

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MADAM ) FRIDAY, THE 17<sup>TH</sup>  
 )  
JUSTICE DIETRICH ) DAY OF MAY, 2019  
 )

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  
OLD API WIND-DOWN LTD.

Applicant

CCAA TERMINATION ORDER

**THIS MOTION**, made by Old API Wind-down Ltd. (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, terminating the CCAA proceedings upon the filing of the Monitor's Certificate (defined below) by Richter Advisory Group Inc. ("**Richter**") in its capacity as Monitor of the Applicant (the "**Monitor**") and granting the other relief set out herein, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Motion Record of the Applicant filed in respect of this motion, including the affidavit of Christopher Freeland sworn May 8, 2019, the Ninth Report of the Monitor (the "**Monitor's Report**"), the affidavit of Lily Coodin, sworn May 3, 2019 (the "**Torys Affidavit**") and the affidavit of Pritesh Patel, sworn May 8, 2019 (the "**Richter Affidavit**"), and on hearing the submissions of counsel for the Applicant, the Monitor and Deerfield Private Design Fund III, L.P. and Deerfield Partners, L.P. (collectively, "**Deerfield**"), no one appearing for any other person on the service list, although properly served as appears from the affidavits of service of Shimshon E. Dukesz, sworn May 8, 2019 and May 14, 2019 and filed:

## SERVICE

1. **THIS COURT ORDERS** that the time and method of service and notice of this Motion is hereby validated and that this Motion is properly returnable today without further service or notice thereof.

## DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms used and not defined herein shall have the meanings given to them in the Initial Order dated August 10, 2018, as amended and restated (the “**Initial Order**”).

## TERMINATION OF CCAA PROCEEDINGS AND RELATED PROVISIONS

3. **THIS COURT ORDERS** that effective at the date and time (the “**CCAA Termination Time**”) on which the Monitor files the certificate, substantially in the form attached hereto as Schedule “A” (the “**Monitor’s Certificate**”), certifying that it has been advised by the Applicant that all matters to be attended to in connection with the CCAA proceedings have been completed, the within CCAA proceedings shall be automatically terminated without any further act or formality and, except as otherwise expressly set out herein, the Initial Order shall have no further force or effect.

4. **THIS COURT ORDERS** that the Stay Period shall expire on the earlier of the CCAA Termination Time and July 31, 2019.

5. **THIS COURT ORDERS** that the Monitor shall, at least seven (7) days prior to the proposed CCAA Termination Time, post on the Monitor’s website and serve on the service list for these CCAA proceedings notice of the Monitor's intention to file the Monitor's Certificate.

6. **THIS COURT ORDERS** that, effective as of the date of this Order, the DIP Lender’s Charge and the Transactional Fee Charge (each as defined in the Initial Order), the Bid Protections Charge (as defined in the Order Re: Bidding Procedures Approval dated October 10, 2018), and the Key Employee Charge (as defined in the Order Re KEIP Approval & Related Charge dated November 28, 2018) shall be and are hereby fully and unconditionally terminated, released and discharged.

7. **THIS COURT ORDERS** that, as at the CCAA Termination Time, the Administration Charge and the D&O Charge shall be fully, unconditionally and automatically terminated, released and discharged.

#### **CLAIMS BARRED AND EXTINGUISHED**

8. **THIS COURT ORDERS AND CONFIRMS** that, notwithstanding the termination of these CCAA proceedings, the Claims Procedure Order dated October 10, 2018, including the bar dates set forth therein, remains in full force and effect.

#### **APPROVAL OF MONITOR'S FEES AND DISBURSEMENTS**

9. **THIS COURT ORDERS** that the fees and disbursements of the Monitor up to and including April 30, 2019, all as set out in the Monitor's Report and the Richter Affidavit, are hereby approved.

10. **THIS COURT ORDERS** that the fees and disbursements of the Monitor, as estimated not to exceed \$50,000, to complete its remaining duties and the administration of these CCAA proceedings, are hereby approved without further Order of the Court.

11. **THIS COURT ORDERS** that the fees and disbursements of the Monitor's counsel up to and including April 30, 2019, all as set out in the Torys Affidavit, are hereby approved.

12. **THIS COURT ORDERS** that the fees and disbursements of the Monitor's counsel, as estimated not to exceed \$25,000, incurred in connection with the completion by the Monitor of its remaining duties and the administration of these CCAA proceedings, are hereby approved without further Order of the Court

#### **APPROVAL OF MONITOR'S ACTIVITIES**

13. **THIS COURT ORDERS** that the Sixth, Seventh, Eighth and Ninth Reports of the Monitor and the activities and conduct of the Monitor referred to therein are hereby ratified and approved; provided, however, that only the Monitor in its personal capacity and only with respect to its personal liability, shall be entitled to rely upon or utilize in any way such approvals.

14. **THIS COURT ORDERS AND DECLARES** that the Monitor has duly and properly satisfied, discharged and performed all of its obligations, liabilities, responsibilities and duties in respect of the Applicant in compliance and in accordance with the CCAA, the Initial Order and any other Orders of this Court made in the within CCAA proceedings.

#### **DISCHARGE OF MONITOR**

15. **THIS COURT ORDERS AND DECLARES** that, effective as at the CCAA Termination Time, Richter shall be discharged as Monitor of the Applicant and shall have no further duties, obligations or responsibilities as Monitor in these CCAA proceedings.

#### **RELEASES**

16. **THIS COURT ORDERS** that the Monitor and its counsel and each of their respective affiliates, officers, directors, partners, employees and agents (collectively, the "**Released Persons**") shall be and are hereby released and discharged from any and all claims that any person may have or be entitled to assert against the Released Persons, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the date of this Order in any way relating to, arising out of or in respect of the within proceedings or with respect to their conduct in the within proceedings (collectively, the "**Released Claims**"), and any such Released Claims are hereby released, stayed, extinguished and forever barred, and the Released Persons shall have no liability in respect thereof, provided that the Released Claims shall not include any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Released Persons.

17. **THIS COURT ORDERS** that, at the CCAA Termination Time, and subject to paragraph 18 hereof, the Released Persons shall be released and discharged from any and all claims that any person may have or be entitled to assert against the Released Persons, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or thereafter arising, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place following the date of this Order in any way relating to, arising out of or in respect of the within CCAA proceedings or with respect to their respective conduct in the within CCAA proceedings (collectively, the "**Subsequent Released Claims**"), and any such



Subsequent Released Claims shall be released, stayed, extinguished and forever barred and the Released Persons shall have no liability in respect thereof, provided that the Subsequent Released Claims shall not include any claim or liability arising out of any gross negligence or wilful misconduct on the part of the Released Persons.

18. **THIS COURT ORDERS** that in the event that any person objects to the release and discharge of the Subsequent Released Claims, that person must send a written notice of objection and the grounds therefor to the Monitor such that the notice of objection is received by the Monitor prior to the proposed CCAA Termination Time. If no objection is received by the Monitor prior to the CCAA Termination Time, the release and discharge of Subsequent Released Claims pursuant to paragraph 17 hereof shall be automatically deemed effective upon the CCAA Termination Time, without further Order of the Court.

19. **THIS COURT ORDERS** that if an objection to the release of the Subsequent Released Claims is received by the Monitor pursuant to paragraph 18 hereof, the release and discharge of the Subsequent Released Claims pursuant to paragraph 17 hereof shall not become effective pending further Order of the Court. For greater certainty, no objection received in accordance with paragraph 18 hereof shall affect the release and discharge of the Released Claims pursuant to paragraph 16 hereof, which shall be effective as of the date of this Order.

20. **THIS COURT ORDERS** that from and after the CCAA Termination Time no action or other proceeding shall be commenced against any of the Released Persons in any way arising from or related to the within CCAA proceedings, except with prior leave of this Court on at least seven days' prior written notice to the applicable Released Person, and provided that any such Order granting leave includes a term granting the applicable Released Person security for its costs and the costs of its counsel in connection with any proposed action or proceeding, such security to be on terms this Court deems just and appropriate.

21. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the termination of the CCAA proceedings or the discharge of the Monitor, nothing herein shall affect, vary, derogate from, limit or amend, and the Monitor and its counsel shall continue to have the benefit of, the approvals and protections in favour of the Monitor at law or pursuant to the Initial Order or any other Order of this Court in the CCAA proceedings, all of which are

expressly continued and confirmed, including in connection with any actions taken by the Monitor pursuant to this Order following the filing of the Monitor's Certificate.

#### **ASSIGNMENT INTO BANKRUPTCY AND DISTRIBUTION OF RESERVE**

22. **THIS COURT ORDERS** that the Applicant is authorized to file an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act* (Canada) in the City of Toronto, Province of Ontario, and the Stay Period is lifted in order to permit such application.


23. **THIS COURT ORDERS** that the Monitor is authorized and directed to set aside \$100,000 from the funds remaining in the Reserve (as defined in the Order Re: Distribution Protocol dated December 17, 2018) to account for the funding of the bankruptcy proceedings (the "**Trustee Account**"). The Monitor is further authorized and directed to transfer the Trustee Account to the trustee in bankruptcy upon its appointment.

24. **THIS COURT ORDERS** that at or before the CCAA Termination Time, subject to the creation of the Trustee Account, the Monitor is authorized and directed without further Order of the Court, to distribute the remainder of the Reserve to Deerfield.

#### **GENERAL**

25. **THIS COURT ORDERS** that notwithstanding the discharge of the Monitor and the termination of the CCAA proceedings, this Court shall remain seized of any matter arising from these CCAA proceedings, and each of the Applicant, the Monitor and any other interested party shall have the authority from and after the date of this Order to apply to this Court to address matters ancillary or incidental to these CCAA proceedings notwithstanding the termination thereof. The Monitor is authorized to take such steps and actions as the Monitor determines are necessary to give effect to this Order following the date of this Order until the CCAA Termination Time.

26. 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 Applicant, 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 Applicant and the Monitor as may be necessary or desirable to give effect to this Order or to assist the Applicant, the Monitor and their agents in carrying out the terms of this Order.

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

MAY 17 2019

PER/PAR:



**SCHEDULE A  
FORM OF MONITOR'S CERTIFICATE**

Court File No. CV-18-603054-00CL

**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  
OLD API WIND-DOWN LTD.**

Applicant

**MONITOR'S CERTIFICATE**

**RECITALS**

- A. Old API Wind-down Ltd. (the "**Applicant**") obtained protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**") pursuant to an Initial Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated August 10, 2018 (the "**Initial Order**").
- B. Richter Advisory Group Inc. (in such capacity, the "**Monitor**") was appointed as the Monitor of the Applicant in the CCAA proceedings pursuant to the Initial Order.
- C. Pursuant to the CCAA Termination Order granted ●, 2019, the Court approved, among other things, the termination of the CCAA proceedings effective at the date and time (the "**CCAA Termination Time**") on which the Monitor files this Monitor's certificate with the Court.

**THE MONITOR CONFIRMS** the following:

1. The Monitor has been informed by the Applicant that all matters to be attended to in connection with the CCAA proceedings have been completed.



2. Accordingly, the CCAA Termination Time has occurred at the date and time set forth below.

DATED at Toronto, Ontario this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**RICHTER ADVISORY GROUP INC., solely 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 OLD API  
WIND-DOWN LTD.

Court File No. CV-18-603054-00CL

Applicant

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ONTARIO  
SUPERIOR COURT OF JUSTICE (COMMERCIAL  
LIST)

Proceeding commenced at Toronto

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CCAA TERMINATION ORDER

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