

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

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

AND IN THE MATTER OF VOYAGER DIGITAL LTD.
APPLICATION OF VOYAGER DIGITAL LTD. UNDER

SECTION 46 OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

**FACTUM OF THE PLAN ADMINISTRATOR
(MOTION FOR APPROVAL OF LGO AGREEMENT AND TERMINATION OF CCAA
RECOGNITION PROCEEDING ORDER)**

October 6, 2023

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TO: SERVICE LIST

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PART I - NATURE OF THIS MOTION¹

1. This Factum is filed in support of the Motion of Voyager Digital Ltd. ("**VDL**"), by the Plan Administrator, for an order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the "**CCAA**"), *inter alia*: (i) approving an agreement (the "**LGO Agreement**") between VDL and LGO SAS ("**LGO**") and authorizing VDL to execute the LGO Agreement on a *nunc pro tunc* basis, with an effective date of September 20, 2021; (ii) terminating the CCAA Recognition Proceeding, upon the filing of the Information Officer's Termination Certificate; and (iii) granting certain related relief.

¹ Terms used but not defined in this Factum shall have the meaning given to them in the Affidavit of Evangelos C. Psaropoulos sworn October 3, 2023 (the "**Psaropoulos Affidavit**").

PART II - SUMMARY OF FACTS

A. BACKGROUND

2. The history of this CCAA Recognition Proceeding is set out in detail in the Psaropoulos Affidavit.

3. On July 5, 2022, VDL, Voyager Digital Holdings, Inc., and Voyager Digital, LLC (each a “**Debtor**” and together with their direct and indirect non-Debtor affiliates, “**Voyager**”), commenced voluntary reorganization proceedings (the “**Chapter 11 Cases**”) pursuant to Chapter 11 of Title 11 of the U.S. Code (the “**U.S. Bankruptcy Code**”) before the United States Bankruptcy Court for the Southern District of New York (the “**U.S. Bankruptcy Court**”).²

4. On July 12, 2022, the Canadian Court granted an order (as amended and restated, the “**Initial Recognition Order**”), among other things, (i) declaring VDL as the “foreign representative” in respect of the Chapter 11 Cases, and (ii) prohibiting VDL from selling or otherwise disposing of any property in Canada outside of the ordinary course of business, without leave of the Canadian Court.³

5. On March 10, 2023, the U.S. Bankruptcy Court granted an order (the “**Confirmation Order**”) approving the Debtors’ Second Amended Disclosure Statement and confirming the third amended joint plan (the “**Third Amended Plan**”) of the Debtors pursuant to the U.S. Bankruptcy Code.⁴

6. The Third Amended Plan went effective on May 19, 2023, pursuant to which the Plan Administrator was appointed for the purposes of implementing the terms and conditions of the

² Psaropoulos Affidavit at para. 5.

³ Psaropoulos Affidavit at para. 11; *In the Matter of Voyager Digital Ltd.*, (July 12, 2022) Ontario Superior Court of Justice (Commercial List), Court File No. CV-22-00683820-00CL ([Initial Recognition Order](#)) at paras. 2 & 5 [*Initial Recognition Order*].

⁴ Psaropoulos Affidavit at para. 23.

Third Amended Plan.⁵ Under the Third Amended Plan, the Plan Administrator was mandated to oversee the wind down of the Debtors and their non-debtor affiliates for the benefit of Voyager's stakeholders.⁶

7. On May 24, 2023, the Canadian Court granted an order recognizing and enforcing in Canada certain orders of the U.S. Bankruptcy Court, including the Confirmation Order (the **"Canadian Plan Recognition and Implementation Order"**).⁷

B. THE LGO TRANSACTION

8. In accordance with the Plan Administrator's mandate under the Third Amended Plan, the Plan Administrator identified a transaction involving VDL and LGO and certain intercompany indebtedness that was not fully documented and required clarification to allow the wind down of LGO to proceed with minimal cost or adverse consequences.

9. On December 10, 2020, VDL entered into a Share Purchase Agreement with LGO Group SAS and its founders to acquire all of the issued and outstanding shares of LGO, along with its 100% owned subsidiary, LGO Europe SAS.⁸ As a share purchase, the acquisition of LGO came with certain assets and liabilities, including €32.3 million of prepaid income in LGO's accounts (the **"Prepaid Income Liability"**) that was acknowledged in connection with an "Initial Coin Offering" completed by LGO of LGO Tokens and which Prepaid Income Liability would be triggered as the LGO Tokens were repurchased, burned or destroyed.⁹

10. On September 20, 2021, VDL completed a token swap transaction whereby the legacy Voyager token, VGX, and the LGO Tokens were merged and migrated into a new custom smart

⁵ Psaropoulos Affidavit at para. 30.

⁶ Psaropoulos Affidavit at para. 33.

⁷ Psaropoulos Affidavit at para. 31; *In the Matter of Voyager Digital Ltd.*, (May 24, 2023) Ontario Superior Court of Justice (Commercial List), Court File No. CV-22-00683820-00CL ([Canadian Plan Recognition and Implementation Order](#)) at para. 5 [*Canadian Plan Recognition and Implementation Order*].

⁸ Psaropoulos Affidavit at para. 37.

⁹ Psaropoulos Affidavit at para. 39.

contract under the same ticker, VGX (the “**Token Swap**”).¹⁰ At the time of the Token Swap, the total number of LGO Tokens in circulation was 217 million.¹¹ The swap portal for exchanging the LGO Tokens closed on September 20, 2021, subsequent to which any un-swapped LGO Tokens were no longer supported with the new VGX on a go-forward basis and were de-facto burned.¹² Through the Token Swap, approximately 191 million LGO Tokens were exchanged for new VGX tokens and approximately 26 million LGO Tokens, representing 12% of the LGO Tokens in circulation at the time of the Token Swap, were never exchanged and were forfeited/burned as a result.¹³

11. The documentation in respect of the intercompany transaction between VDL and LGO to complete the Token Swap was not finalized and, as a result, LGO was not capable of finalizing its audit pertaining to its fiscal period ending June 30, 2022.¹⁴

12. The Plan Administrator has determined that it is necessary to clarify and document the legal and accounting consequences of the Token Swap through the LGO Agreement in order to finalize the outstanding audit and enable LGO to conduct a voluntary wind down. In this regard, the parties have determined that the Token Swap should reflect a payment in kind made by VDL to LGO Tokenholders on behalf of LGO to indemnify such token holders.¹⁵

13. Pursuant to the LGO Agreement, LGO will record a release of approximately 12% of the Prepaid Income Liability, or approximately €3.9 million, as actual income (the “**Adjustment**”), in order to reflect the LGO Tokens that were burned as a result of the Token Swap.¹⁶ Following the Adjustment, the resulting Prepaid Income Liability shall amount to approximately €28 million as

¹⁰ Psaropoulos Affidavit at paras. 40-42.

¹¹ Psaropoulos Affidavit at para. 40.

¹² Psaropoulos Affidavit at paras. 41-42.

¹³ Psaropoulos Affidavit at paras. 41-42.

¹⁴ Psaropoulos Affidavit at para. 43.

¹⁵ Psaropoulos Affidavit at paras. 44 & 47.

¹⁶ Psaropoulos Affidavit at para. 42 & 47.

of June 30, 2022 and shall be reflected in the accounts of LGO and the relevant corporate income tax returns.¹⁷ As a result, VDL will issue an invoice against LGO and LGO will book both an expense and a debt towards VDL in the amount of approximately €28 million.¹⁸ VDL intends to convert the debt into equity of LGO, thereby removing the debt from the balance sheet of LGO.¹⁹

14. LGO has no funds available to pay any intercompany indebtedness and the implementation of the transactions contemplated by the LGO Agreement will not have any meaningful financial impact on VDL or its stakeholders.²⁰ Additionally, the LGO Agreement will allow LGO to be wound up without the need to file for bankruptcy under French law, which would trigger certain tax obligations that would have priority to the creditors in this proceeding and be paid for out of the Debtors' estates, thus decreasing the overall recovery available to creditors in these proceedings.²¹ In particular, the conversion by VDL of the debt into equity is required in order to allow LGO to undergo a solvent wind-up.²²

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

15. The issues to be determined on this Motion are whether:

- (a) the LGO Agreement ought to be approved; and
- (b) the CCAA Recognition Proceeding, upon filing of the Information Officer's Termination Certificate, ought to be terminated.

¹⁷ Psaropoulos Affidavit at para. 47.

¹⁸ Psaropoulos Affidavit at para. 47.

¹⁹ Psaropoulos Affidavit at para. 47.

²⁰ Psaropoulos Affidavit at para. 51.

²¹ Psaropoulos Affidavit at para. 50.

²² Psaropoulos Affidavit at para. 44.

A. The Canadian Court Has Authority to Grant the Relief Sought

16. This Court has recognized the CCAA Recognition Proceeding as a “foreign main proceeding” pursuant to sections 47 and 48 of the CCAA.²³ Where a foreign main proceeding has been recognized under Part IV of the CCAA, s. 49(1) empowers this Court, on application of a foreign representative, to make any order that it considers appropriate to protect the debtor’s property or the interests of one or more creditors.²⁴ In addition, s. 61 empowers this Court, on application of a foreign representative or any other interested person, to apply any legal or equitable rules that are not inconsistent with the provisions of the CCAA or public policy.²⁵

17. Additionally, s. 11 of the CCAA vests this Court with broad discretion to make “any order that it considers appropriate in the circumstances.”²⁶ An order under section 11 of the CCAA will be appropriate where it “advances the policy objectives underlying the CCAA,” namely, that it maximizes creditor recovery and provides a “timely, efficient and impartial resolution of a debtor’s insolvency.”²⁷

18. The Plan Administrator, submits that, as the Motion is being brought by VDL, by the Plan Administrator pursuant to its authority under the Canadian Plan Recognition and Implementation Order, this Court has authority under ss. 49(1) and 61 to grant the relief sought. Additionally, this Court has broad authority pursuant to its powers under s. 11 to grant the relief sought by VDL, by the Plan Administrator, in its Motion.

²³ *Initial Recognition Order* at para. 3.

²⁴ *Companies’ Creditors Arrangement Act*, [R.S.C. 1985, c C-36](#), s. [49\(1\)](#) [CCAA].

²⁵ CCAA, s. [61\(1\)](#).

²⁶ CCAA s. [11](#).

²⁷ *9354-9186 Quebec Inc v Callidus Capital Corp*, [2020 SCC 10](#) at paras. [40](#) & [50](#).

B. The LGO Agreement Ought to be Approved

19. VDL, by the Plan Administrator, is seeking approval of the LGO Agreement as a precautionary measure to ensure that VDL complies with its obligation under paragraph 5 of the Initial Recognition Order, which states that:²⁸

...except with leave of this Court, VDL is prohibited from selling or otherwise disposing of:

- (a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and
- (b) any of its other property in Canada.

Approval is being sought because the transaction contemplated by the LGO Agreement was not specifically contemplated in the Third Amended Plan.

20. The Plan Administrator, in bringing this Motion by VDL, by the Plan Administrator, is relying upon its authority pursuant to paragraph 4 of the Canadian Plan Recognition and Implementation Order. Paragraph 4 of the Canadian Plan Recognition and Implementation Order states:²⁹

...the Foreign Representative, [VDL] and the Plan Administrator are authorized and directed to take all steps and actions, and to do all things, necessary or appropriate to enter into or implement the Third Amended Plan in accordance with its terms, and enter into, implement and consummate all of the steps, transfers, transactions and agreements contemplated pursuant to the Third Amended Plan.

²⁸ *Initial Recognition Order* at para. 5.

²⁹ *Canadian Plan Recognition and Implementation Order* at para. 4.

21. The Plan Administrator has identified the LGO Agreement as a necessary step to implement the Third Amended Plan, including the wind down and disposition of the remaining assets of VDL and the finalization of outstanding tax returns.³⁰

22. The LGO Agreement is consistent with the objectives of the CCAA and the Plan Administrator's mandate pursuant to the Third Amended Plan, previously approved by this Court, as it will enable the Plan Administrator to effectuate a voluntary wind down of LGO and thereby maximize the recovery available to stakeholders.³¹ Additionally, the LGO Agreement will not have any meaningful financial impact on VDL or its stakeholders and will not prejudice any creditor of VDL's estate.³² Rather, the LGO Agreement has the potential to produce a net benefit to creditors of VDL's estate by avoiding formal insolvency for LGO and producing a potential dividend to VDL.³³

23. The Plan Administrator submits that the approval of the LGO Agreement is consistent with the objectives of the Third Amended Plan and the CCAA and ought to be approved.

C. The CCAA Recognition Proceeding Should be Terminated

24. Following the approval of the LGO Agreement, and in accordance with the Third Amended Plan, the Plan Administrator intends to take steps to wind down VDL and administer any remaining claims through a Wind Down Debtor. Accordingly, the CCAA Recognition Proceeding will no longer be necessary and should be terminated.³⁴

25. The process for termination of the CCAA Recognition Proceeding is similar to that employed in other recognition proceedings.³⁵ Similarly, the releases to be granted in favour of the

³⁰ Psaropoulos Affidavit at para. 44.

³¹ Psaropoulos Affidavit at paras. 38, 50-51.

³² Psaropoulos Affidavit at para. 51.

³³ Psaropoulos Affidavit at para. 51.

³⁴ Psaropoulos Affidavit at paras. 54-55.

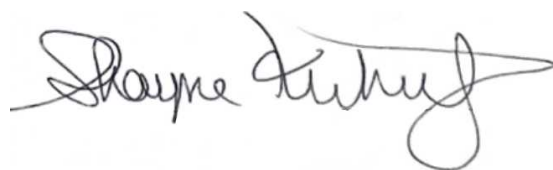
³⁵ *In the Matter of Knotel, Inc. et. al.*, (June 30, 2021) Ontario Superior Court of Justice (Commercial List), Court File No. CV-21-00658434-00CL ([Recognition Order \(Recognition of U.S. Plan Confirmation Order and Termination of the CCAA Proceedings\)](#)) [*Knotel CCAA Recognition and Termination Order*]; *In the*

Information Officer and its counsel are consistent with those granted in other recognition proceedings upon the termination date.³⁶

PART IV - ORDER REQUESTED

26. For all of the reasons above, VDL, by the Plan Administrator, requests that this Honourable Court grant the relief sought.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of October, 2023.



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Matter of Sungard Availability Services (Canada) Ltd., (October 27, 2022) Ontario Superior Court of Justice (Commercial List), Court File No. CV-22-00679628-00CL ([Order \(Recognition of Foreign Order and Termination of CCAA Proceedings\)](#)).

³⁶ *Knotel CCAA Recognition and Termination Order* at paras. 16-18; *In the Matter of LTL Management LLC*, (September 19, 2023) Ontario Superior Court of Justice (Commercial List), Court File No. CV-23-00697824-00CL ([Order \(CCAA Termination\)](#)) at paras. 7-9.

SCHEDULE “A”

LIST OF AUTHORITIES

1. 9354-9186 Quebec Inc v Callidus Capital Corp, [2020 SCC 10](#).
2. *In the Matter of Knotel, Inc. et. al.*, (June 30, 2021) Ontario Superior Court of Justice (Commercial List), Court File No. CV-21-00658434-00CL ([Recognition Order \(Recognition of U.S. Plan Confirmation Order and Termination of the CCAA Proceedings\)](#)).
3. *In the Matter of LTL Management LLC*, (September 19, 2023) Ontario Superior Court of Justice (Commercial List), Court File No. CV-23-00697824-00CL ([Order \(CCAA Termination\)](#)).
4. *In the Matter of Sungard Availability Services (Canada) Ltd.*, (October 27, 2022) Ontario Superior Court of Justice (Commercial List), Court File No. CV-22-00679628-00CL ([Order \(Recognition of Foreign Order and Termination of CCAA Proceedings\)](#)).
5. *In the Matter of Voyager Digital Ltd.*, (July 12, 2022) Ontario Superior Court of Justice (Commercial List), Court File No. CV-22-00683820-00CL ([Initial Recognition Order](#)).
6. *In the Matter of Voyager Digital Ltd.*, (May 24, 2023) Ontario Superior Court of Justice (Commercial List), Court File No. CV-22-00683820-00CL ([Canadian Plan Recognition and Implementation Order](#)).

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Companies’ Creditors Arrangement Act, R.S.C. 1985, c C-36

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Order recognizing foreign proceeding

47 (1) If the court is satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, the court shall make an order recognizing the foreign proceeding.

Nature of foreign proceeding to be specified

(2) The court shall specify in the order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

Order relating to recognition of a foreign main proceeding

48 (1) Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding, the court shall make an order, subject to any terms and conditions it considers appropriate,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken against the debtor company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the debtor company;

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the debtor company; and

(d) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

Scope of order

(2) The order made under subsection (1) must be consistent with any order that may be made under this Act.

...

Other orders

49 (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

(a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);

(b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company's property, business and financial affairs, debts, liabilities and obligations; and

(c) authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

...

Court not prevented from applying certain rules

61 (1) Nothing in this Part prevents the court, on the application of a foreign representative or any other interested person, from applying any legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives that are not inconsistent with the provisions of this Act.

...

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Court File No. CV-22-00683820-00CL

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PROCEEDING COMMENCED AT
TORONTO

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