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COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC, DOMINION FINCO INC., and DOMINION DIAMOND MARKETING CORPORATION
DOCUMENT	**REPLY BRIEF OF ARGUMENT OF THE MONITOR**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**BENNETT JONES LLP** Barristers and Solicitors 4500 Bankers Hall East 855 – 2nd Street SW Calgary, Alberta T2P 4K7 Attention: Chris Simard / Kelsey Meyer Telephone No.: 403-298-4485 / 403-298-3323 Fax No.: 403-265-7219 Client File No.: 76142.10

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I. INTRODUCTION

A. Procedural Context and Background

1. The Monitor files this Reply Brief in support of its November 9, 2021 application for, among other things:

(a) an Order extending the Stay Period to and including March 4, 2022;

(b) advice and directions as to whether the Monitor, on behalf of Dominion Diamond Mines ULC ("**DDM**"), can provide a discontinuance and release of the claim (the "**BC Civil Claim**") filed in the Supreme Court of British Columbia, Vancouver Registry, No. S206419 by DDM as against Diavik Diamond Mines (2012) Inc. ("**DDMI**"), as is contemplated in a transaction (the "**AVO Transaction**") for the sale of certain of the assets, undertakings and properties of DDM regarding its 40% joint venture interest in the Diavik Diamond Mine (the "**AVO Assets**") pursuant to an Asset Purchase Agreement proposed to be entered into between the Monitor in its capacity as the court-appointed Monitor of DDM, and not in its personal capacity, as seller, and DDMI as purchaser (the "**AVO Agreement**");

(c) approval of a transaction (the "**RVO Transaction**") contemplated by the Definitive Term Sheet for RVO Transaction (as it may be amended in accordance with the Order, the "**RVO Agreement**") proposed to be entered into between the Monitor on behalf of the Applicants[1] and Washington Investments Holdings II, LLC ("**Washington**"); and

(d) sealing on the Court file Confidential Appendix "I" (the "**Confidential Appendix**") to the October 19, 2021 Supplement (the "**Supplemental Report**") to the Monitor's October 6, 2021 Sixteenth Report (the "**Sixteenth Report**").

2. No party has expressed any opposition to the stay extension and sealing order being sought.

[1] The Applicants are Dominion Diamond Mines ULC ("**DDM**"), Dominion Diamond Delaware Company LLC, Dominion Diamond Canada ULC, Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC, Dominion Finco Inc., and Dominion Diamond Marketing Corporation.

3. The Monitor previously filed a Bench Brief on October 7, 2021, in which it addressed the law respecting the relief it was seeking, prior to the amendment of its application (the "**Monitor's First Brief**"). This Reply Brief does not repeat any of arguments set out in the Monitor's First Brief. Instead, it serves the following two purposes:

(a) addressing the amendments to the relief that the Monitor will seek at the application, as described in the Monitor's amended application filed on October 19, 2021 (the "**Amended Application**") and the Supplemental Report; and

(b) replying to the Brief of Argument of Arctic Canadian Diamond Company Ltd. ("**ACDC**"), served on October 25, 2021 (the "**ACDC Brief**"), filed in opposition to the application.

4. The Monitor has filed and served the following materials with respect to the application:

(a) its original application, dated October 6, 2021;

(b) the Sixteenth Report;

(c) the Monitor's First Brief;

(d) the Amended Application;

(e) the Supplemental Report;

(f) this Reply Brief; and

(g) concurrently with this Reply Brief, a Second Supplement to the Sixteenth Report (the "**Second Supplemental Report**").

5. All capitalized terms that are used but not defined in this Reply Brief shall bear their meanings as defined in the Monitor's First Brief, the Sixteenth Report, the Supplemental Report or the Second Supplemental Report.

B. The Monitor's Position on the Application

6. The Monitor has carefully considered ACDC's objections to the application, but disagrees with those objections. The Monitor strongly disagrees with ACDC's allegation that the Monitor was required to conduct a new sale process after the EMP Order was granted, and that ACDC reasonably expected this to occur. There was no such requirement or expectation, and suggesting now that there was, is completely spurious. ACDC has not been treated unfairly, either in the process leading to the AVO Transaction and the RVO Transaction being presented to the Court, or since that time. On the contrary, ACDC has been given ample opportunities to receive additional diligence information about the AVO Transaction, and to seek to become the bidder in the RVO Transaction. ACDC has declined to do either.

7. Finally, the Monitor disagrees that the AVO Transaction represents an "expropriation" of ACDC's assets. The currently-available information (the current life of mine plan and reclamation/closure study report provided by DDMI) suggests that the Diavik Joint Venture is unlikely to ever produce future Diavik Realization Assets. ACDC appears to be out of the money. The AVO Transaction and the RVO Transaction represent the best opportunity to maximize the value of Dominion's assets, for the benefit of its creditors.

8. For these reasons, the Monitor continues to be supportive of the AVO Transaction and RVO Transaction, and seeks their approval.

II. STATEMENT OF FACTS

A. Introduction

9. As noted, the Monitor has filed three reports with respect to this application: the Sixteenth Report, the Supplemental Report and the Second Supplemental Report. In those reports, the Monitor has provided the factual background and descriptions of the AVO Transaction and the RVO Transaction. The Monitor will not repeat in this Reply Brief all the facts set out in those reports. Rather, the Monitor will highlight certain factual matters in response to the factual assertions made in the ACDC Brief.

10. The Monitor strongly disagrees with the following factual assertions made in the ACDC Brief:

(a) that the Monitor was required to carry out a sales process after the granting of the EMP Order, and that other parties such as ACDC had a reasonable expectation that this would occur;

(b) that the Monitor did not act in good faith, or treat ACDC unfairly, by not notifying ACDC of the negotiations between DDMI and the Agent which resulted in the Support Agreement and the AVO Transaction;

(c) that there has been no marketing process respecting the RVO Transaction; and

(d) that the Monitor has not responded to ACDC's information requests.

B. The Monitor Was Not Required or Expected after February 2021 to Run a Further Sale Process

(1) Introduction

11. In the ACDC Brief, ACDC alleges repeatedly that the Monitor was obligated to carry out a sale process after the EMP Order was granted. For example, ACDC argues:

(a) "in December 2020, the Monitor, the First Lien Lenders and ACDC all agreed together that a marketing process would be run";

(b) "[i]t was a fundamental tenet of the process put in place under the EMP Order and the TSA that the Monitor, as an independent official, would market these assets and would take all of the steps that a Court Officer would do in a transparent process, including canvassing the market and engaging interested parties in good faith negotiations"; and

(c) [t]he Monitor agreed under the TSA to fulfil three separate obligations … First, to undertake a monetization and marketing process…"[2]

[2] ACDC Brief, paras. 6, 138, 33

12. It is not clear from the ACDC Brief exactly what it alleges that the Monitor was required to market. Sometimes ACDC seems to allege that the Monitor was required to market DDM's remaining 40% Diavik Joint Venture Interest (*ie*. the asset that DDMI is proposing to purchase in the AVO Transaction),[3] but at other times, ACDC suggests that the Monitor was required to market the Diavik Realization Assets (*i.e*. the net receivables from the Diavik Joint Venture Interest that ACDC had purchased, subject to the existing security interests of DDMI and the First Lien Lenders).[4]

13. Whichever allegation is intended by ACDC, it is demonstrably incorrect. The Monitor was **not** required to conduct any marketing process after the EMP Order was granted. This is apparent from the EMP Order and the TSA. Further, no party could reasonably have believed that the Monitor would carry out a sale process. That was obvious to all parties, from the relatively low amount of funding provided to the Monitor, and from the fact that the lengthy and very expensive SISP had just concluded. That the Monitor was not running a sale process was further made clear to all parties from the Monitor's ongoing reporting to the stakeholders and this Court. Indeed, ACDC itself never indicated to the Monitor that it ever expected a new sale process to be conducted, until it filed the ACDC Brief on October 25, 2021. The Monitor will address each of these facts in turn.

(2) The Monitor's Mandate after the ACDC Transaction Closed

14. The Monitor's mandate after the ACDC Transaction closed on February 3, 2021 was established in the EMP Order,[5] with further detail provided in the TSA.

15. In paragraph 4 of the EMP Order, this Court provided the Monitor with a lengthy list of expanded powers, customarily granted to enhanced monitors. Notably, this exhaustive series of powers (totaling 20 separate enumerated powers and an omnibus final power to "take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations") were **permissive** only. The Monitor was not obligated to exercise any of these powers, but it had the discretion to do so. The permissive nature of these powers was made clear by the opening words in paragraph 4:

[3] See *e.g.* ACDC Brief at paras. 32, 46, 47 and 53
[4] See *e.g.* ACDC Brief at paras. 33(a)
[5] Exhibit "N" to the October 13, 2021 Affidavit of Kristal Kaye (the "**October 2021 Kaye Affidavit**").

MONITOR'S EXPANDED POWERS

> 4. In addition to its prescribed rights pursuant to the CCAA and the powers and duties set out in the SARIO or any other Order granted in these proceedings, and without altering in any way the limitations and obligations of the Applicants as a result of these proceedings, **the Monitor is hereby authorized and empowered, but not required**, in each case subject to the terms of the APA and the obligations thereunder, to: **[emphasis added]**

16. The Monitor acknowledges that it was granted the express (but expressly permissive) right to market the property of Dominion, with the consent of the Agent:

> (f) market any or all of the Property, with the consent of Credit Suisse AG, Cayman Islands Branch, in its capacity as administrative agent under the Pre-Filing Credit Agreement (in such capacity, the "1L Agent") until the Diavik LCs (as defined below) have been fully cash collateralized in accordance with paragraph 10(h) of this Order;[6]

17. The Monitor therefore could have chosen to run a sale process for any of the remaining property of Dominion, but it was not required to. The Monitor did not conduct such a sale process, because it was not necessary or appropriate to do so.

18. In addition to granting permissive powers to the Monitor, the EMP Order also authorized the Monitor to enter into the TSA, and also specifically covered the topics to be agreed in the TSA. Paragraph 10 of the EMP Order states:

> 10. The Monitor is hereby authorized to execute a transition services agreement on behalf of the Applicants concurrent with or after the Closing, and to take any and all actions and steps in the name of and on behalf of the Applicants that are necessary to satisfy the obligations thereunder, including, among other things:
>
> (a) **conducting, supervising and directing the realization and recovery of the Applicants' Property or other assets or interests**, including through: (i) the monitoring of such Property, assets and interests; and (ii) monitoring and enforcing applicable rights under the Approval of Monetization Process Order granted November 4, 2020 in these proceedings (as may be amended, restated or supplemented from time to time), the Monetization Process scheduled thereto and all other applicable Orders granted in these proceedings;

[6] EMP Order, para. 4(f)

(b) **conducting, supervising and directing the sale of any diamonds** received by the Applicants;

(c) administering and making payments from the Diavik Realization Account and the Wind-Down Account; and

(d) subject to payment of, or resolution with, private or government royalty holders, **making disbursements of all monetized Diavik Realization Assets** to the 1L Agent to cash collateralize the letters of credit issued with respect to the Diavik Diamond Mine (the "**Diavik LCs**"), until such Diavik LCs have been fully cash collateralized, and in accordance with the applicable Orders granted in these proceedings,

in each case, in accordance with the applicable terms of the APA. **[emphasis added]**

19. Thus, the authority given by the Court in the EMP Order regarding the TSA did not include any direction that the TSA would obligate the Monitor to carry out a sale process. And, indeed, the TSA itself included no such obligation. The TSA[7] is a tripartite agreement, entered into by ACDC (as "Purchaser"), the Monitor on behalf of Dominion, and the Agent. Section 1.02 of the TSA clearly delineated the services to be provided by Dominion (via the Monitor), as follows:

Section 1.02 Provision of Services by Dominion

(a) Dominion agrees to take all reasonable steps that are necessary or desirable for **the full realization and recovery of the Diavik Realization Assets**, as determined by the Monitor, acting reasonably, **and with the consent of the Agent** (or the Agent's counsel) (the "**Realization Activities**"). The Realization Activities may include, among other things:

(i) **enforcement of all rights relating to the Diavik Realization Assets**, including rights provided for under the Orders granted in the CCAA Proceedings and the Diavik Joint Venture Agreement;

(ii) **participation in management committee matters and meetings pursuant to the Diavik Joint Venture Agreement**;

(iii) **review of reporting and calculations relating to the Diavik Diamond Mine** by Diavik Diamond Mines (2012), Inc. ("DDMI");

[7] Exhibit "O" to the Kaye Affidavit

(iv) **review of budgets and cash calls pursuant to the Diavik Joint Venture Agreement**; and

(v) **exercising audit rights under the Diavik Joint Venture Agreement where appropriate**.

(b) In addition to all other reporting obligations to the Parties, Dominion agrees to provide such other information as is reasonably requested by the Agent or Purchaser from time to time and monthly written reports with respect to the status of the Realization Activities (including the funds remaining in the Diavik Realization Account and the Wind-Down Account) to the Agent and the Purchaser, subject to entering into commercially reasonable confidentiality and restriction on use arrangements where such information is not otherwise subject to confidentiality and use provisions under this Agreement or any other agreement(s) between such Parties.

(c) Dominion agrees to respond in good faith to any reasonable request from the Purchaser for access to any additional services that are necessary for the transition of the Acquired Assets and the Assumed Liabilities that are not contemplated in this Agreement or the Purchase Agreement, at a price to be agreed upon between the Parties, acting reasonably. **[emphasis added]**

20. Two facts are obvious from this provision, both of which contradict ACDC's allegations. First, the provision makes it clear that the Monitor's obligations under the TSA were exclusively with respect to the Diavik Realization Assets – the entitlement to receive diamond production or proceeds thereof from the Diavik Joint Venture, subject to the rights of DDMI and the secured claim of the First Lien Lenders. The TSA has nothing to do with any of the property retained by Dominion, such as the 40% Diavik Joint Venture Interest that is now the subject of the AVO Transaction. This makes sense, because the Monitor would have no reason to enter into an agreement with ACDC regarding that property – ACDC had no interest in that property and had chosen not to purchase that property in the ACDC Transaction. The second fact that is made obvious in section 1.02 of the TSA is that the Monitor never agreed (and the other parties never required it) to conduct a sale process with respect to the Diavik Realization Assets. Indeed, such a suggestion is patently absurd – there is no reason the Monitor would have to market an asset that had just been purchased by ACDC.

21. What the Monitor agreed to do, was obligated to do, and in fact did, was to "take all reasonable steps that are necessary or desirable for the full realization and recovery of the Diavik Realization Assets" – what the parties defined as "Realization Activities". In other words (and is made apparent from subparagraphs 1.02(a)(i) – (v) of the TSA), the Monitor was to administer the 40% Diavik Joint Venture Interest, and monetize the diamonds due to DDM from Diavik as a result of the Court's January 25, 2021 decision on the timing of cover payments and diamond collateral. ACDC is stretching the words "full realization and recovery" beyond any reasonable limit, by suggesting that those words should now be interpreted to mean "conduct a sales process for the marketing of the Diavik Realization Assets". If that was intended by the parties, the list of specific tasks by which the parties agreed that the Monitor would realize on and recover the Diavik Realization Assets, in subparagraphs 1.02(a)(i) – (v) of the TSA, would have included "run a sale process". Instead, those specific tasks all spoke to the Monitor's administration of the Diavik Joint Venture Interest, and its monetization of the diamonds due to DDM.

22. Thus, neither the EMP Order nor the TSA obligated the Monitor to run a sale process, either for the Diavik Realization Assets, or for any of Dominion's property.

23. ACDC also argues that the December 6, 2020 Mutual Support Agreement (the "**MSA**")[8] entered into between the Bidders and the Agent mandated a sales process to be conducted by the Monitor after the ACDC Transaction closed. The Monitor, while never a party to the MSA, disagrees with this assertion. The primary purpose of the MSA was to facilitate the Bidders' and the First Lien Lenders' support for the ACDC Transaction and the ACDC APA. It also contemplated the concept that was eventually embodied in the TSA: that an independent officer (ultimately the Monitor) would realize on and recover the Diavik Realization Assets. As agreed in section 6 of the MSA:

> Unless otherwise agreed by the Parties, the Transaction shall be implemented pursuant to an asset purchase agreement (the "**APA**") to be executed by DDJ Capital Management, LLC, Brigade Capital Management, LP, and the Company under which a newly created entity or entities ("**NewCo**") shall acquire substantially all of the assets of the Company other than the Company's Diavik mine joint venture agreement interests but including (subject to the 1L Lenders' continuing lien until cash collateralization or cancellation of all Diavik letters of credit issued by the 1L Lenders and the payment of all related fees) all receivables, diamond production, claims, sales proceeds and other rights and

[8] Schedule "B" to the ACDC APA, October 2021 Kaye Affidavit, Exhibit "B"

> assets realized or recovered in respect of such Diavik mine joint venture agreement interests (collectively, the "**Diavik Assets**"). The Parties shall agree to a mechanism for the pursuit of the realization and recovery of the Diavik Assets, which among other things shall provide for a duly authorized independent official to have control and carriage thereof and for the costs thereof to be funded initially by the Company's payment at closing of the Transaction of US$1,000,000 from the Transaction proceeds at NewCo's direction to such official and thereafter to be funded at the cost of the 1L Lenders if they so elect in their sole discretion.

24. Thus, in that provision of the MSA, the Bidders and the First Lien Lenders agreed:

(a) the Bidders, through a Newco, would purchase substantially all of DDM's assets, but would not purchase the Diavik Joint Venture Interest;

(b) Newco (which was incorporated and became ACDC) would purchase "all receivables, diamond production, claims, sales proceeds and other rights and assets realized or recovered in respect of such Diavik mine joint venture agreement interests". These were defined as the "Diavik Assets" in the MSA, but later became the "Diavik Realization Assets" in the ACDC APA; and

(c) the Bidders and the First Lien Lenders would agree to a "mechanism for the **pursuit of the realization and recovery of the Diavik Assets**, which among other things shall provide for a duly authorized independent official to have control and carriage thereof" (emphasis added). This "mechanism" ultimately became the TSA, including the administration and realization services to be provided by DDM (via the Monitor) described above.

25. Thus, the Monitor submits that this provision of the MSA was given full effect to in the TSA. It contemplated no more than what the TSA later formalized, and what the Monitor subsequently did: administering the Diavik Joint Venture Interest, and monetizing the diamonds from the Joint Venture, which DDM was entitled to receive.

26. However, ACDC suggests in the ACDC Brief an interpretation of this provision of the MSA (without citing its actual words) that goes far beyond, and actually contradicts, what the MSA actually says. ACDC argues that, in this provision, the parties "expressly agreed to settle a mechanism for a **process** for the realization of **DDM's remaining interest in the Diavik**

Diamond Mine…"[9] (emphasis added). This characterization is demonstrably wrong. First, the Bidders and the First Lien Lenders never agreed to any "process". ACDC has simply added the word "process" to the words that were actually agreed by the parties. Second, the parties never agreed to anything whatsoever with respect to the 40% Diavik Joint Venture Interest, which the Bidders had chosen not to purchase through ACDC. The only mechanism the parties agreed to implement was for the realization and recovery of DDM's share of diamonds from the Diavik Joint Venture.

27. Thus, the Monitor submits that ACDC has completely mischaracterized in the ACDC Brief what was agreed to in the MSA and the TSA: there was never any agreement that the Monitor would conduct a sale process for the 40% Diavik Joint Venture Interest that is now proposed to be purchased by DDMI in the AVO Transaction (nor for the Diavik Realization Assets).

(3) There was Insufficient Funding for a Sale Process

28. Additionally, no party could have reasonably expected that the Monitor would run a new sale process after the ACDC Transaction closed, because the very comprehensive (and expensive) SISP had just concluded. The SISP ran from June, 2020 until October, 2020. When it was determined in early October, 2020 that the Stalking Horse Bid would not proceed, negotiations commenced between Dominion, the Bidders and the First Lien Lenders. Those negotiations resulted in the ACDC APA, which the Court approved on December 6, 2020. The ACDC Transaction closed on February 3, 2021.

29. Thus, by the time the EMP Order was granted on January 27, 2021, Dominion's assets had been marketed in the SISP for approximately 7 months. The SISP was well-publicized, conducted by highly specialized professionals, and comprehensive. However, the SISP failed to produce any bid whatsoever for DDM's 40% Diavik Joint Venture Interest. Both the Stalking Horse Bidder (the ultimate equity owner of Dominion) and ACDC[10] could have bid for that

[9] ACDC Brief at paragraph 45

[10] The Monitor notes that the equity owners of ACDC, the Bidders DDJ and Brigade, were two significant members of the Ad Hoc Group. Through the SISP, they would have received detailed information on the opportunity to bid for the Diavik Joint Venture Interest.

asset, but instead they both expressly **excluded it** from their respective bids. The SISP followed three other sale processes for Dominion's business, carried out in 2015, 2016 and 2017.[11]

30. The SISP was also extremely expensive. The professional fees incurred by Dominion and paid with estate funds, from the commencement date of the CCAA Proceedings to the closing of the ACDC Transaction, are set out in the table below:[12]

Professional Fee Summary **For the Forty Two Week Period Ended February 3, 2021** ***($ thousands)***		
Professional Fees - by advisor		
Evercore	Financial Advisor	$ 12,139
Blake, Cassels & Graydon LLP & McDermott Will & Emery LLP	Legal Counsel to Applicants & US Legal Counsel to Applicants	7,814
FTI Consulting Canada Inc.	Monitor	1,988
Bennett Jones LLP	Legal Counsel to Monitor	524
Vinson & Elkins LLP	US Legal Counsel to Monitor	45
TWC Legal Advisors	Legal Counsel to The Washington Companies	4,444
Osler, Hoskin & Harcourt LLP	Legal Counsel to the Existing Credit Facility Lenders	2,944
Cahill Gordon & Reindel LLP	US Legal Counsel to the Existing Credit Facility Lenders	2,675
Restructuring Partners & Associates	Agent Advisor	2,505
Torys LLP	Legal Counsel to the 2Ls	4,248
Houlihan Lokey	Advisors to the 2Ls	5,184
Other	Other	393
Total Professional Fees		**$ 44,901**

31. While the Monitor has not precisely isolated the professional fees specifically related to the SISP, as opposed to all other restructuring matters during this period, the fees of Evercore as sales agent, of $12.1 million, are directly attributable only to the SISP, and it is understood that a significant portion of the other professional fees were also incurred in respect of the SISP.[13]

32. As part of the ACDC Transaction, the Monitor was provided with US$1 million in funding in the "Diavik Realization Account"[14] and US$250,000 in the "Wind-down Account". The TSA established the purposes for which those funds were to be used:

> Section 2.01 Terms of Payment and Related Matters

[11] Sixteenth Report at para. 4
[12] Second Supplemental Report at para. 13
[13] Second Supplemental Report at para. 15
[14] ACDC repeatedly argues that it, or the Bidders, provided this US$1 million (see *e.g.* ACDC Brief at paragraphs 3, 6, 31 and 45) but that is not the case. As agreed in sections 7.1(a)(iv) of the ACDC APA, this amount was funded from Dominion's cash on hand at the time of the closing of the ACDC Transaction.

> (a) The reasonable documented costs, fees and expenses incurred by Dominion or the Monitor in completing the Realization Activities, along with the reasonable documented costs incurred by the Agent and the Purchaser with respect to same, shall be funded initially from the Diavik Realization Account, which shall be administered in accordance with the Purchase Agreement and the First Lien Lender MSA. Thereafter, but only with the consent of the Monitor, such costs may be funded from the Wind-Down Account, to the extent available for such costs pursuant to the Purchase Agreement. Thereafter, such costs shall be funded (i) at the cost of the 1L Lenders if they so elect in their sole discretion; or (ii) subject to the consent of the Agent, at the cost of another Party or Parties if they so elect in their sole discretion. If neither the 1L Lenders nor any Party elects to fund the Realization Activities after the use of all available funds in the Diavik Realization Account and, if applicable, the Wind-Down Account in accordance with this Section 2.01(a), neither Dominion nor the Monitor shall be required to take any further steps or incur any further costs to complete Realization Activities. The Purchaser covenants to: (i) take reasonable efforts to not incur costs with respect to the Realization Activities that would be duplicative with the actions (and related costs) taken by Dominion and/or the Agent, to the extent that such activities are known to the Purchaser; and (ii) advise the Agent of any intended material costs that it anticipates incurring with respect to the Realization Activities reasonably in advance of incurring such costs. For the avoidance of doubt, the costs, fees and expenses incurred by the Agent for its analysis of DDMI's reporting, calculations, legal and commercial positions and other actions taken by DDMI with respect to the Diavik Diamond Mine, along with such reasonable actions that are incidental thereto (which may include consideration of possible legal actions that may be taken against DDMI) as determined by the Agent, shall be funded from the Diavik Realization Account and, if applicable, the Wind-Down Account in accordance with this Section 2.01(a).

33. Thus, the Monitor's, the Agent's and the Purchaser's costs associated with the "Realization Activities" (as noted above, administering the 40% Diavik Joint Venture Interest and monetizing the diamonds from Diavik to which DDM was entitled) were to be paid from the Diavik Realization Account.

34. Given that the very comprehensive SISP had just been completed at a cost well above $12 million, it is spurious to suggest that any party reasonably expected the Monitor to conduct a new sale process for the 40% Diavik Joint Venture Interest. The US$1 million in the Diavik Realization Account was both totally insufficient for that purpose, and also was specifically

earmarked for different tasks: the Monitor's administration of the joint venture interest, and its monetization of the Diavik Realization Assets.

35. The current senior financial management team of ACDC is made up of a number of individuals who were senior management personnel and executives of Dominion prior to the ACDC Transaction, some of whom were also involved in negotiating the ACDC Transaction on behalf of Dominion. These management individuals include, among others:

(a) Ms. Kristal Kaye, Chief Financial Officer of ACDC (and former Chief Financial Officer of Dominion);

(b) Ms. Huili Li, Corporate Controller of ACDC (and former Corporate Controller of Dominion);

(c) Mr. Andrew Petch, Manager, Strategic Planning of ACDC (and former Manager, Strategic Planning of Dominion); and

(d) Ms. Tammy Taylor, Senior Tax Advisor of ACDC (and former Senior Tax Advisor of Dominion).

36. Representatives of the Bidders DDJ and Brigade, the equity owners of ACDC, were also involved in negotiating the ACDC Transaction. The Monitor understands that the two Bidders manage substantial holdings of Dominion's senior secured second lien notes, although less than a majority. They were part of the Ad Hoc Group of secured second lien note holders who were active during the CCAA proceedings prior to the ACDC Transaction closing.

37. Given their involvement in the SISP for Dominion and the Bidders, respectively (and their knowledge of the cost and complexity of that process), the management of ACDC and the equity owners of ACDC cannot reasonably have expected that the Monitor would be able to conduct another sale process, with funding of US$1 million.

(4) After the EMP Order was Granted, the Monitor Fully Reported on its Activities (Including that it was Not Running a Sale Process) and on the Expenditure of the Diavik Realization Account

38. The Monitor's reporting to the Court and to all stakeholders (including ACDC) throughout 2021 made it clear that no sale process was being conducted, and the Diavik Realization Account was being depleted by the activities of the Monitor and the Agent, as contemplated in section 3.01 of the TSA. The Monitor reported as follows:

(a) on March 4, 2021, the Monitor reported on its activities (which did not include running a sales process) in the Fourteenth Report, and reported specifically that it forecasted the expenditure of total professional fees and expenses of $750,000 between February 4, 2021 and September 17, 2021 ($300,000 to the First Lien Lenders' counsel, $300,000 to the Monitor and $150,000 to the Monitor's counsel) to "wind-down Dominion's estate and administer the Diavik Realization Assets"; and

(b) on August 30, 2021, the Monitor reported further on its activities (which did not include running a sales process) in the Fifteenth Report, and reported specifically that:

(i) professional fees and expenses since February 4, 2021 had totaled $857,000, thus exceeding the previous forecast of $750,000 ($243,000 had been incurred by the First Lien Lenders' counsel, $498,000 had been incurred by the Monitor and $117,000 had been incurred by counsel to the Monitor);

(ii) it forecasted the expenditure of professional fees and expenses of $1,146,000 from August 14, 2021 to December 17, 2021 ($596,000 to the First Lien Lenders' counsel, $300,000 to the Monitor and $250,000 to the Monitor's counsel) to "administer the Diavik Realization Assets and [for] the wind-down Dominion's estate"; and

(iii) a further advance would be required from the First Lien Lenders to cover the anticipated expenses of the estate during this forecast period, in the approximate amount of $469,000.

39. It was thus clear from the Monitor's reporting that what it was doing was administering the 40% Diavik Joint Venture Interest and realizing on the Diavik Realization Assets. The many activities of the Monitor after the granting of the EMP Order are described in detail at paragraph 10 of the Second Supplemental Report. The Monitor also transparently reported the costs that it and the Agent were incurring to administer the Diavik Realization Assets, which were being paid from the Diavik Realization Account. Notably, ACDC never raised any concern with the Monitor in response to this reporting.

40. Through this entire period, the Monitor also worked closely with ACDC to monetize the diamonds which DDM was entitled to receive from the Diavik Joint Venture. After the EMP Order was granted, the Monitor received two shipments of diamonds from DDMI corresponding to Dominion Production from November and December 2020, which Dominion had been unable to collect and realize on prior to the closing of the ACDC Transaction. ACDC acted as agent to sell the diamonds on behalf of Dominion, for a 1% fee, pursuant to the TSA. The two sales were conducted by ACDC in April and September, 2021. As reflected in the sales statements from ACDC dated April 28, 2021 and October 1, 2021, the gross and net proceeds from those sales are summarized below:

Sale Statement Date *($ thousands)*	**28-Apr-21**	**1-Oct-21**	**Total**
Total Carats Sold	262,963	178,827	**441,790**
Gross Sales Value	$ 19,619	$ 16,910	**$ 36,529**
Less Cost to Sell:			
1% Sales Fee paid to ACDC	196	169	**365**
Shipping Costs	39	18	**57**
Sorting Costs	99	73	**172**
GNWT Royalties	-	135	**135**
Private Royalties	186	325	**511**
Pre-filing Private Royalties	190	998	**1,189**
Proceeds withheld for Dominion Estate Expenses	-	376	**376**
Net Proceeds from Diamond Sales	**$ 18,907**	**$ 14,816**	**$ 33,723**

41. Thus, as the party who actively sold DDM's diamond production from Diavik for the Monitor, ACDC had direct, immediate and accurate knowledge of the results of the Monitor's Diavik Realization Activities. The Monitor notes that while ACDC, as the "Purchaser" under the TSA, received approximately $365,000 in compensation for its sale of DDM's diamonds, it incurred no costs with respect to the Realization Assets for which it was compensated from the Diavik Realization Account (or if it did incur such costs, it did not seek reimbursement for those costs from the Monitor as contemplated in section 3.01 of the TSA).

42. Further, while the Monitor has not issued formal reports to ACDC,[15] it has had regular correspondence with management of ACDC in which, among other things, the following matters have been discussed:

(a) ACDC acting as the primary interface with Dominion's tax advisors and preparing Dominion's 2020 corporate tax returns;

(b) ACDC acting as agent to monetize diamonds for net proceeds of approximately $33.7 million, net of costs, including fees of approximately $365,000 earned by ACDC;

(c) ACDC assisting the Monitor with accessing certain books and records of Dominion which remain in the custody of ACDC;

(d) ACDC preparing royalty returns and administering royalty payments from the diamond sales proceeds;

(e) ACDC assisting the Monitor with key assumptions used in the Monitor's financial projections;

(f) ACDC providing advice with respect to the selection of environmental engineering consultants; and

(g) various other services provide by ACDC to Dominion pursuant to the TSA.

43. The Monitor acknowledges that section 1.02(b) of the TSA required it to provide "monthly written reports with respect to the status of the Realization Activities (including the

[15] Other than the Monitor's Reports sent to the Court and to all stakeholders on the Service List.

funds remaining in the Diavik Realization Account and the Wind-Down Account) to the Agent and the Purchaser" and the Monitor did not do this. That oversight was inadvertent. However, the Monitor does not believe that either the Agent or ACDC was prejudiced by the lack of this formal reporting. Between the Monitor's Fourteenth and Fifteenth Reports, and ACDC's direct and immediate knowledge about the results of diamond sales, ACDC had sufficient knowledge about the status of the Realization Activities. The Monitor notes that ACDC also never made any requests for additional information, which it was entitled to do pursuant to section 1.02(b) and (c) of the TSA.

(5) Conclusion

44. In conclusion, the Monitor completely rejects ACDC's suggestion that the Monitor was somehow required to conduct a new sale process for the 40% Diavik Joint Venture Interest, and that ACDC expected this. As set out above, that was demonstrably **not** the Monitor's mandate, the Monitor had vastly insufficient funding to run such a process, such a process was unnecessary, and the Monitor's transparent reporting that it was not running such a process was never objected to or questioned by ACDC.

C. The Monitor did not Act in Bad Faith or Treat ACDC Unfairly by not Notifying ACDC of the Confidential Discussions between DDMI and the Agent, which Resulted in the Support Agreement and the AVO Transaction

45. In the ACDC Brief, ACDC makes a number of allegations that the Monitor inappropriately failed to consult ACDC with respect to the AVO Transaction, including the following statements:[16]

(a) [t]he Monitor is seeking approval for a transaction negotiated in secret between the First Lien Lenders and DDMI … [t]he Monitor, despite its contractual reporting obligations, did not report to or notify ACDC";

(b) "ACDC had a reasonable expectation that it would be consulted in good faith before any transaction impacting its ownership interest in the Diavik Realization Assets was finalized";

[16] ACDC Brief at paras. 2, 30, 38, 39 and 40

(c) "[t]hese challenges are exacerbated by the Monitor's and the First Lien Lenders' decision to entirely exclude ACDC from the process"; and

(d) perhaps most significantly:

> The Monitor's Eleventh[17] Report implied in its chronology that, for the Monitor, the first step of significance after the February 2021 closing of the ACDC APA (and entry into the TSA) was the September 16 signing of the Support Agreement by DDMI and the First Lien Lenders. Instead, although not disclosed in its report, the Monitor conceded it has been aware of the private negotiations between the Agent and DDMI since June 29, 2021.
>
> But, to this day, ACDC has no information about the negotiations leading up to the AVO Transaction or the transaction documents. Neither DDMI nor the First Lien Lenders have filed any evidence to support the transaction they brokered. And the Monitor refuses to discuss what it learned since June 29, 2021; it claims privilege over "the Monitor's discussions and negotiations of the AVO Transaction documents" and all "specific of any negotiations or drafting of the transaction documents." In light of this non-disclosure, it should be inferred that the Monitor was actively aware of the negotiations and their progress since June 29, 2021. For reasons unknown to ACDC—despite its reporting obligations under the TSA—the Monitor did not inform ACDC.

46. ACDC is inferring that the Monitor was deceptive, or somehow misled ACDC. Nothing could be further from the truth. While the Monitor did not disclose to ACDC (or to any other stakeholder) until very late in the process that confidential discussions were occurring between the Agent and DDMI, that is not unusual, or inappropriate. One of the important goals of restructuring proceedings under the CCAA is the ability for debtors and different groups of stakeholders to consensually resolve issues in a way that benefits the estate, and avoids disputes and litigation. To facilitate such discussions, confidentiality is sometimes required.

47. During the summer of 2021, when the Agent and DDMI were holding confidential discussions, they were (and remain to this day) the two primary and priority creditors of DDM. DDMI, the creditor with the first-ranking secured claim against the Diavik Joint Venture Interest and DDM's 40% of the diamonds produced by Diavik, was at all material times owed between $49 million and $77 million more by DDM than the value of the Dominion Diamond Production that it was holding (based on DICAN values).[18] The First Lien Lenders also had a large

[17] The Monitor believes this is an erroneous reference, and was intended to refer to the Sixteenth Report.
[18] Confidential Appendix "I" to the Supplemental Report

shortfall, between their LC liability and the Cash Collateral held by them, of approximately $88 million in February 2021, which was reduced to approximately $69 million in April and to approximately $54 million in October (as a result of the two diamond sales conducted by ACDC and the Monitor pursuant to the TSA). Thus, those two creditors, whose claims took priority over any rights of ACDC to the Diavik Realization Assets, have remained well in excess of $100 million throughout this period. Additionally, those two parties were in a dispute over the Section 4 Diamonds.[19] Based on the Monitor's projections of future cover payments and diamond collateral from Diavik, ACDC was at all material times far "out of the money" on the Diavik Realization Assets.[20]

48. In these circumstances, confidential discussions occurring between DDM's two highest-ranking creditors could only be beneficial. Further, in situations like this, it is always possible that such discussions will not result in agreements. That was the case here. Until the Support Agreement was signed on September 16, 2021, creating binding obligations between DDMI and the Agent for the very first time, it was always possible that no consensus at all would be reached.

49. ACDC's argument that some kind of adverse inference should be made (as stated in paragraph 40 of the ACDC Brief, "it should be inferred that the Monitor was actively aware of the negotiations and their progress since June 29, 2021") completely misconstrues the law of evidence. Further, the Monitor (while refusing to waive privilege over the contents of negotiations of the documents in respect of the AVO Transaction) has been completely transparent about its knowledge of DDMI's and the Agent's discussions. It has answered all questions posed by ACDC. In the Second Supplemental Report, the Monitor has now responded to the unfair criticism levelled against it in the ACDC Brief by laying out a comprehensive timeline of the Monitor’s knowledge of discussions about the AVO Transaction which (as opposed to the contents of contract negotiations) the Monitor does not consider to be privileged:[21]

[19] The correspondence exchanged on this dispute is attached in Appendix "C" to the Supplemental Report

[20] The Monitor acknowledges that ACDC argues that the diamond collateral figures for diamonds being held but not sold by DDMI are underestimated, because DICAN values are used. However, as described below, DDMI is entitled to hold diamond collateral based on DICAN values, pursuant to the SARIO.

[21] Second Supplemental Report at paragraph 40

(a) as the Monitor previously told ACDC, it was advised on or around June 29, 2021 that there had been or would be commercial discussions between the Agent and DDMI. The Monitor was not privy to the nature of the discussions or the negotiating positions of either party;

(b) the Monitor was first provided with confidential indicative non-binding terms for discussion regarding the acquisition of the Diavik Joint Venture Interest on August 6, 2021;

(c) on August 19, 2021, the Monitor was first provided with a draft of the confidential Support Agreement. The disclosures on August 6 and August 19 were the first time the Monitor learned of the potential commercial terms of the transaction being considered by DDMI and the Agent. No binding agreement had been reached. Based on the Monitor's understanding and projections of Diavik cover payments and diamond production at that time, the Monitor believed that DDMI and the First Lien Lenders were owed over $100 million by DDM, and there was no realistic prospect that DDM would ever become entitled to receive any further diamonds from Diavik;

(d) the Monitor disclosed to DDJ during an update call on August 31, 2021 (discussed in more detail below) that the Agent was engaged in confidential discussions with DDMI;

(e) the Monitor was provided with the Support Agreement signed by the Agent and DDMI on September 16, 2021. As noted, this was the first time that binding obligations between the Agent and DDMI came into existence;

(f) the Monitor was first provided with a draft of the AVO APA on September 19, 2021;

(g) the Monitor was advised by counsel for the Agent that it had spoken to counsel for ACDC to advise them of the AVO Transaction on September 27, 2021. Thus, 11 days after binding obligations were first created between DDMI and the Agent,

and before any Court application was filed, ACDC was advised of the terms of the AVO Transaction and the RVO Transaction;

(h) the Monitor commenced direct discussions about the AVO Transaction and the RVO Transaction with DDJ and Brigade on September 28, 2021, as well as discussions between counsel. These communications continue to this day (more detail about these communications is provided below);

(i) the Monitor served its application materials on October 6, 2021 (for a hearing originally returnable on October 15, 2021); and

(j) the hearing was then adjourned to November 9, 2021 (meaning that, by the time the application will be heard, ACDC will have had knowledge of the transactions for about 43 days).

50. As noted above, on August 31, 2021, the Monitor attended a videoconference requested by Mr. Eric Hoff of DDJ, in which the following matters were discussed:

(a) the status of the CCAA Proceedings;

(b) the current activities of the Monitor;

(c) the fact that Monitor was aware that representatives of DDMI and the Agent were engaged in confidential discussions; and

(d) the Fifteenth Report in respect of the Monitor's application for an extension of the Stay of Proceedings.

51. Mr. Hoff took no issue with the approach being taken by the Monitor and accepted the Monitor's suggestion of a recurring monthly update call.

52. The Monitor is of the view that the information given to ACDC, or not given to ACDC, was entirely appropriate and in keeping with customary practice in CCAA proceedings, as well as the reality of ACDC's relative status as a stakeholder *vis-à-vis* the interests of DDMI and the First Lien Lenders. DDMI and the First Lien Lenders were the top-ranking creditors that

Dominion could not repay, but ACDC's claims against Diavik (via the Diavik Realization Assets) appeared to be out of the money.

53. The Monitor submits that there is nothing in this course of events that is unusual, inappropriate, or indicative of bad faith. On the contrary, ACDC received much more timely and substantive notice of these transactions than DDMI did when the ACDC Transaction was approved in these proceedings in December 2020. As the Court will recall, Dominion, the Bidders and the Agent completed their negotiation of the ACDC Transaction documents (including the ACDC APA and the MSA) on Sunday, December 6, 2020. Dominion filed and served its application materials on Monday, December 7, for the approval application that was heard four days later, on Friday, December 11, 2020. Notice of the application to approve the ACDC Transaction was provided to DDMI at 9:00 p.m. on Sunday, December 6, 2020.[22] Thus, DDMI had less than five days' notice of that application and the terms of the ACDC Transaction.

54. Here, ACDC was advised of the transaction terms 11 days before the court application was filed, and 18 days before the date originally set for the hearing. By the time this application is heard, ACDC will have had 43 days' notice.

55. The Monitor takes its responsibilities as a court officer very seriously. Its role is not to become involved in all stakeholder discussions. Parties are free, and should be free, to hold confidential discussions to attempt to resolve disputes and reach agreements on issues that might impact the debtors' estate. However, the Monitor does play an important role in ensuring that, if stakeholders might be prejudiced by upcoming events, they are given reasonable notice of such events, to the extent practicable, so that they may consider and articulate their positions. In this case, the Monitor is satisfied that ACDC has been treated fairly and appropriately. It has been given substantial notice of the transactions, and has had more than ample time to consider and fully articulate its position.

56. Ultimately, however, the Monitor is of the view that the AVO Transaction does not prejudice ACDC. The two highest-ranking creditors, DDMI and the First Lien Lenders, are collectively owed over $100 million by DDM, with no realistic prospect that this amount can ever be repaid. These two top-ranking creditors, with the Monitor's participation, have

[22] December 10, 2020 Affidavit No. 6 of Thomas Croese, at paragraph 4

negotiated an agreement that will satisfy those obligations. While ACDC has been given ample opportunity to make its objection, and will be able to do so at the November 9 hearing, the Monitor believes that ACDC is substantially out of the money, because it is extremely unlikely that more Diavik Realization Assets will ever come into existence. Therefore, ACDC is not being prejudiced. The Monitor will discuss this point in greater detail below, in response to ACDC's arguments regarding the *Soundair* factors.

D. Recent Developments Respecting the RVO Transaction

57. In the ACDC Brief, ACDC has alleged that the Tax Attributes that are the subject of the RVO Transaction have not been marketed.[23] The Monitor disagrees.

58. First, the Tax Attributes were available for parties to bid on in the SISP. The SISP Procedures, attached as Schedule "B" to the SARIO (the "**SISP Procedures**"), set the parameters for the SISP. The SISP Procedures solicited interest in the "Opportunity", as follows:

> The SISP is intended to solicit interest in, and opportunities for, (i) a sale or partial sales of (A) all, substantially all, or certain of the assets, property and undertakings (collectively, the "**Property**") of the Applicants and certain of their subsidiaries (together with the Applicants, the "**Dominion Diamond Group**"); (B) the Diavik Interest; or (C) the Non-Diavik Assets or (ii) for an investment in, restructuring, recapitalization, refinancing or other form of reorganization of the Dominion Diamond Group or its business. Bids considered pursuant to the SISP may include one or more of an investment, restructuring, recapitalization, refinancing or other form of reorganization of the business and affairs of the Dominion Diamond Group as a going concern or a sale (or partial sales) of all, substantially all, or certain of the Property of the Dominion Diamond Group, or a combination thereof (the "**Opportunity**").

59. The "Applicants" were defined in the SISP Procedures as "Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC, Dominion Finco Inc., Dominion Diamond Mines ULC ("**DDM**"), Dominion Diamond Delaware Company LLC and Dominion Diamond Canada ULC".

60. The four "Dominion Entities" that are the subject of the RVO Transaction are Washington Diamond Investments, LLC, DDM, Dominion Diamond Holdings, LLC, and Dominion Diamond Marketing Corporation. The latter three corporations are all direct or

[23] See, *e.g.* ACDC Brief at paragraphs 110, 114

indirect subsidiaries of the former. The Tax Attributes of the Dominion Entities are not separable from the Dominion Entities. The RVO Transaction constitutes an "investment, restructuring, recapitalization, refinancing or other form of reorganization of the business and affairs of the Dominion Diamond Group", as specifically contemplated in the definition of the "Opportunity". As such, it was open to any SISP bidder to propose a transaction identical to the RVO Transaction in the SISP. None did so.

61. Second, the only potential bidder under the RVO Transaction besides Washington is ACDC itself (as explained in greater detail below in the Argument section of this Reply Brief). After the Monitor's application was adjourned from October 15, 2021, the Monitor acted promptly to solicit any potential bid from ACDC. As reported in the Supplemental Report, the Monitor's counsel sent a letter to ACDC's counsel on October 15, 2021 (the "**Auction Letter**"), advising that if ACDC intended to make any bid under the RVO Transaction, then the Monitor required ACDC to submit a bid for the RVO Transaction in writing by 5:00 p.m. Mountain time on Friday, October 22, 2021 (the "**Auction Deadline**").[24] If ACDC wished to submit a bid, the Monitor was prepared to move forward with the auction (which was always provided for in the RVO Term Sheet) to be held on October 27, so that results could be reported to this Court promptly. However, ACDC did not submit a competing bid to the Monitor by the Auction Deadline, or send any response whatsoever to the Auction Letter.

62. Given the superior knowledge held by ACDC's finance team regarding the finances and tax status of the Dominion Entities (among other things, it is the current ACDC finance team that assisted the Monitor by completing the 2020 financial statements and filing the 2020 tax returns for those Dominion Entities that are Canadian taxpayers), the Monitor concludes that ACDC does not believe that the value of the RVO Transaction exceeds the amount that Washington is willing to pay.

63. Through counsel, the Monitor has had a number of discussions about the RVO Transaction with counsel to Wilmington, the trustee of the 2L Notes. To date, Wilmington's counsel has asked questions, and suggested revisions to the documents, to make it clear that the proceeds of the RVO Transaction will flow to the holders of the 2L Notes. The Monitor agrees

[24] Appendix "E" to the Supplemental Report

this will be the result of the RVO Transaction (if the claims of the First Lien Lenders, including for their professional fees, are fully repaid).

64. For the reasons set out above, the Monitor disagrees with ACDC's allegation that the RVO Transaction has not been marketed.

65. Counsel to Wilmington has requested one additional change to the form of RVO, which is designed to ensure that the US$1.5 million "Closing Payment" comprises Transferred Assets" and is therefore transferred to the Creditor Trust. The Monitor and Washington have agreed to that change. A blackline showing that incremental change is attached hereto as **[TAB 1]**.

E. ACDC's Allegations that it Has Not Received Information Requested from the Monitor

(1) Introduction

66. In the ACDC Brief, ACDC suggests repeatedly that, since it learned about the AVO Transaction and the RVO Transaction on September 27, it has sought information from the Monitor but its requests have been rebuffed or ignored. For example, ACDC alleges that it "continues to make good faith efforts to obtain further information to assess the proposed transactions. It asked the Monitor for reasonable information to assess the merits of the AVO Transaction and the RVO Transaction, but most of those requests remain unanswered."[25] With respect, that is a complete mischaracterization. The Monitor has made extraordinary efforts to reply promptly and transparently to all of ACDC's requests for information. Additionally, the Monitor has attempted to facilitate the delivery to ACDC of confidential information regarding the Diavik Diamond Mine, by brokering a disclosure mechanism between ACDC and DDMI. However, ACDC has shown very little interest in genuinely taking the necessary steps to move that process forward.

67. The Monitor summarizes below the communications since September 27, 2021 between it, DDJ and ACDC regarding the provision of information about the transactions.

[25] ACDC Brief at paragraph 41.

(2) DDJ Information Requests

68. On September 28, 2021, representatives of the Ad Hoc Group and current owners of ACDC had a scheduled call with the Monitor confirming that they had been advised by the First Lien Lenders on or around September 27, 2021 of the proposed AVO Transaction and RVO Transaction and advising that they would require sufficient time to perform diligence and consider their positions with respect to the two transactions. Following the call, representatives of DDJ provided the Monitor with a detailed list of information requests with respect to the AVO Transaction (the "**DDJ Information Requests**").[26]

69. The Monitor established a confidential virtual data room (the "**ACDC VDR**") on September 30, 2021 and on the same day, posted to the ACDC VDR the document that responded to item six of the DDJ Information Requests. ACDC and DDMI are direct competitors and no longer joint venture partners. DDMI considered the remaining DDJ Information Requests to be for confidential, commercially sensitive information of DDMI, and refused to agree to their disclosure without satisfactory confidentiality requirements being put in place.

70. Counsel for the Monitor, DDMI and ACDC held discussions and exchanged correspondence between September 29 and October 3, 2021 regarding the remaining DDJ Information Requests. At the conclusion of those discussions, the Monitor's counsel informed ACDC's counsel of the terms on which DDMI would agree to disclose the remaining DDJ Information Requests, in an email sent at 8:31 a.m. Mountain Time on Sunday, October 3, 2021.[27]

71. As counsel to the Monitor advised, DDMI would only agree to allow the additional disclosures if satisfactory confidentiality agreements were put in place in advance. For that reason, the Monitor on October 3 requested confirmation from ACDC that the Monitor could send the Non-Disclosure Agreements ("**NDAs**") entered into during the SISP by Brigade, DDJ and ACDC's counsel (who at the time was counsel to Brigade and DDJ), to DDMI. The parties could then work with those NDAs as a starting point and seek to negotiate new confidentiality agreements, to facilitate the provision of the additional requested information.

[26] Second Supplemental Report, Appendix "A"
[27] Second Supplemental Report, Appendix "B"

72. Counsel to ACDC advised counsel to the Monitor on both October 3 and October 4, 2021, that they were seeking their client's instructions regarding the disclosure of the NDAs.

73. After these communications on October 3 and 4, 2021, ACDC did not communicate with the Monitor regarding the DDJ Information Requests. On October 18, 2021, the Monitor's counsel sent a letter to ACDC's counsel, reiterating the necessary next steps to move the process forward (ACDC confirming that the NDAs could be disclosed to DDMI).[28] ACDC never responded to that letter. At paragraph 16 of the Supplemental Report, the Monitor reported that ACDC had not, as of October 19, 2021, provided permission to the Monitor to disclose the NDAs to DDMI.

74. ACDC's next communication with the Monitor regarding the DDJ Information Requests was at 4:40 p.m. Mountain Time on Thursday, October 21, 2021, when its counsel sent an email to the Monitor's counsel. The Monitor's counsel and ACDC's counsel exchanged emails on that topic, culminating in an email from ACDC's counsel to the Monitor's counsel at 1:13 p.m. Mountain Time on Saturday, October 23, 2021, in which ACDC's counsel finally confirmed that ACDC agreed that the NDAs could be disclosed to DDMI, as requested by the Monitor on October 3.[29]

75. The Monitor is of the view that the content of the parties' negotiations regarding the terms of the proposed confidentiality agreement is privileged and confidential, and therefore cannot be disclosed. However, the Monitor can summarize the series of events that occurred on this topic:

(a) on Saturday, October 23, 2021, after receiving ACDC's consent to disclose the NDAs, the Monitor sent the NDAs to DDMI;

(b) on Tuesday, October 26, 2021, DDMI sent to the Monitor a draft proposed confidentiality agreement for ACDC to enter into, to allow for the provision of the requested information as proposed in the Monitor's October 3 email;

(c) the Monitor revised that draft proposed confidentiality agreement and sent it to ACDC at 10:02 a.m. on Wednesday, October 26, 2021; and

[28] Supplemental Report, Appendix "F"
[29] Second Supplemental Report, Appendix "C"

(d) as of the date of this Reply Brief (Monday, November 1, 2021), ACDC has not replied to the Monitor with respect to the proposed confidentiality agreement).

76. The Monitor will continue to work in good faith with ACDC to facilitate the disclosure of this information. However, the Monitor's view is that ACDC seems to lack genuine interest, and any urgency whatsoever, in receiving this information.

(3) ACDC's Letters Requesting Information

77. As detailed in the Supplemental Report, ACDC sent two letters to the Monitor requesting information regarding the AVO Transaction and the RVO Transaction. ACDC sent the first letter on October 11, 2021[30] and the Monitor replied two days later, on October 13, 2021.[31] ACDC sent the second letter on October 19, 2021[32] and the Monitor responded on the same day.[33]

78. The Monitor believes that it answered all the questions posed in ACDC's letters fully, transparently and in good faith. The only answers it did not provide were with respect to the contents of privileged contract negotiations (which information, with respect, is also irrelevant to the issues before the Court).

(4) Confidential Appendix "I"

79. As detailed in paragraphs 20 – 22 of the Supplemental Report:

(a) in paragraph 36 of the October 2021 Kaye Affidavit, Ms. Kaye stated that "[a] report provided in the data room set up by the Monitor does not provide details to reconcile each production cycle against its DICAN valuation, thereby making it impossible to show whether DDMI was over collateralized at any point in time"; and

(b) in response to this statement, the Monitor proactively created the requested document and produced it as Confidential Appendix "I" to the Supplemental

[30] Supplemental Report, Appendix "B"
[31] Supplemental Report, Appendix "C"
[32] Supplemental Report, Appendix "G"
[33] Supplemental Report, Appendix "H"

Report. On Tuesday, October 19, 2021, the Monitor offered to produce Confidential Appendix "I" to DDMI, the Agent and ACDC, if they agreed to keep it confidential. DDMI requested Confidential Appendix "I" on the evening of Tuesday, October 19, 2021 and was provided with it on the morning of Wednesday, October 20, 2021. ACDC requested Confidential Appendix "I" on Sunday, October 24, 2021 and was provided with it on the same day.

(5) Conclusion

80. For the reasons set out above, the Monitor strongly disagrees with ACDC's suggestion that the Monitor has somehow ignored or refused to answer information requests from ACDC about the AVO Transaction and the RVO Transaction.

F. Updates to Agreements and Orders Being Sought Since the Sixteenth Report

81. In the Supplemental Report, the Monitor has explained the incremental changes to the AVO APA, the RVO Term Sheet, the AVO and the RVO made subsequent to the filing of the Sixteenth Report. Most of those changes were immaterial. Those that were material will be discussed below in the Law and Argument section of this Reply Brief.

III. ISSUE

82. The Monitor will not repeat any of the arguments made in its First Brief. It will address only the following issues, to address the points raised in the ACDC Brief:

(a) does the Court have the authority to grant the AVO; and

(b) should the Court approve the transactions and grant the orders being sought?

IV. LAW AND ARGUMENT

A. Does the Court have the Authority to Grant the AVO?

(1) The Court's Jurisdiction to Approve the AVO

83. At paragraphs 38 – 41 of its First Brief, the Monitor has addressed the Court's broad, discretionary authority to approve out of the ordinary course sales under the CCAA and at common law. Those arguments will not be repeated.

84. ACDC has challenged Court's jurisdiction to grant the AVO (but not the RVO). The two bases on which ACDC argues that the Court is unable grant the AVO are that: ACDC is the owner of the Diavik Realization Assets (such that those things cannot be sold "re-sold" to DDMI); and the Court cannot release DDMI from liability with respect to the BC Civil Claim, because such a release is beyond the Court's authority. The Monitor will address those two arguments in turn.

(1) The Diavik Realization Assets

85. As stated at paragraph 56 of the Sixteenth Report, the Monitor agrees that ACDC purchased (as the "Diavik Realization Assets") DDM's entitlements with respect to the 40% share of the diamonds produced from the Diavik Diamond Mine. It is notable, however, that ACDC did **not** buy the actual joint venture interest, or the actual diamonds (the "Diavik Realization Assets" were defined only as "all receivables, **diamond production entitlements**, claims, sales proceeds, cash and other collateral given for the benefit of the First Lien Lenders …"). Thus, ACDC purchased only DDM's entitlement to receive diamonds, or to receive the proceeds of diamonds, from DDMI.

86. It is also undisputed that ACDC bought the Diavik Realization Assets "subject to the liens of the First Lien Lenders". It is common ground that certain diamonds have been produced and sold, resulting in approximately $51.4 million of Cash Collateral currently being held by the Agent. Also, Section 4 Diamonds with a DICAN value of $8.4 million have been produced, and DDM is entitled to them. So to date, approximately $59.4 million (more or less) of diamond production entitlements and proceeds exist. Those assets were purchased by ACDC, but the

purchase was not "free and clear". It was expressly subject to the security of the First Lien Lenders. The First Lien Lenders are owed $105 million (but their claim is notionally reduced by existing Cash Collateral and Section 4 Diamonds, to approximately $45.6 million).

87. That is the current situation, which is the "past" part of the story. The rest of the story deals with the future. The forward-looking question is whether DDM will become entitled to any diamond entitlements or proceeds in the future (or, in other words, will any "Diavik Realization Assets" come into existence in the future?). DDM's right to future diamond entitlements or proceeds therefrom is subject to the rights of DDMI, pursuant to the JVA and the Orders granted in these proceedings. Pursuant to paragraph 16 of the June 19, 2020 SARIO, DDMI does not have to deliver any diamonds from Diavik to DDM, unless the DICAN value of DDM's 40% share of those diamonds exceeds the then-current[34] Cover Payment balance owed by DDM to DDMI. The SARIO was not appealed, and is a final order. As well, DDMI is entitled, but not obligated, to sell DDM's 40% share of diamonds from Diavik in DDMI's possession, pursuant to the November 4, 2020 Monetization Order. The Monetization Order is also now a final order that is unappealable.

88. In summary, the "Diavik Realization Assets" that ACDC purchased is a contingent asset that may or may not come into existence in the future, subject to DDMI's rights pursuant to the JVA, the SARIO and the Monetization Order. If such Diavik Realization Assets do come into existence, they are then subject to the security of the First Lien Lenders that secure the LCs.

89. It is the Monitor's current view, based on the best information available to it, that no Diavik Realization Assets will likely come into existence in the future. As explained in paragraph 51(e) of the Sixteenth Report, the Monitor's projection (using historical diamond sale prices, not DICAN values, and net of the costs permitted to be deducted per the Monetization Order) is that DDM will never become entitled to receive either diamonds, or cash proceeds from Diavik over the projection period (to December 31, 2025). While the Monitor cannot state that its projection will turn out to be accurate, the projection is based on the best information available to the Monitor. Notably, the projection would have to have underestimated the value of future Dominion Production, at the end of the projection period, by approximately $153

[34] The Court decided the issue of the relative timing of Cover Payments and DICAN values in its January 15, 2021 Order.

million (the projected end of period Cover Payment shortfall of $107 million,[35] plus the First Lien Lenders' collateral shortfall of $45.6 million), for any Diavik Realization Assets to come into existence by the end of the projection period.

90. The Monitor acknowledges that this projection is based on many assumptions, and those assumptions could ultimately prove to be incorrect. However, it is impossible to know at this time with any certainty whether any future Diavik Realization Assets will come into existence. That will likely only become known at some time many years in the future. The current practical reality is that there is no source of funding for the significant costs that would be required for the Monitor to continue to administer the Diavik Joint Venture for years. At the same time, if the AVO Transaction is not approved and the First Lien Lenders are not repaid, the estate would also have to pay the ongoing fees of the Agent, and the LC fees that would continue to accrue.

91. For these reasons, the Monitor disagrees with ACDC's characterization of the AVO Transaction as the "expropriation" of an asset purchased by ACDC. ACDC did not buy the Diavik Realization Assets free and clear of all claims. It bought them subject to secured claims of the First Lien Lenders, and they are also subject to the rights of DDMI. The Diavik Realization Assets are a contingent asset that might never come into existence.

92. The *Quicksilver* case cited by ACDC is therefore distinguishable from the facts here. In *Quicksilver*, the third party had purchased an asset (an existing oil and gas facility, so not a future, contingent asset) from the debtor free and clear of all claims against the debtor, and many years before the insolvency of the debtor. Similarly, the *Hutchingame* case is also inapplicable. The AVO is not being used in this case to "enhance a purchaser's interest in an acquired asset beyond the interest held by the debtor". Given DDMI's current rights under the SARIO and the Monetization Order, and based on the best evidence available today, DDMI has the best rights to all current diamond production from Diavik, not ACDC.

93. A good analogy to this case would be the claim of a party who had purchased the right to receive rents from a real property, but subject to the existing rights of two secured mortgage lenders. If the best evidence before the court was that the value of the real property plus the future value of any rents from the real property would not exceed the amounts owed to the

[35] The magnitude of the projected shortfall varies throughout the projection period. It is always materially negative, and is projected to be negative $107 million at the end of the projection period.

mortgage lenders, the court would not prevent a foreclosure sale because the purchaser of future rents was objecting.

(2) The BC Civil Claim

94. As stated by the Monitor in the Sixteenth Report, the Monitor is taking no position in the dispute between ACDC, DDMI and the Agent with respect to the required discontinuance and release of the BC Civil Claim.

95. The Monitor has now put before the Court two alternative forms of AVO, one with a court-ordered release of the BC Civil Claim, and one without. ACDC has argued that the Court cannot grant either order, because ACDC is not a creditor of DDM, but rather it is the purchaser of the BC Civil Claim. While the Monitor takes no position on the issue of whether or not ACDC bought the BC Civil Claim, the Monitor disagrees with the assertion that the Court lacks the authority to grant a release of the BC Civil Claim.

96. As noted in the Monitor's First Brief, the Court has the authority under s. 36 of the CCAA to grant orders approving out of the ordinary course asset sales. Further, in s. 11 of the CCAA, the Court is given very broad authority to "make any order that it considers appropriate in the circumstances". There is nothing in s. 11 or s. 36 that prohibits the Court approval of the release of the BC Civil Claim proposed here. The Ontario Court of Appeal in *Metcalfe*[36] comprehensively analyzed the CCAA and the case law thereunder, and concluded that courts could grant third party releases as part of CCAA plans. Courts have subsequently confirmed that third party releases can also be granted in CCAA cases, in the absence of plans.[37]

97. With respect to ACDC's argument that this case is factually distinguishable because the order proposed here would release claims by parties (like ACDC) who are not creditors of the CCAA debtors, the Monitor notes that many CCAA court-approved releases in plans or other transaction documents have released claims by parties who were not creditors of the CCAA debtors.[38] In fact, it is the Monitor's observation that most, if not all, CCAA third party releases

[36] Tab 8 to the October 12, 2021 Brief of the Agent

[37] See for example *Re Nelson Education Limited* [Tab 11 to the October 12, 2021 Brief of DDMI (the "**DDMI Brief**")].

[38] See, for example, excerpts of the Plan of Arrangement approved in *Lydian* **[TAB 2]**; Vesting Order granted in *Green Relief* **[TAB 3]**; Excerpt from Amended Plan of Arrangement approved in *Cline* **[TAB 4]**.

are structured to release all claims of any "person", a term that is usually defined to be any individual, or corporation, etc., not just creditors.

98. For these reasons, the Monitor submits that the Court has the authority to release the BC Civil Claim.

B. Should the Court Approve the Transactions and Grant the Orders Being Sought?

99. In paragraphs 38 – 40 of its First Brief, the Monitor has outlined the factors to be considered by the Court in considering whether to approve the AVO Transaction and the RVO Transaction (as enunciated in the *Sanjel* and *Soundair* cases). In the ACDC Brief, ACDC has not addressed the broader s. 36 and *Sanjel* factors, but has only addressed the *Soundair* factors. Therefore, in this Reply Brief the Monitor will not repeat its arguments with respect to the s. 36 and *Sanjel* factors, but will instead exclusively respond to ACDC's arguments with respect to the *Soundair* factors.

(1) AVO Transaction

(a) Sufficient Effort has been made to get best price

100. The first *Soundair* factor is whether there has been a sufficient effort made to get the best price for the asset being sold. ACDC's criticisms are that: the Monitor has failed to market the Diavik Joint Venture Interest since the SISP was completed; ACDC provided US$1 million for the Monitor to run such a sale process; the Monitor has provided no independent appraisals or valuations of the Diavik Joint Venture Interest; and the diamond market is dramatically different now than it was in 2020. The Monitor disagrees with these criticisms, and maintains that the AVO Transaction represents the best value available to DDM for the Diavik Joint Venture Interest.

101. The Monitor has set out in detail above why ACDC's argument that it provided US$1 million and that those funds were to be used to run a new sales process is both factually inaccurate, and a completely nonsensical argument. It will not repeat that explanation here.

102. The SISP was comprehensive. It is notable that both bidders who submitted bids in the SISP, Washington and the Bidders, **declined** to make a bid for the Diavik Joint Venture Interest. There is no evidence that running a new sale process now would result in a bid for the asset.

103. The AVO Transaction, if approved, would result in satisfaction of the two highest-ranking claims against the Diavik Joint Venture Interest: the secured claim of DDMI under the JVA and the secured claim of the First Lien Lenders. For any option other than the AVO Transaction to be considered viable, it must have a reasonable prospect of delivering incremental value to the estate. In other words, any alternative must not only repay DDMI and the First Lien Lenders in full, it must then deliver incremental value greater than the costs required to run the process (which net value would then accrue to the next ranking group of creditors, the holders of the 2L Notes).

104. Based on the best information available to the Monitor, there is no reasonably available alternative to the AVO Transaction that would deliver incremental value to the estate. As noted at paragraph 44 of the Sixteenth Report, the Illustrative Purchase Price of the AVO Transaction is $308 million. In other words, any party other than DDMI who wished to act as the purchaser in the AVO Transaction would have to pay $308 million to close the transaction. This price is made up of the approximately $255 million owed to DDMI for Cover Payments, which would have to be paid as cure costs at closing, and the $105 million owed to the First Lien Lenders respecting the LCs, less the $51 million in cash collateral which the purchaser would receive at closing, and could use to offset part of the purchase price. The purchaser would then receive diamonds being held by DDMI for the account of DDM, with a DICAN value of $178.2 million, which the purchaser could then sell.

105. Based on the best information currently available to the Monitor, as set out at paragraphs 85 - 93 above in this Reply Brief, the Diavik Joint Venture Interest does not appear to have any value over and above the amounts owed to DDMI and the First Lien Lenders. ACDC argues that it "believes that there is significant value in the Diavik Realization Assets beyond the contingent debt owed to the First Lien Lenders"[39] and that there is a "bullish market recovery" in progress, such that the diamond collateral held by DDMI could be "undervalued by anywhere from 20% to

[39] ACDC Brief at paragraph 129

50%".[40] However, ACDC (the stakeholder with perhaps the best historical knowledge and information about the Diavik asset and about diamond markets, who has now known of the transactions for over a month) is not before the Court offering to purchase the Diavik Joint Venture Interest, or to pay more for it than will be realized in the AVO Transaction. Rather, ACDC's only suggestion is that a further sale process should be conducted.

106. The Monitor is of the view that the significant cost of a further sale process (conservatively $5 million, and likely more) would not result in incremental value to the estate. The $500,000 in interim financing being offered by the Bidders would be completely inadequate to run a sale process.

107. ACDC also complains that DDMI is "gaming the system" by not selling diamond inventory, and by unjustifiably charging large Cover Payments. The Monitor acknowledges that this is a historical complaint that was previously advanced by Dominion, and also by the First Lien Lenders. However, as the 60% owner of the Diavik Diamond Mine and as the manager under the JVA, DDMI has significant power over the operation and expenditures of the joint venture. On any matter in which the two joint venturers disagree, DDMI can outvote DDM. The only practical way for the minority 40% owner to seriously challenge DDMI's management of the joint venture is through litigation. That is simply a reality of this joint venture, as it is of any joint venture with a majority owner and a minority owner. This simple reality probably explains why Washington and the Bidders both declined to make a bid for DDM's 40% Diavik Joint Venture Interest.

108. In summary, the Monitor does not believe, based on the currently-available information, that there is any available alternative to the AVO Transaction that would result in greater recoveries by Dominion's creditors. The Monitor believes that an expensive sale process, for which it has no funding, would not result in a better bid. The only other alternative would be to litigate with DDMI, likely for a great many years, and at an even greater cost to the estate than running a sale process. There is no evidence that such multi-year and expensive litigation would result in a greater recovery to the estate.

[40] ACDC Brief at paragraph 128

109. The Monitor is of the view that sufficient effort has been made to obtain the best possible price for the Diavik Joint Venture Interest.

(b) Interests of all Parties

110. With respect, ACDC's criticisms of the AVO Transaction largely ignore the interests of those parties who will benefit from the AVO Transaction (and the RVO Transaction): the creditors of Dominion. ACDC is not a creditor. ACDC's equity owners DDJ and Brigade are holders of a significant portion (but less than a majority) of the 2L Notes.

111. The AVO Transaction will repay in full the two highest-ranking creditors, DDMI and the First Lien Lenders. The RVO Transaction, which is dependent on the closing of the AVO Transaction, will return at least some value (US$1.5 million, less costs) to the 2L Noteholders.

112. ACDC does not offer any solution that would increase the recoveries of creditors. If its opposition to the AVO Transaction and the RVO Transaction is successful, Dominion's creditors would be materially worse off. Without significant additional funding being offered by someone, the estate might simply have to be wound up, with a stalemate between DDMI and the First Lien Lenders, leading to a very unpredictable future for the estate.

113. For these reasons, the Monitor believes that the interests of Dominion's creditors will be best served if the AVO Transaction and the RVO Transaction are approved.

(c) Efficacy and Integrity of Process

114. The SISP was thorough, comprehensive, and Court-supervised. It resulted in no bids for the Diavik Joint Venture Interest or the Dominion Entities. No one realistically provided for or expected a subsequent sale process to occur.

115. As set out above in detail at paragraphs 45 - 56 above in this Reply Brief, the Monitor believes that the process that has resulted in the AVO Transaction and the RVO Transaction being presented to the Court for approval has been entirely customary for CCAA proceedings, and untainted by bad faith.

116. The Monitor rejects any suggestion that the process has not been efficacious, or lacked integrity. Such criticisms ignore the reality and practicalities of the situation.

(d) Unfairness in Process

117. For the reasons set out at paragraphs 45 - 56 above in this Reply Brief, the Monitor is of the view that there has been no unfairness in the process, either to ACDC or to any other party.

(2) RVO Transaction

(a) Sufficient Effort has been made to get best price

118. ACDC argues that "[w]ith respect to the RVO Transaction, the Monitor's review falls even shorter: it does not provide any evidence to support its conclusion that US$1.5 million reflects the Tax Attributes' fair and reasonable value and acknowledges that no valuation of the Tax Attributes was undertaken".[41] The Monitor strongly disagrees.

119. First, as noted above, in the thorough and comprehensive SISP, it was open to all bidders (including the Bidders) to include the shares of the Dominion Entities in their bid. None did so.

120. As the Monitor has repeatedly advised ACDC[42] the only realistic bidder under the RVO Transaction besides Washington, is ACDC itself. ACDC has never contested this fact.

121. This reality is simply a consequence of the provisions of the *Income Tax Act*[43] (the "**ITA**") which permit a taxpayer to deduct against income of a particular year the losses incurred in prior or subsequent tax years. In summary:

(a) the tax attributes (including loss balances) of a corporation are not separable from the corporation. The ITA permits a corporation to deduct net operating losses incurred in a particular year, against income in the three taxation years preceding

[41] ACDC Brief at paragraph 131
[42] See the Monitor's letters to ACDC dated October 13, 2021 (Appendix "C" to the Supplemental Report) and October 15, 2021 (Appendix "E" to the Supplemental Report)
[43] *Income Tax Act*, R.S.C. 1985, c.-1

the particular year, and in any of the 20 taxation years following the particular year;[44]

(b) where a "loss restriction event" (an "**LRE**") occurs (which is defined in the ITA[45] to include an acquisition of "control" of the corporation - generally interpreted as voting control - or an acquisition of shares representing 75% of the fair market value of shares of the corporation), the corporation may not deduct non-capital losses incurred prior to the LRE in any taxation year ending after the LRE;[46] and

(c) non-capital losses incurred prior to the LRE may be deducted in taxation years ending after the LRE if the corporation carried on business throughout the taxation year in which the LRE occurs, and if the income is from the same or similar business or property in which the losses were incurred.[47]

122. Thus, to utilize the Dominion Entities' non-capital tax losses, any entity other than Washington would have to acquire the shares of the Dominion Entities. This would result in a LRE, occurring (presumably) in 2021. In that case, the Dominion Entities could only use their non-capital tax losses incurred before the LRE as against future tax years, if the Dominion Entities could be said to have carried on business throughout 2021 and if the income to be sheltered is from the same or a similar business or property with respect to which the losses were incurred. The only entity who could possibly meet all those criteria, and thereby utilize the Dominion Entities' non-capital tax losses, is ACDC.

123. The RVO Term Sheet has always contained a right for the Monitor to market Washington's bid (essentially, as a stalking horse bid) and, if necessary, to the conduct an auction to determine what the highest bid is for the Dominion Entities. After the Monitor's application was adjourned from October 15, 2021 to November 9, 2021, the Monitor immediately wrote to ACDC on October 15,[48] to determine whether ACDC was willing to make a competing bid. If ACDC was willing to do so, an auction could have then ensued and the amount of the US$1.5 million RVO Payment could potentially be increased, for the benefit of Dominion's creditors.

[44] ITA, section 111 **[TAB 5]**
[45] ITA, subsection 251.2(2) **[TAB 5]**
[46] ITA, section 111(4) **[TAB 5]**
[47] ITA, section 111(5) **[TAB 5]**
[48] Appendix "E" to the Supplemental Report

124. However, ACDC never responded to the Monitor's October 15 letter. ACDC is not only the only party who could realistically bid on the RVO Transaction, it also has excellent knowledge of the Dominion Entities' tax attributes: it is ACDC's management and staff who prepared the 2020 financial statements and income tax returns for those entities. Given its non-response to the Monitor's letter, the Monitor concludes that ACDC does not wish to make a higher bid for the Dominion Entities and has determined that it would not pay more than the amount being offered by Washington.

125. The Monitor has canvassed the market for the RVO Transaction (ACDC) and has determined that the bid from Washington is the only available bid. Therefore, sufficient effort has been made to obtain the highest price for the Dominion Entities.

(b) Interests of all Parties

126. Any net proceeds that are realized from the RVO Transaction (the US$1.5 million less unpaid estate and First Lien Lenders' costs) will benefit the holders of the 2L Notes.

127. After the service of the Monitor's application on October 6, 2021, DDMI objected to the possibility that the RVO Transaction might close before the AVO Transaction.[49] As a result, the Monitor and Washington revised the RVO Term Sheet to prevent this possibility occurring.[50] If both transactions are approved by the Court, but the AVO Transaction has not closed by the "Outside Date" under the RVO Term Sheet (December 3, 2021), the Monitor will not be obligated to close the RVO Transaction. DDMI requested, and the Monitor and Washington agreed, to a revision to the RVO to provide further certainty that the RVO Transaction cannot close before the AVO Transaction. The Monitor provided notice of this additional revision to the Court and the Service List on October 21, 2021.[51]

128. The RVO Transaction, and the possibility of any further recovery by the holders of 2L Notes, is thus dependent on the AVO Transaction being approved, and closing promptly, before the RVO Transaction "Outside Date" of December 3, 2021.

[49] See October 13, 2021 letter from DDM to the Monitor, Appendix "D" to the Supplemental Report
[50] Appendix "N" to the Supplemental Report
[51] Second Supplemental Report, Appendix "D"

129. The only party objecting to the RVO Transaction, ACDC, has chosen not to submit a competing bid, which could have resulted in an auction and potentially increased the recovery of 2L Noteholders. Nonetheless, the 2L Noteholders stand to benefit if the RVO Transaction is approved. The interests of all parties have been taken into account.

(c) Efficacy and Integrity of Process

130. The SISP was thorough, comprehensive, and Court-supervised. It resulted in no bids for the Dominion Entities. The only potential bidder other than Washington is ACDC, and it has perfect knowledge about the opportunity, has been given adequate time to submit a competing bid, but has chosen not to do so. The process has been efficacious and conducted with integrity.

(d) No Unfairness to ACDC

131. There has been no unfairness to ACDC in the working out of the process. The Bidders could have included the Dominion Entities in the ACDC Transaction but chose not to. ACDC was given a second chance to bid, and chose not to.

C. Summary of the Monitor's Position

132. The Monitor remains of the view that the AVO Transaction and the RVO Transaction are in the best interests of the Dominion estate, including Dominion's creditors.

V. RELIEF SOUGHT

133. For the reasons set out above, the Monitor respectfully requests that this Court grant the proposed AVO (if the Court directs the Monitor to deliver the discontinuance and release of the BC Civil Claim and/or grants a release thereof) and grant the RVO.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

November 1, 2021
Calgary, Alberta

BENNETT JONES LLP

Per: _____
Chris Simard / Kelsey Meyer
Counsel for the Applicant

Estimated Time for Argument: 45 minutes

VI. TABLE OF AUTHORITIES AND MATERIALS

1. Blackline showing final incremental change to RVO.
2. Lydian Plan of Arrangement dated June 30, 2020
3. Green Relief Vesting Order dated November 9, 2020
4. Cline Plan Amendment Order dated June 1, 2015
5. *Income Tax Act*, R.S.C. 1985, c.-1

TAB 1

	Clerk's Stamp:
COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE	CALGARY
APPLICANTS	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 DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY, LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS LLC, DOMINION FINCO INC., and DOMINION DIAMOND MARKETING CORPORATION
DOCUMENT	**TRANSACTION APPROVAL AND REVERSE VESTING ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**BENNETT JONES LLP** Barristers and Solicitors 4500 Bankers Hall East 855 – 2nd Street SW Calgary, AB T2P 4K7 Attention: Chris Simard / Kelsey Meyer Telephone No.: 403-298-4485 / 403-298-3323 Fax No.: 403-265-7219
DATE ON WHICH ORDER WAS PRONOUNCED:	TUESDAY, NOVEMBER 9, 2021
LOCATION OF HEARING OR TRIAL	CALGARY COURTS CENTRE
NAME OF JUDGE WHO MADE THIS ORDER:	THE HONOURABLE MADAM JUSTICE K.M. EIDSVIK

UPON THE APPLICATION of FTI Consulting Canada Inc. in its capacity as the Court-appointed monitor (the "**Monitor**") in these proceedings (the "**CCAA Proceedings**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order (this "**Order**"), *inter alia*, approving the transaction (the "**Transaction**") contemplated by the Definitive Term Sheet for RVO Transaction (as it may be amended in accordance with this Order, the "**Agreement**") between the Monitor and Washington Diamond Investments Holdings II, LLC ("**Washington**"), a copy of which is attached as Appendix "N" to the October 19, 2021 Supplemental Report to the Sixteenth Report of the Monitor, filed (the "**Monitor's Report**") and vesting the Transferred Assets, subject to the Claims and Encumbrances, to the Monitor in trust for the benefit of the creditors of the Dominion Entities (the "**Creditor Trust**");

AND UPON READING the Monitor's Report; AND UPON hearing the submissions of counsel for the Monitor, Washington and such other counsel as were present;

IT IS ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of the application for this Order and the Monitor's Report is hereby abridged and deemed good and sufficient, no other Person is required to have been served with notice of this application, and this application is properly returnable today.

DEFINED TERMS

2. The following capitalized terms used in this Order shall have the following meanings:

   (a) "**Applicants**" means the applicant debtor companies in these proceedings;

   (b) "**Claims**" means all claims, liabilities, indebtedness, actions, causes of action, demands, judgments, executions, assessments or reassessments, damages, losses, expenses, commitments and obligations of any kind or nature whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or

unaccrued, liquidated or unliquidated, matured or unmatured, due or not yet due, in law or equity and whether based in statute or otherwise) whether or not they have attached or been perfected, registered or filed and whether secured, unsecured, or otherwise;

(c) "**Closing Payment**" means a cash payment of US$1,500,000 made by Washington to the Monitor on closing of the Transaction;

(d) "**DDM**" means Dominion Diamond Mines ULC;

(e) "**Diavik APA**" has the meaning given to it in the Agreement;

(f) "**Diavik Assets**" has the meaning given to it in the Agreement;

(g) "**Diavik Joint Venture**" means the unincorporated joint venture arrangement established pursuant to the Diavik Joint Venture Agreement in relation to the diamond mine located approximately 300 kilometres from Yellowknife in the Northwest Territories, Canada, and known as the "Diavik Diamond Mine";

(h) "**Diavik Joint Venture Agreement**" means the joint venture agreement dated March 23, 1995 between DDM and Diavik Diamond Mines (2012), Inc. originally entered into between Aber Resources Limited and Kennecott Canada Inc. as of March 23, 1995, as amended from time to time;

(i) "**Diavik Liabilities**" has the meaning given to it in the Agreement;

(j) "**Dominion Entities**" means, collectively, (i) Washington Diamond Investments, LLC, (ii) Dominion Diamond Holdings, LLC, (iii) DDM, and (iv) Dominion Diamond Marketing Corporation, each of which is a "**Dominion Entity**";

(k) "**Encumbrances**" means all security interests or similar interests, hypothecations, pledges, mortgages, deeds, deeds of trust, liens, encumbrances, trusts (including statutory, constructive or deemed trusts), reservations of ownership, royalties, leases, options, rights including rights of pre-emption or first refusal, privileges,

interests, assignments, easements, rights of way, encroachments, restrictive covenants, actions, demands, judgments, executions, levies, taxes, writs of enforcement, proxies, voting trusts or agreements, transfer restrictions under any shareholder agreement or similar agreement, charges, conditional sales or other title retention agreements or other impositions, restrictions on transfer or use of any nature whatsoever or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including, without limiting the generality of the foregoing:

(i) any encumbrances or charges created by the Initial Order or any other orders granted in the within CCAA Proceedings;

(ii) any charges, security interests or claims evidenced by registration, filing or publication pursuant to the *Personal Property Security Act*, SNWT 1994, c. 8 (NWT); the *Personal Property Security Act*, RSO 1990, c. P.10 (Ontario); the *Personal Property Security Act*, RSA 2000, c. P-7 (Alberta); the *Personal Property Security Act*, RSBC 1996, c. 359 (British Columbia); the Uniform Commercial Code (U.C.C.); the *Land Titles Act*, RSNWT 1988, c. 8; the *Northwest Territories Mining Regulation*, SOR/2014-68; and any other personal or real property registry system in any jurisdiction (collectively, "**Security Registrations**"); and

(iii) any liens or claims of lien under the *Miners Lien Act*, RSNWT 1988, c. M-12 (NWT) or the *Garage Keepers' Lien Act*, RSA 2000, c. G-2 (Alberta);

(l) "**Equity Interest**" means, with respect to a Person, all shares of capital stock, partnership interests, joint venture interests or other equity interests in respect of such Person, or securities convertible into, exchangeable or exercisable for any such shares of capital stock, partnership interests, joint venture interests or other equity interests in respect of such Person;

(m) "**First Lien Agreements**" has the meaning given to it in the Agreement;

(n) "**First Lien Liabilities**" has the meaning given to it in the Agreement;

(o) "**Initial Order**" means the Initial Order of the Honourable Madam Justice K. Eidsvik dated April 22, 2020, as amended and restated on May 1, 2020, further amended on May 15, 2020, further amended and restated on June 19, 2020, and further amended on March 4, 2021, as it may be further amended, restated or supplemented from time to time;

(p) "**Intercompany Claim**" means any Claim that is owed by one Dominion Entity to another Dominion Entity, and, for greater certainty, Intercompany Claim does not include the approximately $92.8 million intercompany indebtedness formerly owing by DDM to Dominion Diamond Canada ULC;

(q) "**Person**" means any corporation, partnership, joint venture, limited liability company, unlimited liability company, organization, entity, authority (including any Governmental Authority), or natural person;

(r) "**Retained Assets**" means the right, title and interest of any Dominion Entity in and to the following:

(i) the organizational documents, corporate books and records, minute books, income tax returns, and corporate seal of such Dominion Entity;

(ii) any records that are required by applicable law to be retained by such Dominion Entity;

(iii) the tax attributes, including all operating, non-operating, and capital loss balances or carry forwards, of such Dominion Entity;

(iv) any Equity Interest in any other Dominion Entity;

(v) any Intercompany Claim owing to such Dominion Entity by another Dominion Entity;

(vi) all current or former director and officer insurance policies, including all rights, coverage and entitlements thereunder, of such Dominion Entity or pursuant to which such Dominion Entity had any rights, coverage or entitlements;

(vii) the Agreement or this Order with respect to the Transaction; and

(viii) subject to paragraph 10 of this Order, any other asset, property or undertaking designated as a Retained Asset by Washington in writing to the Monitor prior to the Effective Time;

(s) "**Retained Claims**" means, in respect of a Dominion Entity, the following Claims and any related Encumbrances:

(i) any Intercompany Claim owing by such Dominion Entity to another Dominion Entity; and

(ii) subject to paragraph 10 of this Order, any other Claim designated as a Retained Claim by Washington in writing to the Monitor prior to the Effective Time;

(t) "**Transferred Assets**" means all assets, properties, interests and undertakings of the Dominion Entities of any kind or nature whatsoever other than the Retained Assets, which Transferred Assets shall include, without limitation:

(i) the Closing Payment ~~(in the event that it has been paid to one of the Applicants (and not the Monitor))~~;

(ii) all right, title and interest of the Dominion Entities in and to the Diavik Assets, including, without limitation, the Diavik Joint Venture Agreement and the Diavik Joint Venture;

(iii) the First Lien Agreements; and

(iv) all Equity Interests in any Person other than a Dominion Entity, including, without limitation, all Equity Interests in the Transferred Subsidiaries; and

(u) "**Transferred Subsidiaries**" means (i) Dominion Finco Inc., (ii) Dominion Diamond Delaware Company LLC, (iii) Dominion Diamond Canada ULC, and (iv) Dominion Diamond (Luxembourg) S.a.r.l.

APPROVAL OF THE TRANSACTION

3. The Agreement and the Transaction are hereby approved. The execution of the Agreement by the Monitor, on its own behalf and on behalf of the Applicants, is hereby authorized, ratified, confirmed and approved, with such amendments as the Monitor and Washington may deem necessary or desirable. The Monitor and the Applicants are hereby authorized and directed to complete the Transaction subject to the terms of the Agreement, to perform their obligations under the Agreement and any ancillary documents related thereto, and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction. In the event of any conflict between the terms of the Agreement and this Order, this Order shall govern.

4. This Order shall constitute the only authorization required in respect of the Applicants to proceed with and complete the Transaction, and no shareholder, director or other approval in respect of the Dominion Entities shall be required in connection therewith.

VESTING OF TRANSFERRED ASSETS AND CLAIMS AND ENCUMBRANCES

5. Upon delivery of a Monitor's certificate to Washington substantially in the form set out in Schedule "A" hereto (the "**Monitor's Certificate**"), the following shall occur and be deemed to occur commencing at the time of delivery of the Monitor's Certificate (the "**Effective Time**") in the following sequence:

(a) all right, title and interest of the Dominion Entities in and to the Transferred Assets shall be transferred to and shall vest absolutely and exclusively without recourse in the Creditor Trust;

(b) all Claims and Encumbrances in respect of the Dominion Entities other than the Retained Claims shall be transferred to and assumed by and shall vest absolutely and exclusively without recourse in the Creditor Trust, and (i) such Claims and Encumbrances shall continue to attach to the Transferred Assets with the same nature and priority as they had immediately prior to the Effective Time, (ii) such Claims and Encumbrances equal to the fair market value of the Transferred Assets shall be transferred to and assumed by the Creditor Trust in consideration of the Transferred Assets, and (iii) the remaining Claims and Encumbrances shall be transferred to and assumed by the Creditor Trust for no consideration as part of, and to facilitate, the implementation of the Transaction and the conclusion of these CCAA proceedings;

(c) all Claims and Encumbrances other than the Retained Claims shall be irrevocably and forever expunged, released and discharged as against the Dominion Entities and the Retained Assets;

(d) without limiting subparagraph 5(c), any and all Security Registrations against any Dominion Entity (other than any Security Registrations in respect of a Retained Claim) shall be and are hereby forever released and discharged as against such Dominion Entity, and all such Security Registrations shall attach to the Transferred Assets vested in the Creditor Trust and maintain the same attributes, rights, nature, perfection and priority as they had immediately prior to the

Effective Time, and no financing change statements in any applicable personal property or other registry system are required to reflect the transfer of and assumption by the Creditor Trust of such Security Registrations; and

(e) the Dominion Entities shall cease to be Applicants in the CCAA Proceedings and shall be released from the purview of the Initial Order and all other orders of this Court granted in these CCAA Proceedings.

6. As of the Effective Time:

(a) the Dominion Entities shall continue to hold all right, title and interest in and to the Retained Assets, free and clear of all Claims and Encumbrances other than the Retained Claims; and

(b) the Dominion Entities shall be deemed to have disposed of the Transferred Assets and shall have no right, title or interest in or to the Transferred Assets. Without limiting this Order, from and after the Effective Time the Dominion Entities shall not have any right or interest of any kind or nature whatsoever, including any equity or ownership interest, in or with respect to the Diavik Joint Venture, the Diavik Joint Venture Agreement or the Creditor Trust.

7. For greater certainty, any Person that, prior to the Effective Time, had a Claim or Encumbrance other than a Retained Claim against the Dominion Entities or their assets, properties or undertakings shall, as of the Effective Time, no longer have any such Claim or Encumbrance against or in respect of the Dominion Entities or the Retained Assets, but shall have an equivalent Claim or Encumbrance, as applicable, against the Transferred Assets to be administered by the Creditor Trust from and after the Effective Time, with the same attributes, rights, security, nature and priority as such Claim or Encumbrance had immediately prior to its transfer to the Creditor Trust, and nothing in this Order limits, lessens, modifies (other than by change in debtor) or extinguishes the Claim or Encumbrance of any Person as against the Transferred Assets to be administered by the Creditor Trust.

8. From and after the Effective Time, the Dominion Entities shall be authorized to take all steps as may be necessary to effect the discharge and release as against the Dominion Entities and the Retained Assets of the Claims and Encumbrances that are transferred to and vested in the Creditor Trust pursuant to this Order, including the Security Registrations.

9. Upon the delivery of the Monitor's Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to the Dominion Entities, the Retained Assets or the Transferred Assets (collectively, "**Governmental Authorities**") are hereby authorized, requested and directed to accept delivery of such Monitor's Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to give effect to the terms of this Order and the completion of the Transaction and to discharge and release all Claims and Encumbrances other than Retained Claims against or in respect of the Dominion Entities and the Retained Assets, and presentment of this Order and the Monitor's Certificate shall be the sole and sufficient authority for the Governmental Authorities to do so.

10. Washington shall have the right, at any time prior to the Effective Time, by notice in writing to the Monitor and without any adjustment to the Closing Payment, to deem, for all purposes of this Order and the Agreement, (a) any asset, property or undertaking of the Dominion Entities other than the Closing Payment to be a Retained Asset (including any asset, property or undertaking that is otherwise identified herein as a Transferred Asset), (b) any asset, property or undertaking of the Dominion Entities to be a Transferred Asset (including any asset, property or undertaking that is otherwise identified herein as a Retained Asset), and (c) any Retained Claim to be a Claim and Encumbrance that is transferred to and vested in the Creditor Trust and released and discharged as against the Dominion Entities and the Retained Assets. Notwithstanding anything to the contrary in this Order or the Agreement, no First Lien Agreements or

Diavik Assets may be designated as Retained Assets and no First Lien Liabilities or Diavik Liabilities may be designated as Retained Claims.

INJUNCTIONS

11. From and after the Effective Time, all Persons shall be absolutely and forever barred, estopped, foreclosed and permanently enjoined from pursuing, asserting, exercising, enforcing, issuing or continuing any steps or proceedings, or relying on any rights, remedies, claims or benefits in respect of or against the Dominion Entities or the Retained Assets, in any way relating to, arising from or in respect of:

(a) the Transferred Assets;

(b) any and all Claims or Encumbrances other than the Retained Claims against or relating to the Dominion Entities, the Transferred Assets or the Retained Assets existing immediately prior to the Effective Time;

(c) the insolvency of the Dominion Entities prior to the Effective Time;

(d) the commencement or existence of the CCAA Proceedings; or

(e) the completion of the Transaction.

CREDITOR TRUST

12. The Creditor Trust created pursuant to this Order shall be named the "Dominion Residual Asset Trust". The Creditor Trust shall be instituted and administered in accordance with the Trust Settlement attached as **Schedule "B"** hereto.

13. At the Effective Time, the style of cause for these proceedings shall be changed to:

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

AND IN THE MATTER OF THE ADMINISTRATION OF THE DOMINION RESIDUAL ASSET TRUST

14. The administration of the Creditor Trust shall remain subject to the Court's oversight and these proceedings. The Initial Order and the Order (Expansion of Monitor's Powers) of this Court dated January 27, 2021 (the "**Expanded Powers Order**") shall apply *mutatis mutandis* to the Creditor Trust, the Transferred Assets and the Monitor.

15. In addition to and without limiting the rights and protections afforded to the Monitor pursuant to the CCAA, the Initial Order and the Expanded Powers Order, the Monitor and its employees and representatives shall not incur any liability as a result of acting in accordance with this Order or administering the Creditor Trust, save and except for any gross negligence or wilful misconduct on the part of any such parties.

MISCELLANEOUS

16. The Monitor is directed to file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof to Washington provided, however that, subject to further Court order, the Monitor shall not execute, deliver or file the Monitor's Certificate until after the completion of the transactions contemplated by the Diavik APA.

17. Notwithstanding:

(a) the pendency of these proceedings;

(b) any application for a bankruptcy order or receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "**BIA**") or otherwise and any bankruptcy or receivership order issued pursuant to any such application; or

(c) the provisions of any federal or provincial statute,

the execution of the Agreement and the implementation of the Transaction shall be binding on any trustee or other administrator in respect of the Creditor Trust and any trustee in bankruptcy or receiver that may be appointed in respect of any Dominion Entity and shall not be void or voidable by creditors of the Creditor Trust or the Dominion Entities, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement,

fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the BIA or any other applicable federal or provincial legislation or at common law, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

18. The Monitor, Washington and any other interested party shall be at liberty to apply for further advice, assistance and direction as may be necessary or desirable in order to give full force and effect to the terms of this Order and to assist and aid the parties in completing the Transaction.

19. This Court shall retain exclusive jurisdiction to, among other things, interpret, implement and enforce the terms and provisions of this Order, the Agreement and all amendments thereto, in connection with any dispute involving the Dominion Entities or the Creditor Trust, and to adjudicate, if necessary, any disputes concerning the Dominion Entities or the Creditor Trust related in any way to the Transaction.

20. This Court hereby requests the aid and recognition of any court, tribunal, or regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Monitor and the Dominion Entities and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Dominion Entities and to the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Order.

21. Service of this Order shall be deemed good and sufficient by serving the same in accordance with the procedures in the CaseLines Service Order granted May 29, 2020 in these proceedings.

Justice of the Court of Queen's Bench of Alberta

SCHEDULE A

FORM OF MONITOR'S CERTIFICATE

	Clerk's Stamp:
COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE	CALGARY
APPLICANTS	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 DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY, LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS LLC, AND DOMINION FINCO INC.
DOCUMENT	MONITOR'S CERTIFICATE
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**BENNETT JONES LLP** Barristers and Solicitors 4500 Bankers Hall East 855 – 2nd Street SW Calgary, AB T2P 4K7 Attention: Chris Simard / Kelsey Meyer Telephone No.: 403-298-4485 / 403-298-3323 Fax No.: 403-265-7219

RECITALS

A. Pursuant to an Order of the Honourable Madam Justice K. Eidsvik of Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated April 22, 2020, FTI Consulting Canada Inc. was appointed as the monitor (the "**Monitor**") of the Applicants

in proceedings pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

B. On November 9, 2021, the Court granted a Transaction Approval and Reverse Vesting Order approving a Definitive Term Sheet for RVO Transaction (the "**Agreement**") between the Monitor and Washington Diamond Investments Holdings II, LLC ("**Washington**") and the transaction completed thereby (the "**Transaction**").

C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Agreement.

THE MONITOR CERTIFIES the following:

1. The Monitor has received the Cash Payment from or on behalf of Washington and the Closing Conditions have been satisfied or waived;

2. The Transaction has been completed to the satisfaction of the Monitor; and

3. This Certificate was delivered by the Monitor at [TIME] on [DATE].

FTI CONSULTING CANADA INC., in its capacity as Monitor and not in its personal or corporate capacity

Per: _____
Name:
Title:

SCHEDULE B

CREDITOR TRUST SETTLEMENT

Document comparison by Workshare 10.0 on Sunday, October 31, 2021 9:30:39 AM

Input:	
Document 1 ID	iManage://bjwork.legal.bjlocal/WSLEGAL/28768032/2
Description	#28768032v2<bjwork.legal.bjlocal> - DDM - Form of RVO - October 15, 2021
Document 2 ID	iManage://bjwork.legal.bjlocal/WSLEGAL/28768032/3
Description	#28768032v3<bjwork.legal.bjlocal> - DDM - Form of RVO - October 15, 2021
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	6
Deletions	7
Moved from	0
Moved to	0
Style changes	0
Format changes	0
Total changes	13

TAB 2

LYDIAN INTERNATIONAL LIMITED
LYDIAN CANADA VENTURES CORPORATION
LYDIAN U.K. CORPORATION LIMITED

PLAN OF ARRANGEMENT

PURSUANT TO THE

COMPANIES' CREDITORS ARRANGEMENT ACT (CANADA)
BUSINESS CORPORATIONS ACT (BRITISH COLUMBIA)

JUNE 30, 2020

PLAN OF ARRANGEMENT

This is the Plan of Arrangement of Lydian Canada Ventures Corporation, Lydian International Limited and Lydian U.K. Corporation Limited pursuant to the *Companies' Creditors Arrangement Act* (Canada) and *Business Corporations Act* (British Columbia).

ARTICLE 1
INTERPRETATION

Section 1.1 Definitions

In this Plan, unless otherwise stated or the context otherwise requires:

"**Affected Claims**" means, collectively, the obligations of each of the Released Guarantors under the Guarantees.

"**Affected Creditor**" means a Creditor with an Affected Claim.

"**Agent**" means Orion, in its capacity as administrative agent under the Credit Agreement.

"**Ameriabank**" means Ameriabank CJSC.

"**Applicants**" means Lydian Jersey, Lydian Canada and Lydian UK.

"**Armenia-Jersey Interco Debt**" means the indebtedness in the amount of approximately USD$182,257,000 owed by Lydian Armenia to Lydian Jersey.

"**Armenia-US Interco Debt**" means the indebtedness in the amount of approximately USD$3,373,000 owed by Lydian Armenia to Lydian US.

"**Assessments**" means Claims of any taxation authority in any Canadian or foreign jurisdiction, including, without limitation, amounts which may arise or have arisen under any notice of assessment, notice of reassessment, notice of appeal, audit, investigation, demand or similar request from any taxation authority.

"**BCBCA**" means the *Business Corporations Act* (British Columbia).

"**Business Day**" means a day other than a Saturday or Sunday on which banks are generally open for business in Toronto, Ontario.

"**CAT**" means Caterpillar Financial Services (UK) Limited.

"**CCAA**" means the *Companies' Creditors Arrangement Act* (Canada).

"**CCAA Charges**" means the charges created by the Initial Order and defined as the "**Administration Charge**", the "**Directors' Charge**", the "**Transaction Charge**" and the "**DIP Charge**" therein.

"**CCAA Proceedings**" means the proceedings of the Applicants under the CCAA.

"**CCAA Termination Date**" means the date on which the Monitor files a certificate with the Court as set out in Section 6.4 hereto.

"**Lydian Jersey Shareholder**" means any Person who holds, is entitled to or has any rights or interests in or to or in respect of the Lydian Jersey Ordinary Shares immediately prior to the Effective Time, but only in such capacity.

"**Lydian Subsidiaries**" means, collectively, Lydian Canada, Lydian UK, Lydian International Holdings Limited, Lydian Resources Armenia Limited, Lydian Armenia, Lydian DirectorCo, Lydian Resources Kosovo Limited, Lydian Georgia, Lydian GRC, Lydian Zoloto and Lydian US.

"**Lydian UK**" means Lydian U.K. Corporation Limited, a corporation governed by the laws of the United Kingdom.

"**Lydian US**" means Lydian U.S. Corporation, a corporation governed by the laws of Colorado.

"**Lydian Zoloto**" means Kavkaz Zoloto CJSC, a closed joint stock company governed by the laws of Armenia.

"**Majority Senior Lenders**" means a majority in number of Affected Creditors representing at least two thirds in value of the Affected Creditors.

"**Meeting**" means the meeting of the Affected Creditors to be held on the Meeting Date for the purpose of considering and voting on the Plan pursuant to the CCAA in accordance with the Meeting Order and includes any adjournment, postponement or other rescheduling of such meeting in accordance with the Meeting Order.

"**Meeting Date**" means the date on which the Meeting is held in accordance with the Meeting Order.

"**Meeting Order**" means the order of the Court dated June 18, 2020 under the CCAA that, among other things, sets the date for the Meeting, as same may be amended, restated or varied from time to time.

"**Monitor**" means Alvarez & Marsal Canada Inc., solely in its capacity as the monitor appointed by the Court pursuant to the Initial Order, and not in its personal or corporate capacity.

"**New Directors**" means the individuals to be appointed to the board of directors of Lydian Jersey and Restructured Lydian (and its direct and indirect subsidiaries) as of the Plan Implementation Date.

"**Non-Applicant Stay Parties**" has the meaning set out in the Initial Order and includes Lydian Armenia, Lydian Resources Armenia Limited, and Lydian US.

"**Orion**" means Orion Co IV (ED) Limited.

"**Osisko**" means Osisko Bermuda Limited.

"**Person**" means any individual, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, government or any agency, officer or instrumentality thereof or any other entity.

"**Plan**" means this plan of arrangement under the CCAA and the BCBCA, including the Schedules hereto, as further amended, supplemented or replaced from time to time.

"**Plan Implementation Date**" means the date upon which the Monitor files with the Court the certificate contemplated by Section 6.2, which shall occur on or before June 30, 2020.

(k) all Affected Claims and Released Claims shall be fully, finally, irrevocably and forever compromised, released, discharged cancelled and barred without any liability, payment or other compensation in respect thereof; and

(l) Restructured Lydian shall not be an Applicant in the CCAA Proceedings and the style of cause in the CCAA Proceedings shall be amended to remove Lydian Canada and Lydian UK as Applicants.

Section 6.4 Treatment of Other Lydian Entities

After the Effective Time and in accordance with the budget and timetable set forth on Schedule "A", the remaining Applicant in the CCAA Proceedings will, on a best efforts' basis, undertake the following:

(a) Lydian Jersey will apply to the Royal Court of Jersey seeking, in full deference to the discretion and jurisdiction of the Royal Court of Jersey, an orderly wind up through a Just and Equitable Winding Up Process pursuant to laws of Jersey;

(b) Lydian US will be wound-up and dissolved pursuant to the laws of Colorado; and

(c) Lydian Zoloto will be wound up and dissolved pursuant to laws of Armenia.

Once the steps set out in Section 6.3 and Section 6.4 hereof have been completed, and same has been confirmed to the Monitor in writing, the Monitor will file a certificate with the Court terminating the CCAA Proceedings and discharging the Monitor. The Applicants or the Monitor, as applicable, shall be entitled to seek an Order of the Court terminating the CCAA Proceedings even if the steps set out in Section 6.3 and Section 6.4 above are not completed in the event that there are insufficient funds in the Post-Implementation Date Expenses Reserve to pay the Post-Implementation Date Expenses.

Section 6.5 Effect of Plan Generally

(1) At the Effective Time, the treatment of Affected Claims will be final and binding on the Applicants and the Affected Creditors (and their respective successors and assigns), and this Plan, will constitute:

(a) full, final and absolute settlement of all rights of the Affected Creditors against Lydian Jersey; and

(b) an absolute release and discharge of all of the Released Guarantors from all indebtedness, liabilities and obligations owing to the Affected Creditors, and from all security, Encumbrances and other documents in respect thereof.

(2) All Equity Claims shall be forever compromised, released, discharged, cancelled and barred, provided, however, that after the Effective Time: (i) the Lydian Jersey Shareholders and other Equity Claimants with Equity Claims against Lydian Jersey shall retain their Lydian Jersey Ordinary Shares and Equity Claims against Lydian Jersey, as applicable (which Lydian Jersey will seek to extinguish as part of the wind-up of Lydian Jersey) until the wind-up of Lydian Jersey pursuant to the Just and Equitable Winding Up Process; and (ii) the Subsidiary Shares shall remain outstanding and shall continue to be held by the existing holders of such Subsidiary Shares, except as otherwise provided in this Plan.

(3) Any members of the Existing Lydian Group that are also members of the Restructured Lydian Group and their respective employees, contractors, agents and Directors shall be released and discharged from any and all demands, claims, actions, counterclaims, suits, judgments or remedy in respect of any indebtedness, liability, obligation or cause of action which any Released Guarantor or their respective employees, contractors, agents and Directors may be entitled to assert.

Section 6.6 Releases

On the Plan Implementation Date, in accordance with the terms and in the sequence set forth in Section 6.3 hereof, (i) the Applicants, the Applicants' employees, contractors, agents and advisors (including legal counsel) and the Directors, (ii) the Monitor and the Monitor's counsel, and (iii) the Senior Lenders, and each and every present and former affiliate, affiliated funds, subsidiary, director, officer, member, partner, employee, auditor, financial advisor, legal counsel and agent of any of the foregoing Persons (each of the Persons named in (i), (ii) or (iii) of this Section 6.6, in their capacity as such, being herein referred to individually as a "**Released Party**" and all referred to collectively as "**Released Parties**") shall be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature, including claims for contribution or indemnity, or rights of subrogation, which any Person may be entitled to assert, whether or not reduced to judgment, liquidated or unliquidated, fixed, contingent, known or unknown, matured or unmatured, direct, indirect or derivative, foreseen or unforeseen, existing or hereafter arising, by guarantee, surety or otherwise, and whether or not executory or anticipatory in nature, based in whole or in part on any act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the Plan Implementation Date, or following the Plan Implementation Date up to the termination of the CCAA Proceedings that relate to matters relating to implementing the Plan, on or following the Plan Implementation Date, or that constitute or are in any way relating to, arising out of or in connection with any Affected Claims, any Director Claims and any indemnification obligations with respect thereto, the business and affairs of the Applicants whenever or however conducted, the administration and/or management of the Applicants, the Plan, the CCAA Proceedings, the windup or dissolution of Lydian Jersey, Lydian US and Lydian Zoloto, or any document, instrument, matter or transaction involving any of the Applicants taking place in connection with the Plan (referred to collectively as the "**Released Claims**"), and all Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, all to the fullest extent permitted by applicable law; provided that the following shall not constitute Released Claims and nothing herein will waive, discharge, release, cancel or bar: (A) Lydian Canada's, Lydian UK's or the Senior Lenders' obligations under the Plan or incorporated into the Plan; (B) obligations of any member of the Existing Lydian Group other than the Released Guarantors under the Credit Agreement, the other Loan Documents (as defined in the Credit Agreement), the Stream Agreement, the Stream Documents (as defined in the Stream Agreement) and any other agreements entered into in relation to the foregoing, from and after the Plan Implementation Date; (C) any claims arising from the willful misconduct or gross negligence of any applicable Released Party; (D) any Director from any Director Claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA; and (E) an Applicant or the subsidiaries of Restructured Lydian from or in respect of any Unaffected Claim other than as set out in Section 6.5 above.

Section 6.7 Guarantees and Similar Covenants

No Person who has a Claim under any guarantee, surety, indemnity or similar covenant in respect of any Affected Claim or who has a Released Claim that is compromised or released under

TAB 3

Court File No. CV-20-00639217-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	MONDAY, THE 9TH
	)	
JUSTICE KOEHNEN	)	DAY OF NOVEMBER, 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 **GREEN RELIEF INC.** (the "**Applicant**")

ORDER
(Approval and Vesting Order)

THIS MOTION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, among other things: (i) approving the Share Purchase Agreement (the "**SPA**") between the Applicant and AOCO Ventures Inc., as assignee of 2650064 Ontario Inc. (the "**Purchaser**"), dated October 15, 2020, and the transactions contemplated thereby (the "**Transactions**"), (ii) adding 12463873 Canada Inc. ("**ResidualCo**") as an Applicant to these CCAA proceedings; (iii) transferring and vesting all of the Applicant's right, title and interest in and to the Excluded Assets, Excluded Contracts and Excluded Liabilities (as defined in the SPA) to and in ResidualCo; (iv) vesting all of the right, title and interest in and to the New Common Shares (as defined in the SPA) in the Purchaser; was heard on November 2 and 3, 2020, by video conference due to the COVID-19 pandemic.

ON READING the Applicant's Notice of Motion, the affidavit of Neilank Jha sworn October 15, 2020, and the Eighth Report of PricewaterhouseCoopers Inc., LIT, in its capacity as Monitor of the Applicant (the "**Monitor**"), to be filed (the "**Eighth Report**"), and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for the Purchaser, and counsel for those other parties appearing as indicated by the counsel slip, no one appearing for

any other party, although duly served as appears from the affidavit of service of Adam Driedger sworn October 16, 2020, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion was properly returnable on November 2 and 3, 2020, and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the SPA.

APPROVAL AND VESTING

3. **THIS COURT ORDERS AND DECLARES** that the SPA and the Transactions be and are hereby approved and that the execution of the SPA by the Applicant is hereby authorized and approved, with such minor amendments as the parties thereto may deem necessary, with the approval of the Monitor. The Applicant is hereby authorized and directed to perform its obligations under the SPA and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions and for the conveyance of the New Common Shares to the Purchaser.

4. **THIS COURT ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Applicant to proceed with the Transactions (including, for certainty, the Pre-Closing Reorganization), and that no shareholder or other approval shall be required in connection therewith.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Monitor's certificate (the "**Monitor's Certificate**") to the Purchaser (the "**Effective Time**"), substantially in the form attached as Schedule "A" hereto, the following shall occur and shall be deemed to have occurred at the Effective Time in the following sequence:

(a) first, all of the right, title and interest in and to the Excluded Assets shall vest absolutely and exclusively in ResidualCo, and all Claims and Encumbrances (each as defined below) shall continue to attach to the Excluded Assets and to the Proceeds (as defined below) in accordance with paragraph 8 of this Order, in either case with the same nature and priority as they had immediately prior to the transfer;

(b) second, all Excluded Contracts and Excluded Liabilities, other than set off claims asserted as defences to any claims made by the Applicant, (which for certainty includes all debts, liabilities, obligations, indebtedness, contracts, leases, agreements, and undertakings of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) of the Applicant (other than the Assumed Liabilities) shall be channelled to, assumed by and vest absolutely and exclusively in ResidualCo such that the Excluded Contracts and Excluded Liabilities shall become obligations of ResidualCo and shall no longer be obligations of the Applicant, and the Applicant and all of its assets, licenses, undertakings and properties of every nature and kind whatsoever and wherever situate (including, for certainty, the Transferred Assets and the Retained Assets, the "**Applicant's Property**") shall be and are hereby forever released and discharged from such Excluded Contracts and Excluded Liabilities and all related Claims and all Encumbrances affecting or relating to the Applicant's Property are hereby expunged and discharged as against the Applicant's Property;

(c) third, all options, conversion privileges, equity-based awards, warrants, securities, debentures, loans, notes or other rights, agreements or commitments of any character whatsoever that are held by any Person (defined below) and are convertible or exchangeable for any securities of the Applicant or which require the issuance, sale or transfer by the Applicant, of any shares or other securities of the Applicant and/or the share capital of the Applicant, or otherwise relating thereto, shall be deemed terminated and cancelled;

(d) fourth, all of the right, title and interest in and to the New Common Shares shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order or any other Order of the Court in this CCAA Proceeding; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry systems; and (iii) those Claims listed on Schedule "B" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "C" hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the New Common Shares are hereby expunged and discharged as against the New Common Shares; and

(e) fifth, the Applicant shall be deemed to cease being an Applicant in these CCAA proceedings, and the Applicant shall be deemed to be released from the purview of the Initial Order and all other Orders of this Court granted in respect of this CCAA Proceeding, save and except for this Order, the provisions of which (as they relate to the Applicant) shall continue to apply in all respects.

6. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof in connection with the Transactions.

7. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Applicant and the Purchaser regarding the fulfilment of conditions to closing under the SPA and shall have no liability with respect to delivery of the Monitor's Certificate.

8. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the New Common Shares (including, for greater certainty, the Deposit and the Cash Purchase Price and any Earn-Out Payments) (the

"**Proceeds**") shall stand in the place and stead of the Applicant's Property, and that from and after the delivery of the Monitor's Certificate, all Claims and Encumbrances shall attach to the Proceeds and the Excluded Assets with the same priority as they had with respect to the Applicant's Property immediately prior to the sale.

9. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended, the Applicant or the Monitor, as the case may be, is authorized, permitted and directed to, at the Effective Time, disclose to the Purchaser all human resources and payroll information in the Applicant's records pertaining to past and current employees of the Applicant. The Purchaser shall maintain and protect the privacy of such information in accordance with applicable law and shall be entitled to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the Applicant.

10. **THIS COURT ORDERS AND DECLARES** that, at the Effective Time and without limiting the provisions of paragraph 5 hereof, the Purchaser and the Applicant shall be deemed released from any and all claims, liabilities, (direct, indirect, absolute or contingent) or obligations with respect to any Taxes (including penalties and interest thereon) of, or that relate to, the Applicant (provided, as it relates to the Applicant, such release shall not apply to Taxes in respect of the business and operations conducted by the Applicant after the Effective Time), including without limiting the generality of the foregoing, all Taxes that could be assessed against the Purchaser or the Applicant (including its affiliates and any predecessor corporations) pursuant to section 160 of the *Income Tax Act*, R.S.C. 1985 c. 1 (5th Supp.), or any provincial equivalent, in connection with the Applicant. For greater certainty, nothing in this paragraph shall release or discharge any Claims with respect to Taxes that are transferred to ResidualCo.

11. **THIS COURT ORDERS** that except to the extent expressly contemplated by the SPA, all Contracts to which the Applicant is a party at the time of delivery of the Monitor's Certificate will be and remain in full force and effect upon and following delivery of the Monitor's Certificate and no individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") who is a party to any such arrangement may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set

off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

(a) any event that occurred on or prior to the delivery of the Monitor's Certificate and is not continuing that would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of the Applicant);

(b) the insolvency of the Applicant or the fact that the Applicant sought or obtained relief under the CCAA;

(c) any compromises, releases, discharges, cancellations, transactions, arrangements, reorganizations or other steps taken or effected pursuant to the SPA, the Transactions or the provisions of this Order, or any other Order of the Court in these proceedings; or

(d) any transfer or assignment, or any change of control of the Applicant arising from the implementation of the SPA, the Transactions or the provisions of this Order.

12. **THIS COURT ORDERS**, for greater certainty, that (a) nothing in paragraph 11 hereof shall waive, compromise or discharge any obligations of the Applicant in respect of any Assumed Liabilities, and (b) the designation of any Claim as an Assumed Liability is without prejudice to the Applicant's right to dispute the existence, validity or quantum of any such Assumed Liability, and (c) nothing in this Order or the SPA shall affect or waive the Applicant's rights and defences, both legal and equitable, with respect to any Assumed Liability, including, but not limited to, all rights with respect to entitlements to set offs or recoupments against such Assumed Liability.

13. **THIS COURT ORDERS** that from and after the Effective Time, all Persons shall be deemed to have waived any and all defaults of the Applicant then existing or previously committed by the Applicant, or caused by the Applicant, directly or indirectly, or non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition, or obligation, expressed or implied in any Contract existing between such Person and the Applicant (including for certainty, those Contracts constituting Retained Assets) arising directly or indirectly from the filing of the Applicant under the CCAA

and implementation of the Transactions, including without limitation any of the matters or events listed in paragraph 11 hereof and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under a Contract shall be deemed to have been rescinded and of no further force or effect, provided that nothing herein shall be deemed to excuse the Applicant from performing its obligations under the SPA or be a waiver of defaults by the Applicant under the SPA and the related documents.

14. **THIS COURT ORDERS** that from and after the Effective Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations and assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against the Applicant relating in any way to or in respect of any Excluded Assets, Excluded Liabilities or Excluded Contracts and any other claims, obligations and other matters that are waived, released, expunged or discharged pursuant to this Order. For clarity, nothing in the Order alters or limits the ability of any Person with a preserved or perfected claim for lien to pursue and prosecute that lien against Persons other than the Applicant, 2650064 Ontario Inc., AOCO Ventures Inc. or their respective assets or properties.

15. **THIS COURT ORDERS** that from and after the Effective Time:

(a) the nature of the Assumed Liabilities retained by the Applicant, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Transactions or this Order;

(b) the nature of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to ResidualCo;

(c) any Person that prior to the Effective Time had a valid right or claim against the Applicant under or in respect of any Excluded Contract or Excluded Liability (each an "**Excluded Liability Claim**") shall no longer have such right or claim against the Applicant but will have an equivalent Excluded Liability Claim against ResidualCo in respect of the Excluded Contract or Excluded Liability

from and after the Effective Time in its place and stead, and nothing in this Order limits, lessens or extinguishes the Excluded Liability Claim of any Person as against ResidualCo; and

(d) the Excluded Liability Claim of any Person against ResidualCo following the Effective Time shall have the same rights, priority and entitlement as such Excluded Liability Claim had against the Applicant prior to the Effective Time.

16. **THIS COURT ORDERS AND DECLARES** that, as of the Effective Time:

(a) ResidualCo shall be a company to which the CCAA applies; and

(b) ResidualCo shall be added as an applicant in this CCAA Proceeding and all references in any Order of this Court in respect of this CCAA Proceeding to (i) an "Applicant" shall refer to and include ResidualCo, and (ii) "Property" shall include the current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, of ResidualCo (the "**ResidualCo Property**"), and, for greater certainty, each of the Charges (as defined in the Amended and Restated Initial Order dated April 17, 2020), shall constitute a charge on the ResidualCo Property.

17. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C 195, c. B-3, as amended (the "**BIA**"), in respect of ResidualCo and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of ResidualCo;

the SPA, the implementation of the Transactions (including without limitation the transfer and vesting of the Excluded Assets, Excluded Contracts and Excluded Liabilities in and to ResidualCo, the transfer and vesting of the New Common Shares in and to the Purchaser) and any payments by or to the Purchaser, ResidualCo or the Monitor authorized herein shall be

binding on any trustee in bankruptcy that may be appointed in respect of ResidualCo and shall not be void or voidable by creditors of ResidualCo, as applicable, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

MONITOR'S ENHANCED POWERS

18. **THIS COURT ORDERS** that in addition to the powers and duties of the Monitor set out in the Initial Order or any other Order of this Court in this CCAA Proceeding, and without altering in any way the limitations and obligations of ResidualCo as a result of these proceedings, the Monitor be and is hereby authorized and empowered, but not required, to:

(a) take any and all actions and steps, and execute all documents and writings, on behalf of, and in the name of ResidualCo in order to facilitate the performance of any ongoing obligations of ResidualCo, including with respect to any Excluded Liability Claim, and to carry out the Monitor's duties under this Order or any other Order of this Court in this CCAA Proceeding;

(b) exercise any powers which may be properly exercised by a board of directors of ResidualCo;

(c) cause ResidualCo to retain the services of any person as an employee, consultant, or other similar capacity all under the supervision and direction of the Monitor and on the terms as agreed with the Monitor;

(d) open one or more new accounts (the "**ResidualCo Accounts**") into which all funds, monies, cheques, instruments and other forms of payment payable to ResidualCo shall be deposited from and after the making of this Order from any source whatsoever and to operate and control, as applicable, on behalf of ResidualCo, the ResidualCo Accounts in such manner as the Monitor, in its sole discretion, deems necessary or appropriate to assist with the exercise of the Monitor's powers and duties;

(e) cause ResidualCo to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the winding-down of ResidualCo or the distribution of the proceeds of the ResidualCo Property or any other related activities, including in connection with bringing this CCAA Proceeding to an end;

(f) engage, deal, communicate, negotiate, agree and settle with any creditor or other stakeholder of ResidualCo (including any governmental authority) in the name of or on behalf of ResidualCo;

(g) claim or cause ResidualCo to claim any and all insurance refunds or tax refunds, including refunds of harmonized sales taxes, to which ResidualCo is entitled;

(h) have access to all books and records that are the property of ResidualCo in ResidualCo's possession or control in addition to the Applicant's books and records in accordance with the terms of the SPA;

(i) assign ResidualCo, or cause ResidualCo to be assigned, into bankruptcy, and the Monitor shall be entitled but not obligated to act as trustee in bankruptcy thereof;

(j) consult with Canada Revenue Agency or Health Canada with respect to any issues arising in respect of this CCAA Proceeding; and

(k) apply to this Court for advice and directions or any orders necessary or advisable to carry out its powers and obligations under this Order or any other Order granted by this Court including for advice and directions with respect to any matter.

19. **THIS COURT ORDERS** that notwithstanding anything contained in this Order, the Monitor is not and shall not be or be deemed to be, a director, officer, or employee of ResidualCo or the Applicant.

20. **THIS COURT ORDERS** that, without limiting the provisions of the Initial Order, ResidualCo shall remain in possession and control of its Property and Business (each as

defined in the Initial Order) and the Monitor shall not take, or be deemed to have taken, possession or control of the Property or the Business of ResidualCo, or any part thereof.

21. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor and its legal counsel shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the Initial Order and any other Order of this Court and all such indemnities, charges, protections and priorities shall apply and extend to the Monitor and the fulfillment of its duties and the carrying out of the provisions of this Order.

22. **THIS COURT ORDERS** that nothing in this Order shall constitute or be deemed to constitute the Monitor as receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of the Applicant or ResidualCo within the meaning of any relevant legislation and that any distributions to creditors of ResidualCo or the Applicant by the Monitor will be deemed to have been made by ResidualCo.

23. **THIS COURT ORDERS** that the power and authority granted to the Monitor by virtue of this Order shall, if exercised in any case, be paramount to the power and authority of ResidualCo with respect to such matters and, in the event of a conflict between the terms of this Order and those of the Initial Order or any other Order of this Court, the provisions of this Order shall govern.

RELEASES

24. **THIS COURT ORDERS** that effective upon filing of the Monitor's Certificate, (i) the current directors, officers, employees, independent contractors that have provided legal or financial services to the Applicant, legal counsel and advisors of the Applicant, and (ii) the Monitor and its legal counsel (collectively, the "**Released Parties**") shall be deemed to be forever irrevocably released and discharged from any and all present and future claims (including, without limitation, claims for contribution or indemnity), liabilities, indebtedness, demands, actions, causes of action, counterclaims, suits, damages, judgments, executions, recoupments, debts, sums of money, expenses, accounts, liens, taxes, recoveries, and obligations of any nature or kind whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not

yet due, in law or equity and whether based in statute or otherwise) based in whole or in part of any act or omission, transaction, dealing or other occurrence existing or taking place prior to the filing of the Monitor's Certificate and that relate in any manner whatsoever to the Applicant or any of its assets (current or historical), obligations, business or affairs or this CCAA Proceeding, including any actions undertaken or completed pursuant to the terms of this Order, or arising in connection with or relating to the SPA or the completion of the Transactions (collectively, the "**Released Claims**"), which Released Claims are hereby fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, *provided that* nothing in this paragraph shall waive, discharge, release, cancel or bar any claim: (i) that is not permitted to be released pursuant to section 5.1(2) of the CCAA, (ii) against the former directors and officers of the Applicant for breach of trust arising from acts or omissions occurring before the date of the Initial Order, (iii) that may be made against any applicable insurance policy of the Applicant prior to the date of the Initial Order, or (iv) that may be made against the current directors and officers that would be covered by the Directors' Charge granted pursuant to the Initial Order.

GENERAL

25. **THIS COURT ORDERS** that, following the Effective Time, the Purchaser shall be authorized to take all steps as may be necessary to effect the discharge of the Claims and Encumbrances as against the New Common Shares.

26. **THIS COURT ORDERS** that, following the Effective Time, the title of these proceedings is hereby changed to

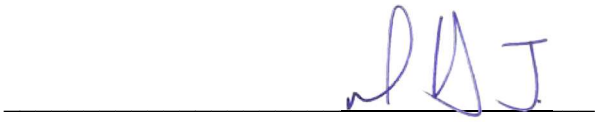
IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF 12463873 CANADA INC.

27. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date that it is made, and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original signing, entry and filing when the Court returns to regular operations.

28. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

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

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



Schedule A – Form of Monitor's Certificate

Court File No. CV-20-00639217-00CL

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 A PLAN OF COMPROMISE OR ARRANGEMENT OF GREEN RELIEF INC. (the "**Applicant**")

RECITALS

A. Pursuant to the Initial Order of the Honourable Mr. Justice Koehnen of the Ontario Superior Court of Justice (Commercial List), dated April 8, 2020, as amended, the Applicant was granted protection from its creditors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and PricewaterhouseCoopers Inc., LIT, was appointed as the monitor ("**Monitor**") of Green Relief Inc. ("**Green Relief**").

B. Pursuant to the Approval and Vesting Order of the Court, dated November 9, 2020 (the "**Order**"), the Court approved the transactions (the "**Transactions**") contemplated by the Share Purchase Agreement dated October 15, 2020 (the "**SPA**"), between Green Relief and AOCO Ventures Inc., as assignee of 2650064 Ontario Inc. (the "**Purchaser**"), and ordered, *inter alia*, that: (i) all of Green Relief's right, title and interest in and to the Excluded Assets shall vest absolutely and exclusively in ResidualCo; (ii) all of the Excluded Contracts and Excluded Liabilities shall be transferred to, assumed by and vest in ResidualCo; and (iii) all of the right, title and interest in and to the New Common Shares shall vest absolutely and exclusively in the Purchaser, which vesting is, in each case, to be effective upon the delivery by the Monitor to the Purchaser of a certificate confirming that the Monitor has received written confirmation in the form and substance satisfactory to the Monitor from the Purchaser and Green Relief that all conditions to closing have been satisfied or waived by the parties to the SPA.

C. Capitalized terms not defined herein shall have the meaning given to them in the Order.

THE MONITOR CERTIFIES the following:

1. The Monitor has received written confirmation from the Purchaser and from Green Relief, in form and substance satisfactory to the Monitor, that all conditions to closing have been satisfied or waived by the parties to the SPA.

2. This Monitor's certificate was delivered by the Monitor at _____ on _____, 2020.

PricewaterhouseCoopers Inc., LIT, in its capacity as Monitor of the Applicant, and not in its personal capacity.

Per: _____

Name:

Title:

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 **GREEN RELIEF INC.**

Court File No.: CV-20-00639217-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

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Lawyers for Green Relief Inc.

TAB 4

Court File No. CV14-10781-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE REGIONAL	)	**MONDAY, THE 1ST**
	)	
SENIOR JUSTICE MORAWETZ	)	**DAY OF JUNE, 2015**

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 AND ARRANGEMENT OF CLINE MINING CORPORATION, NEW ELK COAL COMPANY LLC AND NORTH CENTRAL ENERGY COMPANY

PLAN AMENDMENT ORDER

THIS MOTION made by Cline Mining Corporation, New Elk Coal Company LLC and North Central Energy Company (collectively, the "**Applicants**") for an Order, *inter alia*, approving amendments to the Applicants' Plan of Compromise and Arrangement dated January 20, 2015 (the "**Plan**") in the form of the Second Amended and Restated Plan of Compromise and Arrangement dated May 26, 2015, attached hereto as Schedule "A" (the "**Second Amended Plan**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Affidavit of Matthew Goldfarb sworn May 26, 2015 (the "**Goldfarb Affidavit**") and the fifth report of FTI Consulting Canada Inc., in its capacity as CCAA monitor of the Applicants (the "**Monitor**"), and on hearing the submissions of counsel for each of the Applicants, the Monitor and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service, filed.

DEFINED TERMS

1. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order shall have the meanings ascribed thereto in the Second Amended Plan.

SERVICE

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record in respect of this Motion be and is hereby abridged so that the Motion is properly returnable today and hereby dispenses with further service thereof, and there has been good and sufficient notice, service and delivery of the Second Amended Plan to all Persons upon which notice, service and delivery is required.

AMENDMENTS TO THE PLAN

3. **THIS COURT ORDERS** that the amendments to the Plan attached as Exhibit "C" to the Goldfarb Affidavit are hereby approved, and the Plan is hereby amended and restated in the form of the Second Amended Plan.

4. **THIS COURT ORDERS** that all references to the "Plan" in the Plan Sanction Order granted by this Court on January 27, 2015 (the "**Plan Sanction Order**") shall be deemed to mean the Second Amended Plan.

5. **THIS COURT ORDERS** that paragraph 9 of the Plan Sanction Order is hereby amended and restated as follows:

> 9. **THIS COURT ORDERS** that, pursuant to section 6(2) of the CCAA, the Articles of Cline shall be amended on the Plan Implementation Date at the times set forth in section 5.3 of the Plan in accordance with the provisions of, and as required to implement, the Plan. Without limiting the generality of the foregoing, the Articles of Cline shall be amended in accordance with section 5.3 of the Plan: (i) to create a new class of shares in the capital of Cline, consisting of the New Cline Convertible Shares and to authorize the issuance of an unlimited number of New Cline Convertible Shares, all in accordance with section 5.3(c) of the Plan; and (ii) if such amendments to the Articles are determined to be necessary by the Applicants, to provide that fractional Cline Common Shares existing immediately following the consolidation of Cline Common Shares referred to in section 5.3(j) of the Plan and any fractional New Cline Convertible Shares existing immediately following the consolidation of New Cline Convertible Shares referred to in

section 5.3(j) of the Plan shall be cancelled without any liability, payment or other compensation in respect thereof, and all Equity Interests (for greater certainty not including any New Cline Shares that remain issued and outstanding immediately following the cancellation of fractional interests pursuant to section 5.3(k) of the Plan) shall be cancelled without any liability, payment or other compensation in respect thereof. The amendments to the Articles and the authorized share capital of Cline referred to in this paragraph 9 are hereby authorized by the Court and shall not require director or shareholder approval.

6. **THIS COURT ORDERS AND DECLARES** that the Plan Sanction Order remains in full force and effect, and, except as expressly set forth in this Order, the Plan Sanction Order remains unamended.

EXTENSION OF THE STAY OF PROCEEDINGS

7. **THIS COURT ORDERS** that the Stay Period, as such term is defined in and used throughout the Order of this Court dated December 3, 2014 (the "**Initial CCAA Order**"), be and is hereby extended to and including 11:59 p.m. on August 17, 2015, and that all other terms of the Initial CCAA Order shall remain in full force and effect, unamended, except as may be required to give effect to this paragraph.

APPROVAL OF MONITOR'S ACTIVITIES

8. **THIS COURT ORDERS** that the activities and conduct of the Monitor prior to the date hereof in relation to the Applicants and these CCAA proceedings are hereby ratified and approved.

9. **THIS COURT ORDERS** that the fourth report of the Monitor dated March 25, 2015 and the activities of the Monitor described therein are hereby approved.

RECOGNITION AND ASSISTANCE

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, or in any other foreign jurisdiction, to give effect to this Order and to assist the Applicants, the Monitor

and their respective agents in carrying out the terms of this 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 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 Order.

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

JUN - 1 2015

SCHEDULE A

SECOND AMENDED AND RESTATED PLAN OF COMPROMISE AND ARRANGEMENT

(See attached)

Court File No. CV-14-10781-00CL

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 A PLAN OF COMPROMISE OR ARRANGEMENT OF CLINE MINING CORPORATION, NEW ELK COAL COMPANY LLC AND NORTH CENTRAL ENERGY COMPANY

APPLICANTS

SECOND AMENDED AND RESTATED PLAN OF COMPROMISE AND ARRANGEMENT

pursuant to the *Companies' Creditors Arrangement Act*
concerning, affecting and involving

CLINE MINING CORPORATION,
NEW ELK COAL COMPANY LLC and
NORTH CENTRAL ENERGY COMPANY

May 26, 2015

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AMENDED AND RESTATED
PLAN OF COMPROMISE AND ARRANGEMENT

WHEREAS Cline Mining Corporation ("**Cline**"), New Elk Coal Company LLC ("**New Elk**") and North Central Energy Company ("**North Central**" and together with Cline and New Elk, the "**Applicants**") are debtor companies under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**");

AND WHEREAS the Applicants have obtained an order (as may be amended, restated or varied from time to time, the "**Initial Order**") of the Ontario Superior Court of Justice (the "**Court**") under the CCAA (the date of such Initial Order being the "**Filing Date**");

AND WHEREAS Marret Asset Management Inc. ("**Marret**") exercises sole investment discretion and control over all of the beneficial holders of (i) the $71,381,900 aggregate principal amount of 10% senior secured notes due June 15, 2014 issued by Cline pursuant to the indenture dated December 13, 2011, as amended (the "**2011 Notes**") and (ii) the $12,340,998 aggregate principal amount of 10% senior secured notes due June 15, 2014 issued by Cline pursuant to the indenture dated July 8, 2013, as amended (the "**2013 Notes**", and collectively with the 2011 Notes, the "**Secured Notes**");

AND WHEREAS the Applicants have developed a recapitalization transaction (the "**Recapitalization**") as set forth herein, and Marret (on behalf of all of the beneficial holders of the Secured Notes) has agreed to support the terms of the Recapitalization;

AND WHEREAS the Applicants filed a Plan of Compromise and Arrangement dated December 3, 2014 pursuant to the Meetings Order (as defined below) (the "**Original Plan**");

AND WHEREAS, following discussions with counsel for the WARN Act Plaintiffs, Marret and the Monitor, the Applicants agreed to make certain amendments to the Original Plan to address the settlement of the WARN Act Claims;

AND WHEREAS the Applicants filed an amended and restated consolidated plan of compromise and arrangement dated January 20, 2015 (the "**First Amended Plan**") with the Court pursuant to the CCAA and proposed and presented the First Amended Plan to the Secured Noteholders Class, the Affected Unsecured Creditors Class and the WARN Act Plaintiffs Class (each as defined below) under and pursuant to the CCAA;

AND WHEREAS, on January 21, 2015 the creditors voting in each of the Secured Noteholders Class, the Affected Unsecured Creditors Class and the WARN Act Plaintiffs Class unanimously approved the Plan;

AND WHEREAS, on January 27, 2015, the Court granted the Sanction Order (as defined below) approving the Plan pursuant to the CCAA;

AND WHEREAS the Applicants and Marret have determined that it is necessary to make certain amendments to the First Amended Plan to address certain regulatory matters affecting the Secured Noteholders (as defined below);

"**Original Plan**" has the meaning ascribed thereto in the recitals.

"**Person**" means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, government or any agency, officer or instrumentality thereof or any other entity.

"**Plan**" means this Plan of Compromise and Arrangement filed by the Applicants pursuant to the CCAA, as it may be amended, supplemented or restated from time to time in accordance with the terms hereof.

"**Plan Implementation Date**" means the Business Day on which the Plan becomes effective, which shall be the Business Day on which, pursuant to section 9.2, the Applicants and Marret (on behalf of the Secured Noteholders) or their respective counsel deliver written notice to the Monitor (or its counsel) that the conditions set out in section 9.1 have been satisfied or waived in accordance with the terms hereof.

"**Post-Filing Trade Payables**" means trade payables that were incurred by any of the Applicants (a) after the Filing Date but before the Plan Implementation Date; and (b) in compliance with the Initial Order and other Orders issued in connection with the CCAA Proceeding and the Chapter 15 Proceeding.

"**Prior Ranking Secured Claims**" means Allowed Claims existing on both the Filing Date and the Plan Implementation Date, other than Government Priority Claims, Employee Priority Claims, and Claims secured by the Charges, that (a) are secured by a valid, perfected and enforceable security interest in, mortgage, encumbrance or charge over, lien against or other similar interest in, any of the assets that any of the Applicants owns or to which any of the Applicants is entitled, but only to the extent of the realizable value of the property subject to such security; and (b) would have ranked senior in priority to the Secured Noteholders Allowed Secured Claim if the Applicants had become bankrupt on the Filing Date, but only to the extent that it would have ranked senior in priority, including any Allowed Claims relating to the security registrations listed on Schedule "A" to the Initial Order, which, for greater certainty, includes the registration in favour of Bank of Montreal/Banque de Montreal listed thereon, to the extent that such Claims satisfy the terms of this definition.

"**Proof of Claim**" has the meaning ascribed thereto in the Claims Procedure Order.

"**Recapitalization**" means the transactions contemplated by the Plan.

"**Regulated Marret Investment Fund**" means (a) any mutual fund in Ontario (as defined in Section 1(1) of the Securities Act), and/or (b) any non-redeemable investment fund (as defined in Section 1(1) of the Securities Act) that is a reporting issuer under the Securities Act, for which, in either case, Marret acts as the manager.

"**Released Claims**" has the meaning ascribed thereto in section 7.1.

"**Released Director/Officer Claim**" means any Director/Officer Claim that is released pursuant to section 7.1.

"**Released Party**" and "**Released Parties**" have the meaning ascribed thereto in section 7.1.

(e) At any applicable time, Cline shall be permitted, with the consent of the Monitor, to release and retain for itself any amounts in the Disputed Distribution Claims Reserve that were reserved to pay Convenience Claims that have been definitively not been Allowed in accordance with the Claims Procedure Order.

(f) Prior to any Distribution Date and under the supervision of the Monitor, Cline shall re-calculate the Individual Unsecured Plan Entitlements of the Affected Unsecured Creditors (other than Convenience Creditors and Secured Noteholders), in each case to reflect any applicable Disputed Distribution Claims that were definitively not Allowed, and such Creditors shall become entitled to their re-calculated Individual Unsecured Plan Entitlements. If this occurs after the Unsecured Plan Entitlement Date, as applicable, Cline shall (on the next Distribution Date) distribute to such Creditors the applicable amounts from the Disputed Distribution Claims Reserve as are necessary to give effect to their re-calculated Individual Unsecured Plan Entitlements.

(g) On the date that all Disputed Distribution Claims have been finally resolved in accordance with the Claims Procedure Order, Cline shall, with the consent of the Monitor, release all remaining cash, if any, from the Disputed Distribution Claims Reserve and shall be entitled to retain such cash.

ARTICLE 7
RELEASES

7.1 Plan Releases

On the Plan Implementation Date, in accordance with the sequence set forth in section 5.3, (i) the Applicants, the Applicants' employees and contractors, the Directors and Officers and (ii) the Monitor, the Monitor's counsel, the Indenture Trustee, Marret (on behalf of the Secured Noteholders and in its individual corporate capacity), the Secured Noteholders, the Company Advisors, the Noteholder Advisors and each and every present and former shareholder, affiliate, subsidiary, director, officer, member, partner, employee, auditor, financial advisor, legal counsel and agent of any of the foregoing Persons (each of the Persons named in (i) or (ii) of this section 7.1, in their capacity as such, being herein referred to individually as a "**Released Party**" and all referred to collectively as "**Released Parties**") shall be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, Encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature, including claims for contribution or indemnity which any Creditor or other Person may be entitled to assert, whether known or unknown, matured or unmatured, direct, indirect or derivative, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the later of the Plan Implementation Date and the date on which actions are taken to implement the Plan, that constitute or are in any way relating to, arising out of or in connection with any Claims, any Director/Officer Claims and any indemnification obligations with respect thereto, the Secured Notes and related guarantees, the Indentures, the Secured Note Obligations, the Equity Interests, the Stock Option Plans, the New Cline Shares, the Amended

Indentures, the Unsecured Plan Entitlement, the WARN Act Plan Entitlement, any payments to Convenience Creditors, the business and affairs of the Applicants whenever or however conducted, the administration and/or management of the Applicants, the Recapitalization, the Plan, the CCAA Proceeding, the Chapter 15 Proceeding or any document, instrument, matter or transaction involving any of the Applicants or the Cline Companies taking place in connection with the Recapitalization or the Plan (referred to collectively as the "**Released Claims**"), and all Released Claims shall be deemed to be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, all to the fullest extent permitted by Applicable Law; provided that nothing herein will waive, discharge, release, cancel or bar (x) the right to enforce the Applicants' obligations under the Plan, (y) the Applicants from or in respect of any Unaffected Claim (including, for greater certainty, the Secured Noteholders Unaffected Secured Claim, as evidenced by the Amended Indentures and the Secured Notes in the reduced aggregate principal amount of $55,000,000) or any Claim that is not permitted to be released pursuant to section 19(2) of the CCAA, or (z) any Director or Officer from any Director/Officer Claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA, and none of the Claims referred to in sub-paragraphs (x), (y) or (z) above shall constitute Released Claims.

7.2 Limitation on Insured Claims

Notwithstanding anything to the contrary in section 7.1, Insured Claims shall not be compromised, released, discharged, cancelled or barred by the Plan, provided that from and after the Plan Implementation Date, any Person having an Insured Claim shall be irrevocably limited to recovery in respect of such Insured Claim solely from the proceeds of the applicable Insurance Policies, and Persons with an Insured Claim shall have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries in respect thereof from the Applicants, any of the Cline Companies, any Director or Officer or any other Released Party, other than enforcing such Person's rights to be paid by the applicable insurer(s) from the proceeds of the applicable Insurance Policies.

7.3 Injunctions

All Persons are permanently and forever barred, estopped, stayed and enjoined, on and after the Effective Time, with respect to any and all Released Claims, 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 (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties; (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 any of the Released Parties or their property; (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; provided, however, that the foregoing shall not apply to the enforcement of any obligations under the Plan. For greater certainty, the provisions of this section 7.3 shall apply to Insured Claims in the same manner as Released Claims, except to the extent that the rights of such Persons to enforce such Insured Claims against an insurer in respect of an Insurance Policy are expressly preserved pursuant to section 3.5(c) and/or section 7.2, and provided further that, notwithstanding the restrictions on making a claim that are set forth in sections 3.5(c) and 7.2,

TAB 5

CANADA

CONSOLIDATION

CODIFICATION

Income Tax Act

Loi de l'impôt sur le revenu

R.S.C. 1985, c. 1 (5th Supp.)

S.R.C. 1985, ch. 1 (5e suppl.)

NOTE

Application provisions are not included in the consolidated text; see relevant amending Acts.

NOTE

Les dispositions d'application ne sont pas incluses dans la présente codification; voir les lois modificatives appropriées.

Current to October 20, 2021

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the purpose of that subsection, the individual shall be deemed to reside in only one such area on that day.

[NOTE: Application provisions are not included in the consolidated text; see relevant amending Acts and regulations.] ; R.S., 1985, c. 1 (5th Supp.), s. 110.7; 1994, c. 7, Sch. II, s. 82, Sch. VIII, s. 48; 1999, c. 22, s. 27; 2008, c. 28, s. 13; 2016, c. 7, s. 13.

Losses deductible

111 (1) For the purpose of computing the taxable income of a taxpayer for a taxation year, there may be deducted such portion as the taxpayer may claim of the taxpayer's

Non-capital losses

(a) non-capital losses for the 20 taxation years immediately preceding and the 3 taxation years immediately following the year;

Net capital losses

(b) net capital losses for taxation years preceding and the three taxation years immediately following the year;

Restricted farm losses

(c) restricted farm losses for the 20 taxation years immediately preceding and the 3 taxation years immediately following the year, but no amount is deductible for the year in respect of restricted farm losses except to the extent of the taxpayer's incomes for the year from all farming businesses carried on by the taxpayer;

Farm losses

(d) farm losses for the 20 taxation years immediately preceding and the 3 taxation years immediately following the year; and

Limited partnership losses

(e) limited partnership losses in respect of a partnership for taxation years preceding the year, but no amount is deductible for the year in respect of a limited partnership loss except to the extent of the amount by which

(i) the taxpayer's at-risk amount in respect of the partnership (within the meaning assigned by subsection 96(2.2)) at the end of the last fiscal period of the partnership ending in the taxation year

exceeds

(ii) the total of all amounts each of which is

(A) the amount required by subsection 127(8) in respect of the partnership to be added in computing the investment tax credit of the taxpayer for the taxation year,

l'application de ce paragraphe, ne résider que dans une seule de ces régions ce jour-là.

[NOTE : Les dispositions d'application ne sont pas incluses dans la présente codification; voir les lois et règlements modificatifs appropriés.] ; L.R. (1985), ch. 1 (5e suppl.), art. 110.7; 1994, ch. 7, ann. II, art. 82, ann. VIII, art. 48; 1999, ch. 22, art. 27; 2008, ch. 28, art. 13; 2016, ch. 7, art. 13.

Pertes déductibles

111 (1) Pour le calcul du revenu imposable d'un contribuable pour une année d'imposition, peuvent être déduites les sommes appropriées suivantes :

Pertes autres que des pertes en capital

a) ses pertes autres que des pertes en capital subies au cours des 20 années d'imposition précédentes et des 3 années d'imposition suivantes;

Pertes en capital nettes

b) les pertes en capital nettes que le contribuable subit pour les années d'imposition qui précèdent et pour les trois années d'imposition qui suivent l'année;

Pertes agricoles restreintes

c) ses pertes agricoles restreintes subies au cours des 20 années d'imposition précédentes et des 3 années d'imposition suivantes; toutefois, la somme déductible pour l'année à titre de pertes agricoles restreintes ne peut excéder le revenu tiré, pour l'année, des entreprises agricoles exploitées par le contribuable;

Pertes agricoles

d) ses pertes agricoles subies au cours des 20 années d'imposition précédentes et des 3 années d'imposition suivantes;

Pertes comme commanditaire

e) les pertes comme commanditaire subies dans une société de personnes par le contribuable pour les années d'imposition précédant l'année; toutefois, le montant déductible pour l'année au titre d'une perte comme commanditaire ne l'est qu'à concurrence de l'excédent du montant visé au sous-alinéa (i) sur le total visé au sous-alinéa (ii) :

(i) la fraction à risques de l'intérêt du contribuable dans la société de personnes, au sens du paragraphe 96(2.2), à la fin du dernier exercice de la société de personnes se terminant au cours de l'année,

(ii) le total des montants dont chacun représente :

(A) la partie du montant déterminé à l'égard de la société de personnes que le paragraphe 127(8) prévoit d'ajouter au crédit d'impôt à l'investissement du contribuable pour l'année,

(B) the taxpayer's share of any losses of the partnership for that fiscal period from a business or property, or

(C) the taxpayer's share of

(I) the foreign resource pool expenses, if any, incurred by the partnership in that fiscal period,

(II) the Canadian exploration expense, if any, incurred by the partnership in that fiscal period,

(III) the Canadian development expense, if any, incurred by the partnership in that fiscal period, and

(IV) the Canadian oil and gas property expense, if any, incurred by the partnership in that fiscal period.

(B) la part dont le contribuable est tenu des pertes de la société de personnes résultant d'une entreprise ou d'un bien pour le dernier exercice de la société de personnes se terminant au cours de l'année,

(C) la part attribuable au contribuable des frais globaux relatifs à des ressources à l'étranger, des frais d'exploration au Canada, des frais d'aménagement au Canada et des frais à l'égard de biens canadiens relatifs au pétrole et au gaz, engagés par la société de personnes au cours de cet exercice.

Net capital losses

(1.1) Notwithstanding paragraph 111(1)(b), the amount that may be deducted under that paragraph in computing a taxpayer's taxable income for a particular taxation year is the total of

(a) the lesser of

(i) the amount, if any, determined under paragraph 3(b) in respect of the taxpayer for the particular year, and

(ii) the total of all amounts each of which is an amount determined by the formula

A × B/C

where

A is the amount claimed under paragraph 111(1)(b) for the particular year by the taxpayer in respect of a net capital loss for a taxation year (in this paragraph referred to as the "loss year"),

B is the fraction that would be used for the particular year under section 38 in respect of the taxpayer if the taxpayer had a capital loss for the particular year, and

C is the fraction required to be used under section 38 in respect of the taxpayer for the loss year;

(b) where the taxpayer is an individual, the least of

(i) $2,000,

Pertes en capital nettes

(1.1) Malgré l'alinéa (1)b), le montant qu'un contribuable peut déduire en application de cet alinéa dans le calcul de son revenu imposable pour une année d'imposition donnée correspond au total des montants suivants :

a) le moins élevé des montants suivants :

(i) l'excédent calculé selon l'alinéa 3b) à l'égard du contribuable pour l'année donnée,

(ii) le total des montants dont chacun représente un montant calculé selon la formule suivante :

A × B/C

où :

A représente le montant dont le contribuable a demandé la déduction pour l'année donnée selon l'alinéa (1)b) au titre d'une perte en capital nette pour une année d'imposition (appelée « année de la perte » au présent alinéa),

B la fraction qui serait utilisée pour l'année donnée pour l'application de l'article 38 en ce qui concerne le contribuable s'il avait subi une perte en capital pour l'année donnée,

C la fraction à utiliser pour l'application de l'article 38 en ce qui concerne le contribuable pour l'année de la perte;

b) si le contribuable est un particulier, le moins élevé des montants suivants :

(i) 2 000 $,

(ii) the taxpayer's pre-1986 capital loss balance for the particular year, and

(iii) the amount, if any, by which

(A) the amount claimed under paragraph 111(1)(b) in respect of the taxpayer's net capital losses for the particular year

exceeds

(B) the total of the amounts in respect of the taxpayer's net capital losses that, using the formula in subparagraph 111(1.1)(a)(ii), would be required to be claimed under paragraph 111(1)(b) for the particular year to produce the amount determined under paragraph 111(1.1)(a) for the particular year; and

(c) the amount, if any, that the Minister determines to be reasonable in the circumstances for the particular year and after considering the application to the taxpayer of subsections 104(21.6), 130.1(4), 131(1) and 138.1(3.2) as they read in their application to the taxpayer's last taxation year that began before November 2011.

(ii) le solde, pour l'année donnée, des pertes en capital subies par le contribuable avant 1986,

(iii) l'excédent éventuel du montant visé à la division (A) sur le montant visé à la division (B) :

(A) le montant dont le contribuable a demandé la déduction selon l'alinéa (1)b) pour l'année donnée au titre de ses pertes en capital nettes,

(B) le total — déterminé au moyen de la formule visée au sous-alinéa a)(ii) — des montants au titre des pertes en capital nettes du contribuable, dont celui-ci devrait demander la déduction pour l'année donnée selon l'alinéa (1)b) afin d'obtenir le montant calculé selon l'alinéa a) pour l'année donnée;

c) la somme que le ministre estime raisonnable dans les circonstances pour l'année donnée et compte tenu de l'application au contribuable des paragraphes 104(21.6), 130.1(4), 131(1) et 138.1(3.2), dans leur version applicable à la dernière année d'imposition du contribuable ayant commencé avant novembre 2011.

Year of death

(2) Where a taxpayer dies in a taxation year, for the purpose of computing the taxpayer's taxable income for that year and the immediately preceding taxation year, the following rules apply:

(a) paragraph 111(1)(b) shall be read as follows:

"111(1)(b) the taxpayer's net capital losses for all taxation years not claimed for the purpose of computing the taxpayer's taxable income for any other taxation year;"; and

(b) paragraph 111(1.1)(b) shall be read as follows:

"111(1.1)(b) the amount, if any, by which

(i) the amount claimed under paragraph 111(1)(b) in respect of the taxpayer's net capital losses for the particular year

exceeds the total of

(ii) all amounts in respect of the taxpayer's net capital losses that, using the formula in subparagraph 111(2)(a)(ii), would be required to be claimed under paragraph 111(1)(b) for the particular year to produce the amount determined under paragraph 111(2)(a) for the particular year, and

Pertes en capital nettes en cas de décès

(2) En cas de décès d'un contribuable, les règles suivantes s'appliquent au calcul du revenu imposable du contribuable pour l'année d'imposition au cours de laquelle il est décédé et pour l'année d'imposition précédente :

a) l'alinéa (1)b) est remplacé par ce qui suit :

« b) les pertes en capital nettes pour les années d'imposition dont le contribuable n'a pas demandé la déduction pour le calcul de son revenu imposable pour une autre année d'imposition; »

b) l'alinéa (1.1)b) est remplacé par ce qui suit

« b) l'excédent éventuel :

(i) du montant dont le contribuable a demandé la déduction au titre de ses pertes en capital nettes selon l'alinéa (1)b) pour l'année donnée,

sur le total des montants suivants :

(ii) l'ensemble — déterminé au moyen de la formule visée au sous-alinéa a)(ii) — des montants au titre des pertes en capital nettes du contribuable, dont celui-ci devrait demander la déduction pour l'année donnée selon l'alinéa (1)b) afin d'obtenir le

(iii) all amounts each of which is an amount deducted under section 110.6 in computing the taxpayer's taxable income for a taxation year, except to the extent that, where the particular year is the year in which the taxpayer died, the amount, if any, by which the amount determined under subparagraph 111(2)(b)(i) in respect of the taxpayer for the immediately preceding taxation year exceeds the amount so determined under subparagraph 111(2)(b)(ii)."

Limitation on deductibility

(3) For the purposes of subsection 111(1),

(a) an amount in respect of a non-capital loss, restricted farm loss, farm loss or limited partnership loss, as the case may be, for a taxation year is deductible, and an amount in respect of a net capital loss for a taxation year may be claimed, in computing the taxable income of a taxpayer for a particular taxation year only to the extent that it exceeds the total of

(i) amounts deducted under this section in respect of that non-capital loss, restricted farm loss, farm loss or limited partnership loss in computing taxable income for taxation years preceding the particular taxation year,

(i.1) the amount that was claimed under paragraph 111(1)(b) in respect of that net capital loss for taxation years preceding the particular taxation year, and

(ii) amounts claimed in respect of that loss under paragraph 186(1)(c) for the year in which the loss was incurred or under paragraph 186(1)(d) for the particular taxation year and taxation years preceding the particular taxation year, and

(b) no amount is deductible in respect of a non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss, as the case may be, for a taxation year until

(i) in the case of a non-capital loss, the deductible non-capital losses,

(ii) in the case of a net capital loss, the deductible net capital losses,

(iii) in the case of a restricted farm loss, the deductible restricted farm losses,

montant calculé selon l'alinéa a) pour l'année donnée,

(iii) l'ensemble des montants dont chacun représente un montant que le contribuable a déduit en application de l'article 110.6 dans le calcul de son revenu imposable pour une année d'imposition, sauf dans la mesure où, l'année donnée étant l'année du décès du contribuable, l'excédent du montant calculé selon le sous-alinéa (i) à l'égard du contribuable pour l'année d'imposition précédente dépasse le montant ainsi déterminé selon le sous-alinéa (ii). »

Restriction des déductions

(3) Pour l'application du paragraphe (1) :

a) une somme au titre d'une perte autre qu'une perte en capital, d'une perte agricole restreinte, d'une perte agricole ou d'une perte comme commanditaire pour une année d'imposition n'est déductible, et la déduction d'une somme au titre d'une perte en capital nette pour une année d'imposition ne peut être demandée, dans le calcul du revenu imposable d'un contribuable pour une année d'imposition donnée que dans la mesure où la somme dépasse le total des montants suivants :

(i) les sommes déduites selon le présent article, au titre de cette perte autre qu'une perte en capital, perte agricole restreinte, perte agricole ou perte comme commanditaire, dans le calcul du revenu imposable pour les années d'imposition antérieures à l'année donnée,

(i.1) le montant demandé en déduction selon l'alinéa (1)b) au titre de cette perte en capital nette pour les années d'imposition antérieures à l'année donnée,

(ii) les sommes réclamées au titre de cette perte en vertu de l'alinéa 186(1)c) pour l'année au cours de laquelle la perte a été subie ou en vertu de l'alinéa 186(1)d) pour l'année d'imposition donnée et les années d'imposition antérieures à l'année d'imposition donnée;

b) aucune somme n'est déductible au titre d'une perte autre qu'une perte en capital, d'une perte en capital nette, d'une perte agricole restreinte, d'une perte agricole ou d'une perte comme commanditaire pour une année d'imposition avant que :

(i) dans le cas d'une perte autre qu'une perte en capital, les pertes autres que les pertes en capital déductibles,

(iv) in the case of a farm loss, the deductible farm losses, and

(v) in the case of a limited partnership loss, the deductible limited partnership losses,

for preceding taxation years have been deducted.

(ii) dans le cas d'une perte en capital nette, les pertes en capital nettes déductibles,

(iii) dans le cas d'une perte agricole restreinte, les pertes agricoles restreintes déductibles,

(iv) dans le cas d'une perte agricole, les pertes agricoles déductibles,

(v) dans le cas d'une perte comme commanditaire, les pertes comme commanditaire déductibles,

pour les années d'imposition antérieures n'aient été déduites.

Loss restriction event — capital losses

(4) Notwithstanding subsection (1), and subject to subsection (5.5), if at any time (in this subsection referred to as "that time") a taxpayer is subject to a loss restriction event,

(a) no amount in respect of a net capital loss for a taxation year that ended before that time is deductible in computing the taxpayer's taxable income for a taxation year that ends after that time;

(b) no amount in respect of a net capital loss for a taxation year that ends after that time is deductible in computing the taxpayer's taxable income for a taxation year that ends before that time;

(c) in computing the adjusted cost base to the taxpayer at and after that time of each capital property, other than a depreciable property, of the taxpayer immediately before that time, there is to be deducted the amount, if any, by which the adjusted cost base to the taxpayer of the property immediately before that time exceeds its fair market value immediately before that time;

(d) each amount required by paragraph (c) to be deducted in computing the adjusted cost base to the taxpayer of a property is deemed to be a capital loss of the taxpayer for the taxation year that ended immediately before that time from the disposition of the property;

(e) if the taxpayer designates — in its return of income under this Part for the taxation year that ended immediately before that time or in a prescribed form filed with the Minister on or before the day that is 90 days after the day on which a notice of assessment of tax payable for the year or notification that no tax is payable for the year is sent to the taxpayer — a property that was a capital property of the taxpayer immediately before that time (other than a property in respect of which an amount would, but for this paragraph, be

Fait lié à la restriction de pertes — pertes en capital

(4) Malgré le paragraphe (1), sous réserve du paragraphe (5.5), dans le cas où un contribuable est assujetti à un fait lié à la restriction de pertes à un moment donné, les règles ci-après s'appliquent :

a) aucune somme au titre d'une perte en capital nette pour une année d'imposition s'étant terminée avant ce moment n'est déductible dans le calcul du revenu imposable du contribuable pour une année d'imposition se terminant après ce moment;

b) aucune somme au titre d'une perte en capital nette pour une année d'imposition se terminant après ce moment n'est déductible dans le calcul du revenu imposable du contribuable pour une année d'imposition s'étant terminée avant ce moment;

c) l'excédent éventuel du prix de base rajusté pour le contribuable, immédiatement avant ce moment, de chaque immobilisation (sauf un bien amortissable) lui appartenant immédiatement avant ce moment sur la juste valeur marchande de l'immobilisation immédiatement avant ce moment est à déduire dans le calcul du prix de base rajusté de l'immobilisation pour le contribuable à ce moment et par la suite;

d) cet excédent est réputé être une perte en capital du contribuable provenant de la disposition de l'immobilisation pour l'année d'imposition s'étant terminée immédiatement avant ce moment;

e) si le contribuable désigne — dans sa déclaration de revenu produite en vertu de la présente partie pour l'année d'imposition s'étant terminée immédiatement avant ce moment ou sur le formulaire prescrit présenté au ministre au plus tard le quatre-vingt-dixième jour suivant l'envoi au contribuable d'un avis de cotisation concernant l'impôt payable pour l'année ou d'un avis portant qu'aucun impôt n'est payable pour l'année — un bien qui était une immobilisation lui

required by paragraph (c) to be deducted in computing its adjusted cost base to the taxpayer or a depreciable property of a prescribed class to which, but for this paragraph, subsection (5.1) would apply),

(i) the taxpayer is deemed to have disposed of the property at the time that is immediately before the time that is immediately before that time for proceeds of disposition equal to the lesser of

(A) the fair market value of the property immediately before that time, and

(B) the greater of the adjusted cost base to the taxpayer of the property immediately before the disposition and such amount as is designated by the taxpayer in respect of the property,

(ii) subject to subparagraph (iii), the taxpayer is deemed to have reacquired the property at that time at a cost equal to those proceeds of disposition, and

(iii) if the property is depreciable property of the taxpayer the capital cost of which to the taxpayer immediately before the disposition exceeds those proceeds of disposition, for the purposes of sections 13 and 20 and any regulations made for the purposes of paragraph 20(1)(a),

(A) the capital cost of the property to the taxpayer at that time is deemed to be the amount that was its capital cost immediately before the disposition, and

(B) the excess is deemed to have been allowed to the taxpayer in respect of the property under regulations made for the purposes of paragraph 20(1)(a) in computing the taxpayer's income for taxation years that ended before that time; and

(f) for the purposes of the definition ***capital dividend account*** in subsection 89(1), each amount that because of paragraph (d) or (e) is a capital loss or gain of the taxpayer from a disposition of a property for the taxation year that ended immediately before that time is deemed to be a capital loss or gain, as the case may be, of the taxpayer from the disposition of the property immediately before the time that a capital property of the taxpayer in respect of which paragraph (e) would be applicable would be deemed by that paragraph to have been disposed of by the taxpayer.

appartenant immédiatement avant ce moment (sauf un bien pour lequel une somme serait à déduire en application de l'alinéa c), en l'absence du présent alinéa, dans le calcul de son prix de base rajusté pour le contribuable ou un bien amortissable d'une catégorie prescrite auquel le paragraphe (5.1) s'appliquerait en l'absence du présent alinéa) :

(i) le contribuable est réputé avoir disposé du bien immédiatement avant le moment qui est immédiatement avant le moment donné pour un produit de disposition égal à la moins élevée des sommes suivantes :

(A) la juste valeur marchande du bien immédiatement avant le moment donné,

(B) son prix de base rajusté pour le contribuable immédiatement avant la disposition ou, si elle est plus élevée, la somme qu'il a désignée relativement au bien,

(ii) sous réserve du sous-alinéa (iii), le contribuable est réputé avoir acquis le bien de nouveau au moment donné à un coût égal à ce produit de disposition,

(iii) si le bien est un bien amortissable du contribuable dont le coût en capital, pour lui, immédiatement avant la disposition excède ce produit de disposition, pour l'application des articles 13 et 20 et des dispositions réglementaires prises pour l'application de l'alinéa 20(1)a) :

(A) le coût en capital du bien pour le contribuable au moment donné est réputé être le montant qui correspondait à son coût en capital immédiatement avant la disposition,

(B) la déduction de l'excédent par le contribuable est réputée avoir été autorisée relativement au bien selon les dispositions réglementaires prises pour l'application de l'alinéa 20(1)a) dans le calcul de son revenu pour les années d'imposition s'étant terminées avant le moment donné;

f) pour l'application de la définition de ***compte de dividendes en capital*** au paragraphe 89(1), chaque somme qui constitue, par l'effet des alinéas d) ou e), une perte en capital ou un gain en capital du contribuable provenant de la disposition d'un bien pour l'année d'imposition s'étant terminée immédiatement avant le moment donné est réputée être une perte en

Loss restriction event — non-capital losses and farm losses

(5) If at any time a taxpayer is subject to a loss restriction event,

(a) no amount in respect of the taxpayer's non-capital loss or farm loss for a taxation year that ended before that time is deductible by the taxpayer for a taxation year that ends after that time, except that the portion of the taxpayer's non-capital loss or farm loss, as the case may be, for a taxation year that ended before that time as may reasonably be regarded as the taxpayer's loss from carrying on a business and, if a business was carried on by the taxpayer in that year, the portion of the non-capital loss as may reasonably be regarded as being in respect of an amount deductible under paragraph 110(1)(k) in computing the taxpayer's taxable income for that year is deductible by the taxpayer for a particular taxation year that ends after that time

(i) only if that business was carried on by the taxpayer for profit or with a reasonable expectation of profit throughout the particular year, and

(ii) only to the extent of the total of the taxpayer's income for the particular year from

(A) that business, and

(B) if properties were sold, leased, rented or developed or services rendered in the course of carrying on that business before that time, any other business substantially all the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services; and

(b) no amount in respect of the taxpayer's non-capital loss or farm loss for a taxation year that ends after that time is deductible by the taxpayer for a taxation year that ended before that time, except that the portion of the taxpayer's non-capital loss or farm loss, as the case may be, for a taxation year that ended after that time as may reasonably be regarded as the taxpayer's loss from carrying on a business and, if a business was carried on by the taxpayer in that year, the portion of the non-capital loss as may reasonably be regarded as being in respect of an amount deductible under paragraph 110(1)(k) in computing the taxpayer's taxable capital ou un gain en capital, selon le cas, du contribuable provenant de la disposition du bien immédiatement avant le moment où le contribuable serait réputé, en vertu de l'alinéa e), avoir disposé d'une immobilisation à laquelle cet alinéa serait applicable.

Fait lié à la restriction de pertes — pertes autres qu'en capital et pertes agricoles

(5) Si un contribuable est assujetti à un fait lié à la restriction de pertes à un moment donné, les règles ci-après s'appliquent :

a) aucune somme au titre d'une perte autre qu'une perte en capital ou d'une perte agricole pour une année d'imposition s'étant terminée avant ce moment n'est déductible par le contribuable pour une année d'imposition se terminant après ce moment; toutefois, la partie de la perte autre qu'une perte en capital ou de la perte agricole, selon le cas, du contribuable pour une année d'imposition s'étant terminée avant ce moment qu'il est raisonnable de considérer comme provenant de l'exploitation d'une entreprise et, si le contribuable exploitait une entreprise au cours de cette année, la partie de la perte autre qu'une perte en capital qu'il est raisonnable de considérer comme se rapportant à une somme déductible en application de l'alinéa 110(1)k) dans le calcul de son revenu imposable pour l'année, ne sont déductibles par le contribuable pour une année d'imposition donnée se terminant après ce moment :

(i) que si le contribuable a exploité cette entreprise à profit ou dans une attente raisonnable de profit tout au long de l'année donnée,

(ii) concurrence du total du revenu du contribuable pour l'année donnée provenant :

(A) de cette entreprise,

(B) si des biens ont été vendus, loués ou mis en valeur, ou des services rendus, dans le cadre de l'exploitation de cette entreprise avant ce moment, de toute autre entreprise dont la presque totalité du revenu est dérivée de la vente, de la location ou de la mise en valeur, selon le cas, de biens semblables ou de la prestation de services semblables;

b) aucune somme au titre d'une perte autre qu'une perte en capital ou d'une perte agricole pour une année d'imposition se terminant après ce moment n'est déductible par le contribuable pour une année d'imposition s'étant terminée avant ce moment; toutefois, la partie de la perte autre qu'une perte en capital ou de la perte agricole, selon le cas, du contribuable pour une

income for that year is deductible by the taxpayer for a particular taxation year that ends before that time

(i) only if throughout the taxation year and in the particular year that business was carried on by the taxpayer for profit or with a reasonable expectation of profit, and

(ii) only to the extent of the taxpayer's income for the particular year from

(A) that business, and

(B) if properties were sold, leased, rented or developed or services rendered in the course of carrying on that business before that time, any other business substantially all the income of which was derived from the sale, leasing, rental or development, as the case may be, of similar properties or the rendering of similar services.

année d'imposition se terminant après ce moment qu'il est raisonnable de considérer comme provenant de l'exploitation d'une entreprise et, si le contribuable exploitait une entreprise au cours de cette année, la partie de la perte autre qu'une perte en capital qu'il est raisonnable de considérer comme se rapportant à une somme déductible en application de l'alinéa 110(1)k) dans le calcul de son revenu imposable pour l'année, ne sont déductibles par le contribuable pour une année d'imposition donnée s'étant terminée avant ce moment :

(i) que si le contribuable a exploité cette entreprise à profit ou dans une attente raisonnable de profit tout au long de l'année d'imposition et au cours de l'année donnée,

(ii) concurrence du revenu du contribuable pour l'année donnée provenant :

(A) de cette entreprise,

(B) si des biens ont été vendus, loués ou mis en valeur, ou des services rendus, dans le cadre de l'exploitation de cette entreprise avant ce moment, de toute autre entreprise dont la presque totalité du revenu est dérivée de la vente, de la location ou de la mise en valeur, selon le cas, de biens semblables ou de la prestation de services semblables.

Loss restriction event — UCC computation

(5.1) Subject to subsection (5.5), if at any time a taxpayer is subject to a loss restriction event and, if this Act were read without reference to subsection 13(24), the undepreciated capital cost to the taxpayer of depreciable property of a prescribed class immediately before that time would have exceeded the total of

(a) the fair market value of all the property of that class immediately before that time, and

(b) the amount in respect of property of that class otherwise allowed under regulations made under paragraph 20(1)(a) or deductible under subsection 20(16) in computing the taxpayer's income for the taxation year that ended immediately before that time,

the excess is to be deducted in computing the taxpayer's income for the taxation year that ended immediately before that time and is deemed to have been allowed in respect of property of that class under regulations made under paragraph 20(1)(a).

Fait lié à la restriction de pertes — calcul de la FNACC

(5.1) Sous réserve du paragraphe (5.5), dans le cas où un contribuable est assujetti à un fait lié à la restriction de pertes à un moment donné et où la fraction non amortie du coût en capital pour lui de biens amortissables d'une catégorie prescrite immédiatement avant ce moment aurait excédé le total des sommes ci-après si la présente loi s'appliquait compte non tenu du paragraphe 13(24) :

a) la juste valeur marchande de tous les biens de cette catégorie immédiatement avant ce moment,

b) la somme relative aux biens de cette catégorie dont la déduction est autorisée par ailleurs par les dispositions réglementaires prises en application de l'alinéa 20(1)a) ou qui est déductible en application du paragraphe 20(16) dans le calcul du revenu du contribuable pour l'année d'imposition s'étant terminée immédiatement avant ce moment,

l'excédent est à déduire dans le calcul du revenu du contribuable pour l'année d'imposition s'étant terminée immédiatement avant ce moment et est réputé être une déduction autorisée par les dispositions réglementaires prises en application de l'alinéa 20(1)a) pour les biens de cette catégorie.

(5.2) [Repealed, 2016, c. 12, s. 40]

Loss restriction event — doubtful debts and bad debts

(5.3) Subject to subsection (5.5), if at any time a taxpayer is subject to a loss restriction event,

(a) no amount may be deducted under paragraph 20(1)(l) in computing the taxpayer's income for the taxation year that ended immediately before that time; and

(b) in respect of each debt owing to the taxpayer immediately before that time

(i) the amount that is the greatest amount that would, but for this subsection and subsection 26(2) of this Act and subsection 33(1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, have been deductible under paragraph 20(1)(l)

(A) is deemed to be a separate debt, and

(B) notwithstanding any other provision of this Act, is to be deducted as a bad debt under paragraph 20(1)(p) in computing the taxpayer's income for its taxation year that ended immediately before that time, and

(ii) the amount by which the debt exceeds that separate debt is deemed to be a separate debt incurred at the same time and under the same circumstances as the debt was incurred.

Non-capital loss

(5.4) Where, at any time, control of a corporation has been acquired by a person or persons, such portion of the corporation's non-capital loss for a taxation year ending before that time as

111(5.4)(a) was not deductible in computing the corporation's income for a taxation year ending before that time, and

(b) can reasonably be considered to be a non-capital loss of a subsidiary corporation (in this subsection referred to as the "former subsidiary corporation") from carrying on a particular business (in this subsection referred to as the "former subsidiary corporation's loss business") that was deemed by subsection 88(1.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read on November 12,

(5.2) [Abrogé, 2016, ch. 12, art. 40]

Fait lié à la restriction de pertes — créances douteuses ou irrécouvrables

(5.3) Sous réserve du paragraphe (5.5), si un contribuable est assujetti à un fait lié à la restriction de pertes à un moment donné, les règles ci-après s'appliquent :

a) aucune somme n'est déductible en application de l'alinéa 20(1)l) dans le calcul du revenu du contribuable pour l'année d'imposition s'étant terminée immédiatement avant ce moment;

b) en ce qui a trait à chaque créance du contribuable immédiatement avant ce moment :

(i) la somme maximale qui, en l'absence du présent paragraphe, du paragraphe 26(2) de la présente loi et du paragraphe 33(1) de la *Loi de l'impôt sur le revenu*, chapitre 148 des Statuts revisés du Canada de 1952, aurait été déductible en application de l'alinéa 20(1)l) :

(A) d'une part, est réputée être une créance distincte,

(B) d'autre part, est à déduire, malgré les autres dispositions de la présente loi, à titre de créance irrécouvrable en application de l'alinéa 20(1)p) dans le calcul du revenu du contribuable pour son année d'imposition s'étant terminée immédiatement avant ce moment,

(ii) l'excédent du montant de la créance sur le montant de cette créance distincte est réputé être une créance distincte née au même moment et dans les mêmes circonstances que la créance.

Perte autre qu'une perte en capital

(5.4) Lorsque, à un moment donné, le contrôle d'une société a été acquis par une ou plusieurs personnes, la partie de la perte autre qu'une perte en capital de la société pour une année d'imposition se terminant avant ce moment, dans la mesure où :

a) d'une part, elle n'était pas déductible dans le calcul du revenu de la société pour une année d'imposition se terminant avant ce moment;

b) d'autre part, il est raisonnable de la considérer comme étant une perte autre qu'une perte en capital d'une filiale (appelée l'« ancienne filiale » au présent paragraphe) résultant de l'exploitation d'une entreprise donnée (appelée l'« entreprise déficitaire de l'ancienne filiale » au présent paragraphe) et réputée, en vertu du paragraphe 88(1.1) de la *Loi de l'impôt sur le*

1981 to be the non-capital loss of the corporation for the taxation year of the corporation in which the former subsidiary corporation's loss year ended

shall be deemed to be a non-capital loss of the corporation from carrying on the former subsidiary corporation's loss business.

revenu, chapitre 148 des Statuts revisés du Canada de 1952, dans sa version applicable au 12 novembre 1981, être la perte autre qu'une perte en capital de la société pour l'année d'imposition de la société pendant laquelle l'année au cours de laquelle a été subie la perte de l'ancienne filiale s'est terminée,

est réputée être une perte autre qu'une perte en capital subie par la société résultant de l'exploitation de l'entreprise déficitaire de l'ancienne filiale.

Loss restriction event — special rules

(5.5) If at any time a taxpayer is subject to a loss restriction event,

(a) paragraphs (4)(c) to (f) and subsections (5.1) to (5.3) do not apply to the taxpayer in respect of the loss restriction event if at that time the taxpayer becomes or ceases to be exempt from tax under this Part on its taxable income; and

(b) if it can reasonably be considered that the main reason that the taxpayer is subject to the loss restriction event is to cause paragraph (4)(d) or any of subsections (5.1) to (5.3) to apply with respect to the loss restriction event, the following do not apply with respect to the loss restriction event:

(i) that provision and paragraph (4)(e), and

(ii) if that provision is paragraph (4)(d), paragraph (4)(c).

Fait lié à la restriction de pertes — règles spéciales

(5.5) Si un contribuable est assujetti à un fait lié à la restriction de pertes à un moment donné, les règles ci-après s'appliquent :

a) les alinéas (4)c) à f) et les paragraphes (5.1) à (5.3) ne s'appliquent pas au contribuable relativement au fait lié à la restriction de pertes si, à ce moment, il devient exonéré de l'impôt payable en vertu de la présente partie sur son revenu imposable ou cesse de l'être;

b) s'il est raisonnable de considérer que la principale raison pour laquelle le contribuable est assujetti au fait lié à la restriction de pertes consiste à rendre l'alinéa (4)d) ou l'un des paragraphes (5.1) à (5.3) applicables au fait, les dispositions ci-après ne s'appliquent pas relativement à ce fait :

(i) la disposition en cause et l'alinéa (4)e),

(ii) si la disposition en cause est l'alinéa (4)d), l'alinéa (4)c).

Limitation

(6) For the purposes of this section and paragraph 53(1)(i), any loss of a taxpayer for a taxation year from a farming business shall, after the taxpayer disposes of the land used in that farming business and to the extent that the amount of the loss is required by paragraph 53(1)(i) to be added in computing the adjusted cost base to the taxpayer of the land immediately before the disposition, be deemed not to be a loss.

Restriction

(6) Pour l'application du présent article et de l'alinéa 53(1)i), toute perte subie par un contribuable pour une année d'imposition et découlant d'une entreprise agricole est réputée, après que le contribuable a disposé du fonds de terre utilisé dans cette entreprise agricole et dans la mesure où cette perte doit, en vertu de l'alinéa 53(1)i), être ajoutée dans le calcul du prix de base rajusté du fonds de terre du contribuable, immédiatement avant la disposition, ne pas être une perte.

Idem

(7) For the purposes of this section, any loss of a taxpayer for a taxation year from a farming business shall, to the extent that the loss is included in the amount of any deduction permitted by section 101 in computing the taxpayer's income for any subsequent taxation year, be deemed not to be a loss of the taxpayer for the purpose of computing the taxpayer's taxable income for that subsequent year or any taxation year subsequent thereto.

Idem

(7) Pour l'application du présent article, toute perte subie par un contribuable pour une année d'imposition et résultant de l'exploitation d'une entreprise agricole est réputée, dans la mesure où cette perte est incluse dans le montant de toute déduction permise par l'article 101, dans le calcul de son revenu pour toute année d'imposition suivante, ne pas être une perte pour le contribuable pour le calcul de son revenu imposable pour cette année

(7.1) to (7.2) [Repealed, 2013, c. 34, s. 241]

Non-capital losses of employee life and health trusts

(7.3) Paragraph (1)(a) does not apply in computing the taxable income of a trust for a taxation year if the trust is, in the year, an employee life and health trust.

Non-capital losses of employee life and health trusts

(7.4) For the purposes of computing the taxable income of an employee life and health trust for a taxation year, there may be deducted such portion as the trust may claim of the trust's non-capital losses for the seven taxation years immediately preceding and the three taxation years immediately following the year.

Non-capital losses of employee life and health trusts

(7.5) Notwithstanding paragraph (1)(a) and subsection (7.4), no amount in respect of the trust's non-capital losses for a taxation year in which the trust was an employee life and health trust may be deducted in computing the trust's taxable income for another taxation year (referred to in this subsection as the "specified year") if

(a) the trust was not an employee life and health trust for the specified year; or

(b) the trust is an employee life and health trust that, because of the application of subsection 144.1(3), is not permitted to deduct any amount under subsection 104(6) for the specified year.

Definitions

(8) In this section,

exchange rate, at any time in respect of a currency of a country other than Canada, means the rate of exchange between that currency and Canadian currency quoted by the Bank of Canada on the day that includes that time or, if that day is not a business day, on the day that immediately precedes that day, or a rate of exchange acceptable to the Minister; (*taux de change*)

farm loss of a taxpayer for a taxation year means the amount determined by the formula

A - C

suivante ou toute année d'imposition postérieure à celle-ci.

(7.1) à (7.2) [Abrogés, 2013, ch. 34, art. 241]

Pertes autres qu'en capital d'une fiducie de soins de santé au bénéfice d'employés

(7.3) L'alinéa (1)a) ne s'applique pas au calcul du revenu imposable pour une année d'imposition de toute fiducie qui est une fiducie de soins de santé au bénéfice d'employés au cours de l'année.

Pertes autres qu'en capital d'une fiducie de soins de santé au bénéfice d'employés

(7.4) Est déductible dans le calcul du revenu imposable d'une fiducie de soins de santé au bénéfice d'employés pour une année d'imposition toute partie qu'elle peut déduire de ses pertes autres que des pertes en capital subies au cours des sept années d'imposition précédentes et des trois années d'imposition suivantes.

Pertes autres qu'en capital d'une fiducie de soins de santé au bénéfice d'employés

(7.5) Malgré l'alinéa (1)a) et le paragraphe (7.4), aucune somme au titre des pertes autres que des pertes en capital subies par une fiducie au cours d'une année d'imposition où elle était une fiducie de soins de santé au bénéfice d'employés n'est déductible dans le calcul de son revenu imposable pour une autre année d'imposition (appelée « année déterminée » au présent paragraphe) s'il s'avère que, selon le cas :

a) la fiducie n'était pas une fiducie de soins de santé au bénéfice d'employés pour l'année déterminée;

b) la fiducie est une fiducie de soins de santé au bénéfice d'employés qui, en raison de l'application du paragraphe 144.1(3), n'est pas autorisée à déduire une somme en application du paragraphe 104(6) pour l'année déterminée.

Définitions

(8) Les définitions qui suivent s'appliquent au présent article.

dette en monnaie étrangère Titre de créance libellé dans la monnaie d'un pays étranger. (*foreign currency debt*)

perte agricole S'agissant de la perte agricole d'un contribuable pour une année d'imposition, le montant calculé selon la formule suivante :

A - C

où :

where

A is the lesser of

(a) the amount, if any, by which

(i) the total of all amounts each of which is the taxpayer's loss for the year from a farming or fishing business

exceeds

(ii) the total of all amounts each of which is the taxpayer's income for the year from a farming or fishing business, and

(b) the amount that would be the taxpayer's non-capital loss for the year if the amount determined for D in the definition ***non-capital loss*** in this subsection were nil, and

B [Repealed, 2000, c. 19, s. 19]

C is the total of all amounts by which the farm loss of the taxpayer for the year is required to be reduced because of section 80; (*perte agricole*)

foreign currency debt means a debt obligation denominated in a currency of a country other than Canada; (*dette en monnaie étrangère*)

net capital loss of a taxpayer for a taxation year means the amount determined by the formula

A - B + C - D

where

A is the amount, if any, determined under subparagraph 3(b)(ii) in respect of the taxpayer for the year,

B is the lesser of the total determined under subparagraph 3(b)(i) in respect of the taxpayer for the year and the amount determined for A in respect of the taxpayer for the year,

C is the least of

(a) the amount of the allowable business investment losses of the taxpayer for the taxpayer's tenth preceding taxation year,

(b) the amount, if any, by which the amount of the non-capital loss of the taxpayer for the taxpayer's tenth preceding taxation year exceeds the total of all amounts in respect of that non-capital loss deducted in computing the taxpayer's taxable income or claimed by the taxpayer under paragraph 186(1)(c) or (d) for the year or for any preceding taxation year, and

(c) if the taxpayer was subject to a loss restriction event before the end of the year and after the end

A représente le moins élevé des montants suivants :

a) l'excédent éventuel du total visé au sous-alinéa (i) sur le total visé au sous-alinéa (ii) :

(i) le total des montants dont chacun représente la perte qu'il a subie pour l'année relativement à une entreprise agricole ou à une entreprise de pêche,

(ii) le total des montants dont chacun représente son revenu tiré pour l'année d'une entreprise agricole ou d'une entreprise de pêche;

b) le montant qui constituerait la perte autre qu'une perte en capital du contribuable pour l'année si la valeur de l'élément D de la formule applicable figurant à la définition de ***perte autre qu'une perte en capital*** au présent paragraphe était nulle;

B [Abrogé, 2000, ch. 19, art. 19]

C le total des montants à appliquer en réduction de la perte agricole du contribuable pour l'année par l'effet de l'article 80. (*farm loss*)

perte autre qu'une perte en capital La perte autre qu'une perte en capital d'un contribuable pour une année d'imposition correspond, à un moment donné, au montant obtenu par la formule suivante :

(A + B) - (D + D.1 + D.2)

où :

A représente le montant obtenu par la formule suivante :

E - F

où :

E représente le total des sommes représentant chacune :

a) la perte que le contribuable a subie pour l'année relativement à une charge, à un emploi, à une entreprise ou à un bien,

a.1) une somme déductible en application de l'alinéa 104(6)a.4) dans le calcul du revenu du contribuable pour l'année,

b) une somme déduite en application de l'alinéa (1)b) ou de l'article 110.6, ou déductible en application de l'un des alinéas 110(1)d) à g) et k), de l'article 112 et des paragraphes 113(1) et 138(6), dans le calcul de son revenu imposable pour l'année,

c) si le moment donné est antérieur à la onzième année d'imposition postérieure du

of the taxpayer's tenth preceding taxation year, nil, and

D is the total of all amounts by which the net capital loss of the taxpayer for the year is required to be reduced because of section 80; (*perte en capital nette*)

non-capital loss of a taxpayer for a taxation year means, at any time, the amount determined by the formula

(A + B) - (D + D.1 + D.2)

where

A is the amount determined by the formula

E - F

where

E is the total of all amounts each of which is

(a) the taxpayer's loss for the year from an office, employment, business or property,

(a.1) an amount deductible under paragraph 104(6)(a.4) in computing the taxpayer's income for the year,

(b) an amount deducted under paragraph (1)(b) or section 110.6, or deductible under any of paragraphs 110(1)(d) to (g) and (k), section 112 and subsections 113(1) and 138(6), in computing the taxpayer's taxable income for the year, or

(c) if that time is before the taxpayer's eleventh following taxation year, the taxpayer's allowable business investment loss for the year, and

F is the amount determined under paragraph 3(c) in respect of the taxpayer for the year,

B is the amount, if any, determined in respect of the taxpayer for the year under section 110.5 or subparagraph 115(1)(a)(vii),

C [Repealed, 2000, c. 19, s. 19]

D is the amount that would be the taxpayer's farm loss for the year if the amount determined for B in the definition ***farm loss*** in this subsection were zero,

D.1 is the total of all amounts deducted under subsection 111(10) in respect of the taxpayer for the year, and

D.2 is the total of all amounts by which the non-capital loss of the taxpayer for the year is required to be reduced because of section 80; (*perte autre qu'une perte en capital*)

contribuable, sa perte déductible au titre d'un placement d'entreprise pour l'année,

F la fraction calculée selon l'alinéa 3c) à l'égard du contribuable pour l'année;

B le montant déterminé à l'égard du contribuable pour l'année selon l'article 110.5 ou le sous-alinéa 115(1)a)(vii);

C [Abrogé, 2000, ch. 19, art. 19]

D le montant qui constituerait sa perte agricole pour l'année, si le montant représenté par l'élément B dans la formule figurant à la définition de ***perte agricole*** au présent paragraphe était zéro;

D.1 le total des montants déduits en application du paragraphe (10) relativement au contribuable pour l'année;

D.2 le total des montants à appliquer en réduction de la perte autre qu'une perte en capital du contribuable pour l'année par l'effet de l'article 80. (*non-capital loss*)

perte en capital nette S'agissant de la perte en capital nette subie par un contribuable pour une année d'imposition, le résultat du calcul suivant :

A - B + C - D

où :

A représente le montant éventuel calculé selon le sous-alinéa 3b)(ii) à l'égard du contribuable pour l'année;

B le moins élevé du total calculé selon le sous-alinéa 3b)(i) à l'égard du contribuable pour l'année ou de l'élément A déterminé à l'égard du contribuable pour l'année;

C le moins élevé des montants suivants :

a) le montant des pertes déductibles au titre d'un placement d'entreprise du contribuable pour sa dixième année d'imposition précédente,

b) l'excédent éventuel de la perte autre qu'une perte en capital du contribuable pour sa dixième année d'imposition précédente sur le total des montants à l'égard de cette perte que le contribuable a déduits dans le calcul de son revenu imposable ou demandés en vertu des alinéas 186(1)c) ou d) pour l'année ou pour une année d'imposition antérieure,

c) si le contribuable est assujetti à un fait lié à la restriction de pertes avant la fin de l'année et après la fin de la dixième année d'imposition précédente, zéro;

pre-1986 capital loss balance of an individual for a particular taxation year means the amount determined by the formula

(A + B) - (C + D + E + E.1)

where

A is the total of all amounts each of which is an amount determined by the formula

F - G

where

F is the individual's net capital loss for a taxation year ending before 1985, and

G is the total of all amounts claimed under this section by the individual in respect of that loss in computing the individual's taxable income for taxation years preceding the particular taxation year, and

B is the amount determined by the formula

H - I

where

H is the lesser of

(a) the amount of the individual's net capital loss for the 1985 taxation year, and

(b) the amount, if any, by which the amount determined under subparagraph 3(e)(ii) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, in respect of the individual for the 1985 taxation year exceeds the amount deductible by reason of paragraph 3(e) of that Act in computing the individual's taxable income for the 1985 taxation year, andI is the total of all amounts claimed under this section by the individual in respect of the individual's net capital loss for the 1985 taxation year in computing the individual's taxable income for taxation years preceding the particular taxation year, and

I is the total of all amounts claimed under this section by the individual in respect of the individual's net capital loss for the 1985 taxation year in computing the individual's taxable income for taxation years preceding the particular taxation year,

C is the total of all amounts deducted under section 110.6 in computing the individual's taxable income for taxation years that ended before 1988 or begin after October 17, 2000,

D is 3/4 of the total of all amounts each of which is an amount deducted under section 110.6 in computing

D le total des montants à appliquer en réduction de la perte en capital nette du contribuable pour l'année par l'effet de l'article 80. (*net capital loss*)

solde des pertes en capital subies avant 1986 À l'égard d'un particulier pour une année d'imposition donnée, le montant calculé selon la formule suivante :

(A + B) - (C + D + E + E.1)

où :

A représente le total des montants dont chacun est un montant calculé selon la formule suivante :

F - G

où :

F représente la perte en capital nette que ce particulier a subie pour une année d'imposition se terminant avant 1985,

G le total des montants dont il a demandé la déduction selon le présent article au titre de cette perte dans le calcul de son revenu imposable pour les années d'imposition précédant l'année d'imposition donnée;

B le montant calculé selon la formule suivante :

H - I

où :

H représente le moins élevé des montants suivants :

a) le montant de la perte en capital nette que le particulier a subie pour l'année d'imposition 1985,

b) l'excédent du montant calculé selon le sous-alinéa 3e)(ii) de la *Loi de l'impôt sur le revenu*, chapitre 148 des Statuts revisés du Canada de 1952, à l'égard du particulier pour l'année d'imposition 1985 sur le montant déductible en vertu de l'alinéa 3e) de la même loi dans le calcul de son revenu imposable pour l'année d'imposition 1985,

I le total des montants dont il a demandé la déduction selon le présent article au titre de la perte en capital nette qu'il a subie pour l'année d'imposition 1985 dans le calcul de son revenu imposable pour les années d'imposition précédant l'année d'imposition donnée;

C le total des montants déduits en application de l'article 110.6 dans le calcul de son revenu imposable pour les années d'imposition s'étant terminées avant 1988 ou commençant après le 17 octobre 2000;

the individual's taxable income for a taxation year, preceding the particular year, that

(a) ended after 1987 and before 1990, or

(b) began after February 27, 2000 and ended before October 18, 2000,

E is 2/3 of the total of all amounts deducted under section 110.6 in computing the individual's taxable income for taxation years, preceding the particular year, that ended after 1989 and before February 28, 2000, and

E.1 is the amount determined by the formula

J × (0.5/K)

where

J is the amount deducted by the individual under section 110.6 for a taxation year of the individual, preceding the particular year, that includes February 28, 2000 or October 17, 2000, and

K is the fraction in paragraph 38(a) that applies to the individual for the individual's taxation year referred to in the description of J. (*solde des pertes en capital subies avant 1986*)

D les 3/4 du total des montants déduits en application de l'article 110.6 dans le calcul de son revenu imposable pour les années d'imposition antérieures à l'année donnée qui :

a) soit se sont terminées après 1987 et avant 1990,

b) soit ont commencé après le 27 février 2000 et se sont terminées avant le 18 octobre 2000;

E les 2/3 du total des montants déduits en application de l'article 110.6 dans le calcul de son revenu imposable pour les années d'imposition antérieures à l'année donnée qui se sont terminées après 1989 et avant le 28 février 2000;

E.1 le montant obtenu par la formule suivante :

J × (0,5/K)

où :

J représente le montant qu'il a déduit en application de l'article 110.6 pour une année d'imposition, antérieure à l'année donnée, qui comprend le 28 février 2000 ou le 17 octobre 2000,

K la fraction figurant à l'alinéa 38a) qui s'applique à lui pour l'année d'imposition mentionnée à l'élément J. (*pre-1986 capital loss balance*)

taux de change En ce qui concerne la monnaie d'un pays étranger à un moment donné, le taux de change entre cette monnaie et le dollar canadien, affiché par la Banque du Canada le jour qui comprend ce moment ou, si ce jour n'est pas un jour ouvrable, la veille de ce jour, ou tout taux de change que le ministre estime acceptable. (*exchange rate*)

Exception

(9) In this section, a taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss and limited partnership loss for a taxation year during which the taxpayer was not resident in Canada shall be determined as if

(a) in the part of the year throughout which the taxpayer was non-resident, if section 114 applies to the taxpayer in respect of the year, and

(b) throughout the year, in any other case,

the taxpayer had no income other than income described in any of subparagraphs 115(1)(a)(i) to (vi), the taxpayer's only taxable capital gains, allowable capital losses and allowable business investment losses were from dispositions of taxable Canadian property (other than treaty-protected property) and the taxpayer's only other

Exception

(9) Au présent article, la perte autre qu'une perte en capital, la perte en capital nette, la perte agricole restreinte, la perte agricole et la perte comme commanditaire subies par un contribuable pour une année d'imposition pendant laquelle il ne résidait pas au Canada sont calculées comme si :

a) pendant la partie de l'année tout au long de laquelle le contribuable était un non-résident, si l'article 114 s'applique à lui pour l'année,

b) tout au long de l'année, dans les autres cas,

le seul revenu du contribuable était celui visé à l'un des sous-alinéas 115(1)a)(i) à (vi), ses seuls gains en capital imposables, seules pertes en capital déductibles et seules pertes déductibles au titre de placements d'entreprise résultaient de la disposition de biens canadiens imposables (sauf des biens protégés par traité) et ses seules autres pertes étaient des pertes résultant des fonctions d'une

losses were losses from the duties of an office or employment performed by the taxpayer in Canada and businesses (other than treaty-protected businesses) carried on by the taxpayer in Canada.

Fuel tax rebate loss abatement

(10) Where in a particular taxation year a taxpayer received an amount (in this subsection referred to as a "rebate") as a fuel tax rebate under subsection 68.4(2) or (3.1) of the *Excise Tax Act*, in computing the taxpayer's non-capital loss for a taxation year (in this subsection referred to as the "loss year") that is one of the 7 taxation years preceding the particular year, there shall be deducted the lesser of

(a) the amount determined by the formula

10(A - B) - C

where

A is the total of all rebates received by the taxpayer in the particular year,

B is the total of all amounts, in respect of rebates received by the taxpayer in the particular year, repaid by the taxpayer under subsection 68.4(7) of that Act, and

C is the total of all amounts, in respect of rebates received in the particular year, deducted under this subsection in computing the taxpayer's non-capital losses for other taxation years; and

(b) such amount as the taxpayer claims, not exceeding the portion of the taxpayer's non-capital loss for the loss year (determined without reference to this subsection) that would be deductible in computing the taxpayer's taxable income for the particular year if the taxpayer had sufficient income for the particular year from businesses carried on by the taxpayer in the particular year.

Fuel tax rebate — partnerships

(11) Where a taxpayer was a member of a partnership at any time in a fiscal period of the partnership during which it received a fuel tax rebate under subsection 68.4(2), (3) or (3.1) of the *Excise Tax Act*, the taxpayer is deemed

(a) to have received at that time as a rebate under subsection 68.4(2), 68.4(3) or 68.4(3.1), as the case may be, of that Act an amount equal to that proportion of the amount of the rebate received by the partnership

charge ou d'un emploi qu'il exerce au Canada et d'entreprises (sauf des entreprises protégées par traité) qu'il y exploite.

Réduction de perte pour remise de taxe sur le combustible

(10) Le contribuable qui reçoit, au cours d'une année d'imposition donnée, un montant (appelé « remise » au présent paragraphe) à titre de remise de taxe sur le combustible en vertu des paragraphes 68.4(2) ou (3.1) de la *Loi sur la taxe d'accise* déduit, dans le calcul de sa perte autre qu'une perte en capital pour une année d'imposition (appelée « année de perte » au présent paragraphe) qui compte parmi les sept années d'imposition précédant l'année donnée, le moins élevé des montants suivants :

a) le résultat du calcul suivant :

10(A - B) - C

où :

A représente le total des remises reçues par le contribuable au cours de l'année donnée,

B le total des sommes, relatives aux remises reçues par le contribuable au cours de l'année donnée, restituées par le contribuable en application du paragraphe 68.4(7) de cette loi,

C le total des montants, relatifs aux remises reçues au cours de l'année donnée, déduits en application du présent paragraphe dans le calcul des pertes autres que les pertes en capital du contribuable pour d'autres années d'imposition;

b) le montant que le contribuable demande en déduction, n'excédant pas la fraction de sa perte autre qu'une perte en capital pour l'année de perte (déterminée compte non tenu du présent paragraphe) qui serait déductible dans le calcul de son revenu imposable pour l'année donnée s'il avait suffisamment de revenu pour cette année provenant d'entreprises qu'il exploite au cours de cette même année.

Remise de la taxe sur le combustible — sociétés de personnes

(11) Le contribuable qui est l'associé d'une société de personnes à un moment d'un exercice de celle-ci au cours duquel elle reçoit une remise de taxe sur le combustible en vertu des paragraphes 68.4(2), (3) ou (3.1) de la *Loi sur la taxe d'accise* est réputé :

a) avoir reçu à ce moment, à titre de remise en vertu des paragraphes 68.4(2), (3) ou (3.1) de cette loi, un montant correspondant au produit de la remise reçue par la société de personnes par le rapport entre la part

that the member's share of the partnership's income or loss for that fiscal period is of the whole of that income or loss, determined without reference to any rebate under section 68.4 of that Act; and

(b) to have paid as a repayment under subsection 68.4(7) of that Act an amount equal to that proportion of all amounts repaid under subsection 68.4(7) of that Act in respect of the rebate that the member's share of the partnership's income or loss for that fiscal period is of the whole of that income or loss, determined without reference to any rebate under section 68.4 of that Act.

Foreign currency debt on loss restriction event

(12) For the purposes of subsection (4), if at any time a taxpayer owes a foreign currency debt in respect of which the taxpayer would have had, if the foreign currency debt had been repaid at that time, a capital loss or gain, the taxpayer is deemed to own at the time (in this subsection referred to as the "measurement time") that is immediately before that time a property

(a) the adjusted cost base of which at the measurement time is the amount determined by the formula

A + B – C

where

A is the amount of principal owed by the taxpayer under the foreign currency debt at the measurement time, calculated, for greater certainty, using the exchange rate applicable at the measurement time,

B is the portion of any gain, previously recognized in respect of the foreign currency debt because of this section, that is reasonably attributable to the amount described in A, and

C is the portion of any capital loss previously recognized in respect of the foreign currency debt because of this section, that is reasonably attributable to the amount described in A; and

(b) the fair market value of which is the amount that would be the amount of the principal owed by the taxpayer under the foreign currency debt at the measurement time if that amount were calculated using the exchange rate applicable at the time of the original borrowing.

[NOTE: Application provisions are not included in the consolidated text; see relevant amending Acts and regulations.] ; R.S., 1985, c. 1 (5th Supp.), s. 111; 1994, c. 7, Sch. II, s. 83, Sch. VI, s. 5, Sch. VIII, s. 49; 1995, c. 21, s. 36; 1997, c. 26, s. 84; 1999, c. 22, s. 28; 2000, c. 19, s. 19; 2001, c. 17, s. 87; 2002, c. 9, s. 34; 2005, c. 19, s. 20; 2006, c. 4, s. 57; 2009, c. 2, s. 30; 2010, c. 25, s. 21; 2013, c. 34, s. 241, c. 40, s. 47; 2016, c. 12, s. 40; 2017, c. 20, s. 10, c. 33, s. 40; 2021, c. 23, s. 16.

de l'associé sur le revenu ou la perte de la société de personnes pour cet exercice et le total de ce revenu ou de cette perte, déterminé compte non tenu d'une remise prévue à l'article 68.4 de cette loi;

b) avoir restitué en application du paragraphe 68.4(7) de cette loi un montant correspondant au produit des sommes restituées en application de ce paragraphe au titre de la remise par le rapport entre la part de l'associé sur le revenu ou la perte de la société de personnes pour cet exercice et le total de ce revenu ou de cette perte, déterminé compte non tenu d'une remise prévue à l'article 68.4 de cette loi.

Dette en monnaie étrangère — fait lié à la restriction de pertes

(12) Pour l'application du paragraphe (4), le contribuable qui est débiteur, à un moment donné, d'une dette en monnaie étrangère relativement à laquelle il aurait eu une perte en capital ou un gain en capital si la dette avait été remboursée à ce moment est réputé être propriétaire, au moment (appelé « moment d'évaluation » au présent paragraphe) immédiatement avant le moment donné, d'un bien :

a) d'une part, dont le prix de base rajusté au moment d'évaluation correspond à la somme obtenue par la formule suivante :

A + B – C

où :

A représente le montant de principal dont le contribuable est débiteur relativement à la dette en monnaie étrangère au moment d'évaluation, étant entendu que ce montant est calculé selon le taux de change en vigueur à ce moment,

B la partie de tout gain, constaté antérieurement relativement à la dette en monnaie étrangère par l'effet du présent article, qu'il est raisonnable d'attribuer à la valeur de l'élément A,

C la partie de toute perte en capital, constatée antérieurement relativement à la dette en monnaie étrangère par l'effet du présent article, qu'il est raisonnable d'attribuer à la valeur de l'élément A;

b) d'autre part, dont la juste valeur marchande correspond à la somme qui correspondrait au montant de principal dont le contribuable est débiteur relativement à la dette en monnaie étrangère au moment d'évaluation si cette somme était calculée selon le taux de change en vigueur au moment de l'emprunt initial.

[NOTE : Les dispositions d'application ne sont pas incluses dans la présente codification; voir les lois et règlements modificatifs appropriés.] ; L.R. (1985), ch. 1 (5e suppl.), art. 111; 1994, ch. 7, ann. II, art. 83, ann. VI, art. 5, ann. VIII, art. 49; 1995, ch. 21, art. 36; 1997, ch. 26, art. 84; 1999, ch. 22, art. 28; 2000, ch. 19, art. 19; 2001, ch. 17, art. 87; 2002, ch. 9, art. 34; 2005, ch. 19, art. 20; 2006, ch. 4, art. 57; 2009, ch. 2, art. 30; 2010, ch. 25,

art. 21; 2013, ch. 34, art. 241, ch. 40, art. 47; 2016, ch. 12, art. 40; 2017, ch. 20, art. 10, ch. 33, art. 40; 2021, ch. 23, art. 16.

Order of applying provisions

111.1 In computing an individual's taxable income for a taxation year, the provisions of this Division shall be applied in the following order: sections 110, 110.2, 111, 110.6 and 110.7.

[NOTE: Application provisions are not included in the consolidated text; see relevant amending Acts and regulations.] ; R.S., 1985, c. 1 (5th Supp.), s. 111.1; 2000, c. 19, s. 20.

Ordre d'application

111.1 Le calcul du revenu imposable d'un particulier pour une année d'imposition s'effectue par l'application des dispositions de la présente section dans l'ordre suivant : articles 110, 110.2, 111, 110.6 et 110.7.

[NOTE : Les dispositions d'application ne sont pas incluses dans la présente codification; voir les lois et règlements modificatifs appropriés.] ; L.R. (1985), ch. 1 (5e suppl.), art. 111.1; 2000, ch. 19, art. 20.

Deduction of taxable dividends received by corporation resident in Canada

112 (1) Where a corporation in a taxation year has received a taxable dividend from

(a) a taxable Canadian corporation, or

(b) a corporation resident in Canada (other than a non-resident-owned investment corporation or a corporation exempt from tax under this Part) and controlled by it,

an amount equal to the dividend may be deducted from the income of the receiving corporation for the year for the purpose of computing its taxable income.

Déduction des dividendes imposables reçus par une société résidant au Canada

112 (1) Lorsqu'une société a reçu, au cours d'une année d'imposition, un dividende imposable :

a) soit d'une société canadienne imposable;

b) soit d'une société résidant au Canada (autre qu'une société de placement appartenant à des non-résidents et une société exonérée d'impôt en vertu de la présente partie) et dont elle a le contrôle,

une somme égale au dividende peut être déduite du revenu pour l'année de la société qui le reçoit, dans le calcul de son revenu imposable.

Dividends received from non-resident corporation

(2) Where a taxpayer that is a corporation has, in a taxation year, received a dividend from a corporation (other than a foreign affiliate of the taxpayer) that was taxable under subsection 2(3) for the year and that has, throughout the period from June 18, 1971 to the time when the dividend was received, carried on a business in Canada through a permanent establishment as defined by regulation, an amount equal to that proportion of the dividend that the paying corporation's taxable income earned in Canada for the immediately preceding year is of the whole of the amount that its taxable income for that year would have been if it had been resident in Canada throughout that year, may be deducted from the income of the receiving corporation for the taxation year for the purpose of computing its taxable income.

Dividendes reçus d'une société non-résidente

(2) Lorsqu'un contribuable qui est une société a, au cours d'une année d'imposition, reçu un dividende imposable d'une société (à l'exclusion d'une société étrangère affiliée du contribuable) qui était imposable pour l'année en vertu du paragraphe 2(3) et qui a, tout au long de la période allant du 18 juin 1971 à la date de réception du dividende, exploité une entreprise au Canada par l'entremise d'un établissement stable défini par règlement, une somme égale à la fraction du dividende représentée par le rapport existant entre le revenu imposable gagné au Canada pour l'année précédente par la société payant le dividende et le montant total qui aurait été son revenu imposable pour cette année, si elle avait résidé au Canada tout au long de l'année, peut être déduite du revenu de la société recevant le dividende, pour l'année d'imposition, dans le calcul de son revenu imposable.

No deduction permitted

(2.1) No deduction may be made under subsection (1) or (2) in computing the taxable income of a specified financial institution in respect of a dividend received by it on a share that was, at the time the dividend was received, a term preferred share, other than a dividend on a share of the capital stock of a corporation that was not acquired in the ordinary course of the business carried on by the institution, and for the purposes of this subsection, if a restricted financial institution received the dividend on a share of the capital stock of a mutual fund corporation or

Déduction non permise

(2.1) Aucune déduction ne peut être faite en application des paragraphes (1) ou (2) dans le calcul du revenu imposable d'une institution financière déterminée relativement à un dividende que celle-ci a reçu sur une action qui était, au moment de la réception du dividende, une action privilégiée à terme, à l'exception d'un dividende sur une action du capital-actions d'une société qui n'a pas été acquise dans le cours normal des activités de l'entreprise exploitée par l'institution. Pour l'application du présent paragraphe, si une institution financière

(ii) each amount (other than an amount described in subparagraph (i)) that is the portion of the fair market value at that time — derived directly or indirectly from equity of the subject entity — of a property that is held at that time by the particular person or a person with whom the particular person is affiliated. (*filiale*)

est raisonnable de conclure que les énoncés ci-après s'avèrent :

a) il est conforme aux pratiques commerciales normales;

b) il est conforme à des conditions qui seraient acceptables pour les bénéficiaires de la fiducie si ceux-ci n'avaient entre eux aucun lien de dépendance;

c) son exercice ou son non-exercice n'aura pas d'incidence appréciable sur la valeur d'une participation à titre de bénéficiaire de la fiducie par rapport à celle d'autres participations dans la fiducie. (*fixed interest*)

personne Sont assimilées à des personnes les sociétés de personnes. (*person*)

valeur des capitaux propres S'entend au sens du paragraphe 122.1(1). (*equity value*)

Loss restriction event

(2) For the purposes of this Act, a taxpayer is at any time subject to a loss restriction event if

(a) the taxpayer is a corporation and at that time control of the corporation is acquired by a person or group of persons; or

(b) the taxpayer is a trust and

(i) that time is after March 20, 2013 and after the time at which the trust is created, and

(ii) at that time a person becomes a majority-interest beneficiary, or a group of persons becomes a majority-interest group of beneficiaries, of the trust.

Fait lié à la restriction de pertes

(2) Pour l'application de la présente loi, un contribuable est assujetti à un fait lié à la restriction de pertes à un moment donné si :

a) le contribuable est une société dont le contrôle est acquis, à ce moment, par une personne ou un groupe de personnes;

b) le contribuable est une fiducie et, à la fois :

(i) le moment est postérieur à la fois au 20 mars 2013 et à la date d'établissement de la fiducie,

(ii) à ce moment, une personne devient un bénéficiaire détenant une participation majoritaire de la fiducie ou un groupe de personnes devient un groupe de bénéficiaires détenant une participation majoritaire de la fiducie.

Trusts — exceptions

(3) For the purposes of paragraph (2)(b), a person is deemed not to become a majority-interest beneficiary, and a group of persons is deemed not to become a majority-interest group of beneficiaries, as the case may be, of a particular trust solely because of

(a) the acquisition of equity of the particular trust by

(i) a particular person from another person with whom the particular person was affiliated immediately before the acquisition,

Exceptions

(3) Pour l'application de l'alinéa (2)b), une personne est réputée ne pas devenir un bénéficiaire détenant une participation majoritaire d'une fiducie donnée, et un groupe de personnes est réputé ne pas devenir un groupe de bénéficiaires détenant une participation majoritaire d'une fiducie donnée, en raison seulement :

a) de l'acquisition de capitaux propres de la fiducie donnée par, selon le cas :

(i) une personne donnée qui a acquis les capitaux propres auprès d'une autre personne à laquelle elle était affiliée immédiatement avant l'acquisition,