

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-11-057094-191

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,**

-&-

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 COPCO CANADA INC.,

-&-

CWB NATIONAL LEASING INC.,

-&-

OSISKO GOLD ROYALTIES LTD,

-&-

CDPQ RESSOURCES INC.,

-&-

TF R&S LTD. (FORMERLY 1078243 CANADA LIMITED),

-&-

ALBION EXPLORATION FUND LLC,

-&-

WASHINGTON STATE INVESTMENT BOARD,

-&-

TSX INC.,

-&-

ATTORNEY GENERAL OF CANADA,

-&-

QUEBEC REVENUE AGENCY,

-&-

THE DIRECTOR APPOINTED PURSUANT TO THE CANADA BUSINESS CORPORATIONS ACT, having its head office at 235 Queen Street, West Tower, 7th Floor, in the city of Ottawa, province of Ontario, K1A 0H5

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THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL RIGHTS OF QUEBEC, represented by the **QUEBEC MINISTRY OF JUSTICE**, having its head office at 1, Notre-Dame East, in the district and city of Montreal, province of Quebec, H2Y 1B6

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11641603 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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11641638 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

-&-

11641735 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

-&-

THE MINISTER OF ECONOMY, SCIENCE AND INNOVATION OF QUEBEC, for and in the name of the Quebec Government and represented by the Mr. David Bahan, in his quality of deputy minister, having a place of business at 380, St-Antoine West Street, 5th Floor, in the city and district of Montreal, province of Québec, H2Y 3X7

-&-

THE MINISTER OF FINANCE AND ECONOMY OF QUEBEC, for and in the name of the Quebec Government and represented by the Mr. David Bahan, in his quality of deputy minister, having a place of business at 380, St-Antoine West Street, 5th Floor, in the city and

district of Montreal, province of Québec, H2Y 3X7

-&-

THE LAND REGISTRAR FOR THE REGISTRY OFFICE FOR THE REGISTRATION DIVISION OF SEPT-ÎLES, under the MINISTÈRE DE L'ÉNERGIE ET DES RESSOURCES NATURELLES (QUÉBEC), having an office at 5700, 4th Avenue, in the district and city of Québec, province of Québec, G1H 6R1

-&-

THE REGISTRAR OF PUBLIC REGISTER OF REAL AND IMMOVABLE MINING RIGHTS KEPT BY THE MINISTÈRE DE L'ÉNERGIE ET DES RESSOURCES NATURELLES (QUÉBEC), having an office at 5700, 4th Avenue, in the district and city of Québec, province of Québec, G1H 6R1

Mis-en-cause

-&-

DELOITTE RESTRUCTURING INC.

Monitor

MOTION SEEKING

- (I) EXTENSION OF THE STAY OF PROCEEDINGS;
(II) AMENDMENT AND RESTATEMENT OF THE INITIAL ORDER; AND
(III) LEAVE TO ENTER INTO THE PARTICIPATING STREAMERS/DIAQUEM TRANSACTION WITH ISSUANCE OF AN APPROVAL AND VESTING ORDER AND ANCILLARY RELIEF**

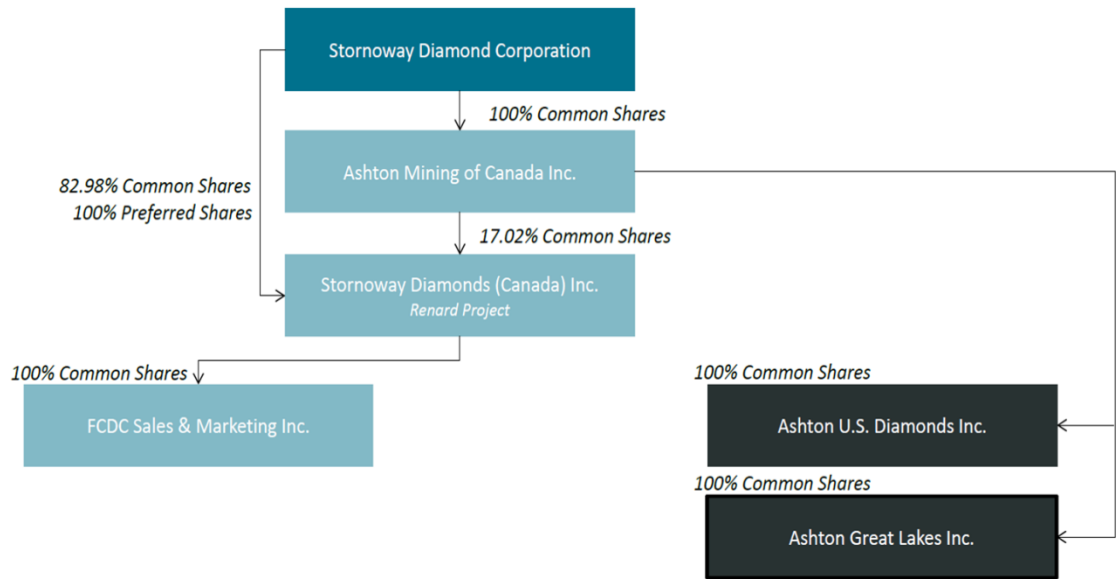
(Companies' Creditors Arrangement Act, R.S.C. (1985), ch. C-36, Sections 11, 11.02 and 36 (hereinafter the "CCAA"))

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 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;

2. 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 areas, for the benefit of its populations and of the whole of Québec, through a form of sustainable development based on a comprehensive, integrated, consistent and responsible approach, the whole by 2035;
3. The corporate structure of the CCAA Parties is as follows:



4. SDCI owns **100%** of the Renard Mine, the Petitioners' main 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. As of the date of the present Motion, the Petitioners employ an aggregate of approximately **540** employees;
6. On September 9, 2019, this Honourable Court issued an order providing for, *inter alia* the following relief (hereinafter the "**Initial Order**"):
 - a) Stay of Proceedings: 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**");
 - b) Monitor: The appointment of *Deloitte Restructuring Inc.*, as Monitor;
 - c) Interim/DIP Financing: The authorization for the CCAA Parties to enter into the Interim Facility and the granting to the Interim Lenders of an Interim Lenders' Charge to secure the repayment of the Interim Facility;

d) CCAA Charges:

- i) The granting of an Administration Charge in the amount of **\$500,000** to secure the Petitioners' obligations towards its legal advisors (*Norton Rose Fulbright Canada LLP*), the Monitor (*Deloitte Restructuring Inc.*) and the Monitor's legal advisors (*Osler Hoskin & Harcourt LLP*);
- ii) The granting of a D&O Charge in the amount of **\$5.2 million** 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 SISP Managers Charge to secure the payment of the SISP Managers Fees;

7. For ease of reference, capitalized terms not otherwise defined herein shall have the meaning ascribed to same in the Initial Order and/or the Motion materials that led to the issuance of the Initial Order, a copy of which is communicated herewith as **EXHIBIT R-1** for convenience purpose (hereinafter the **"Initial Motion"**);

8. As detailed in the Initial Motion:

a) The CCAA Parties are insolvent. The F/S 2018 indicate, *inter alia*, that:

- i) The Petitioners' ability to maintain their going concern operations and fund their planned activities is dependent on their ability to secure additional financing;
- ii) The Petitioners' accumulated deficit amounts to approximately **\$660 million**; and
- iii) The losses for the 2018 fiscal year totalled approximately **\$330 million**;

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**;

b) As of August 31, 2019, excluding contingent liabilities, the CCAA Parties had estimated outstanding liabilities, on a consolidated basis, of approximately **\$715 million**;

c) As of August 31 2019, outstanding secured liabilities totalled approximately **\$600 million** allocated amongst the principal secured creditors as follows:

- i) Streamers: Pursuant to the Streaming Agreements (approximately **\$430 million**) and Bridge Financing (approximately **\$21.5 million**);
- ii) Diaguem: Pursuant to the Senior Credit Agreement (approximately **\$111 million**) and Bridge Financing (approximately **\$21.5 million**); and

- iii) Caterpillar: Pursuant to the Caterpillar Agreement (approximately **\$42 million**);
- d) A SISP was implemented and conducted by the CCAA Parties with the support of their principal secured creditors, i.e. the Streamers and Diaquem;
- e) The SISP was conducted with the assistance of the SISP Managers;
- f) In the context of the SISP, a single third-party bidder, Bidder 1, submitted Bid 1, whereas the Participating Streamers and Diaquem submitted the Participating Streamers/Diaquem LOI, as further detailed below;
- g) After careful consideration of the terms and conditions of Bid 1 and the Participating Streamers/Diaquem LOI, the CCAA Parties, in consultation with their principal secured creditors (as required under the terms of the SISP Procedures) and their advisors, concluded that the Participating Streamers/Diaquem Contemplated Transaction offered 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;
- h) On September 8, 2019, the CCAA Parties entered into the Participating Streamers/Diaquem LOI;
- i) On September 8, 2019, the CCAA Parties entered into the Interim Facility giving them access to a **\$20 million** working capital financing facility (which can be increased to up to **\$50 million** subject to secured lenders' consent) from the group of secured creditors sponsoring the Participating Streamers/Diaquem Contemplated Transaction. This financing is initially being used as interim financing until Participating Streamers/Diaquem Contemplated Transaction is implemented, at which point it shall be converted into an exit financing facility; and
- j) CCAA Parties, Participating Streamers and Diaquem have been working on finalizing the transactional documents to fully implement the Participating Streamers/Diaquem Contemplated Transaction and have same approved by this Honourable Court during the Initial Period to minimize the impact of a CCAA process on the continued operations of the Renard Mine;

2. PURPOSE OF THE MOTION

- 9. Pursuant to the present Motion, the CCAA Parties are seeking that this Honourable Court issues the following orders:
 - a) Approval of the Participating Streamers/Diaquem Transaction (as defined hereinafter), including the Pre-Closing Reorganization Transactions (as defined hereinafter);

- b) Vesting the Purchased Shares free and clear from Encumbrances (other than Permitted Encumbrances as defined in the Draft AVO) through a vesting order in favour of AcquisitionCo (as defined hereinafter);
 - c) Vesting the Excluded Assets (as defined hereinafter) in favour of NewCo 2 (as defined hereinafter);
 - d) Vesting the Excluded Liabilities (as defined hereinafter) in NewCo2 and NewCo 3 (as defined hereinafter);
 - e) Releasing the Released Parties (as defined hereinafter) from any Released Claims (as defined hereinafter);
 - f) Amending and restating the Initial Order to add, upon filing of the Monitor's certificate confirming closing of the Participating Streamers/Diaquem Transaction (as defined hereinafter), NewCo 2 (as defined hereinafter) and NewCo 3 (as defined hereinafter) as CCAA Parties and grant certain additional powers to the Monitor in respect to SWY, NewCo 2 (as defined hereinafter) and NewCo 3 (as defined hereinafter); and
 - g) Extending the Stay of Proceedings in respect to the CCAA Parties (including NewCo 2 and NewCo 3 for purpose of clarity) until **November 30, 2019** (hereinafter the "**Extended Period**");
10. In support of this Motion, the Petitioners submit to this Honourable Court the following two (2) draft orders:
- a) Approval and Vesting Order: A draft approval and vesting order (hereinafter the "**Draft AVO**") with a version comparing the model CCAA Approval and Vesting Order developed by the Liaison Committee of the Commercial Division of the Superior Court, communicated herewith respectively as **EXHIBIT R-2** and **EXHIBIT R-3**;
 - b) Amended and Restated Initial Order: A draft amended and restated initial order communicated herewith as **EXHIBIT R-4** (hereinafter the "**Draft AR Initial Order**") to take into account:
 - i) The addition of NewCo 2 (as defined hereinafter) and NewCo 3 (as defined hereinafter) as CCAA Parties, upon filing of the Monitor's certificate confirming closing of the Participating Streamers/Diaquem Transaction (as defined hereinafter);
 - ii) To provide the Monitor with the additional powers to assign SWY, NewCo 2 and NewCo 3 into bankruptcy; and
 - iii) To extend the Stay of Proceedings until **November 30, 2019**.
- A version comparing the Draft AR Initial Order with the Initial Order is communicated herewith as **EXHIBIT R-5**;

11. Petitioners respectfully submit to this Honourable Court that the orders sought pursuant to the Draft AVO and the Draft AR Initial Order are wholly appropriate and will serve to preserve the going concern of the operations related to the Renard Mine, in the best interest of all stakeholders;

3. THE SISP

12. As further detailed in the Initial Motion, 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;

13. The CCAA Parties, in consultation with the Streamers and Diaquem, concluded that without a comprehensive restructuring of the existing capital structure they would not be able to operate the Renard Mine with profitability;

14. This led to the implementation of the SISP and a related funding package, the Bridge Financing, to allow for the SISP to be implemented by the CCAA Parties;

15. The SISP was conducted with the assistance of the SISP Managers, in accordance with SISP Procedures;

16. The Monitor, then acting as financial advisor to the CCAA Parties, was kept informed of all relevant matters in respect to the SISP;

3.1 THE SISP MANAGERS AND THE SISP PROCEDURES

17. The CCAA Parties retained TD and Scotia to act as SISP Managers and assist in the optimal conduct of the SISP;

18. The SISP Managers were selected given their respective experience in implementing and conducting SISPs in the mining industry;

19. The SISP was conducted in accordance with SISP Procedures to which the CCAA Parties, the Streamers and Diaquem agreed;

20. 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 with 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-6**;

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-7**;

- 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 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));
 - In consultation with Streamers and Diaquem, Petitioners were able to waive compliance in respect to non-compliant Non-Binding Indications 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 process in the context of which a Phase 1 Qualified Bidder would be invited to firm up its 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) The SISP Procedures provided that the Streamers and Diaquem were entitled to credit bid for the full amount of their outstanding secured debt at any time during the SISP (Section 5.11 of the SISP Procedures);

21. The SISP resulted in two (2) bids: Bid 1 and the Participating Streamers/Diaquem LOI, as further detailed below;

3.2 BIDDER 1 AND THE BIDDER 1 CONTEMPLATED TRANSACTION

22. As appears from a copy of a report prepared by SISP Managers, communicated herewith under seal as **EXHIBIT R-8:**

- 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 (an arms' length third party), submitted a non-binding indication of interest with its Bid 1;
23. On July 15, 2019, prior to the initial expiry of the Phase 1 Bid Deadline, Bidder 1 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-9**;
24. Essentially, Bid 1 outlines the main terms and conditions of the Bidder 1 Contemplated Transaction, which may be summarized as follows:
- a) Bidder 1 offered to acquire all of the property, assets and undertakings of the Petitioner SDCI;
 - 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 the 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 into common shares of Bidder 1;
 - iv) Completion of a due diligence process; and
 - v) Implementation of the transactions through the necessary CCAA orders;

25. 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 in value and not in the best interest of the CCAA Parties' stakeholders;

3.3 THE PARTICIPATING STREAMERS/DIAQUEM LOI AND THE PARTICIPATING STREAMERS/DIAQUEM CONTEMPLATED TRANSACTION

26. 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);
27. 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;
28. 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 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);
29. 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 their contemplated transaction would be implemented from a transactional standpoint;
30. These exchanges, discussions and negotiations were driven by the desire to provide the CCAA Parties' business with a sustainable capital and equity structure, allowing it to be in a better position to face difficult and challenging market conditions;
31. On September 8, 2019, in accordance with the SISP Procedures, 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 the Participating Streamers/Diaquem LOI communicated herewith as **EXHIBIT R-10**;

32. As detailed in the Initial Motion, Participating Streamers and Diaquem, with the CCAA Parties, have been working on finalizing the mechanism to allow for the Participating Streamers/Diaquem Contemplated Transaction to be implemented in the most efficient manner, with the objective of seeking approval of same within the Initial Period;

4. **RELIEF SOUGHT: DRAFT AVO & DRAFT AR INITIAL ORDER**

4.1 **APPROVAL OF THE PARTICIPATING STREAMERS/DIAQUEM TRANSACTION AND ISSUANCE OF AN ORDER TAKING SUBSTANTIALLY THE FORM OF THE DRAFT AVO**

33. Subject to the issuance of an order taking substantially the form of the Draft AVO, Participating Streamers, Diaquem and CCAA Parties have negotiated the transactional documents to fully effectuate and implement the Participating Streamers/Diaquem Contemplated Transaction, as appears from a copy of the document entitled “*Share Purchase Agreement*” communicated herewith as **EXHIBIT R-11** (hereinafter the “**SPA**”). A duly executed copy of the final version of the SPA, including a comparative version outlining any changes made to the version communicated herewith, will be filed into the Court record at hearing of the present Motion;

34. The SPA is consistent with the Participating Streamers/Diaquem LOI and the Participating Streamers/Diaquem Contemplated Transaction;

35. Essentially, the SPA describes the main terms and conditions of the Participating Streamers/Diaquem transaction (hereinafter the “**Participating Streamers/Diaquem Transaction**”), which may be summarized as follows:

- a) The Participating Streamers and Diaquem are acquiring indirectly, through an entity formed by them (hereinafter “**AcquisitionCo**”) substantially all of the property, assets and undertakings of the CCAA Parties, through the acquisition of **100%** of the shares in the capital of SDCI (or AmalCo following the Pre-Closing Reorganization) ;
- b) In consideration for the acquisition by AcquisitionCo from SWY of 100% of the shares in the capital of SDCI (AmalCo) under the Participating Streamers/Diaquem Contemplated Transaction, AcquisitionCo will assume the secured obligations of SWY under the Diaquem Senior Credit Agreement, the Amended and Restated PSA and the Bridge Financing. SWY will also become a guarantor of the Interim Facility.
- c) In addition, AcquisitionCo will cause SDCI (AmalCo) to continue payment of the following liabilities, which on a combined measure and subject to adjustments, total approximately **\$637 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**;

- 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. **\$430.9 million**, including 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 Senior Credit Agreement (approx. **\$111.7 million**);
 - v) All obligations of the CCAA Parties under the Diaquem Royalty;
 - vi) All obligations of the CCAA Parties under the Caterpillar Agreements (approx. **\$42.7 million**);
 - vii) All obligations of the CCAA Parties under the Mecheshoo Agreement (approx. **\$10.5 million**);
 - viii) All trade obligations incurred by SDCI towards its suppliers both prior to and following the issuance of the Initial Order; and
 - ix) All obligations of the CCAA Parties towards its employees, other than certain designated employees of SWY;
- d) The Participating Streamers/Diaquem 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; and
 - ii) The vesting of any and all Excluded Assets (as defined in the Share Purchase Agreement) 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 shares in the capital of SDCI, and which allows SDCI to continue to own its property, assets and undertakings of the CCAA Parties, free and clear from any such Excluded Assets and excluded liabilities and encumbrances; and
 - iii) A full and final release (to the extent permitted by law) of the directors and officers of the CCAA Parties (hereinafter the **“Release”**).

The purpose of the Release is to achieve certainty and finality for the released parties (essentially Streamers, Diaquem and the directors and officers of the CCAA Parties – hereinafter the **“Released Parties”**) in the most efficient and appropriate manner given the current circumstances.

The Release if being sought in light of the significant contributions of the Released Parties' to the restructuring efforts of the Petitioners and to achieving a positive outcome of these CCAA Proceedings including in particular through the completion of the Participating Streamers/Diaquem Transaction which will result in the assumption of the Assumed Liabilities, as well as contributions relating to the provision of financing (Bridge Financing and Interim Facility) during the pendency of the CCAA Proceedings and the continued support of the Streamers and Diaquem following closing of the Transactions.

- e) The Participating Streamers/Diaquem Transaction is not conditional upon:
 - i) Financing; or
 - ii) Due diligence;
36. Essentially, the SPA provides for the following operations to take place, for the most part, after the issuance of the order substantially in the form of the Draft AVO (hereinafter the ***"Participating Streamers/Diaquem Transaction"***):
- a) Pre-Closing Reorganization: As further detailed in Exhibit A in support of the SPA, before closing the following corporate reorganization steps must be completed (hereinafter the ***"Pre-Closing Reorganization"***):
 - i) The incorporation of three (3) new wholly-owned subsidiaries of SWY, i.e. the Mises en cause:
 - 1) 11641603 Canada Inc. (hereinafter referred to as ***"NewCo 1"***);
 - 2) 11641638 Canada Inc. (hereinafter referred to as ***"NewCo 2"***);
 - 3) 11641735 Canada Inc. (hereinafter referred to as ***"NewCo 3"***);
 - ii) The incorporation by the Participating Streamers and Diaquem of AcquisitionCo;
 - iii) The vesting of excluded assets (a list of excluded assets is forming part of the SPA as Schedule "B" – hereinafter the ***"Excluded Assets"***) to NewCo 2 for no consideration;
 - iv) The vesting and assignment by SWY of all of Ashton, SDCI and FCDC's interco debts into NewCo 1. As indicated at paragraph 39 of the Proposed Monitor's Report, an amount of approximately **\$620 million** is owed by SDCI to SWY (hereinafter the ***"InterCo"***). As appears from the RDPRM Report filed in support of the Initial Motion, Streamers and Diaquem were granted by SWY with a first ranking security interest in the InterCo for an amount of approximately **\$1,3 billion**;
 - v) The vesting and assignment of excluded liabilities (defined in the SPA as any liabilities not forming part of the Assumed Liabilities – hereinafter the ***"Excluded Liabilities"***) to NewCo 2 or NewCo 3; and

- vi) The amalgamation between NewCo 1, SDCI, Ashton and FCDC (hereinafter "**AmalCo**");
 - b) Closing Transactions: Pursuant to the order taking substantially the form of the Draft AVO and the completion of the Pre-Closing Reorganization, AcquisitionCo will acquire at closing all shares held by SWY in AmalCo (hereinafter the "**Purchased Shares**") free and clear from any encumbrances. In consideration for the acquisition by AcquisitionCo from SWY of the Purchased Shares, AcquisitionCo will assume the secured obligations of SWY under the Diaquem Senior Credit Agreement, the Amended and Restated PSA and the Bridge Financing. SWY will also become a guarantor of the Interim Facility;
37. As appears from the SPA, the end result of the Participating Streamers/Diaquem Transaction may be summarized as follows:
- a) AcquisitionCo will:
 - i) Become sole shareholder of AmalCo;
 - ii) Acquire effective control and ownership of AmalCo, which will continue to control and own the property, assets and undertakings related to the operations of the Renard Mine, free and clear from any Excluded Liabilities and Excluded Assets;
 - b) As such:
 - i) Most of the existing agreements allowing SDCI, as one of the predecessor entities to AmalCo, to operate the Renard Mine will be maintained without the need for an assignment;
 - ii) Employees will continue to be employed by AmalCo (or AcquisitionCo in some cases) and paid in the normal course of business;
 - iii) Suppliers of AmalCo will continue to be paid in the normal course of business;
 - iv) AmalCo will be released from all Excluded liabilities; and
 - v) AmalCo will no longer have to deal with Excluded Assets;
38. The transactional structure of the Participating Streamers/Diaquem Transaction is aimed at continuing the operations of the Renard Mine, the employment of approximately **540** employees and the payments in respect of the Assumed Liabilities, as well as preserving a local economy and the tax attributes of the CCAA Parties, while releasing and discharging the CCAA Parties from any and all liabilities not forming part of the Assumed Liabilities, with a view to minimizing any effect that the CCAA process may have on their contractual relationships and operational imperatives;
39. The SISF has unfortunately led to the difficult conclusion that the existing equity and non-operational related unsecured claims of the CCAA Parties have no value. As such,

to be clear, no value is attributed to the claim of any creditor not forming part of the Assumed Liabilities pursuant to the Participating Streamers/Diaquem Transaction;

40. In particular,

a) **SWY Excluded Liabilities/Obligations:** The unsecured liabilities of SWY will not be assumed by AcquisitionCo or SDCI and will remain owing by SWY only. In this regard, for purpose of clarity, the following unsecured liabilities are not forming part of the Assumed Liabilities:

- i) The obligations of SWY under the **\$20 million** loan from the Fonds de solidarité des travailleurs du Québec (F.T.Q.) and Diaquem Inc. as lenders, and SWY as borrower;
- ii) The obligations of SWY under the 6.25% Convertible Unsecured Debentures issued pursuant to an Indenture dated July 8, 2014.

Such obligations are obligations of SWY which are not secured and which were not guaranteed by SDCI. They are therefore structurally subordinated to the prior repayment of the obligations of SDCI, and as a result of being unsecured, effectively rank after the secured obligations of SWY which are being assumed by AcquisitionCo, i.e. the obligations of SWY under the Diaquem Senior Credit Agreement, Streaming Agreements and the Bridge Financing;

b) **SDCI Excluded Liabilities/Obligations:** The following liabilities of SDCI and AmalCo will not be forming part of the Assumed Liabilities:

- i) The Mine Road Loan;
- ii) The Royalty Agreement dated May 3, 2012 among Fonds de solidarité des travailleurs du Québec (F.T.Q.), Fonds régional de solidarité F.T.Q. Nord-du-Québec, S.E.C., Diaquem Inc. which was granted in connection with the \$20 million loan referred in the previous paragraph, a copy of which is communicated herewith as **EXHIBIT R-11** and the associated hypothec executed by SDCI to secure such Royalty Agreement, both being subordinated to the secured obligations of SDCI pursuant to an Intercreditor and Subordination Agreement dated July 8, 2014, a copy of which is communicated herewith as **EXHIBIT R-12**.

41. In entering into the Participating Streamers/ Diaquem Transaction, Participating Streamers and Diaquem are essentially attempting to mitigate their losses, hoping that the restructuring package resulting from the transaction will allow the Renard Mine operations to weather the difficult economic context in which it is operating, *en route* to sustained profitability;

42. The Participating Streamers/Diaquem Transaction is conditional upon the issuance of an order taking substantially the form of the Draft AVO;

43. The CCAA Parties respectfully submit to this Honourable Court that the Streamers/Diaquem Transaction is the best possible outcome under the circumstances as, *inter alia*:

- a) A robust SISP was conducted by the SISP Managers, thoroughly canvassing the market for potential bidders interested to invest in the CCAA Parties' business and/or acquire their property, assets and undertakings;
 - b) It allows the CCAA Parties' business to continue on a going concern basis, without disruption;
 - c) It preserves some **540** jobs;
 - d) It allows to sustain a local economy. Noteworthy, suppliers of SDCI have been paid in the normal course of business, in accordance with the Initial Order, without disruption and the Participating Streamers/Diaquem Transaction does not contemplate any compromise in respect thereto; and
 - e) It allows for the CCAA Parties' business to count on the Participating Streamers' and Diaquem's continued support, vested interest and knowledge of the diamond industry and its associated challenges.
44. The CCAA Parties respectfully submit to this Honourable Court that the implementation and conduct of the SISP has:
- a) Optimized the chances of securing the best possible investment in their business or alternatively the best price for same, all for the benefit of the CCAA Parties' stakeholders as a whole;
 - b) Offered the highest probability of attracting sophisticated investors for the assets/business of the CCAA Parties, the whole for the benefit of all of their stakeholders;
 - c) Provided the best opportunity to protect the interests of the CCAA Parties' stakeholders and for the CCAA Parties to maximize recoveries for their stakeholders; and
 - d) Provided a level playing field for all potential bidders, promoting fairness, transparency, integrity, commercial efficacy, the flexibility necessary to accommodate a broad range of possible bids;
45. As such, the CCAA Parties respectfully submit to this Honourable Court that they should be authorized to enter into the Participating Streamers/Diaquem Transaction and that an order taking substantially the form of the Draft AVO (**Exhibit R-2**) should be issued;
46. The CCAA Parties have been informed that the Monitor will submit a report to the Court:
- a) Supporting the Participating Streamers/Diaquem Transaction;
 - b) Confirming that the SISP was fair and reasonable;
 - c) Indicating that the security of the Streamers, Diaquem and CFSL over the Petitioners' assets that are subject to such security is valid and has been rendered opposable against third persons or perfected in accordance with applicable laws; and

- d) Indicating that the Release in respect to the Released Parties is fair and justified under the circumstances.

4.2 AMENDMENT AND RESTATEMENT OF THE INITIAL ORDER – DRAFT AR INITIAL ORDER

47. As appears from the SPA, upon the Effective Date of the Participating Streamers/Diaquem Transaction:

- a) AmalCo (the result of the amalgamation between NewCo 1, SDCI, Ashton and FCDC) shall no longer be a CCAA Party; and
- b) SWY, NewCo 2 and NewCo 3 shall remain CCAA Parties;

48. Considering:

- a) The vesting of the Excluded Assets in NewCo 2;
- b) The vesting of the Excluded Liabilities in NewCo 2 and/or NewCo 3;
- c) The fact that NewCo 2 and NewCo 3 are sole purpose entities without any activities and/or any assets worth of value; and
- d) The fact that NewCo 2 and NewCo 3 will be wholly owned subsidiaries of SWY, already a CCAA Party,

the CCAA Parties respectfully submit to this Honourable Court that NewCo 2 and NewCo 3 qualify as “*debtor companies*” within the meaning of the CCAA;

49. As such, the CCAA parties respectfully submit to this Honourable Court that the Initial Order should be amended and restated in accordance with the Draft AR Initial Order (**Exhibit R-4**);

50. To account for the fact that SWY, NewCo 2 and NewCo 3 will not have any directors upon the Effective Date of the Participating Streamers/Diaquem Transaction, the draft AR Initial Order provides the Monitor with additional powers in respect to SWY, NewCo 2 and NewCo 3 to allow the Monitor to assign SWY, NewCo 2 and NewCo into bankruptcy, as the case may be;

4.3 EXTENSION OF THE STAY OF PROCEEDINGS

51. The Stay of Proceedings pursuant to the Initial Order expires on **October 9, 2019**;

52. It is anticipated that the Participating Streamers/Diaquem Transaction would be completed shortly after the issuance of an order taking the form of the Draft AVO. In any event, the SPA provides for an outside date of **November 16, 2019**;

53. Pursuant to the Draft AR Initial Order (**Exhibit R-4**), the CCAA Parties request that the Stay of Proceedings be extended until November 30, 2019 to allow for the completion of the Participating Streamers/Diaquem Transaction and determine the proper course of action in respect to SWY, Newco 2 and NewCo 3;

54. Based on the projections for the period ending on **December 1, 2019**, communicated herewith as **EXHIBIT R-12**, the CCAA Parties have sufficient funding and liquidity to cover anticipated post-filing costs and expenses during the Extended Period;
55. The CCAA Parties submit to this Honourable Court that the Stay of Proceedings should be extended to **November 30, 2019**, in accordance with the Draft AR Initial Order (**Exhibit R-4**);

5. CONCLUSION

56. It is the CCAA Parties' view that pursuing the completion and implementation of the Participating Streamers/Diaquem Transaction under the CCAA and in accordance with the SPA will yield significantly better results for the diverse group of stakeholders than any conceivable alternative scenario;
57. The Participating Streamers/Diaquem Transaction is the result of a thorough review of CCAA Parties' alternatives and the conduct of a robust SISF that did not lead to the materialization of any third party transaction;
58. The Participating Streamers/Diaquem Transaction will ensure that the Renard Mine will continue operating in the normal course of business, for the greater benefit of all stakeholders;
59. It must be noted that there are no viable alternatives to preserve the going concern operations of the Renard Mine other than the Participating Streamers/Diaquem Transaction. In that regard, no creditor will be materially prejudiced from the issuance of the Draft AVO (**Exhibit R-2**) and the Draft AR Initial Order (**Exhibit R-4**);
60. The Petitioners believe that it is wholly appropriate for the orders requested herein to be made forthwith;
61. The issuance of the orders requested pursuant hereto are essential to allow for the completion and the implementation of the Participating Streamers/Diaquem Transaction, which will allow for the continuation of the business related to the Renard Mine on a going concern basis, thus promoting its long-term viability for the benefit of all stakeholders;
62. 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 relief sought pursuant thereto is granted in accordance with the Draft AVO (**Exhibit R-2**) and the Draft AR Initial Order (**Exhibit R-4**);
63. The 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 AVO (**Exhibit R-2**) and the Draft AR Initial Order (**Exhibit R-4**), as appears from a copy of the Monitor's Report communicated herewith as **EXHIBIT R-13**;
64. Considering the foregoing, it is in the Petitioners' best interest and the best interest of its stakeholders, that the present Motion be granted by this Honourable Court, in accordance with the Draft AVO (**Exhibit R-2**) and the Draft AR Initial Order (**Exhibit R-4**);

65. 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 AVO (**Exhibit R-2**);

ISSUE an order in the form of the Draft AR Initial Order (**Exhibit R-4**);

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

Montréal, September 30, 2019

(s) Norton Rose Fulbright Canada

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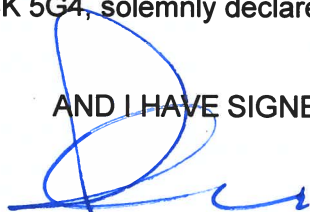
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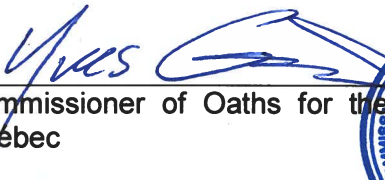
I, the undersigned, Patrick Godin, President and Chief Executive Officer, duly authorized director of the Petitioners, having my professional domicile at 1111 Blvd. Saint-Charles West, suite 400, Longueuil, province of Québec, J4K 5G4, solemnly declare that all the facts alleged in the present Motion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

AND I HAVE SIGNED



Patrick Godin

SOLEMNLY DECLARED before me in
Montreal, province of Québec
this 30th day of September 2019


Commissioner of Oaths for the Province of
Québec



NOTICE OF PRESENTATION

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REAL AND IMMOVABLE MINING RIGHTS KEPT notificationOPF@mern.gouv.qc.ca
BY THE MINISTÈRE DE L'ÉNERGIE ET DES
RESSOURCES NATURELLES (QUÉBEC)

Mis-en-cause

TAKE NOTICE that the present “*Motion seeking (i) Extension of the Stay of Proceedings; (ii) Amendment and Restatement of the Initial Order; and (iii) Leave to Enter into the Participating Streamers/Diaquem Transaction with Issuance of an Approval and Vesting Order and Ancillary Relief*” 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 **October 7, 2019, at 9:00 am**, in a room which will be announced once confirmed.

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, September 30, 2019

(s) Norton Rose Fulbright Canada

NORTON ROSE FULBRIGHT CANADA LLP

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CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-11-057094-191

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,**

-&-

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 COPCO CANADA INC.,

-&-

CWB NATIONAL LEASING INC.,

-&-

OSISKO GOLD ROYALTIES LTD,

-&-

CDPQ RESSOURCES INC.,

-&-

TF R&S LTD. (FORMERLY 1078243 CANADA LIMITED),

-&-

ALBION EXPLORATION FUND LLC,

-&-

WASHINGTON STATE INVESTMENT BOARD,

-&-

TSX INC.,

-&-

ATTORNEY GENERAL OF CANADA,

-&-

QUEBEC REVENUE AGENCY,

-&-

**THE DIRECTOR APPOINTED PURSUANT TO THE
CANADA BUSINESS CORPORATIONS ACT**

-&-

**THE REGISTRAR OF THE REGISTER OF PERSONAL
AND MOVABLE REAL RIGHTS OF QUEBEC,
represented by the QUEBEC MINISTRY OF JUSTICE**

-&-

11641603 CANADA INC.,

-&-

11641638 CANADA INC.,

-&-

11641735 CANADA INC.

-&-

**THE MINISTER OF ECONOMY, SCIENCE AND
INNOVATION OF QUEBEC**

-&-

**THE MINISTER OF FINANCE AND ECONOMY OF
QUEBEC**

-&-

**THE LAND REGISTRAR FOR THE REGISTRY OFFICE
FOR THE REGISTRATION DIVISION OF SEPT-ILES,**

-&-

**THE REGISTRAR OF PUBLIC REGISTER OF REAL
AND IMMOVABLE MINING RIGHTS KEPT BY THE
MINISTÈRE DE L'ÉNERGIE ET DES RESSOURCES
NATURELLES (QUÉBEC)**

Mis-en-cause

-&-

LIST OF EXHIBITS

- Exhibit R-1:** Initial Order;
- Exhibit R-2:** Draft approval and vesting order;
- Exhibit R-3:** Comparison of the Draft approval and vesting order (R-2) with the model CCAA Approval and Vesting Order developed by the Liaison Committee of the Commercial Division of the Superior Court;
- Exhibit R-4:** Draft amended and restated initial order;
- Exhibit R-5:** A version comparing the draft amended and restated Initial order (R-4) with the Initial Order (R-1);
- Exhibit R-6:** **UNDER SEAL** - Teaser letter inviting potential bidders to submit a bid in respect to the CCAA Parties' business;
- Exhibit R-7:** **UNDER SEAL** - List of the documents available in the virtual data room made available to potential bidders who signed a confidentiality agreement;
- Exhibit R-8:** **UNDER SEAL** - report prepared by SISP Managers;
- Exhibit R-9:** **UNDER SEAL** - Bid 1;
- Exhibit R-10:** Letter of intent to the CCAA Parties outlining the main terms and conditions of the proposed transaction from the Participating Streamers and Diaquem;
- Exhibit R-11:** Royalty Agreement dated May 3, 2012 among Fonds de solidarité des travailleurs du Québec (F.T.Q.), Fonds régional de solidarité F.T.Q. Nord-du-Québec, S.E.C., Diaquem Inc.;
- Exhibit R-12:** Intercreditor and Subordination Agreement dated July 8, 2014;
- Exhibit R-13:** Share Purchase Agreement;
- Exhibit R-14:** Projections for the period ending on December 1, 2019.

Montréal, September 30, 2019

(s) Norton Rose Fulbright Canada

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