

**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 BANRO CORPORATION, BANRO GROUP
(BARBADOS) LIMITED, BANRO CONGO (BARBADOS)
LIMITED, NAMOYA (BARBADOS) LIMITED, LUGUSHWA
(BARBADOS) LIMITED, TWANGIZA (BARBADOS) LIMITED
AND KAMITUGA (BARBADOS) LIMITED**

(the “Applicants”)

**MOTION RECORD
(RETURNABLE AUGUST 5, 2020)**

July 29th, 2020

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(the "Applicants")

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
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**IN THE MATTER OF THE *COMPANIES' CREDITORS
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AND KAMITUGA (BARBADOS) LIMITED**

(the "**Applicants**")

NOTICE OF MOTION

Motion for CCAA Termination and Discharge Order
Returnable August 5th, 2020

The Applicants will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) on August 5th, 2020 at 9:30 a.m., or as soon after that time as the motion can be heard, by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 emergency. Please refer to the conference details attached as **Schedule "A"** hereto in order to attend the motion and advise if you intend to join the motion by emailing Sophie Moher at smoher@cassels.com.

PROPOSED METHOD OF HEARING: The Motion is to be heard orally.

THE MOTION IS FOR:

- a) An Order substantially in the form attached as **Schedule "B"** hereto (the "**CCAA Termination and Discharge Order**"), *inter alia*:

- i. terminating these CCAA proceedings of the Applicants (the “**CCAA Proceedings**”) and discharging FTI Consulting Canada Inc. (“**FTI**”) in its capacity as the Court-appointed monitor (the “**Monitor**”) of the Applicants upon the filing by the Monitor of a certificate confirming the completion of the administration of the CCAA Proceedings (the “**CCAA Termination and Monitor’s Discharge Certificate**”);
 - ii. approving the Sixth Report of the Monitor (the “**Sixth Report**”) and the activities of the Monitor as set out therein;
 - iii. approving the fees and disbursements of the Monitor and its counsel; and
 - iv. releasing the Monitor from any and all liability, as set out in paragraph 7 of the CCAA Termination and Discharge Order; and
- b) Such further and other relief as counsel may advise and as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

BACKGROUND

- c) On December 22, 2017, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued an order which granted the Applicants protection under the CCAA and appointed FTI as Monitor of the Applicants;
- d) On March 27, 2018, the Court granted an order (the “**Sanction Order**”) sanctioning the Applicants’ Amended Consolidated Plan of Compromise and Reorganization dated March 26, 2018 (the “**Plan**”);

- e) On May 3, 2018, the Monitor filed with the Court and posted to the website maintained by the Monitor, a certificate certifying that it had been informed in writing by the Applicants and the Requisite Consenting Parties¹ that all of the conditions precedent set out in the Plan had been satisfied or waived, and that the Implementation Date had occurred and the Plan and provisions of the Sanction Order which came into effect on the Implementation Date were effective in accordance with their respective terms;
- f) The Sanction Order specifically released the Class Action Complaint filed in the United States District Court for the Southern District of New York (the “**District Court**”) on March 5, 2018 by EMA GARP FUND L.P. and Lawrence Lepard, individually and on behalf of all others similarly situated as plaintiffs (together, the “**Lepard Plaintiffs**”) against Banro Corporation and John Clarke as defendants (the “**Lepard Action**”);
- g) Despite the Sanction Order, the Lepard Plaintiffs sought to proceed to the District Court;
- h) On February 22, 2019, the District Court dismissed the Lepard Action relying on the Sanction Order and held that the Lepard Action was released as part of the Plan;
- i) On March 18, 2019, the Lepard Plaintiffs filed a Notice of Appeal with the District Court;
- j) On November 5, 2019, the United States Court of Appeals for the Second Circuit (the “**Appeals Court**”) confirmed the District Court’s decision and no further

¹ All terms not otherwise defined herein have the meanings given to them in the Plan.

appeal has been filed. As such, no further litigation is possible with respect to the Lepard Action. Accordingly, the Applicants are bringing a motion to terminate the CCAA Proceedings and discharge the Monitor;

TERMINATION OF CCAA AND DISCHARGE OF MONITOR

- k) Following the transfer of the unused portion of the Administrative Reserve Account set out in paragraph 5 of the CCAA Termination and Discharge Order and any other activities described in the Sixth Report, there will be no further matters pertaining to the completion of the administration of the CCAA Proceedings;
- l) The CCAA Termination and Discharge Order is necessary and appropriate to facilitate the completion of the administration of the CCAA Proceedings in accordance with paragraph 36 of the Sanction Order;
- m) The filing of the CCAA Termination and Monitor's Discharge Certificate by the Monitor with the Court will certify that the CCAA Proceedings are terminated and the Monitor of the Applicants is discharged;

OTHER GROUNDS

- n) Those grounds set out in the Sixth Report, filed;
- o) The provisions of the CCAA and the inherent equitable jurisdiction of this Court;
- p) Rules 1.04, 1.05, 2.01, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- q) Such other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- r) The Sixth Report to be filed;
- s) The fee affidavits of the Monitor and counsel to the Monitor; and
- t) Such further and other material as counsel may advise and this Honourable Court may permit.

July 29th, 2020

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Counsel for Jefferies LLC

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100 Adelaide Street West, Suite 300
Toronto, ON M5H 1S3

Attention: Vice President, Trust Services

In its capacity as Canadian Trustee and Collateral Agent under the Note Indenture dated April 19, 2017

AND TO: THE BANK OF NEW YORK MELLON
101 Barclay Street, Floor 7E
New York, New York 10286

Attention: Manager, Global America

In its capacity as U.S. Trustee under the Note Indenture dated April 19, 2017

AND TO: EQUITY FINANCIAL TRUST COMPANY
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Toronto, ON M5H 1S3

AND TO: ATTORNEY GENERAL OF CANADA
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Ontario Regional Office
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Lawyers for the Plaintiffs, EMA GARP Fund, L.P. and Lawrence Lepard, in the U.S. securities class action

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02451

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TAB A

Schedule "A"

Join Zoom Meeting

<https://cassels.zoom.us/j/96124839260?pwd=ZGR3VFhmaDlocm1XT2ZQbmlyWVgrUT09>

Meeting ID: 961 2483 9260

Password: 963048

One tap mobile

+16699006833,,96124839260# US (San Jose)

+19292056099,,96124839260# US (New York)

Dial by your location

+1 669 900 6833 US (San Jose)

+1 929 205 6099 US (New York)

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

877 853 5257 US Toll-free

888 475 4499 US Toll-free

Meeting ID: 961 2483 9260

Find your local number: <https://cassels.zoom.us/u/a9jDljwst>

TAB B

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) WEDNESDAY, THE 5th
)
JUSTICE HAINEY) DAY OF AUGUST, 2020
)

**IN THE MATTER OF THE *COMPANIES' CREDITORS
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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
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(BARBADOS) LIMITED AND KAMITUGA (BARBADOS)
LIMITED**

(the "**Applicants**")

CCAA TERMINATION AND DISCHARGE ORDER

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an Order, among other things: (i) terminating these CCAA proceedings of the Applicants (the "**CCAA Proceedings**") and discharging FTI Consulting Canada Inc. ("**FTI**") in its capacity as the Court-appointed monitor (the "**Monitor**") of the Applicants upon the filing by the Monitor of a certificate (the "**CCAA Termination and Monitor's Discharge Certificate**") substantially in the form attached hereto as Schedule "A" confirming the completion of the administration of these CCAA Proceedings; (ii) approving the Sixth Report of the Monitor (the "**Sixth Report**") and the activities set out therein; (iii) approving the fees and disbursements of the Monitor and its counsel; and (iv) releasing the Monitor from any and all liability, as set out in paragraph 7 of this Order, was heard this day by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 Emergency.

ON READING the Sixth Report, the affidavits of the Monitor and its counsel as to fees (the “**Fee Affidavits**”), and on hearing the submissions of counsel for the Monitor, no one else appearing although served as evidenced by the Affidavit of ● sworn ●, filed;

1. THIS COURT ORDERS that the time for service and filing of this motion is hereby abridged and validated such that the motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that all terms not otherwise defined herein have the meanings given to them in the Sixth Report.

3. THIS COURT ORDERS that the Sixth Report and the activities of the Monitor as set out in therein are hereby approved; *provided, however*, that only the Monitor, in its personal capacity and only with respect to its own personal liability, and the Monitor’s legal counsel shall be entitled to rely upon or utilize in any way such approval.

4. THIS COURT ORDERS that the fees and disbursements of the Monitor and its counsel, as set out in the Sixth Report and the Fee Affidavits, are hereby approved and that no further approval of the fees and disbursements of the Monitor or its legal counsel is required in respect of the period from the date of this order until such time as the Monitor is discharged in accordance with paragraph 6 below.

5. THIS COURT ORDERS that, after payment of the fees and disbursements herein approved and the fees and disbursements of counsel to the Applicants, the Monitor shall transfer any unused portion of the Administrative Reserve Account to Banro Corporation or as it may otherwise direct in writing.

6. THIS COURT ORDERS that upon the transfer of any unused portion of the Administrative Reserve Account set out in paragraph 5 hereof and upon the Monitor filing the CCAA Termination and Monitor’s Discharge Certificate certifying that (i) it has completed the transfer of any unused portion of the Administrative Reserve Account to Banro Corporation or as it may otherwise direct in writing; and (ii) it has completed the other activities described in the Sixth Report, these CCAA Proceedings shall be

terminated and FTI shall be discharged as Monitor of the Applicants, provided however that notwithstanding its discharge herein (a) the Monitor shall remain Monitor for the performance of such incidental duties as may be required to complete the administration of the CCAA Proceedings; and (b) the Monitor shall continue to have the benefit of the provisions of all Orders made in these proceedings, including all approvals, protections and stays of proceedings in favour of FTI in its capacity as Monitor.

7. THIS COURT ORDERS AND DECLARES that FTI be and is hereby released and discharged from any and all liability that FTI now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of FTI while acting in its capacity as Monitor herein, save and except for any gross negligence or wilful misconduct on the Monitor's part. Without limiting the generality of the foregoing, FTI is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the CCAA Proceedings, save and except for any gross negligence or wilful misconduct on the Monitor's part. Notwithstanding the discharge of FTI as Monitor and the termination of this CCAA proceeding, FTI and its legal counsel shall continue to have the benefit of all approvals and protections that exist at common law or pursuant to the CCAA, the Initial Order and all other Orders made in this CCAA proceeding.

8. 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 the Monitor and its 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 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 Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

9. THIS COURT ORDERS that, this order is effective from today's date and it is made and enforceable without any need for entry or filing.

Schedule "A"
Form of CCAA Termination and Monitor's Discharge Certificate

Court File No. CV-17-589016-00CL

ONTARIO
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LIMITED

(the "**Applicants**")

CCAA TERMINATION AND MONITOR'S DISCHARGE CERTIFICATE

RECITALS

A. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Order of the Honourable Justice Hainey made in these proceedings on August 5th, 2020 (the "**CCAA Termination and Discharge Order**").

B. Pursuant to the CCAA Termination and Discharge Order, upon FTI in its capacity as Monitor filing the CCAA Termination and Monitor's Discharge Certificate certifying that it has transferred any unused portion of the Administrative Reserve Account to Banro Corporation or as it may have otherwise directed in writing and completed the other activities described in the Sixth Report, the CCAA proceedings of the Applicants

shall be terminated and FTI shall be discharged as the Monitor of the Applicants, provided however that notwithstanding this discharge (a) the Monitor shall remain Monitor for the performance of such incidental duties as may be required to complete the administration of the Applicants' CCAA proceedings; and (b) the Monitor shall continue to have the benefit of the provisions of all Orders made in the Applicants' CCAA proceedings, including all approvals, protections and stays of proceedings in favour of FTI in its capacity as Monitor.

THE MONITOR CERTIFIES the following:

1. The Monitor has transferred any unused portion of the Administrative Reserve Account to Banro Corporation or as it otherwise directed in writing.
2. The Monitor has completed the other activities described in the Sixth Report.

DATED at the City of Toronto, in the Province of Ontario, this ___ day of _____, 2020 at _____.

FTI CONSULTING CANADA INC., in its capacity as Court-appointed Monitor of the Applicants and not in its personal or corporate capacity

By: _____
Name: Nigel D. Meakin
Title: Senior Managing Director

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 BANRO CORPORATION, BANRO GROUP (BARBADOS) LIMITED, BANRO CONGO (BARBADOS) LIMITED, NAMOYA (BARBADOS) LIMITED, LUGUSHWA (BARBADOS) LIMITED, TWANGIZA (BARBADOS) LIMITED AND KAMITUGA (BARBADOS) LIMITED

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**CCAA TERMINATION AND MONITOR'S DISCHARGE
CERTIFICATE**

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PROCEEDING COMMENCED AT TORONTO

CCAA TERMINATION AND DISCHARGE ORDER

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PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

(Returnable August 5th, 2020)

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Court File No. CV-17-589016-00CL
IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BANRO CORPORATION, BANRO GROUP (BARBADOS) LIMITED, BANRO CONGO (BARBADOS) LIMITED, NAMOYA (BARBADOS) LIMITED, LUGUSHWA (BARBADOS) LIMITED, TWANGIZA (BARBADOS) LIMITED AND KAMITUGA (BARBADOS) LIMITED

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**MOTION RECORD
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