

Court File No. 18-601307-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**(COMMERCIAL LIST)**

BETWEEN:

**CRH Funding II Pte. Ltd.**

Applicant

- and -

**SAGE GOLD INC.**

Respondent

**SIXTH REPORT OF THE RECEIVER**

**DELOITTE RESTRUCTURING INC.**

**DATED DECEMBER 11, 2020**

## INTRODUCTION AND PURPOSE OF REPORT

1. Pursuant to an Order (the “**Receivership Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated July 30, 2018 (the “**Receivership Date**”), Deloitte Restructuring Inc. (“**Deloitte**”) was appointed as receiver (the “**Receiver**”) of all of the assets, undertakings and properties of Sage Gold Inc. (“**Sage**” or the “**Company**”) acquired for, or used in relation to business carried on by Sage (the “**Property**”) pursuant to section 243 of the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O., 1990, C-43 (“**CJA**”). A copy of the Receivership Order is attached hereto as Appendix “**A**”.
2. The application for the appointment of Deloitte as Receiver by CRH Funding II Pte. Ltd. (“**CRH**”), the senior secured creditor of the Respondent, was opposed by the Company. At that time, the Court found it appropriate in the circumstances to make an Order for the appointment of Deloitte as an interim receiver pursuant to section 47 of the BIA (“**Interim Receivership Order**”) pending resolution of the Company’s opposition to the appointment at a subsequent hearing. On July 30, 2018, Mr. Justice Dunphy heard arguments from CRH, Deloitte (as interim receiver) and the Company, ultimately granting the Receivership Order. A copy of the Interim Receivership Order is attached hereto as Appendix “**B**”.
3. Despite a number of challenges, which are set out in the prior reports of the Receiver and further referenced herein, a purchase and sale agreement was negotiated for all of Sage’s Property including each of Sage’s most valuable mining lands: the Onaman property, which was a development property near Thunder Bay, Ontario (the “**Onaman Property**”), and the Clavos property, Sage’s formerly operating gold mine near Timmins, Ontario (the “**Clavos Property**”).

4. On August 29, 2018, Mr. Justice Hainey granted an order approving a sale and investor solicitation procedure (the “**SISP**”) for the marketing and sale of Sage’s assets by the Receiver. The conduct of the SISP and the transactions that resulted from the SISP and subsequent efforts by the Receiver were described in the Receiver’s Third Report, dated January 23, 2019 (the “**Third Report**”) and the Fourth Report of the Receiver, dated December 11, 2019 (the “**Fourth Report**”).

*Additional background*

5. While the SISP was being administered, CRH was providing the Receiver with financing to maintain the Clavos Property. Such funding was necessary as the Receiver, based on asset realizations to that time, did not have sufficient funds to cover such costs and keep up with the necessary care and maintenance program requirements.
6. Pursuant to the SISP, and after a marketing period of several months, the Receiver received a number of expressions of interest for each of the Onaman Property and the Clavos Property. Ultimately the following binding bids were negotiated between the Receiver and an interested party for each of the properties;
  - a. The Onaman Property was subject to a binding bid from RZJ Capital Management LLC (“**RZJ**”). An asset purchase agreement dated January 11, 2019 memorialized the agreement between the Receiver and RZJ (the “**Onaman APA**”); and
  - b. The Clavos Property was the subject of a credit bid from CRH (the “**Credit Bid**”). As part of the Credit Bid and consistent with the previous funding mechanism for the Clavos Property, CRH committed to providing ongoing

funding to maintain the Clavos Property.

7. As described in detail in the Second Report and the First and Second Supplements thereto, CRH purported to withdraw its binding credit bid (the “**Credit Bid**”) and suspend funding for this receivership proceeding in December 2018. This development threatened the pendency of these proceedings, including the Receiver’s oversight of the Clavos mine.
8. Beginning on December 14, 2018, the Receiver engaged CRH in urgent discussions with a view to obtaining further funding commitments over the holiday period and through January 31, 2019. The Receiver was unable to obtain such a commitment by the morning of December 18, 2018.
9. As a result of the lack of a workable funding protocol with CRH, the Receiver advised CRH that it would be abandoning the Clavos Property on or about December 27, 2018, as the Receiver did not have sufficient funds to permit the continued possession of the site beyond that date. The Receiver notified CRH and the various affected provincial ministries that it would be abandoning the Clavos Property on December 27, 2018. The Receiver served a notice of motion on December 18, 2018, which was returnable three days later (i.e. on December 21, 2018), to seek Court approval to abandon the Clavos Property. Such Order was granted by the Court (the “**Property Abandonment Order**”) and required the Receiver to provide two business days’ written notice to the Director of Mine Rehabilitation (the “**Director**”) of the Ministry of Northern Development and Mines (now called the Ministry of Energy, Northern Development and Mines (the “**ENDM**”)).
10. Over the next several days, the Receiver engaged with CRH in additional discussions to continue funding the care and maintenance program at the Clavos Property. This included providing CRH with up to date funding requirements for various scenarios of care and

maintenance.

11. At the same time, the Receiver continued to provide the Director and ENDM with information related to the likely abandonment of the site. Representatives of ENDM attended the Clavos Property on December 19, 2018 to conduct an inspection and also provided the Receiver with their views on key areas of focus should the mine be abandoned. During this time the Receiver was working in close collaboration with ENDM and the Director.
12. On December 20, 2018, CRH provided the Receiver with the necessary funding to maintain the Clavos Property through January 3, 2019 and continued to discuss future funding with CRH.
13. The following day, on December 21, 2018, the Court issued an Order that provided Her Majesty the Queen in right of Ontario (“**HMQ**”) with a charge on the real property of the Clavos Property (the “**Abandonment Cost Charge**”). Such charge was for the purpose reimbursing HMQ should out of pocket costs be disbursed in respect of the Clavos Property. CRH consented to the granting of the Abandonment Cost Charge. At the same time, the Court granted the Property Abandonment Order that gave the Receiver the power to abandon the Clavos Property.
14. HMQ has not incurred any expenses that would be secured by the Abandonment Cost Charge.
15. At the hearing on December 21, 2018, CRH provided the Court with a letter indicating its intent to continue working with the Receiver to reach an agreement that would allow CRH to continue funding the activity at the Clavos Property.

16. Between December 21, 2018 and January 3, 2019, the Receiver continued discussions with CRH regarding the provision of funding to manage the Clavos Property. However, on that date, the Receiver determined that it did not have sufficient funding to manage the site beyond January 7, 2019. Accordingly, the Receiver provided a notice of abandonment to the Director that it intended to abandon, renounce and divest its control and possession of the Clavos Property effective January 8, 2020 (the “**Abandonment**”). Such notice was a requirement of the Property Abandonment Order.
17. Notwithstanding the Abandonment, the Receiver continued to market the Clavos Property and the Onaman Property for sale to potentially interested parties in consultation with the Director. Given CRH’s decision to stop funding the receivership, the Receiver undertook such activity with no guarantee that a buyer could be found for either property and ultimately provide realizations to fund the receivership estate. As a result, the fees and out of pocket disbursements of the Receiver and its counsel were at risk with no certainty that any of them would be paid. However, in an effort to enhance recoveries for all stakeholders, the Receiver continued its efforts to try and find buyers for Sage’s assets.
18. The Receiver also funded certain specific costs associated with the maintenance of the Clavos mine site, which included hydro and security costs. To date, the Receiver has disbursed approximately \$324,321 and \$11,149 in respect of hydro and security costs, respectively. Such disbursements were made without any certainty of reimbursement.
19. As a consequence of the Receiver’s election to continue paying the ongoing costs, it was able to negotiate with two parties for the sale of the Clavos Property. This occurred in parallel with a separate process for the Onaman Property. As a result of such negotiations, two agreements were finalized for the Onaman Property and the Clavos Property.

20. On January 29, 2019, Madam Justice Dietrich granted orders approving:
  - a. The sale of the Onaman Property to RZJ pursuant to an asset purchase agreement; and
  - b. The sale of the Clavos Property (the “**Original Clavos Approval and Vesting Order**”, as defined in the Fourth Report) pursuant to an asset purchase agreement (the “**Original Clavos APA**”, as defined in the Fourth Report) between the Receiver and a proposed purchaser.
21. The sale of the Onaman Property closed on April 7, 2019. However, the sale contemplated in the Original Clavos APA did not close. The circumstances of the failure to close the transaction are set out in detail in the Receiver’s Fourth Report. Following further negotiations with a newly constituted purchaser, the Receiver entered into a new asset purchase agreement (the “**New Clavos APA**”, as defined in the Fourth Report) on substantially similar commercial terms to the Original Clavos APA.
22. On December 19, 2019, Madam Justice Conway granted an Order (the “**Vesting Order**”) approving the transaction contemplated in the New Clavos APA and vesting the assets purchased thereunder in the purchaser upon closing. Given certain changes that were required to the original Vesting Order, the Receiver sought and obtained, on October 1, 2020, a revised vesting order (the “**Amended and Restated Vesting Order**”) to allow the closing of the Clavos APA with the purchaser, Grace Gold Ltd. (the “**Clavos Purchaser**”), and its principals, Mr. Jonathon Quint and Mr. Jayson Flowers.
23. The sale of the Clavos Property closed on October 2, 2020. As such, all of Sage’s assets have now been sold. The activity of the Receiver will be limited in the coming months to:

- a. Waiting to receive the balance of the purchase price pursuant to the Clavos APA. As set out in the Fifth Report, certain components of the purchase price were deferred for a period of up to 120 days and were secured by a first ranking charge on the assets of the Clavos Purchaser; and
- b. Filing HST and corporate income tax returns for the relevant periods.

*Purpose*

24. The purpose of this sixth report of the Receiver (the “**Sixth Report**”) is to:
  - a. Seek the Court’s approval of the fees and disbursements of the Receiver and its counsel, McMillan LLP (“**McMillan**”);
  - b. Seek the Receiver’s discharge, subject to filing a certificate (the “**Certificate**”) once certain tax filings are complete (the “**Remaining Activities**”) and
  - c. Provide the Court with a summary of the Receiver’s receipts and disbursements from July 30, 2018 to November 30, 2020.
25. Unless otherwise stated, all dollar amounts contained in this Sixth Report are expressed in Canadian dollars.
26. Due to the extraordinary circumstances of this receivership proceeding the Receiver and its counsel incurred significant unfunded professional fees. This was done for the benefit of Sage’s stakeholders, including unpaid workers at the Clavos Property and the affected Ministries. The decision of the Receiver to work without secured funding has resulted in a sale transaction and the ongoing care and maintenance of the Clavos Mine.
27. The work performed by the Receiver and McMillan in this proceeding are set out in detail in the fee affidavits filed on this motion, with recovery of its fees and the fees of its counsel

at risk. It involved seven distinct phases of work, including multiple attempts to negotiate and consummate the sale of the Clavos Property. There are not sufficient funds in the estate to pay all of the professional fees incurred by the Receiver and its counsel, which are secured by an administrative charge. Accordingly, the Receiver and its counsel will not be fully compensated for their work in this proceeding and there will be no excess funds for distribution to CRH or any other creditors of Sage.

### **TERMS OF REFERENCE**

28. In developing this Sixth Report, the Receiver has relied upon the Company's books and records and discussions with its management. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to be the *CPA Canada Handbook* and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the information.

### **COURT APPROVAL OF RECEIVER AND MCMILLAN FEES AND DISBURSEMENTS**

29. The Receiver is now seeking Court approval for its fees and those of its counsel, McMillan. The Receiver requests that the Court approve such fees and disbursements for the period from July 30, 2018 to the date of this Sixth Report (the "**Period**"). Time spent and the activities undertaken by the Receiver during the Period is more particularly set out in the affidavit of Philip J. Reynolds dated December 11, 2020 (the "**Reynolds Affidavit**") and is not reproduced within the body of this Sixth Report as it is included separately in the Receiver's motion record. The Reynolds Affidavit also includes a summary of these accounts and copies of the Receiver's invoices.

30. For the Period, the Receiver's fees total \$744,405.00, plus disbursements of \$137.74 and HST of \$95,601.84. None of these invoices have been paid and the Receiver has undertaken significant activities and disbursed tens of thousands of dollars without any certainty that its fees and disbursements would be paid by proceeds of the estate.
31. In addition to the fees and disbursements set out above, the Receiver expects to incur further storage costs of approximately \$35,000. Such costs are necessary to store the various records required of a Receiver pursuant to the BIA. Further professional time is estimated to be \$30,000, for which the Receiver is seeking Court approval.
32. The Receiver further seeks Court approval of the fees and disbursements of its independent legal counsel, McMillan, for the period from June 28, 2018 to September 30, 2020. Particulars of McMillan's fees and disbursements are set out in the affidavit of Waël Rostom dated December 11, 2020 (the "**Rostom Affidavit**"). The Rostom Affidavit is included in the Receiver's motion record and includes redacted copies of the invoices of McMillan during this period. The fees of McMillan during this period total \$890,790.50 plus disbursements of \$16,882.58 and HST of \$117,529.35. To date McMillan has been paid \$89,744 (inclusive of HST) and currently has \$935,458,14 of fees, disbursements and HST outstanding.
33. McMillan expects a further \$20,000 of fees to be incurred to finalize Sage's estate and the Receiver is currently seeking the Court's approval of this amount as well.

#### **RECEIVER'S DISCHARGE**

34. The liquidation of Sage's assets is now complete and, other than HST recoveries and the collection of the Deferred Amount, there are no further assets remaining in the estate. The

receipt of HST refunds from CRA has been delayed pending the assessment of corporate tax returns which are now being prepared by the Receiver.

35. The Receiver is now seeking its discharge from the Court. The Receiver requests that the Court grant such discharge, which will be conditional upon the Receiver filing the Certificate certifying that all remaining receivership activities have been satisfactorily completed. The Certificate will be filed once Sage's tax returns have been assessed by CRA, HST refunds received, and collection of the Deferred Amount has occurred. The proposed form of the Certificate is attached as Appendix "C" to this Sixth Report.

#### **RECEIPTS AND DISBURSEMENTS**

36. Attached as Appendix "D" to this Sixth Report is a summary of the Receiver's receipts and disbursements since the commencement of the receivership proceeding through November 30, 2020 (the "R&D").
37. As set out in the R&D, the Receiver is currently holding approximately \$995,473 and expects to further receive the Deferred Amount (as defined in the Fifth Report) and HST refunds as they are filed. As such, the Receiver expects to have approximately \$1.2 million to satisfy claims in order of their priority.
38. Of the expected \$1.2 million, the Receiver currently estimates that all such amounts will be used to pay outstanding professional fees of it and its counsel, McMillan. As noted earlier, the Receiver expects that it and McMillan will suffer a shortfall on their professional fees and that there will be no proceeds for any creditor of Sage.
39. The Receiver intends to return to Court to seek its discharge once it has completed the filing of all necessary tax returns for both HST and corporate income tax. The completion

of such returns is currently in progress.

## RECOMMENDATIONS

40. Based on the foregoing, the Receiver respectfully requests that the Court approve the fees and disbursements of the Receiver and McMillan. The Receiver further recommends that the Court grant its discharge once the Certificate has been filed with the Court.

All of which is respectfully submitted this 11<sup>th</sup> day of December, 2020.

**Deloitte Restructuring Inc.,**  
Solely in its capacity as the  
Receiver of Sage Gold Inc., and not in its  
personal capacity

Per:



Philip J. Reynolds, CPA, CA, CIRP, LIT  
Senior Vice-President