year round access to the Renard Mine;
- Exhibit R-13:** UNDER SEAL - Bridge Financing Agreement dated June 10, 2019, entered into among the Petitioners, the Streamers and Diaquem, as amended on August 13, 2019 and September 8, 2019, pursuant to which a secured credit facility of up to approximately \$12 million was made available to the Petitioners to allow it to conduct the SISP;
- Exhibit R-14:** Summary report of some registrations in the *Registre des droits personnels et réels mobiliers*;
- Exhibit R-15:** *En liasse*, deeds of hypothec affecting the Mining Lease, mining claims and surface right leases;
- Exhibit R-16:** The latest financial statements audited by PricewaterhouseCoopers LLP, for the period ending on December 31, 2018;
- Exhibit R-17:** Stornoway Second Quarter 2019 Report;
- Exhibit R-18:** UNDER SEAL - Report prepared by Bonas, the Approved Commissionaire;
- Exhibit R-19:** UNDER SEAL - Preliminary report submitted to Management by the Proposed Monitor, dated April 25, 2019;
- Exhibit R-20:** UNDER SEAL - Agreements entered into between the CCAA Parties and the SISP Managers;
- Exhibit R-21:** UNDER SEAL - Sale and Investor Solicitation Procedures;
- Exhibit R-22:** UNDER SEAL - Teaser letter inviting potential bidders to submit a bid in respect to the CCAA Parties' business;
- Exhibit R-23:** UNDER SEAL - List of the documents made available in the virtual data room to the potential bidders who signed a confidentiality agreement;
- Exhibit R-24:** UNDER SEAL - Report prepared by the SISP Managers;
- Exhibit R-25:** UNDER SEAL - Bid 1;
- Exhibit R-26:** LOI submitted to the CCAA Parties by the Streamers and Diaquem;
- Exhibit R-27:** Interim financing Commitment Letter from Streamers and Diaquem;
- Exhibit R-28:** Proposed Monitor's Report.

Montréal, September 8, 2019

*(s) Norton Rose Fulbright Canada*

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