

2019

Hfx No. 484742

Supreme Court of Nova Scotia

IN THE MATTER OF:

Application by Quadriga Fintech Solutions Corp, Whiteside Capital Corporation and 0984750 B.C. Ltd d/b/a Quadriga CX and Quadriga Coin Exchange for relief under the *Companies' Creditors Arrangement Act*

AFFIDAVIT OF ASIM IQBAL

(April 2, 2019)

I, **ASIM IQBAL**, of the City of Oakville in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a lawyer at Miller Thomson LLP ("**Miller Thomson**") and one of the lawyers at Miller Thomson primarily responsible for its role as Representative Counsel (as defined herein) to the users affected by the shutdown of the Quadriga CX cryptocurrency exchange platform (the "**Affected Users**", which term does not include users who elect to opt out of representation by Representative Counsel ("**Opt-Out Individuals**")). As such, I have personal knowledge of the matters to which I herein depose except where otherwise stated to be based on information or belief. I further state the source of any information that is not based on my own personal knowledge and I state my belief of the source.

2. I swear this Affidavit in support of a motion, brought by Miller Thomson and Cox & Palmer (together, "**Representative Counsel**") in their capacity as Representative Counsel to the Affected Users, for:

- (a) an Order amending the Order of the Supreme Court of Nova Scotia (the "**Court**") dated February 28, 2019 (the "**Representative Counsel Appointment Order**") to increase the Initial Fee Cap (as defined in the Representative Counsel Appointment Order) to up to \$400,000 (plus taxes and disbursements); and
- (b) an Order further amending the Representative Counsel Appointment Order as set out below, which amendments would take effect on the termination of these CCAA Proceedings in accordance with the CCAA Termination Order (as defined below).

Background

3. Quadriga Fintech Solutions Corp, Whiteside Capital Corporation and 0984750 B.C. Ltd d/b/a Quadriga CX and Quadriga Coin Exchange (collectively, the "**Applicants**") commenced these proceedings (these "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") and, among other things, obtained protection from their creditors pursuant to the Order of the Honourable Mr. Justice Wood dated February 5, 2019 (the "**Initial Order**").

4. Under the Initial Order, Ernst & Young Inc. was appointed as Monitor of the Applicants (in such capacity, the "**Monitor**").

5. On February 19, 2019, this Court released its decision appointing Representative Counsel to, among other things, represent the interests of Affected Users in these CCAA Proceedings (the "**Representative Counsel Decision**"). Notably, at paragraph 44 of the Representative Counsel Decision, this Court described the Affected Users as "...the only creditors of any significance..." in these insolvency proceedings.

6. The Representative Counsel Decision was subsequently memorialized in the Representative Counsel Appointment Order.

7. The Representative Counsel Appointment Order sets out the current scope of Representative Counsel's mandate, which includes:

- (a) Communicating with Affected Users;
- (b) Liaising with the Monitor and the Applicants;
- (c) Representing and advocating for the interests of Affected Users; and
- (d) Identifying potential conflicts of interests among Affected Users and taking necessary steps to address such conflicts.

Activities of Representative Counsel

8. Following its appointment, Representative Counsel began fulfilling its mandate. In that regard, Representative Counsel's activities included:

- (a) Negotiating and finalizing the terms of the Representative Counsel Appointment Order;
- (b) Negotiating and entering into a non-disclosure agreement with the Applicants and the Monitor to facilitate the disclosure by the Applicants or the Monitor of confidential information;
- (c) Establishing and maintaining Representative Counsel's website located at www.millerthomson.com/en/quadrigacx;
- (d) Establishing a dedicated email address for Affected Users to contact Representative Counsel;
- (e) Establishing a dedicated email address for Affected Users to apply to serve on the Official Committee of Affected Users (the "**Official Committee**");
- (f) Communicating with Affected Users through telephone calls and emails to answer their inquiries. To date, Representative Counsel has received 1,196 emails to the general inbox and 230 emails to the inbox set up for applications for the Official Committee;
- (g) Establishing the Official Committee (the process for establishing the Official Committee is described in further detail below);
- (h) Issuing multiple written updates to Affected Users regarding the status of these CCAA proceedings;
- (i) Developing a preliminary budget to inform the quantum of the Initial Fee Cap (as defined in the Representative Counsel Appointment Order);
- (j) Attending multiple motions before this Court;
- (k) Communicating with the Applicants' former counsel, Stewart McKelvey, regarding various issues in these CCAA Proceedings, including with respect to conflicts of interest;
- (l) Hosting two (2) conference calls with the broader group of Affected Users prior to the Comeback hearing on March 5, 2019;

- (m) Negotiating with the Applicants regarding the appointment of the Chief Restructuring Officer and other relief sought at the Comeback hearing;
- (n) Holding multiple meetings of the Official Committee to consider various issues in these CCAA Proceedings, including the Monitor's pending motion for an order (the "**CCAA Termination Order**") to transition these CCAA Proceedings into bankruptcy (the "**Transition**") and for a preservation order (the "**Preservation Order**") with respect to the assets of Jennifer Robertson in her personal capacity and the assets of the estate of Gerald Cotten; and
- (o) Attending a conference call with Mr. Justice Wood, and multiple calls with the Monitor, regarding the Transition.

Appointment of the Official Committee

9. The Representative Counsel Appointment Order directed Representative Counsel, in consultation with the Monitor, to establish the Official Committee.

10. Representative Counsel developed a process (the "**Selection Process**") to select Affected Users to serve on the Official Committee. In summary, the Selection Process included the following steps:

- (a) Representative Counsel sent multiple communications to Affected Users calling for applications to serve on the Official Committee;
- (b) The deadline for applications was 5:00 p.m. EST on March 8, 2019. As part of the application, applicants were required to provide Representative Counsel with a summary of the nature and quantum of their claim, a copy of their *curriculum vitae* and a 200-word statement expressing their interest in serving as an Official Committee member;
- (c) Representative Counsel received a total of 119 applications;
- (d) Representative Counsel reviewed all 119 applications and created a short list of 27 applicants, each of whom was invited for an interview by telephone or video conference;

- (e) For consistency, Representative Counsel developed a "standard" interview format, and each applicant was asked substantially the same questions in substantially the same order;
- (f) Following the interviews, Representative Counsel created a further short list of applicants (the "**Short List**"), which was presented to the Monitor for approval; and
- (g) From the Short List approved by the Monitor, Representative Counsel selected seven (7) Official Committee members and two (2) alternate Official Committee members. Such selections were then submitted to this Court for approval.

11. On March 19, 2019, this Court granted an Order (the "**Official Committee Appointment Order**") constituting the Official Committee and approving the Official Committee members and alternates.

12. I believe that Representative Counsel has performed its duties, including the activities described in this Affidavit, in as efficient and cost-effective manner as it could in the circumstances without compromising the quality of work necessary to advance the interests of Affected Users.

13. I believe Representative Counsel has worked closely and effectively with the Monitor and made a conscious and successful effort to avoid duplication of work.

Transition into Bankruptcy

14. Following its appointment, Representative Counsel raised concerns through two (2) letters to, and multiple discussions with, Stewart McKelvey regarding a perceived conflict of interest arising from Stewart McKelvey's representation of both the Applicants and Jennifer Robertson in this CCAA Proceeding.

15. On March 13, 2019, Stewart McKelvey communicated to this Court its intention to withdraw as the Applicants' counsel in the CCAA Proceeding effective immediately.

16. Since Stewart McKelvey's withdrawal, Representative Counsel has worked with the Monitor and held two (2) meetings of the Official Committee regarding the next steps in these CCAA Proceedings (the "**Committee Meetings**").

17. After considering the relevant facts and circumstances at the Committee Meetings, the Official Committee resolved to support the Transition subject to certain conditions, including:

- (a) The continuation of the role of Representative Counsel and the Official Committee in the bankruptcy proceedings;
- (b) Maintaining as confidential the identities and other personal information of Affected Users;
- (c) That Representative Counsel be authorized to file an omnibus proof of claim on behalf of Affected Users for voting purposes at the first meeting of creditors by filing with the trustee in bankruptcy an omnibus proof of claim; and
- (d) That Representative Counsel be authorized to vote as a proxy on behalf of Affected Users at the first meeting of creditors.

18. Accordingly, should this Court grant the CCAA Termination Order, Representative Counsel's role is expected, and requested by the Official Committee, to continue in the bankruptcy proceeding.

Increase of Initial Fee Cap Required

19. Paragraph 23 of the Representative Counsel Appointment Order provides for an initial fee cap in the amount of \$250,000 (excluding disbursements and HST) (the "**Initial Fee Cap**").

20. The Initial Fee Cap was expressly subject to adjustments through the preparation of a budget from time to time for the purpose of determining whether the Initial Fee Cap required adjustment. The Representative Counsel Appointment Order provided that any motion to adjust the Initial Fee Cap should be conducted by way of a teleconference on seven (7) calendar days' notice to the Service List.

21. In order to set the Initial Fee Cap, Representative Counsel prepared and delivered to the Monitor a detailed initial budget for the first thirty (30) days of the case until March 19, 2019 (the "**Initial Budget**").

22. The Initial Budget contemplated the following main activities to be conducted (the "**Initial Activities**");

- (a) Attendance at the motion to appoint Representative Counsel and finalization of the terms of the Representative Counsel Appointment Order;
- (b) The development and administration of the Selection Process and establishment of the Official Committee;
- (c) Communications with Affected Users;
- (d) Communications with the Monitor and Applicants for the purpose of advocating for the interests of Affected Users; and
- (e) Preparation for and attendance at a motion returnable February 21, 2019 in respect of certain banking arrangements and the comeback motion.

23. The Initial Budget broke out each category listed above into smaller tasks. The Initial Budget then estimated the time that would be spent on each task based on Representative Counsel's assumptions regarding possible future events in the case. The Initial Budget also ascribed a confidence level to each assumption based Representative Counsel's level of certainty as to the accuracy of each such assumption. These confidence levels were then applied to the estimated fees for each task, to establish a range (*i.e.*, low, mid, high) of the anticipated costs.

24. The budgeting methodology described in the paragraph above produced the following ranges for the fees anticipated to be incurred by Representative Counsel during the Initial Budget period: approx. \$138,000 (low) to approx. \$207,000 (medium) to approx. \$276,000 (high), in each case, plus taxes and disbursements. The Initial Budget contemplated that, if the assumptions were accurate, the fees incurred by Representative Counsel during the Initial Budget period would be within the mid-range (*i.e.*, \$207,000) as much of the Initial Fee Cap would be exhausted following completion of the Initial Activities.

25. Based on the Initial Budget provided to the Monitor, the Initial Fee Cap was set at \$250,000 (plus disbursements and HST).

26. As mentioned above, the Initial Budget was only an estimate and based on a number of assumptions regarding future events. Actual events varied materially from the assumptions in certain ways. For example:

- (a) The period covered by the Initial Budget has expired;

- (b) The Initial Budget assumed that Representative Counsel would receive 40 applications from Affected Users to serve on the Official Committee. In fact, Representative Counsel received 119 applications;
- (c) The volume of inquiries from Affected Users was greater than anticipated;
- (d) An additional court appearance was required that was not contemplated in the Initial Budget;
- (e) Certain tasks such as the establishment of the Official Committee and the finalization of the Official Committee's governance documents and the Representative Counsel Appointment Order took more time than anticipated;
- (f) The withdrawal of Stewart McKelvey as the Applicants' counsel and the additional work that flowed from it with respect to the Transition was not anticipated; and
- (g) The Preservation Order being sought by the Monitor, which involved consultations with Representative Counsel and the Official Committee, was not anticipated.

27. As a result of these unforeseen circumstances, the fees incurred by Representative Counsel to date exceed the Initial Fee Cap by approximately \$58,000. After extensive discussions with the Official Committee, Representative Counsel agreed to a 20% reduction of the excess fees incurred, which results in the amount sought in respect of such excess fees to be the amount of \$48,333 (the "**Excess Fees**").

28. As a result, Representative Counsel seeks an increase of the Initial Fee Cap to up to \$400,000 (plus taxes and disbursements) to cover the Excess Fees and include a buffer for work to be conducted by Representative Counsel with respect to the transition of these CCAA Proceedings into bankruptcy. The increase to the Initial Fee Cap is supported by the Official Committee after significant deliberations among the committee members as well during two meetings of the Official Committee.

29. In consultation with the Monitor, this work is expected to include Representative Counsel's participation in:

- (a) Preparation for and attendance at the motion to terminate these CCAA Proceedings;
- (b) Any adjudication process to address the entitlement to the funds comprising the Reserves (as defined in the CCAA Termination Order);
- (c) Responding to Affected Users' concerns about the Transition on a continuous, timely and expedited basis;
- (d) Organizing, facilitating and running additional Official Committee meetings required to obtain instructions from the Official Committee;
- (e) Developing a claims process that satisfactorily accommodates Affected User concerns regarding disclosure of personal information and proving their claims;
- (f) Establishing additional communication channels based on requests from Affected Users relayed to the Official Committee; and
- (g) Such other matters as may be required in order to facilitate the Transition.

30. I believe the requested increase to the Initial Fee Cap will be sufficient to allow Representative Counsel to continue to fulfill its mandate representing Affected Users during the Transition period, without compromising on the work required to be done to represent the interests of Affected Users and is reasonable in the circumstances. Attached as Exhibit "A" is a budget prepared by Representative Counsel for the period between March 19, 2019 and the anticipated CCAA Termination Time (being around May 19, 2019).

31. The fees incurred by Representative Counsel will remain subject to the approval of this Court, which Representative Counsel anticipates seeking prior to the termination of these CCAA Proceedings.

32. As described in detail below, Representative Counsel seeks further amendments to the Representative Counsel Appointment Order that would be effective at the CCAA Termination Time. These amendments are intended to avoid the costs of unnecessary court appearances solely for the purpose of further adjusting the Initial Fee Cap, while maintaining sufficient "checks and balances" to ensure that the fees incurred are reasonable.

Amendments Effective Post-Termination of these CCAA Proceedings

33. As noted above, the Official Committee's support for the Transition is subject to the continuation of the Representative Counsel Appointment Order and the Official Committee Appointment Order in the bankruptcy proceedings.

34. In addition, following termination of the CCAA Proceeding, there is expected to be a significant reduction in professional fees because of (a) the removal of the CRO and the Applicants' counsel, and (b) an overall reduction in court appearances due to the comprehensive procedures set out in the *Bankruptcy and Insolvency Act* (Canada) for the administration of the Applicants' bankruptcy estates.

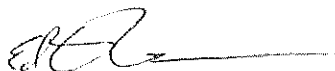
35. As a result, Representative Counsel seeks, at this time, to amend the Representative Counsel Appointment Order, which will be effective at the CCAA Termination Time, for the purpose of avoiding the added expense of preparing ongoing budgets and scheduling additional court appearances solely for the purpose of addressing the fee cap.

36. Representative Counsel's fees remain subject to approval by the Official Committee in all instances as the fees incurred are the result of the instructions given by the Official Committee, whose mandate is to act in the overall best interests of Affected Users. The amendments will be effective as at the CCAA Termination Time.

37. In addition, if the CCAA Termination Order is granted, Representative Counsel expects that, similar to those of the trustee in bankruptcy, its fees would also be subject to approval by the inspectors appointed in the bankruptcy proceeding and the ultimate approval of this Court.

38. Accordingly, Representative Counsel is of the view that all parties, including Affected Users, will have sufficient "checks and balances" in place to ensure the fees incurred by both Representative Counsel and the Monitor are reasonable without incurring unnecessary expenses to administer an ongoing budgeting process with court attendances solely for the purpose of adjusting the fee cap.

SWORN BEFORE ME at the City of Toronto this
2nd day of April, 2019.



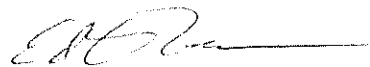
A Commissioner for taking Affidavits (or as may be)

Edward Popov



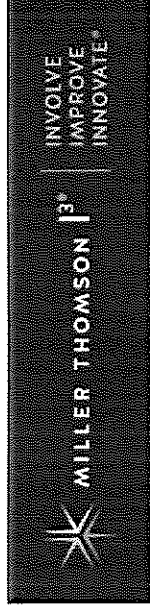
ASIM IQBAL

This is Exhibit "A" referred to in the Affidavit
of Asim Iqbal, SWORN BEFORE ME
this 2nd day of April 2019



A COMMISSIONER FOR TAKING AFFIDAVIT

Edward Popov



WORK PLAN AND BUDGET

Client/Matter Representative Counsel for Quadriga's Affected Users

Key Matter-Level Assumptions:

- Hours not used in any given line item may be reallocated to a line item in the same or any other Phase where the expenditure of hours on that line item is expected to exceed or exceeds the upper end of its range.
- This work plan and budget covers the period from March 19, 2019 through and until the CCAA Termination Time, which is estimated to be May 19, 2019 (approx. 60 days) (the "**Budget Period**")
- This work plan and budget is based on the known facts in this proceeding as of March 19, 2019.
- References to the Monitor includes the Monitor and its counsel.
- We have included a low-, mid- and high-range for our budgeted costs. Our assumptions are based upon the midpoint with a variance allowance on either side.

Work Plan and Budget does not include:

- Taxes and disbursements (including travel expenses).
- Additional work outside the scope of any assumption.
- Any work extending beyond the Budget Period.
- Any Advisors that may need to be retained during the Budget Period (with the consent of the Monitor).

Phase/Task	Assumptions	Comfort Level	Budgeted Cost for Task (Low Range)	Budgeted Cost for Task (Mid-Range)	Budgeted Cost for Task (Upper Range)
ITEM 1: Court Motions					
Preparation for and attendance at motion re Termination of CCAA Proceedings, Increase of Fee Cap and Post-Bankruptcy Amendments	Assumes: Attendance by 1 CP lawyer and 2 MT lawyers	80%	\$ 9,720.00	\$ 12,150.00	\$ 14,580.00
Additional Court Motion(s)	Assume 1 additional court appearances during the budgeting period with attendance in person by Representative Counsel	50%	\$ 5,837.50	\$ 11,675.00	\$ 17,512.50
		Total:	\$ 15,557.50	\$ 23,825.00	\$ 32,092.50
ITEM 2: Communications with Affected Users					
Responding to Affected User inquiries re Transition into Bankruptcy	Assumes 1 hour per business day of communications with Affected Users responding to inquiries.	60%	\$ 11,070.00	\$ 18,450.00	\$ 25,830.00
Preparation of 1 Communication with Affected Users re Bankruptcy Transition	Assumes preparation by MT of 1 official communication from Representative Counsel to Affected Users	60%	\$ 2,490.00	\$ 4,150.00	\$ 5,810.00
Monitor inquiries from Affected Users and prepare and disseminate Q&A responses	Assumes 0.5 hours per business day monitoring inquiries from Affected Users and updating FAQ, plus Partner Approval re same	60%	\$ 5,628.00	\$ 9,380.00	\$ 13,132.00
		Total:	\$ 19,188.00	\$ 31,980.00	\$ 44,772.00
ITEM 3: Communications with Monitor					

Phase/Task	Assumptions	Comfort Level	Budgeted Cost for Task	Budgeted Cost for Task	Budgeted Cost for Task (Upper Range)
Communications with Monitor and Official Committee	Assumes 1 phone call with Monitor and Official Committee re: update on Investigation	60%	\$ 1,860.00	\$ 3,100.00	\$ 4,340.00
		Total:	\$ 1,860.00	\$ 3,100.00	\$ 4,340.00
ITEM 4: Official Committee Meetings and Other Matters					
Organizing, facilitating and hosting Official Committee Meetings	Assumes two committee meetings	70%	\$ 9,534.00	\$ 13,620.00	\$ 17,706.00
Ongoing communication with Official Committee	Assumes 0.5 hours per business day with respect to ongoing communication with Official Committee;	70%	\$ 7,175.00	\$ 10,250.00	\$ 13,325.00
Preparation of documents associated with Official Committee Meetings	Preparation of Agenda, resolutions and other documents required for committee meetings	70%	\$ 3,220.00	\$ 4,600.00	\$ 5,980.00
		Total:	\$ 19,929.00	\$ 28,470.00	\$ 37,011.00
ITEM 5: Payment of Excess Fees and Contingency					
Excess Funds due to unanticipated events and out of scope work (after agreed upon 20% reduction after discussions with the Official Committee)		100%	\$ 48,333.00	\$ 48,333.00	\$ 48,333.00
Contingency		100%	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00
		Total:	\$ 68,333.00	\$ 68,333.00	\$ 68,333.00

TOTAL BUDGETED COST	Low	\$ 124,867.50
	Mid	\$ 155,708.00
	High	\$ 186,548.50