

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

THE HONOURABLE MADAM) THURSDAY, THE 20th
)
JUSTICE GILMORE) DAY OF FEBRUARY, 2020



BETWEEN:

ORIONIS CORPORATION

Applicant

- and -

ONTARIO GRAPHITE, LTD.

Respondent

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

**ORDER
(SISP & IRP Approval Order)**

THIS MOTION, made by the Applicant, Orionis Corporation ("**Orionis**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Initial Order of Justice Gilmore, dated February 12, 2020 (the "**Initial Order**"), the Affidavit of David Yanovich Wancier, sworn January 10, 2020, the Second Affidavit of David Yanovich, sworn February 11, 2020, the Affidavit of Ellerton

Castor, sworn February 18, 2020 (the “**Castor Affidavit**”), the Pre-Filing Report of Deloitte Restructuring Inc., in its capacity as the proposed monitor of Ontario Graphite, Ltd., dated February 11, 2020, the First Report to the Court of the Monitor, dated February 19, 2020 (the “**First Report**”), the Factum of Orionis, and on hearing the submissions of counsel for Orionis, counsel for the Monitor, counsel for the Respondent, Ontario Graphite, Ltd. (the “**Debtor**”), and no one appearing for any other parties, although properly served as appears from the affidavits of service of Mark Sheeley, sworn February 18, 2020, and February 19, 2020,

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

2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Initial Order and the Sale and Investment Solicitation Procedure, attached as Schedule “A” to this Order (the “**SISP**”).

SISP

3. **THIS COURT ORDERS** that the SISP is hereby approved.

4. **THIS COURT ORDERS** that the Monitor is hereby authorized and directed to perform its obligations under the SISP, including through its affiliate, Deloitte Corporate Finance Inc., and to take any and all steps that are reasonably necessary or desirable to carry out the SISP.

5. **THIS COURT ORDERS** that the Monitor and its respective affiliates, partners, directors, employees, advisors, agents and controlling persons, including Deloitte Corporate Finance Inc. as agent of the Monitor (collectively, the “**Agents**”), shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of their duties under the SISP or the provisions of this Order, save and except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of the Monitor or the

Agents, as applicable, in performing their obligations under the SISP or the provisions of this Order, as determined by this Court.

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Debtor, the Monitor and its Agents may disclose personal information of identifiable individuals to interested parties who participate in the SISP and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete a sale or investment transaction through the SISP (the “**Sale**”). Each interested party (and their respective advisors) to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information solely to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Debtor, or in the alternative destroy all such information.

IRP

7. **THIS COURT ORDERS** that the incentive and retention plan (the “**IRP**”) described in the Castor Affidavit and the First Report is hereby approved and the Debtor is authorized to make the Retention Payments (as defined in the Castor Affidavit) contemplated thereunder and set out in Confidential Appendix “1” to the First Report (the “**Confidential IRP Appendix**”) in accordance with the terms and conditions of the IRP.

8. **THIS COURT ORDERS** that the individual participants in the IRP listed in the Confidential IRP Appendix (the “**IRP Participants**”) shall be entitled to the benefit of and are hereby granted a charge (the “**IRP Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$100,000, to secure amounts owing to the IRP Participants in respect of Retention Payments under the IRP on a *pari passu* basis among the IRP Participants.

9. **THIS COURT ORDERS** that the IRP Charge shall constitute a charge on the Property and shall have priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Administration Charge and the DIP Lender’s Charge.


Sealing

10. **THIS COURT ORDERS** that the Confidential IRP Appendix is hereby sealed pending further Order of the Court.

General

11. **THIS COURT ORDERS** that the Monitor shall be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any other Canadian and foreign court, tribunal, regulatory or administrative body (each a "**Judicial Body**") to give effect to this Order and to assist the Monitor and its respective agents in carrying out the terms of this Order. All Judicial Bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Monitor and its respective agents in carrying out the terms of this Order.



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

FEB 20 2020

PER / PAR: 

SCHEDULE "A"
SALE AND INVESTOR SOLICITATION PROCEDURES

SALE AND INVESTMENT SOLICITATION PROCEDURE

ONTARIO GRAPHITE, LTD.

RECITALS

- A. Pursuant to an Order (the “**CCAA Order**”) granted by the Ontario Superior Court of Justice (the “**Court**”) on February 12, 2020, Deloitte Restructuring Inc. was appointed as monitor (the “**Monitor**”) in the *Companies’ Creditors Arrangement Act* (“**CCAA**”) proceedings of Ontario Graphite, Ltd. (“**OGL**”).
- B. On February 20, 2020, the Court granted an order (the “**SISP Approval Order**”), among other things, approving and ratifying the sale and investment solicitation procedure (the “**SISP**”) and the SISP procedures set forth herein (these “**SISP Procedures**”).
- C. The SISP Approval Order, the SISP, and these SISP Procedures shall govern the process for soliciting and selecting bids for:
- (a) the sale (a “**Sale**”) of all or substantially all of the property, assets and undertakings of OGL (the “**Property**”), including without limitation:
 - (i) the Kearney Mine Property (as defined below); and
 - (ii) all mining equipment owned by OGL, wherever located, including at the Kearney Mine (as defined below); and
 - (b) for the restructuring, recapitalization or refinancing of OGL (an “**Investment**”).
- D. All dollar amounts expressed herein, unless otherwise noted, are in Canadian currency. Unless otherwise indicated herein, any event that occurs on a day that is not a Business Day shall be deemed to occur on the next Business Day.

ARTICLE 1 DEFINED TERMS

In these SISP Procedures:

- (1) “**Application Affidavits**” means the Affidavits of David Yanovich Wancier sworn on January 10, 2020 and February 11, 2020, the latter in support of an Initial Order pursuant to the CCAA.
- (2) “**Approval Hearing**” is defined in Section 5.7(1).
- (3) “**Backup Bid**” is defined in Section 5.6(4).
- (4) “**Backup Bid Expiration Date**” is defined in Section 5.6(6).
- (5) “**Backup Bidder**” is defined in Section 5.6(4).

- (6) “**Bid Notice**” is defined in Section 4.3(5).
- (7) “**Bridge Notes**” means, collectively, the secured notes issued by OGL to Orionis dated January 19, 2016, July 19, 2017, and March 20, 2019, in each case as they may have been amended.
- (8) “**Business Day**” means a day (other than Saturday or Sunday) on which banks are generally open for business in Toronto, Ontario.
- (9) “**CCAA**” is defined in Recital A.
- (10) “**CCAA Order**” is defined in Recital A.
- (11) “**CCAA Proceedings**” means the CCAA proceedings in respect of OGL pursuant to the CCAA Order.
- (12) “**Confidentiality Agreement**” is defined in Section 2.4(1).
- (13) “**Court**” is defined in Recital A.
- (14) “**Definitive Agreements**” is defined in Section 5.6(5).
- (15) “**Definitive Investment Agreement**” is defined in Section 5.3(a).
- (16) “**Definitive Purchase Agreement**” is defined in Section 5.2(b).
- (17) “**Deposit**” is defined in Section 5.2(i).
- (18) “**Draft Approval Order**” means the form of sale approval and vesting order to be developed by the Monitor in consultation with the Secured Creditor and provided to Qualified Phase 2 Bidders that submitted a Qualified Phase 1 Bid that is a Sale Proposal.
- (19) “**Draft Purchase Agreement**” means the form of purchase and sale agreement to be developed by the Monitor in consultation with the Secured Creditor and provided to Qualified Phase 2 Bidders that submitted a Qualified Phase 1 Bid that is a Sale Proposal.
- (20) “**Investment**” is defined in Recital C(b).
- (21) “**Investment Amount**” is defined in Section 5.3(a).
- (22) “**Investment Proposal**” is defined in Section 4.2(1)(a)(ii).
- (23) “**Kearney Mine**” means the mining, exploration, development and recommissioning project located 26 kilometres north-east of Kearney, Ontario, consisting of seven mining leases covering an area of approximately 435 hectares and 116 mining claims, as described in the Application Affidavit.
- (24) “**Kearney Mine Property**” means:

- (a) the three mining leases and 15 mining claims to which OGL has title; and
 - (b) the four mining leases and 12 mining claims to which OGL has a beneficial interest;
- as further described in the Application Affidavits.
- (25) “**Known Potential Bidders**” is defined in Section 2.4(1).
 - (26) “**Monitor**” is defined in Recital A.
 - (27) “**Non-Binding Indication of Interest**” is defined in Section 4.1(1).
 - (28) “**OGL**” is defined in Recital A.
 - (29) “**Orionis**” means Orionis Corporation.
 - (30) “**Phase 1 Bid Deadline**” is defined in Section 4.1(2).
 - (31) “**Phase 2 Bid Deadline**” is defined in Section 5.1.
 - (32) “**Potential Bidder**” is defined in Section 2.5(1).
 - (33) “**Property**” is defined in Recital C(a).
 - (34) “**Purchase Price**” is defined in Section 5.2(b).
 - (35) “**Qualified Bidder**” is defined in Section 5.4(1).
 - (36) “**Qualified Bids**” is defined in Section 5.4(1).
 - (37) “**Qualified Investment Bid**” is defined in Section 5.3.
 - (38) “**Qualified Phase 1 Bid**” is defined in Section 5.2.
 - (39) “**Qualified Phase 1 Bidder**” is defined in Section 2.5(2).
 - (40) “**Qualified Phase 2 Bidder**” is defined in Section 4.3(4).
 - (41) “**Qualified Purchase Bid**” is defined in Section 5.2.
 - (42) “**Sale**” is defined in Recital C(a).
 - (43) “**Sale Proposal**” is defined in Section 4.2(1)(a)(i).
 - (44) “**Secured Claims Amount**” means the aggregate amount owing (including, but not limited to, principal, interest, fees and recoverable expenses) to the Secured Creditor, as at the date which the transactions contemplated by the Successful Bid, if any, are completed, under the Bridge Notes or otherwise that are validly secured by the Property, and any funds

advanced by Orionis to OGL in connection with the CCAA Proceedings that are secured by a Court ordered charge, all as determined by the Monitor or the Court.

- (45) “**Secured Creditor**” means Orionis or any purchaser, transferee or assignee of the Bridge Notes or of the right to repayment of funds advanced by Orionis to the Monitor in connection with the CCAA Proceedings that are secured by a Court ordered charge.
- (46) “**SISP**” is defined in Recital B.
- (47) “**SISP Approval Order**” is defined in Recital B.
- (48) “**SISP Procedures**” is defined in Recital B.
- (49) “**Solicitation Process**” is defined in Section 2.1(1).
- (50) “**Successful Bid**” is defined in Section 5.6(3).
- (51) “**Successful Bidder**” is defined in Section 5.6(4).
- (52) “**Target Closing Date**” means May 29, 2020.
- (53) “**Teaser Letter**” is defined in Section 2.4(1).
- (54) “**Transaction**” means a Sale or an Investment.

ARTICLE 2 SOLICITATION

2.1 Solicitation Process

- (1) These SISP Procedures describe, among other things, the Property available for sale, the opportunity for an investment in OGL, the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning OGL, the Property, the manner in which bidders and bids become Qualified Bidders and Qualified Bids, respectively, the receipt and negotiation of bids received, the ultimate selection of one or more Successful Bids and a Backup Bid (if a Backup Bid is identified in accordance with these SISP Procedures), and the approval thereof by the Court (collectively, the “**Solicitation Process**”).
- (2) The Monitor (including through its affiliate, Deloitte Corporate Finance Inc.) shall conduct the Solicitation Process as outlined herein. In the event that there is a disagreement or clarification required as to the interpretation or application of these SISP Procedures, the Court shall hear such matter and provide directions, upon application of the Monitor or any other party with a hearing on not less than five (5) Business Days’ notice.

2.2 Sale and Investment Opportunity

These SISP Procedures provide for (a) a sale of all or part of the Property, and/or (b) an Investment to be structured in a manner acceptable to the Monitor in consultation with the Secured Creditor and OGL.

2.3 “As Is, Where Is”

Any Sale or Investment will be on an “as is, where is” basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Monitor or OGL or any of their agents, estates, advisors, professionals or otherwise, except to the extent set forth in the relevant agreement with the Successful Bidder.

2.4 Solicitation of Interest

- (1) The Monitor shall prepare a list of potential bidders capable of submitting a Sale Proposal or Investment Proposal (the “**Known Potential Bidders**”). The Secured Creditor may on a timely basis identify any parties to the Monitor which shall be included in the list of Known Potential Bidders. Concurrently, the Monitor, in consultation with the Secured Creditor, will prepare (a) an initial offering summary (the “**Teaser Letter**”) to notify Known Potential Bidders of the existence of the Solicitation Process and invite the Known Potential Bidders to express their interest in participating in a Sale or Investment, and (b) a form of confidentiality agreement satisfactory to the Monitor (a “**Confidentiality Agreement**”).
- (2) Promptly after preparation of the Known Potential Bidders list, the Monitor shall distribute the Teaser Letter and the Confidentiality Agreement to the Known Potential Bidders.

2.5 Participation Requirements

- (1) Unless otherwise provided for herein, ordered by the Court or agreed by the Monitor, in order to participate in the Solicitation Process and be considered for qualification as a Qualified Phase 1 Bidder, an interested party, including a Known Potential Bidder (a “**Potential Bidder**”), must deliver the following to the Monitor prior to the Phase 1 Bid Deadline:
 - (a) An executed Confidentiality Agreement, which shall inure to the benefit of any Successful Bidder in the event that a Transaction is completed;
 - (b) A letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder, full disclosure of the direct and indirect owners of the Potential Bidder and their principals; and
 - (c) A written acknowledgment of receipt of a copy of the SISP Approval Order (including these SISP Procedures) agreeing to accept and be bound by the provisions contained therein.
- (2) The Monitor shall designate a Potential Bidder as a “**Qualified Phase 1 Bidder**” if:

- (a) Such Potential Bidder has satisfied all of the requirements described in Section 2.5(1) above; and
- (b) Such Potential Bidder's financial information and credit support or enhancement demonstrate to the satisfaction of the Monitor, in its reasonable business judgement, the financial capability of such Potential Bidder to consummate a Transaction and that such Potential Bidder is likely (based on availability of financing, experience and other considerations) to consummate either a Sale or an Investment.

The Monitor may waive one or more of the requirements set out in Section 2.5(1)(a) to (c) and designate a Potential Bidder as a Qualified Phase 1 Bidder. The Secured Creditor shall be deemed to be a Qualified Phase 1 Bidder.

- (3) The determination as to whether a Potential Bidder is a Qualified Phase 1 Bidder pursuant to Section 2.5(2) will be made as promptly as practicable after a Potential Bidder delivers all of the materials required above. If it is determined that a Potential Bidder is a Qualified Phase 1 Bidder, the Monitor will promptly notify the Potential Bidder that it is a Qualified Phase 1 Bidder.
- (4) If it is determined in accordance with Section 2.5(2) above, that there are no Qualified Phase 1 Bidders and that, as a consequence, proceeding with these SISP Procedures is not in the best interests of OGL or its stakeholders, the Monitor shall notify the Secured Creditor forthwith, and within ten (10) Business Days of such determination, file a motion with the Court seeking directions with respect to the conduct of the SISP.

ARTICLE 3 DUE DILIGENCE

3.1 Due Diligence

- (1) As soon as practicable after the determination that a party is a Qualified Phase 1 Bidder, the Monitor will make available to such Qualified Phase 1 Bidder in a secure online electronic data room confidential due diligence information that is in the possession and control of the Monitor regarding:
 - (a) The Property available for sale; and
 - (b) The debt of, and equity interests in, OGL.

At the request of a Qualified Phase 1 Bidder, such confidential due diligence information shall also be provided on a confidential basis satisfactory to the Monitor to a proposed lender of such Qualified Phase 1 Bidder that is reasonably acceptable to the Monitor.

- (2) Each Qualified Phase 1 Bidder shall have such access to due diligence materials, on-site inspections and information relating to the Property, and other information as the Monitor deems appropriate in its discretion.

- (3) The Monitor shall not be obligated to furnish any due diligence materials or information after the Phase 2 Bid Deadline.
- (4) Without limiting the generality of any term or condition of any Confidentiality Agreement between the Monitor and any Potential Bidder, Qualified Phase 1 Bidder, Qualified Phase 2 Bidder, Successful Bidder or Backup Bidder, unless otherwise agreed by the Monitor or ordered by the Court, no Potential Bidder, Qualified Phase 1 Bidder, Qualified Phase 2 Bidder, Successful Bidder or Backup Bidder shall be permitted to have any discussions with any counterparty to any contract with OGL, any current or former director, officer or employee of OGL, or with any regulatory authority responsible for OGL or any of their businesses or any other Potential Bidder, Qualified Phase 1 Bidder or Qualified Phase 2 Bidder in connection with a Non-Binding Indication of Interest or any other bid submitted in accordance with the terms hereof or in contemplation thereof.
- (5) The Monitor is not responsible for, and will have no liability with respect to, any information obtained by any Known Potential Bidder, Potential Bidder or Qualified Bidder in connection with the Property, a Sale or Investment. The Monitor does not make any representations or warranties whatsoever as to the information or the materials provided, except, to the extent the representations or warranties are contained in any Definitive Purchase Agreement or Definitive Investment Agreement between a Successful Bidder or Backup Bidder and the Monitor.

ARTICLE 4 PHASE 1

4.1 Seeking Non-Binding Indications of Interest by Qualified Phase 1 Bidders

- (1) Until the Phase 1 Bid Deadline, in accordance with the terms of the SISP Approval Order and these SISP Procedures, the Monitor will seek to identify and qualify Qualified Phase 1 Bidders, and will solicit non-binding indications of interest from Qualified Phase 1 Bidders to acquire all, or substantially all of the Property or make an Investment (each a “**Non-Binding Indication of Interest**”).
- (2) Subject to Section 4.3(5), in order to continue to participate in the Solicitation Process, a Qualified Phase 1 Bidder must deliver a Non-Binding Indication of Interest to the Monitor so as to be received by the Monitor not later than 5:00 p.m. (Toronto time) on April 15, 2020, or such later date or time as the Monitor may determine appropriate with the prior written consent of the Secured Creditor, acting reasonably (the “**Phase 1 Bid Deadline**”).

4.2 Non-Binding Indications of Interest by Qualified Phase 1 Bidders

- (1) Unless otherwise ordered by the Court or agreed by the Monitor, in order to be considered a “**Qualified Phase 1 Bid**” a Non-Binding Indication of Interest submitted by a Qualified Phase 1 Bidder must be received on or before the Phase 1 Bid Deadline, and contain the following information:
 - (a) An indication of whether the Qualified Phase 1 Bidder is offering to:

- (i) acquire all or part of the Property (a “**Sale Proposal**”); or
 - (ii) make an Investment (an “**Investment Proposal**”);
- (b) In the case of a Sale Proposal, the Non-Binding Indication of Interest shall identify:
- (i) the purchase price (including the cash component thereof and/or the liabilities to be assumed by the Qualified Phase 1 Bidder);
 - (ii) the assets included, any of the assets expected to be excluded, and/or any additional assets desired to be included in the transaction;
 - (iii) the structure and financing of the transaction (including, but not limited to, the sources of financing for the purchase price, preliminary evidence of the availability of such financing and the steps necessary and associated timing to obtain the financing and consummate the proposed transaction and any related contingencies, as applicable);
 - (iv) an acknowledgement that the contemplated sale will be made on an “as is, where is” basis;
 - (v) the key material contracts and leases, if any, the Qualified Phase 1 Bidder wishes to acquire and the Qualified Phase 1 Bidder’s proposed treatment of related cure costs, if any;
 - (vi) any anticipated corporate, shareholder, internal or regulatory approvals, including without limitation any approvals with respect to the grant or transfer of any mining permits or licenses or other approvals with respect to environmental matters, required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals;
 - (vii) a timeline to closing with critical milestones and a statement with respect to the Qualified Phase 1 Bidder’s ability to consummate the contemplated transaction by the Target Closing Date;
 - (viii) a detailed description of any additional due diligence required or desired to be conducted prior to the Phase 2 Bid Deadline, if any;
 - (ix) contact information for any business, financial or legal advisors retained or to be retained in connection with the contemplated transaction;
 - (x) a specific indication of sources of capital for the Qualified Phase 1 Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit-quality support or enhancement, including contact information for capital/financing sources, that will allow the Monitor to make a reasonable business judgement as to the Qualified Phase 1 Bidder’s financial or other capabilities to consummate the contemplated transaction;

- (xi) any conditions to closing that the Qualified Phase 1 Bidder may wish to impose; and
 - (xii) any other terms or conditions of the Sale Proposal which the Qualified Phase 1 Bidder believes are material to the transaction;
- (c) In the case of an Investment Proposal, it shall identify:
- (i) the aggregate amount of the equity and debt investment (including, the sources of such capital, preliminary evidence of the availability of such capital and the steps necessary and associated timing to obtain the capital and consummate the proposed transaction and any related contingencies, as applicable) to be made in OGL;
 - (ii) the underlying assumptions regarding the pro forma capital structure (including, the anticipated debt levels, debt service fees, interest and amortization);
 - (iii) the consideration to be allocated to the stakeholders including claims of any secured or unsecured creditors of OGL and the proposed treatment of employees;
 - (iv) the structure and financing of the transaction including all requisite financial assurance including a specific indication of sources of capital for the Qualified Phase 1 Bidder and preliminary evidence of the availability of such capital, or such other form of financial disclosure and credit-quality support or enhancement, including contact information for capital/financing sources, that will allow the Monitor to make a reasonable business judgement as to the Qualified Phase 1 Bidder's financial or other capabilities to consummate the contemplated transaction;
 - (v) any anticipated corporate, shareholder, internal or regulatory approvals, including without limitation any approvals with respect to the grant or transfer of any mining permits or licenses, required to close the transaction, the anticipated time frame and any anticipated impediments for obtaining such approvals;
 - (vi) the proposed corporate governance structure of the entity or entities owning/operating the business, following implementation of the Investment;
 - (vii) contact information for any business, financial or legal advisors retained or to be retained in connection with the contemplated transaction;
 - (viii) additional due diligence required or desired to be conducted prior to the Phase 2 Bid Deadline, if any;

- (ix) a timeline to closing with critical milestones and a statement with respect to the Qualified Phase 1 Bidder's ability to consummate the contemplated transaction by the Target Closing Date;
 - (x) the proposed treatment of stakeholders, including lenders, trade creditors, shareholders and employees;
 - (xi) any conditions to closing that the Qualified Phase 1 Bidder may wish to impose;
 - (xii) any other terms or conditions of the Investment Proposal which the Qualified Phase 1 Bidder believes are material to the transaction; and
- (d) Such other information reasonably requested by the Monitor.
- (2) The Monitor may, with the consent of the Secured Creditor, acting reasonably, waive compliance with any one or more of the requirements specified herein and deem any non-compliant Non-Binding Indication of Interest to be a Qualified Phase 1 Bid. Notwithstanding the foregoing, prior written consent shall not be required for amendments or modifications to the SISP that are administrative or minor in nature such that they are unlikely (in the Monitor's reasonable discretion) to have a material effect on the results of the SISP or the Secured Creditor, provided further that the Monitor shall consult with the Secured Creditor in advance of any such matters.

4.3 Assessment of Qualified Phase 1 Bids and Determination of Qualified Phase 2 Bidders

- (1) Subject to Section 4.3(7), the Monitor will provide copies of any Qualified Phase 1 Bids received to the Secured Creditor, and consult with the Secured Creditor.
- (2) In consultation with the Secured Creditor and OGL, the Monitor will assess any Qualified Phase 1 Bids received and will determine whether proceeding with these SISP Procedures on the basis of such Qualified Phase 1 Bids is in the best interests of OGL and its stakeholders. Such assessment will be made as promptly as practicable after the Phase 1 Bid Deadline.
- (3) If the Monitor, in accordance with Section 4.2 above, determines that no Qualified Phase 1 Bids were received, the Monitor shall advise the Secured Creditor forthwith, and within ten (10) Business Days file a motion with the Court seeking directions.
- (4) If the Monitor, in accordance with Section 4.2 above, determines that
 - (a) One or more Qualified Phase 1 Bids were received, and
 - (b) Proceeding with these SISP Procedures is in the best interests of OGL and its stakeholders,

these SISP Procedures will continue and each Qualified Phase 1 Bidder who has submitted a Qualified Phase 1 Bid that is determined by the Monitor, on consideration of the

information delivered pursuant to Section 4.2(1), likely be consummated shall be a **“Qualified Phase 2 Bidder”**. The Monitor shall provide advance written notice of the commencement of Phase 2 and the names of the Qualified Phase 2 Bidders to the Secured Creditor and OGL.

- (5) Notwithstanding any other provision in these SISP Procedures, the Secured Creditor shall be deemed to be a Qualified Phase 2 Bidder even if it did not submit a Non-Binding Indication of Interest. Subject to the restrictions and limitations set out in Section 4.3(7), the Secured Creditor shall be permitted to submit a Qualified Purchase Bid or Qualified Investment Bid, provided that the Secured Creditor declares its intention to do so within five (5) Business Days of the commencement of Phase 2 (as described in Article 5 hereto) by delivering written notice thereof to the Monitor (the **“Bid Notice”**). The Bid Notice shall contain the amount of the Secured Creditor’s bid together with a summary of all material terms of the bid. The Secured Creditor shall not be entitled to increase the amount of its bid following delivery of the Bid Notice. The Monitor shall forthwith provide a copy of the Bid Notice to all Qualified Phase 1 Bidders and Qualified Phase 2 Bidders, as applicable.
- (6) If the Secured Creditor does not submit a Bid Notice within five (5) Business Days of the commencement of Phase 2 then the Secured Creditor will not be permitted to submit any bid thereafter, save and except for in the circumstances described in Section 5.5(2).
- (7) Notwithstanding any other provision of this SISP, to the extent that the Secured Creditor or any employee, officer, director or partner of the Secured Creditor or any of its affiliates, at any time received copies of any Qualified Phase 1 Bid or information regarding the proposed consideration to be paid by the bidder in such Qualified Phase 1 Bid, the Secured Creditor shall not be permitted to submit any bid that provides for consideration that exceeds the amount of the Secured Claims Amount.

ARTICLE 5 PHASE 2

5.1 Seeking Qualified Bids by Qualified Phase 2 Bidders

In order to continue to participate in the Solicitation Process, a Qualified Phase 2 Bidder must deliver a Qualified Purchase Bid or Qualified Investment Bid to the Monitor so as to be received by the Monitor by no later than 5:00 p.m. (Toronto time) on June 22, 2020, or such later date or time as the Monitor may determine appropriate (the **“Phase 2 Bid Deadline”**).

5.2 Qualified Purchase Bids

A Sale Proposal submitted by a Qualified Phase 2 Bidder will be considered a **“Qualified Purchase Bid”** only if the Sale Proposal complies with all of the following:

- (a) It includes a letter stating that the Sale Proposal is irrevocable until the earlier of:
 - (i) approval by the Court of a Successful Bid; and

(ii) 45 Business Days following the Phase 2 Bid Deadline;

provided, however, that if such Sale Proposal is selected as the Successful Bid or the Backup Bid, it shall remain irrevocable until the earlier of: (i) the closing of the Successful Bid or the Backup Bid, as the case may be; and (ii) the outside date stipulated in the Successful Bid or the Backup Bid, as applicable;

- (b) It includes a duly authorized and executed purchase and sale agreement substantially in the form of Draft Purchase Agreement specifying the purchase price, including the cash component thereof and/or the liabilities to be assumed by the Qualified Phase 2 Bidder, expressed in Canadian dollars (the “**Purchase Price**”), together with all exhibits and schedules thereto (the “**Definitive Purchase Agreement**”), and such ancillary agreements as may be required by the Qualified Phase 2 Bidder with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such ancillary agreements) and the proposed orders to approve the sale by the Court, as well as copies of such materials marked to show the amendments and modifications to the Draft Purchase Agreement and Draft Approval Order;
- (c) It does not include any request or entitlement to any break-fee, expense reimbursement or similar type of payment. Further, by submitting a Sale Proposal, a Qualified Phase 2 Bidder shall be deemed to waive its right to pursue a claim for any costs or expenses in any way related to the submissions of its Sale Proposal or these SISP Procedures;
- (d) It includes evidence sufficient to allow the Monitor to make a reasonable determination as to the Qualified Phase 2 Bidder’s (and its direct and indirect owners and their principals’) financial and other capabilities to consummate the transaction contemplated by the Sale Proposal, which evidence could include but is not limited to evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution;
- (e) It is not conditioned on:
 - (i) the outcome of unperformed due diligence by the bidder; and/or
 - (ii) obtaining any financing capital; andit includes an acknowledgement and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its Sale Proposal;
- (f) It fully discloses the identity of each entity that is bidding or otherwise that will be sponsoring or participating in the Sale Proposal, including the identification of the Qualified Phase 2 Bidder’s direct and indirect owners and their principals, and the complete terms of any such participation;

- (g) It includes an acknowledgement and representation that the Qualified Phase 2 Bidder:
 - (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its Sale Proposal;
 - (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the assets to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, including by the Monitor, or any of its advisors, except as expressly stated in the Definitive Purchase Agreement submitted by it;
 - (iii) is a sophisticated party capable of making its own assessments in respect of making its Sale Proposal; and
 - (iv) has had the benefit of independent legal advice in connection with its Sale Proposal;
- (h) It includes evidence, in form and substance reasonably satisfactory to the Monitor, of authorization and approval from the Qualified Phase 2 Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Sale Proposal;
- (i) Except in the case of a credit bid, it is accompanied by a refundable deposit (the "**Deposit**") in the form of a wire transfer (to a trust account specified by the Monitor), or such other form acceptable to the Monitor, payable to the order of Deloitte Restructuring Inc., in trust, in an amount equal to 5% of the proposed gross Purchase Price, to be held and dealt with in accordance with these SISP Procedures;
- (j) It includes an acknowledgement and representation that the Qualified Phase 2 Bidder will assume the obligations of OGL under executory contracts, unexpired leases, and licences proposed to be assigned (or identifies with particularity which of such contracts, leases, and licenses of OGL, as applicable, that the Qualified Phase 2 Bidder wishes not to assume, or alternatively wishes to assume), contains full details of the Qualified Phase 2 Bidder's proposal for the treatment of related cure costs, and which of these the assumption of which is a condition of closing;
- (k) It provides for closing of the Qualified Purchase Bid by no later than the Target Closing Date;
- (l) If the Qualified Phase 2 Bidder is an entity newly formed for the purpose of the transaction, the bid shall contain an equity or debt commitment letter from the parent entity or sponsor, which is satisfactory to the Monitor, that names the

Monitor as a third party beneficiary of any such commitment letter with recourse against such parent entity or sponsor;

- (m) It includes evidence, in form and substance satisfactory to the Monitor, of compliance or anticipated compliance with any and all applicable regulatory approvals (including, if applicable, anti-trust regulatory approval and any approvals with respect to the grant or transfer of any mining permits or licenses), the anticipated time frame for such compliance and any anticipated impediments for obtaining such approvals;
- (n) It contains other information reasonably requested by the Monitor; and
- (o) It is received by no later than the Phase 2 Bid Deadline.

5.3 Qualified Investment Bids

An Investment Proposal submitted by a Qualified Phase 2 Bidder will be considered a “**Qualified Investment Bid**” only if the Investment Proposal complies with all of the following:

- (a) It includes duly authorized and executed binding definitive documentation setting out the terms and conditions of the proposed transaction, including the aggregate amount of the proposed equity and/or debt investment (the “**Investment Amount**”) and details regarding the proposed equity and/or debt structure of OGL, if applicable, following completion of the proposed transaction (a “**Definitive Investment Agreement**”);
- (b) It includes a letter stating that the Investment Proposal is irrevocable until the earlier of:
 - (i) approval by the Court of a Successful Bid; and
 - (ii) 45 Business Days following the Phase 2 Bid Deadline;provided, however, that if such Investment Proposal is selected as the Successful Bid or Backup Bid, it shall remain irrevocable until the earlier of:
 - (i) the closing of the Successful Bid or the Backup Bid, as the case may be; and
 - (ii) the outside date stipulated in the Successful Bid or the Backup Bid, as applicable;
- (c) It does not include any request or entitlement to any break-fee, expense reimbursement or similar type of payment. Further, by submitting an Investment Proposal, the Qualified Phase 2 Bidder shall be deemed to waive its right to pursue a claim for any costs or expenses in any way related to the submission of its Investment Proposal or these SISP Procedures;

- (d) It includes written evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution to consummate the proposed transaction, or other evidence satisfactory to the Monitor, to allow the Monitor to make a reasonable determination as to the Qualified Phase 2 Bidder's financial and other capabilities to consummate the transaction contemplated by the Investment Proposal;
- (e) It is not conditioned on:
 - (i) the outcome of unperformed due diligence by the Qualified Phase 2 Bidder; and/or
 - (ii) obtaining any financing capital; andincludes an acknowledgement and representation that the Qualified Phase 2 Bidder has had an opportunity to conduct any and all required due diligence prior to making its bid;
- (f) It fully discloses the identity of each entity that is bidding or otherwise that will be sponsoring or participating in the Investment Proposal, including the identification of the Qualified Phase 2 Bidder's direct and indirect owners and their principals, and the complete terms of any such participation;
- (g) It includes an acknowledgement and representation that the Qualified Phase 2 Bidder:
 - (i) has relied solely upon its own independent review, investigation and/or inspection of any documents in making its Investment Proposal;
 - (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the business of OGL or the completeness of any information provided in connection therewith, including by the Monitor or any of its advisors, except as expressly stated in the Definitive Investment Agreement;
 - (iii) is a sophisticated party capable of making its own assessments in respect of making its Investment Proposal; and
 - (iv) has had the benefit of independent legal advice in connection with its Investment Proposal;
- (h) It includes evidence, in form and substance satisfactory to the Monitor, of authorization and approval from the Qualified Phase 2 Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction contemplated by the Investment Proposal;

- (i) It is accompanied by a Deposit in the form of a wire transfer (to a trust account specified by the Monitor), or such other form acceptable to the Monitor, payable to the order of Deloitte Restructuring Inc., in trust, in an amount equal to 10% of the Investment Amount, to be held and dealt with in accordance with these SISP Procedures;
- (j) It provides for closing of the Qualified Investment Bid by no later than the Target Closing Date;
- (k) If the Qualified Phase 2 Bidder is an entity newly formed for the purpose of the transaction, the Investment Proposal shall contain an equity or debt commitment letter from the parent entity or sponsor, and satisfactory to the Monitor, that names OGL as a third party beneficiary of any such commitment letter with recourse against such parent entity or sponsor;
- (l) It includes evidence, in form and substance reasonably satisfactory to the Monitor, of compliance or anticipated compliance with any and all applicable regulatory approvals (including, if applicable, anti-trust regulatory approval), the anticipated time frame for such compliance and any anticipated impediments for obtaining such approvals;
- (m) It contains other information reasonably requested by the Monitor; and
- (n) It is received by no later than the Phase 2 Bid Deadline.

5.4 Qualified Bids

- (1) Qualified Purchase Bids and Qualified Investment Bids shall hereinafter be referred to as “**Qualified Bids**” and each a “**Qualified Bid**” and each bidder who has submitted a Qualified Bid shall hereinafter be referred to as a “**Qualified Bidder**”.
- (2) Notwithstanding Section 5.2 and Section 5.3 hereof, the Monitor, with the consent of the Secured Creditor, may waive compliance with any one or more of the Qualified Bid requirements specified herein, and deem such non-compliant bids to be Qualified Purchase Bids or Qualified Investment Bids, as the case may be.

5.5 No Qualified Bids

- (1) In consultation with the Secured Creditor and OGL, the Monitor will assess the Qualified Bids received, if any, and will determine whether the transactions contemplated by such Qualified Bids are likely to be consummated and whether proceeding with these SISP Procedures is in the best interests of OGL and its stakeholders. Such determination will be made, subject to the prior written consent of the Secured Creditor, acting reasonably, as promptly as practicable after the Phase 2 Bid Deadline.
- (2) If the Monitor, in accordance with Section 5.5(1) above, determines, in consultation with the Secured Creditor and OGL, that (a) no Qualified Bid was received, or (b) at least one Qualified Bid was received but it is not likely that the transactions contemplated in any

such Qualified Bids will be consummated, the Monitor shall, within ten (10) Business Days of such determination, file a motion with the Court seeking directions. In the circumstances described in this subsection, the Secured Creditor shall have the option within five (5) Business Days from such determination to submit a credit bid (that would constitute a binding agreement if accepted) even if they did not submit a credit bid at any other point during Phase 1 or Phase 2, and notwithstanding the receipt of any new information regarding bids or offers after the commencement of Phase 2.

5.6 Selection Criteria

- (1) In selecting the Successful Bid, the Monitor, in consultation with the Secured Creditor and OGL, will review each Qualified Bid. Evaluation criteria with respect to a Sale Proposal may include, but are not limited to, items such as:
 - (a) The Purchase Price and the net value (including assumed liabilities and other obligations to be performed or assumed by the bidder) provided by such bid;
 - (b) The claims likely to be created by such bid in relation to other bids;
 - (c) the counterparties to the transaction;
 - (d) The proposed revisions to the Draft Purchase Agreement and the Draft Approval Order and the terms of the transaction documents;
 - (e) Other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals required to close the transaction);
 - (f) The assets included or excluded from the bid and the transaction costs and risks associated with closing multiple transactions versus a single transaction for all or substantially all of the Property;
 - (g) The transition services required from OGL post-closing and any related restructuring costs; and
 - (h) The likelihood and timing of consummating the transaction by the Target Closing Date.

- (2) Evaluation criteria with respect to an Investment Proposal may include, but are not limited to items such as:
 - (a) The Investment Amount and the proposed sources and uses of such capital;
 - (b) The debt to equity structure post-closing;
 - (c) The counterparties to the transaction;
 - (d) The terms of the transaction documents;
 - (e) Other factors affecting the speed, certainty and value of the transaction;

- (f) Planned treatment of and recovery to stakeholders; and
 - (g) The likelihood and timing of consummating the transaction by the Target Closing Date.
- (3) The Monitor may select Qualified Bids for further negotiation and/or clarification of any terms or conditions of such Qualified Bids, including the Investment Amount or Purchase Price offered, before identifying the highest or otherwise best Qualified Bid(s) received (the “**Successful Bid**”).
 - (4) Upon completion of any further negotiations or clarifications that may be conducted pursuant to Section 5.6(3) above, the Monitor will identify the Successful Bid and may identify a next highest or otherwise best Qualified Bid received (such offer, the “**Backup Bid**”). The Qualified Bidder(s) who made the Successful Bid is/are the “**Successful Bidder**” and the Qualified Bidder(s) who made the Backup Bid (if a Backup Bid is identified in accordance with these SISP Procedures) is/are the “**Backup Bidder**”. The Monitor will notify the Successful Bidder and any Backup Bidder that they are, respectively, the Successful Bidder and the Backup Bidder.
 - (5) The Monitor will finalize definitive agreements in respect of the Successful Bid and the Backup Bid, if any, conditional upon approval by the Court (the “**Definitive Agreements**”).
 - (6) If a Backup Bid is identified in accordance with these SISP Procedures, then such Backup Bid shall remain open until the consummation of the transaction contemplated by the Successful Bid (the “**Backup Bid Expiration Date**”).
 - (7) All Qualified Bids (other than the Successful Bid and any Backup Bid) shall be deemed rejected by the Monitor on and as of the date of approval of the Successful Bid or any Backup Bid by the Court.

5.7 Approval Hearing

- (1) After Definitive Agreements in respect of a Successful Bid and Backup Bid, if any, have been finalized, in the case of the Successful Bid, signed (conditional on Court approval) and, in the case of the Backup Bid signed (conditional on non-completion of the Successful Bid and on Court approval), the Monitor shall seek a hearing as soon as practicable on a date to be scheduled by the Court that will permit not less than five (5) Business Days’ notice to the service list (the “**Approval Hearing**”) to approve the Successful Bid and the Backup Bid, if any, should the Successful Bid not close for any reason. The Approval Hearing may be adjourned or rescheduled by the Monitor, without further notice, by an announcement of the adjourned date at the Approval Hearing.
- (2) If, following approval of the Successful Bid by the Court, the Successful Bidder fails to consummate the transaction for any reason, then the Backup Bid, if any, will be deemed to be the Successful Bid and the Monitor shall effectuate the transaction with the Backup Bidder subject to the terms of the Backup Bid, without further order of the Court.

5.8 Deposits

- (1) All Deposits shall be retained by the Monitor and invested in an interest-bearing trust account in a Schedule I bank in Canada. If there is a Successful Bid, the Deposit (plus accrued interest) paid by the Successful Bidder whose bid is approved pursuant to the Approval Hearing shall be applied to the Purchase Price to be paid or Investment Amount to be made by the Successful Bidder upon closing of the Successful Bid. The Deposit (plus accrued interest) paid by the Backup Bidder, if there is one, shall be retained by the Monitor until the Backup Bid Expiration Date or, if the Backup Bid becomes the Successful Bid, shall be applied to the Purchase Price to be paid or Investment Amount to be made by the Backup Bidder upon closing of the Backup Bid. The Deposits (plus applicable interest) of all Qualified Phase 2 Bidders not selected as the Successful Bidder or Backup Bidder shall be returned to such bidders without interest within five (5) Business Days of the date upon which the Successful Bid and Backup Bid, if any, are approved by the Court. If these SISP Procedures are terminated in accordance with the provisions hereof, all Deposits shall be returned to the bidders without interest within five (5) Business Days of the date upon which these SISP Procedures are terminated.
- (2) If an entity selected as the Successful Bidder or Backup Bidder breaches its obligations to close, it shall forfeit its Deposit to the Monitor; provided, however, that the forfeiture of such Deposit shall be in addition to, and not in lieu of, any other rights in law or equity that the Monitor has or may have against such breaching entity.

5.9 Approvals

For greater certainty, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by any Canadian or other foreign statute or are otherwise required at law in order to implement the Successful Bid or Backup Bid, as the case may be.

5.10 Notice to the Monitor

Any notice or other communication to be given to the Monitor in connection with this SISP shall be given in writing and shall be given by personal delivery (in which case it shall be left with a responsible officer of the recipient) or by electronic communication addressed to the Monitor as follows:

Deloitte Restructuring Inc.
8 Adelaide Street West, Suite 200
Toronto, ON M5K 0A9
Attention: Phil Reynolds and Todd Ambachtsheer
Telephone: 416-956-9200 and 416-607-0781
Email: philreynolds@deloitte.ca and tambachtsheer@deloitte.ca

5.11 Reservation of Rights

- (1) The Monitor may:
 - (a) Reject at any time any bid that is:
 - (i) inadequate or insufficient;
 - (ii) not in conformity with the requirements of these SISP Procedures or any orders of the Court applicable to OGL; or
 - (iii) contrary to the best interests of OGL, its estate, and stakeholders as determined by the Monitor;
 - (b) In accordance with the terms hereof, accept bids not in conformity with these SISP Procedures to the extent that the Monitor determines, in its reasonable business judgement, that doing so would benefit OGL, its estate, and stakeholders;
 - (c) In accordance with the terms hereof extend the Phase 1 Bid Deadline or Phase 2 Bid Deadline; and
 - (d) Reject all bids.

The Monitor shall not be required to accept the highest bid, but shall be entitled to recommend to the Court a transaction that in its view maximizes value for all stakeholders.

- (2) These SISP Procedures do not, and shall not be interpreted to, create any contractual or other legal relationship between the Monitor on the one hand and any Known Potential Bidder, Potential Bidder, Qualified Phase 1 Bidder, Qualified Phase 2 Bidder, Qualified Bidder, Successful Bidder or Backup Bidder, on the other hand, except as specifically set forth in Definitive Agreements that may be executed by the Monitor.
- (3) Subject to the restrictions and limitations set out in Section 4.3(7) hereof, the Secured Creditor shall be granted by the Monitor with full access to the information in connection with the Non-Binding Indication of Interests, the Phase 1 Qualified Bids and/or the Phase 2 Qualified bids, as the case may be.

5.12 Further Orders

At any time during the SISP, the Monitor may apply to the Court for directions with respect to the discharge of its powers and duties hereunder.

5.13 Credit Bid

These SISP Procedures permit the Secured Creditor to submit a credit bid, provided such credit bid is in accordance with the terms and conditions of these SISP Procedures and in accordance with applicable law.

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

ORIONIS CORPORATION

Applicant

and

ONTARIO GRAPHITE, LTD.

Respondent

Court File No: CV-20-00634195-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT: TORONTO

ORDER
(SISP & IRP Approval Order, made Feb. 20, 2020)

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Orionis Corporation

Our Matter No. 1165915