UNITED STATES
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January 2, 2020

Via ECF and UPS Overnight

Hon. Carol Bagley Amon
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: SEC v. PlexCorps a/k/a and d/b/a PlexCoin and Sidpay.ca, et al., No. 17 Civ. 7007 (CBA)

Dear Judge Amon:

Plaintiff Securities and Exchange Commission ("SEC") respectfully writes to update the Court on the status of the disposition of the assets collected in the United States in this matter (the "U.S. Assets"), including as it relates to the letter to the Court from Skip Shapiro, dated December 6, 2019 (D.E. 117). The SEC anticipates that, upon completion of the distribution plan approval process in Canada, described below, the SEC will file a motion with this Court recommending a course of action with respect to the U.S. Assets (the "Disposition Motion").

As background, there are ongoing, related proceedings in Superior Court in Quebec, Canada (the "Canadian Proceedings"),[1] in which a Receiver has been appointed to collect and administer certain digital assets of, or controlled by, defendant Dominic Lacroix ("Lacroix"). On or about November 4, 2019, the Receiver filed a proposed distribution plan (the "Proposed Plan") for consideration by the Superior Court. The SEC reviewed and provided comments to the Receiver on the Proposed Plan prior to its filing, some of which resulted in adjustments to the Proposed Plan as filed with the Superior Court. The Proposed Plan has since been published by the Receiver on its public website.[2]

[1] *AUTORITÉS DES MARCHÉS FINANCIERS v. DOMINIC LACROIX, et al.*, No.: 200-11-025040-182, Superior Court, Quebec, Canada.

[2] https://www.raymondchabot.com/en/companies/public-records/dominic-lacroix/

Following the entry of the final judgment in this matter (D.E. 116), the entities that the Court directed to turnover assets formerly belonging to Lacroix have done so, resulting in the SEC collecting approximately $1.4 million as U.S. Assets. The SEC is considering recommending to this Court that the U.S. Assets be sent to the Receiver to effect one, single distribution to harmed investors. Prior to making such a recommendation, the SEC is ascertaining whether the Proposed Plan, and the accompanying claims process, is fair and reasonable and whether investors would be better served by one distribution as opposed to a second, separate distribution in the United States. To this end, with the cooperation of the Receiver, the SEC has been monitoring and, as an interested party recognized by the Superior Court, participating in the Canadian Proceedings.

On November 20, 2019, in order to provide investors an opportunity to consider the SEC's participation in a single, coordinated distribution through the Proposed Plan, the SEC sent notice of the possibility of a coordinated distribution, including links to the Receiver's public website and the English translation of the Plan (the "Notice"). The Notice was sent to more than 91,000 possible PlexCoin investors, by electronic mail and by UPS, using pre-PlexCoin ICO registration data obtained from Defendants' seized computers.[3] In the Notice, the SEC provided U.S. investors with the opportunity to comment on and object to the coordination of distribution and, through such objection, to the Proposed Plan.[4] The SEC also established a public webpage for this matter.[5]

In response to the Notice, the SEC has received inquiries about the claims process from investors worldwide, responded to those inquiries individually, and maintained a contact list. The SEC has sent the list of investors that have contacted the SEC, and their contact information, to the Receiver, to ensure that the responding investors are included in any claims process.

To date, the SEC has received only two formal objections, neither from Mr. Shapiro, who has not availed himself of the objection mechanism set forth in the Notice. The first objecting investor communicated concerns that investors in U.S. currency would be prejudiced by any distribution given the U.S.-to-Canadian-dollar exchange rate. After consulting with the Receiver, the SEC responded to this investor, confirming that adjustments for the exchange rate would be part of the distribution calculations. The second objecting investor voiced the concerns set forth in Mr. Shapiro's letter, namely concerns as to the cost of the Receiver and the Proposed Plan's limitation of claims to only those equal to or greater than $CAN 250. With respect to the Receiver's fees, the Quebec securities regulator, the Autorité des Marchés Financiers (the

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[3] https://www.sec.gov/divisions/enforce/claims/plexcorps.htm.

[4] The SEC directed the Notice to more than 91,000 individuals and entities worldwide who had provided their email address to PlexCorps as parties interested in the initial coin offering, regardless of their nationality or domicile. However, the SEC staff limited the objection process to U.S. residents and citizens due to practical concerns, given the SEC staff's limited ability to promptly review and respond to (possibly) thousands of objections.

[5] https://www.sec.gov/divisions/enforce/claims/plexcorps.htm.

"Autorité"), reviews fee petitions before they are submitted for approval to the Superior Court—a process similar to that conducted by the SEC for receivers appointed in enforcement actions in U.S. courts. Moreover, if and when U.S. Assets from this matter are sent to the Receiver, the SEC staff will review the fee petitions prior to approval by the Superior Court. With respect to the $250 limitation in the Proposed Plan, the Receiver has informed the SEC staff that it has been set based on a cost-benefit analysis of, among other things, the cost of claims review in a digital asset matter and that its basis has been challenged and will be justified by the Receiver to the Superior Court in connection with the Receiver's request for approval of the Plan. The SEC has since responded to this objector and continues to monitor the Canadian Proceedings to confirm that the Superior Court actually considers the objection. The SEC anticipates that its Disposition Motion will address the substance of all objections, including the two the SEC has received to date, and the SEC's responses thereto.

Finally, Mr. Shapiro's letter references the Superior Court's denial of the request made by the group calling itself the "Ad Hoc Committee of Investors of PlexCoin" (the "Committee") for the payment of its attorneys' fees from the funds collected by the Receiver. In its petition to the Superior Court, the Committee requested that the Superior Court (1) appoint the Committee to represent the interests of (and advocate for) all PlexCoin investors, (2) appoint a particular law firm as the Committee's counsel, and (3) permit that law firm's reasonable professional fees and disbursements in the matter to be paid by the Receiver from recovered assets. *See* Exhibit A, ¶ 14. The SEC participated in the hearing on this application through its local counsel. As the Superior Court observed, the SEC did not contest the first two parts of the request—the opportunity for this group of investors to be heard by the Superior Court through its chosen counsel. *Id.* ¶ 15.

However, as observed in Mr. Shapiro's letter, the SEC, joined by the Receiver and the Autorité, objected to the payment of the Committee's legal fees from the assets available for distribution. Losses in this matter exceed $8 million and, and even if the SEC recommends and the Court approves that the U.S. Assets be transferred to the Receiver, the Receiver will likely have less than $5 million to distribute. Accordingly, reduction of administrative fees is important to maximize the distribution to harmed investors and is a primary reason the SEC is considering a single, coordinated distribution. In anticipation of one, consolidated distribution, the SEC is participating in the Canadian Proceedings matter at this stage to ensure that the Proposed Plan and the claims process fairly and reasonably distribute collected assets to harmed investors. Similarly, as found by the Superior Court, the Autorité and the Receiver are acting for the benefit of investors. *See id.* ¶ 32 (the Autorité and the Receiver acted for the benefit of investors; the court does not consider that members of the Committee or other ICO investors are vulnerable). As the Superior Court found: "It is one thing to allow representation of the Committee but a different one to duplicate the use of the funds to satisfy its costs." *Id.* ¶ 133.

Moreover, the Committee represents a small percentage of investors—less than 5% of the total number of investors. *Id.* ¶ 11. Allowing payment of legal fees for a small fraction of investors would open the door for like requests and quickly exhaust the limited funds available

for distribution. *Id.* ¶ 33 (if the Superior Court allows the funding of the Committee, it would open the door to other groups or potential stakeholders).

The SEC is providing the foregoing information in anticipation of the Disposition Motion and to provide a complete picture surrounding the latest filing (D.E. 117) with this Court. The undersigned is available to answer any questions the Court may have regarding the foregoing.

Respectfully submitted,

Jorge G. Tenreiro

cc (via ECF): Jason Gottlieb, Esq.

Exhibit A

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF QUEBEC

N° : 200-11-025040-182

DATE : December 6, 2019

IN THE PRESENCE OF : THE HONOURABLE DANIEL DUMAIS, j.s.c.

IN THE MATTER OF THE ACT RESPECTING THE REGULATION OF THE FINANCIAL SECTOR:

AUTORITÉ DES MARCHÉS FINANCIERS
Plaintiff
v.
DOMINIC LACROIX
Defendant
and
RAYMOND CHABOT ADMINISTRATEUR PROVISOIRE INC.
Receiver
and
THE *AD HOC* COMMITTEE OF INVESTORS OF PLEXCOIN
Intervenant

JUDGMENT
(on an Application to appoint an Investors Committee and a Representative Counsel)

1.- THE CONTEXT

[1] The Defendant Lacroix created a cryptocurrency named *Plexcoin*. In search of investors or buyers, he proceeded with an initial coin offering (the «ICO»). Approximately 15 000 persons (the «ICO Investors») responded to this offer and acquired plexcoins. Some people bought or exchanged minimal quantity of plexcoins while others spent more than $100,000 in value.

[2] Alert to this project it considered illegal, the Autorité des marchés financiers (the «AMF») instituted proceedings before the Financial Markets Administrative Tribunal (the «FMAT») and the Quebec Superior Court.

[3] This resulted, among other things, in the appointment of a receiver, Raymond Chabot Administrateur provisoire inc. («RCAP»)[1]. The receiver has large powers in order to investigate and recover the assets of Defendant Lacroix.

[4] RCAP acts under the supervision of this Court and the undersigned Judge is managing the process.

[5] Proceedings related to plexcoins and Lacroix are also ongoing in the United States where a complaint has been filed by the Securities and Exchange Commission (the «SEC») before the U.S. District Court for the Eastern District of New York.

[6] With the involvement of RCAP, assets were found and seized both in Canada and USA. It mainly consists of cryptocurrencies. With this Court approval, they were converted in Canadian dollars.

[7] There is approximately $1,000,000 (CDN) frozen in USA and $6,000,000 recovered in Canada. These amounts do not take into account important fees incurred by RCAP, its legal team and technical experts. Such fees amount to approximately $1,100,000.

[8] During the course of its mandate, RCAP prepared, at the beginning of November 2019, a distribution plan whereby it proposes how the net assets realized should be distributed. This involves the creation of a fund to be liquidated among ICO investors who will file a proof of claim to be adjudicated by RCAP.

[9] This plan of distribution has yet to be presented and approved by the Quebec Superior Court. Furthermore, the transfer of the American assets to the Quebec authorities requires the consent of the U.S. District Court.

[10] Some ICO Investors followed the proceedings from the very beginning. They formed chat groups. Mr. Skip Shapiro, a businessman from New Bedford, MA, led one group of investors.

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1 In virtue of section 19.1 of the Act Respecting the regulation of the financial sector, L.Q. Chapter E-6.1.

[11] At one point, his group included more than one thousand of investors spread around the world. Now, it comprises approximately 500 persons. Mr. Shapiro believes his group represents 20% of the total investments made through the ICO. In terms of the number of buyers, it reaches less than 5% of the total.

[12] On November 7, 2019, Mr. Shapiro and his group formed the *Ad Hoc* Committee of Investors of Plexcoin (the «Committee»). This Committee is composed of the following investors, each of whom purchased Plexcoin initially. These persons are:

- Skip Shapiro from the United States
- Michael Isang from Nigeria
- Rose Thomas from the United States
- Marx Hu from Malaysia
- Roehl Dumlao from the Philippines
- Steve McQueen from the United States
- Frank D'Assisi from Canada
- Calvin Tewari from the Netherlands
- Javier Puente from the United States

[13] As potential beneficiaries of the Plan of distribution, the group members have a vested interest in its content. They want to participate at Court hearings and discuss with RCAP of their concerns and issues in relation with the distribution mechanism proposed.

[14] Hence, they present an application for an order from this Court to:

- Appoint the Committee to represent the interests of and advocate for all the investors of Plexcoin;
- Appoint the law firm Lavery De Billy LLP as its representative counsel;
- Have their reasonable professional fees and disbursements paid by the receiver with the recovered assets.

[15] The AMF, the SEC and RCAP do not contest formerly the first two requests, as long as they are restricted to the approval of the Distribution Plan, and not its execution by RCAP. However, they object to the demand for legal funding. The attorney for the SEC goes further and argues its client will not accept to transfer the U.S. money in Canadian soil if it is used to reimburse or assume the legal fees of the investors[2].

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[2] Unless the U.S. District Court rules otherwise.

[16] It must be added that another group («the Second group») intends to present a similar demand[3]. It includes more than thirty people who invested money in one of Lacroix's companies. Three such companies have been identified and they are currently bankrupt[4]. Their trustee, Lemieux Nolet inc., follows the situation. He and the second group of investors intend to intervene and dispute the announced Plan of distribution on the ground that they should be included as claimants instead of being excluded by RCAP's proposed plan.

[17] In a correspondence subsequent to the hearing, RCAP's attorneys submit that the Court should first determine who will be entitled to qualify as claimants and who should be excluded. Once it is decided, then the Distribution Plan may be modified and presented for approval by the Court.

[18] In line with this position, RCAP indicated, in a recent opposition dated November 29, that it consents to the intervention of the second group as long as it is limited to the question of their inclusion (or exclusion) as potential claimants under the plan. This issue will be debated later at a management conference scheduled on December 19, 2019.

2.- THE ANALYSIS

[19] The present judgment deals only with the request of the Committee. It does not concern the proposed plan itself.

[20] It is quite obvious that we are heading into a dispute between, at least, the ICO investors, the Second group and the trustee for Lacroix's bankrupt companies. Lacroix himself does not request an interest in the assets but intends to make submissions.

[21] Although the RCAP, AMF and SEC already took position in favor of the ICO investors in their proposed Plan of distribution, the Court considers it should allow the Committee to intervene through its representative counsel. It is expedient given the issues in dispute. The Committee's participation, legally represented, can certainly contribute usefully to the debate[5].

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3 This is the position expressed by their counsel at hearing and in a letter dated November 19, 2019.
4 Namely *DL Innov inc.*, *Micro-Prêts inc.* and *Finaone inc.*
5 See section 187 of the *Code of Civil Procedure*.

[22] The practice of appointing a representative counsel for special groups of stakeholders is acknowledged under the *Companies Creditors Arrangement Act*[6]. By analogy, it should also be permitted in the current file. The intervention will facilitate the hearing and ensure that those who have an interest are heard, if such is their desire.

[23] Hence, the Court will grant the first two conclusions, at least for the debate on who should be included in the Distribution Plan. When this question is settled, the Court will revaluate if the Committee should be entitled to go further in the legal file.

[24] This approach will allow all potential claimants to have a say in the legal issue to be discussed, independently from the regulatory authorities and from the receiver.

[25] The Committee seeks the payment of its representative counsel's reasonable fees and disbursements from the funds recovered by the receiver. No more details are given in relation with the services rendered and those to be provided in the future. We ignore if the Committee agreed to pay its lawyers and, if so, under which conditions.

[26] The Committee bases its submissions on two judgments rendered in CCAA proceedings. The first case is *Arrangement relatif à Les Investissements Hexagone inc.*[7] Mr. Justice Riordan granted a motion to appoint a committee of subcontractors unpaid by a major contractor facing insolvency. The Committee acted for a majority of subcontractors. Mr Justice Riordan ordered a limited and priority charge in favor of the subcontractors subject to the approval of the receiver or the Court. It qualified it as a «*mesure exceptionnelle que la jurisprudence indique devrait être limitée à ce qui est essentiel au succès d'une restructuration*»[8].

[27] The case underlines the vulnerability of the subcontractors who are left without any guarantee and representation. They are the ones who financed the activities of *Hexagone*. They agreed to sign releases to help the monitor to obtain the payments necessary to the restructuration[9]. Without the priority charge and the collective representation, they would be deprived of their rights and of any representation[10].

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6 SARRA, Janis P., *Rescue! The Companies Creditors Arrangement Act*, 2nd Edition, 2013, Carswell, at pages 606 at 609. See also : *Arrangement relatif à Les Investissements Hexagone inc*. 2016 QCCS 6792, par. 38; *Quadriga Fintech Solutions Corp* (Re), 2019 NSSC 65. *Urbancorp inc.* (Re), 2016 ONSC 5426.

7 See note 6.

8 *Idem* at par. 38.

9 *Idem* at par. 21, 28, 29, 30, 31 and 52.

10 *Idem* at par. 26.

[28] The second decision is *Quadriga Fintech Solutions Cord* (Re)[11] where the Court wrote:

> « *It is usually done (the appointment of representatives) where the affected group of stakeholders is large and, without representation, most members would be unable to effectively participate in the CCAA proceedings*. »[12]

[29] It quotes *Re Canwest Publishing inc.*[13]:

> « *In that regard I accept their evidence that they are (the salaried Employees and Retirees) a vulnerable group and there is no other counsel available to represent their interest*. »

[30] It must be noted that the conclusions of the demand in *Quadriga Fintech* were not contested. The debate consisted of choosing which law firm should be selected as representative counsel.

[31] The present file differs from these decisions. Indeed, the ICO investors are not left alone and without a voice. The AMF initiated proceedings before the FMAT with a view to protecting these investors. Faced with a lack of cooperation from Mr. Lacroix, it presented a motion to appoint a receiver to help investigating and finding assets.

[32] The AMF and RCAP acted for the benefit of investors. Their intention is demonstrated by their recent Plan of distribution where they propose, subject to Court approval, that the proceeds be distributed to the initial buyers of *Plexcoin*. This goal has been expressed since the beginning. Considering these facts, the Court does not consider that members of the group or other ICO investors are vulnerable and that their legal costs should be paid at least at this stage.

[33] It is one thing to allow representation of the Committee but a different one to duplicate the use of the funds to satisfy its costs. If the Court allows the funding of the Committee, it opens the door to other groups or potential stakeholders. The second group already announced its desire to present a similar demand. The trustee might do the same like other creditors or secondary purchasers of *Plexcoin* or else.

[34] It would be paradoxical and counterproductive that the funds serve to fuel a debate among all the parties that dispute these funds. The end result might very well become unreasonable.

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11 2019 NSSC 65.
12 *Idem* at par. 6.
13 2010 ONSC 1328.

[35] In addition, the Court can hardly run the risk that the U.S. Authorities refuse to transfer the frozen assets as potentially suggested by the SEC counsel. It must be remembered that Mr. Lacroix agreed to pay a very substantial penalty in the United States.

[36] In the case of *Quadriga*, the Court defined the main role of the committee as being one of information and ensuring that the legitimate interests are considered throughout the proceedings[14]. RCAP does play such a role in this case. It published information on a dedicated website.

[37] We must keep in mind what M. Justice Clément Gascon wrote in *Mecachrome International inc.*[15]:

> [77] *Les critères déjà énumérés confirment qu'une charge prioritaire établie en vertu de la LACC se veut exceptionnelle. Le Tribunal se doit de l'accorder avec parcimonie, en la limitant seulement à ce qui est essentiel au succès d'une restructuration.*
>
> [78] *Dans cette perspective, le Tribunal est d'avis qu'à moins de circonstances particulières bien appuyées par une preuve convaincante, une charge d'administration ne devrait pas inclure des conseillers juridiques ou financiers autres que ceux du contrôleur et des débitrices.*
>
> [...]
>
> [90] *Que chacun des acteurs retienne ses conseillers juridiques ou financiers est légitime. Que tous le fassent aux frais des Débitrices Canadiennes, et partant des créanciers les moins protégés, est, de l'avis du Tribunal, exagéré.*

[38] The Court shares the view of Justice Newbould in *Urbancorp*[16]. It does not agree that the fees be paid from the recovered assets. However, the Court is willing to allow that individual payments be made to the law firm upon express instructions from an investor and subject to the limit of his/her recovery once the plan is executed. If such authorisations are given, the Committee could come back with a new application to this end.

[39] Finally, the Court reaffirms its intention to bring this matter to an end rapidly and with efficiency. The next steps will be discussed at the next management conference on **December 19, 2019 at 9h30**.

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14 See par. 16.
15 2009 QCCS 1575.
16 See note 6.

FOR THESE REASONS, THE COURT:

[40] **ORDERS** that the *Ad Hoc* Committee of Investors of Plexcoin may appear before this Court to represent the interests of all of the investors of Plexcoin in the present proceedings, this intervention being limited to the approval of the Plan of distribution and the determination of those persons whose claim should be included in the latter;

[41] **ORDER** that the *Ad Hoc* Committee of Investors of Plexcoin be composed of the following individual investors, namely:

- Skip Shapiro from the United States
- Michael Isang from Nigeria
- Rose Thomas from the United States
- Marx Hu from Malaysia
- Roehl Dumlao from the Philippines
- Steve McQueen from the United States
- Frank D'Assisi from Canada
- Calvin Tewari from the Netherlands
- Javier Puente from the United States

[42] **AUTHORIZE** the *Ad Hoc* Committee of Investors of Plexcoin to retain the services of the law firm Lavery, de Billy LLP as representative counsel («Representative Counsel») for the investors of Plexcoin in the present proceedings;

[43] **DISMISSES** the request of payment of the Representative Counsel's fees and disbursments;

[44] **THE WHOLE** without costs.

J.C.S.

DANIEL DUMAIS, J.C.S.

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For the Securities and Exchange Commission

Hearing date: November 22, 2019