

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)	MONDAY, THE 29 TH
)	
CHIEF JUSTICE MORAWETZ)	DAY OF JUNE, 2020

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

AND

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION,
AND LYDIAN U.K. CORPORATION LIMITED

Applicants

ORDER

(Re: Plan Sanction and Implementation)

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order (the "**Sanction and Implementation Order**"), among other things, approving and sanctioning the Applicants' Plan of Arrangement dated June 30, 2020 (the "**Plan**"), a copy of which is attached as Schedule "A" hereto, proceeded by way of videoconference due to the COVID-19 crisis on this day.

ON READING the affidavit of Edward A. Sellers sworn June 24, 2020 (the "**Sellers Sanction Affidavit**"), the affidavit of Edward A. Sellers sworn June 28, 2020 (the "**Sellers Supplementary Sanction Affidavit**") and the exhibits thereto, the Fifth Report of Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as Monitor of the Applicants (the "**Monitor**") dated June 16, 2020 (the "**Fifth Report**"), the Sixth Report of the Monitor dated June 22, 2020 (the "**Sixth Report**"), the Seventh Report of the Monitor dated June 25, 2020 (the "**Seventh Report**") and on hearing the submissions of counsel for the Applicants, the Monitor, Orion Capital Management, Resource Capital Fund VI LP (which voted against the Plan), Osisko Bermuda Limited and those other parties listed on the counsel slip;

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and supporting materials be and is hereby abridged and validated such that this Motion is properly returnable today and service thereof upon any interested party other than the parties on the service list is hereby dispensed with.
2. **THIS COURT ORDERS** that all capitalized terms in this Sanction and Implementation Order, unless otherwise defined herein, have the meanings ascribed to them in the Plan.

EXTENSION OF STAY PERIOD

3. **THIS COURT ORDERS** that the stay period as referred to in the Amended and Restated Initial Order of Chief Justice Morawetz dated January 23, 2020 (the “**Amended and Restated Initial Order**”) is extended with respect to:

- (a) Lydian International Limited (“**Lydian International**”) and Lydian US until and including the earlier of (i) the filing of the Monitor’s CCAA Termination Certificate (as defined below), and (ii) December 21, 2020; and
- (b) Lydian Canada, Lydian UK and the Non-Applicant Stay Parties (other than Lydian US) until and including the date of filing of the Monitor’s Plan Implementation Certificate (as defined below).

NOTICE AND MEETING

4. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient notice, service and delivery of the Order of this Court (re: Meeting of the Affected Creditors) dated June 18, 2020 in the within proceedings (the “**Meeting Order**”) and the Plan to all Persons upon which notice, service and delivery were required, and that the Meeting was duly convened, held and conducted on June 19, 2020 in conformity with the CCAA and the Meeting Order.

SANCTION OF THE PLAN

5. **THIS COURT ORDERS AND DECLARES** that that the Plan has been approved by the Required Majority of the Affected Creditors, as required by the Meeting Order, and in conformity with the CCAA.

6. **THIS COURT ORDERS** that (a) the activities of the Applicants have been in compliance with the provisions of the CCAA, the Initial Order granted by this Court on December 23, 2019 (the “**Filing Date**”), the Amended and Restated Initial Order and all other Orders granted in the within proceedings (collectively, the “**CCAA Orders**”), and (b) the Court is satisfied that the Applicants have not done or purported to do anything that is not authorized by the CCAA, and the Plan, all terms and conditions thereof, and the matters, implementation steps and transactions contemplated thereby, are fair and reasonable.

7. **THIS COURT ORDERS AND DECLARES** that the Plan and all associated steps, compromises, transactions arrangements, amalgamations, releases and reorganizations effected thereby are hereby sanctioned and approved pursuant to Section 6 of the CCAA.

PLAN IMPLEMENTATION

8. **THIS COURT ORDERS** that each of the Applicants, their directors and officers and the Monitor, as applicable, are hereby authorized and directed to take all steps and actions, and do all things, necessary or appropriate to implement the Plan in accordance with its terms and to enter into, execute, deliver, complete, implement and consummate all of the steps, transactions, distributions, deliveries, allocations and agreements contemplated by the Plan. Neither the Applicants, their respective directors and officers, nor the Monitor shall incur any liability to any person whatsoever as a result of acting in accordance with the terms of the Plan and this Sanction and Implementation Order.

RESTRUCTURING STEPS

9. **THIS COURT ORDERS AND DECLARES** that the Plan and all associated steps, transactions, arrangements, releases, permanent injunctions and reorganizations effected thereby shall be deemed to be implemented, binding and effective in accordance with the provisions of the Plan as of the Effective Time, or at such other time, times or manner as contemplated by the Plan, in the sequence provided therein, and shall be final and binding for

all purposes and enure to the benefit of the Applicants, all Affected Creditors, the Released Parties, all Persons holding a Released Claim, and all other Persons named or referred to in, or subject to, the Plan and their respective heirs, executors, administrators and other legal representatives, successors and assigns, and the steps required to implement the Plan, including without limitation, the release of all Released Claims in accordance with the terms of the Plan, shall be deemed to occur and to take effect in the order, manner and at the times contemplated in the Plan, without any further act or formality .

10. **THIS COURT ORDERS** that upon delivery to the Monitor of written notice from the Applicants as to the waiver or satisfaction of the conditions precedent set out in [section 6.1] of the Plan, the Monitor is authorized and directed to deliver to the Applicants, serve on the service list for the CCAA proceedings and file with the Court, a certificate substantially in the form attached hereto as Schedule “B” (the “**Monitor’s Plan Implementation Certificate**”) signed by the Monitor certifying that the Plan Implementation Date has occurred and the Plan is effective in accordance with its terms and the terms of this Order.

11. **THIS COURT ORDERS** that in the event that there are insufficient funds in the Post-Implementation Date Expenses Reserve to pay the Remaining Post-Implementation Date Expenses, the Applicants or the Monitor shall be entitled to take steps to terminate the CCAA Proceedings even if the steps contemplated in section 6.3 and 6.4 of the Plan are not completed.

DIP EXIT CREDIT FACILITIES

12. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to enter into the DIP Exit Facility Amendment (as defined in the Sellers Sanction Affidavit) in order to finance the steps necessary to implement the Plan and terminate the CCAA Proceedings, as specifically provided for in the DIP Exit Facility Amendment.

13. **THIS COURT ORDERS** that, for greater certainty, in connection with the Applicants’ obligations under the DIP Exit Facility Amendment, the DIP Lenders (as defined in the Sellers Sanction Affidavit) shall be entitled to the benefit of the DIP Charge referred to in paragraph 7 of the Order of this Court dated March 11, 2020 (the “**March 11 Order**”), which DIP Charge has the priority set out in paragraphs 10 and 12 of the March 11 Order.

EFFECT OF PLAN AND CCAA ORDERS

14. **THIS COURT ORDERS AND DECLARES** that as at the Effective Time, pursuant to and in accordance with the Plan, all Released Claims shall be forever released, discharged, cancelled and restrained, in each case with prejudice in the manner and to the extent provided for in the Plan, provided that, for greater certainty, nothing herein shall release affect or prejudice any obligation or claim expressly not released under the Plan pursuant to section 6.6 thereof.

15. **THIS COURT ORDERS AND DECLARES** that solely with respect to any and all Released Claims, all Persons are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, from: (i) commencing, conducting or continuing in any manner directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever against the Released Parties, as applicable; (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against the Released Parties; (iii) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the Released Parties or their property; or (iv) taking any actions to interfere with the implementation or consummation of the Plan.

THE MONITOR

16. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA and the powers provided to the Monitor herein and in the CCAA Orders and the Plan, shall be and is hereby authorized, directed and empowered to perform its functions and fulfill its obligations under this Plan Sanction and Implementation Order and the Plan to facilitate the implementation of the Plan.

17. **THIS COURT ORDERS** that the Monitor is authorized to maintain the Post-Implementation Date Expenses Reserve as contemplated by the Plan, and may be entitled to make payments from the Post-Implementation Date Expenses Reserve to and for the purposes outlined in Schedule "A" to the Plan, upon written direction from Lydian International, provided there are sufficient funds remaining in the Post- Implementation Date Expenses Reserve to make such payments. The Monitor shall have no liability as to the sufficiency of

funds in the Post-Implementation Date Expenses Reserve and shall be under no obligation to take any action or make any payments for which there are insufficient funds.

18. **THIS COURT ORDERS** that, for the purposes provided in the Plan and this Sanction and Implementation Order, with respect to any direction required to be given by Lydian International to the Monitor in order for the Monitor to effect any of its duties as set out in the Plan or in this Sanction and Implementation Order, such direction shall be sufficient for all purposes if same is provided by either one director of Lydian International or a liquidator appointed pursuant to the J&E Process on behalf of Lydian International, as may be applicable.

19. **THIS COURT ORDERS** that only the DIP Charge and the Administration Charge shall apply to the funds in the Post-Implementation Date Expenses Reserve held by the Monitor.

20. **THIS COURT ORDERS** that if any unused amounts remain in the Post-Implementation Date Expenses Reserve on the CCAA Termination Date, the Monitor is authorized and directed to release and transfer all such amounts to Lydian Armenia in accordance with the terms of the Plan.

21. **THIS COURT ORDERS** that: (i) in carrying out the terms of this Sanction and Implementation Order and the Plan, including the distribution of any amounts in the Post-Implementation Date Expenses Reserve, the Monitor shall have all the protections given to it by the CCAA, the CCAA Orders, and as an officer of the Court, including the stay of proceedings in its favour; and (ii) the Monitor shall incur no liability or obligation as a result of carrying out the provisions of this Sanction and Implementation Order and/or the Plan, including but not limited to disbursing funds from the Post-Implementation Date Expenses Reserve save and except for any gross negligence or wilful misconduct on its part.

MONITOR'S FEES AND ACTIVITIES

22. **THIS COURT ORDERS** that the Monitor's activities, as set out in the Fifth Report, Sixth Report and Seventh Report be and hereby are approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or use in any way such approval.

23. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and the Monitor's counsel, Thornton Grout Finnigan LLP, as disclosed in the Seventh Report and

detailed in the Affidavit of Alan Hutchens sworn June 25, 2020 and the Affidavit of D.J. Miller sworn June 25, 2020, respectively, as appended to the Seventh Report, be and hereby are approved.

24. **THIS COURT ORDERS** that the Monitor and its counsel shall not be required to pass their accounts for any fees incurred from and after June 24, 2020.

LETTER OF REQUEST

25. **THIS COURT DECLARES** that it shall issue a letter substantially in the form of the letter attached hereto as Schedule “D” to request the assistance of the Royal Court of Jersey in the implementation of the Plan.

TERMINATION OF CCAA PROCEEDINGS

26. **THIS COURT ORDERS AND DECLARES** that, on the Plan Implementation Date, upon the delivery of the Monitor’s Plan Implementation Certificate, the CCAA Proceedings as they relate to the Applicants Lydian Canada and Lydian UK and the Non-Applicant Stay Parties (other than Lydian US) shall be terminated.

27. **THIS COURT ORDERS** that, on the Plan Implementation Date, upon the delivery of the Monitor’s Plan Implementation Certificate, the title of proceedings in the CCAA Proceedings shall be amended to remove Lydian Canada and Lydian UK as Applicants.

28. **THIS COURT ORDERS** that, subject to the payment or other satisfaction (including without limitation, by way of a reserve of funds to be held by the Monitor in an amount necessary to satisfy the Post-Implementation Date Expenses), of any amounts secured for the beneficiaries of the Charges that remain owing on the Plan Implementation Date, upon the delivery of the Monitor’s Plan Implementation Certificate, the Director’s Charge and the Transaction Charge shall be terminated, discharged and released, and the Administration Charge shall no longer apply to the benefit of BMO Nesbitt Burns Inc. in respect of its monthly work fee.

29. **THIS COURT ORDERS** that on the CCAA Termination Date, upon the delivery of the Monitor’s CCAA Termination Certificate, A&M shall be deemed to be discharged from its duties as Monitor and released from all claims relating to its activities as Monitor, whether before or after the date of this Sanction and Implementation Order.

30. **THIS COURT ORDERS** that, upon the filing of the Monitor of a certificate on the CCAA Termination Date, substantially in the form attached hereto as Schedule "C", (the "**Monitor's CCAA Termination Certificate**"), the Administration Charge and the DIP Charge shall be terminated, discharged and released.

31. **THIS COURT ORDERS** that, upon the delivery of the Monitor's CCAA Termination Certificate, the CCAA Proceedings shall be terminated.

32. **THIS COURT ORDERS AND DECLARES** that the CCAA Orders shall continue in full force and effect in accordance with their respective terms, except to the extent that such CCAA Orders are varied by or inconsistent with this Sanction and Implementation Order.

33. **THIS COURT ORDERS** that notwithstanding the termination of the CCAA Proceedings in respect of any of the Applicants, the Court shall remain seized of any matter arising from or that are incidental to the CCAA Proceedings, and the Applicants and Monitor shall have the authority from and after the date of this Sanction and Implementation Order to apply to this Court to address matters incidental to this CCAA Proceedings notwithstanding the termination thereof.

SEALING

34. **THIS COURT ORDERS** that the unredacted Sellers Sanction Affidavit and the unredacted Sellers Supplementary Sanction Affidavit are hereby sealed pending further order of the Court.

GENERAL

35. **THIS COURT ORDERS** that subject to any further Order of this Court, in the event of any conflict, inconsistency, ambiguity or difference between the provisions of the Plan and this Sanction and Implementation Order, the terms, conditions and provisions of the Plan shall govern and be paramount, and any such provision of this Sanction and Implementation Order shall be deemed to be amended to the extent necessary to eliminate any such conflict, inconsistency, ambiguity or difference.

36. **THIS COURT ORDERS** that the Applicants and the Monitor may each apply to this Court for advice and direction with respect to any matter arising from or under the Plan or this Sanction and Implementation Order.

37. **THIS COURT ORDERS** that this Sanction and Implementation Order shall have full force and effect in all provinces and territories of Canada and abroad as against all persons and parties against whom it may otherwise be enforced.

38. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, Armenia, the Bailiwick of Jersey, the United Kingdom, or the United States to give effect to this Sanction and Implementation Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Sanction and Implementation Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Sanction and Implementation Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Sanction and Implementation Order.



Schedule "A"

THE PLAN

Schedule "B"

Monitor's Plan Implementation Certificate

Court File No. CV-19-00633392-00CL

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

AND

**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION,
AND LYDIAN U.K. CORPORATION LIMITED**

Applicants

**CERTIFICATE OF ALVAREZ & MARSAL CANADA INC. AS THE COURT-APPOINTED
MONITOR OF THE APPLICANTS**

(Plan Implementation)

All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Order of the Honourable Mr. Chief Justice Morawetz made in these proceedings on June 29, 2020 (the "**Sanction and Implementation Order**").

Pursuant to paragraph 10 of the Sanction and Implementation Order, Alvarez & Marsal Canada Inc., solely in its capacity as Court-appointed monitor (the "**Monitor**") of the Applicants, delivers to the Applicants this certificate and hereby certifies that

1. The Monitor has received written confirmation from the Applicants that all of the conditions precedent set out in the Plan have been satisfied or waived, and that the Effective Time of the Plan is [a.m/p.m.] on ●, being the Plan Implementation Date.
2. The Plan Implementation Date has occurred and the Plan is effective in accordance with its terms.
3. This Certificate will be filed with the Court and posted on the website maintained by the Monitor.

DATED at the City of Toronto, in the Province of Ontario, this ● day of ●, 2020 at [● a.m./p.m.]

ALVAREZ & MARSAL CANADA INC.,
solely in its capacity as Court-appointed
Monitor of the Applicants and not in its
personal or corporate capacity

By:

Name:

Title:

Schedule "C"

Monitor's CCAA Termination Certificate

Court File No. CV-19-00633392-00CL

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

AND

**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LYDIAN INTERNATIONAL LIMITED**

Applicant

**CERTIFICATE OF ALVAREZ & MARSAL CANADA INC. AS THE COURT-APPOINTED
MONITOR OF THE APPLICANTS**

(CCAA Termination)

All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Order of the Honourable Mr. Chief Justice Morawetz made in these proceedings on June 29, 2020 (the "**Sanction and Implementation Order**").

Pursuant to paragraph 30 of the Sanction and Implementation Order, Alvarez & Marsal Canada Inc. ("**A&M**"), solely in its capacity as Court-appointed monitor (the "**Monitor**") of the Applicants, delivers to the Applicants this certificate and hereby certifies that

1. The Monitor has received written confirmation (the "**Notice**") from Lydian International Limited ("**Lydian International**") that the Remaining Post-Implementation Date Expenses should be disbursed to the parties with Remaining Post-Implementation Date Expenses, in accordance with Schedule "A" to the Plan.
2. The Monitor has paid all Remaining Post-Implementation Date Expenses in accordance with the Notice and has transferred any remaining funds in the Post-Implementation Date Expenses Reserve to Restructured Lydian.
3. The Monitor is filing this Certificate in accordance with section 6.4 of the Plan confirming that the CCAA Termination Date has occurred on **[date]**.

4. Upon the filing of this Certificate, the within CCAA proceedings in respect of Lydian International shall be terminated and A&M shall be discharged as Monitor.
5. This Certificate will be filed with the Court and posted on the website maintained by the Monitor.

DATED at the City of Toronto, in the Province of Ontario, this ● day of ●, 2020 at [● a.m./p.m.]

ALVAREZ & MARSAL CANADA INC.,
solely in its capacity as Court-appointed
Monitor of the Applicants and not in its
personal or corporate capacity

By: _____

Name:

Title:

Schedule "D"

LETTER OF REQUEST

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION, AND LYDIAN U.K. CORPORATION LIMITED

Court File No.: CV-19-00633392-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER
(Re: Plan Sanction and Implementation)**

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