

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL
No.: 500-11-055122-184

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, C C-36, AS AMENDED:

LE GROUPE SMI INC./THE SMI GROUP INC. et al.

Debtors

-and-

LE GROUPE S.M. INTERNATIONAL S.E.C. et al.

Mises-en-cause

-and-

ALARIS ROYALTY CORP.

INTEGRATED PRIVATE DEBT FUND V LP.

Applicants

-and-

DELOITTE RESTRUCTURING INC.

Monitor

JOINT APPLICATION TO EXTEND THE STAY PERIOD
(Section 11.02 of the *Companies' Creditors Arrangement Act*)

TO THE HONORABLE JUSTICE CHANTAL CORRIVEAU, SITTING IN COMMERCIAL DIVISION IN THE DISTRICT OF MONTREAL, THE APPLICANTS RESPECTFULLY STATE:

I. INTRODUCTION

1. By the present joint application (this "**Application**"), the Applicants seek to continue the Restructuring process commenced pursuant to the Initial Order rendered on August 24, 2018 (as amended on September 21 and November 12, 2018, the "**Initial Order**") in respect of the Debtors and the Mises-en-cause (collectively, the "**Debtors**" or the "**SM Group**"), the whole for the benefit of all of the Debtors' stakeholders.

2. All capitalized terms used but not otherwise defined in this Application have the meanings ascribed to them in the Initial Order.
3. The Applicants seek an extension of the Stay Period until May 10, 2019, in order to, in particular, allow for:
 - (a) the potential monetization of certain remaining assets of the Debtors; and
 - (b) the completion of the final steps in the Transaction (as defined below) whereby substantially all of the Business was sold.
4. The Monitor supports this Application and is of the view that the extension sought is appropriate in the circumstances, as will appear more fully from Monitor's Fifth Report to the Court (the "**Monitor's Fifth Report**") to be filed prior to the hearing.

II. **BACKGROUND**

5. On application of the Applicants, this Court rendered the Initial Order on August 24, 2018 commencing proceedings under the CCAA in respect of the Debtors (the "**CCAA Proceedings**"), the whole as appears from the Court record.
6. The Initial Order provided for the appointment of the Monitor and of LGBM Inc. as Chief Restructuring Officer (the "**CRO**"), the latter being granted various powers, to be exercised in consultation with the Monitor and the Applicants, in connection with the management of the Debtors' affairs and the development and implementation of Restructuring initiatives.
7. On September 21, 2018, this Court extended the Stay Period and the application of the Initial Order until November 14, 2018, as appears from the Court record.
8. On November 12, 2018 this Court issued an order (as corrected on December 7, 2018, the "**Approval and Vesting Order**") approving a transaction (the "**Transaction**") whereby substantially all of the assets of certain of the Debtors (the "**Vendors**") were sold to FNX-Innov Inc. (formerly 11017870 Canada Inc., "**FNX**"), Thornhill G.P. and 11054953 Canada Inc. (collectively, the "**Purchasers**"), as appears from the Court record.
9. Pursuant to the Approval and Vesting Order, this Court also:
 - (a) authorized the Applicants to extend transition financing (the "**Transition Financing**") to the Purchasers to be repaid in accordance with the terms of a Transition Financing Agreement forming part of the agreements governing the Transaction (the "**Transition Financing Agreement**");
 - (b) discharged and released the CRO from his functions in the CCAA Proceedings and expanded the Monitor's powers such that the latter has since had effective control over the Debtors' affairs and operations; and

- (c) extended the Stay Period and the application of the Initial Order until December 19, 2018.
10. On December 10, 2018, this Court issued an order (the “**Assignment Order**”) authorizing the assignment to FNX of the Vendors’ rights, benefits, obligations and interests under various agreements and approving an “administrative” assignment process whereby FNX could seek and obtain the assignment in its favour of the Vendors’ rights, benefits, obligations and interests under other agreements within a 60 day period following the final closing of the Transaction (the “**Post-Closing Assignment Process**”), the whole as appears from the Court record.
 11. Pursuant to the Assignment Order, this Court also extended the Stay Period and the application of the Initial Order until March 8, 2019.

III. THE EXTENSION SOUGHT IS NECESSARY AND APPROPRIATE

12. It is respectfully submitted that the Applicants and the Debtors, with the latter’s affairs now being managed by the Monitor in consultation with the Applicants, have acted, and are acting in good faith and with due diligence.
13. Moreover, the Applicants and the Monitor are of the respectful view that it is necessary and appropriate to extend the Stay Period until May 10, 2019 to, *inter alia*, permit the Monitor to:
 - (a) explore and, where appropriate, pursue the monetization of certain remaining assets of the Debtors; and
 - (b) complete the implementation of the Transaction in accordance with the prior orders of this Court.

A. Potential monetization of remaining assets of the Debtors

14. While the Purchasers acquired substantially all of the assets of the Vendors pursuant to the Transaction, certain assets were excluded from the sale, including any of the Vendors’ rights, title and interest in:
 - (a) certain research and development tax credits under the federal Scientific Research and Experimental Development (SR&ED) program (the “**SRED Tax Credits**”);
 - (b) certain claims against third parties, including against Mr. Bernard Poulin (“**Poulin**”), a former director and shareholder of the Debtors; and
 - (c) a receivable owed by Groupe Hexagone S.E.C. or any of its affiliates (the “**Hexagone Receivable**”).

15. As will appear from the Monitor's Fifth Report, the Monitor is in the process of determining whether and to what extent the SRED Tax Credits can be monetized and is currently awaiting payment of the Hexagone Receivable.
16. The Applicants and the Monitor are also in the process of exploring whether certain life insurance policies subscribed by Poulin for the benefit of certain of the Debtors can be monetized.
17. Furthermore, in the fall of 2018, the Applicants instituted proceedings in the context of the CCAA Proceedings seeking, *inter alia*, monetary condemnations against Poulin in favour of certain of the Debtors for principal amounts totaling over 8 million dollars (the "**Poulin CCAA Proceedings**").
18. Following various discussions and exchanges of information arising out of the Poulin CCAA Proceedings, including in respect of Poulin's purported financial capacity, Applicant Alaris Royalty Corp. issued an application for a bankruptcy order against Poulin on March 1, 2019, which will be presented on March 20.
19. In the event that Poulin is adjudged bankrupt or makes a voluntary assignment, it will necessarily impact the Poulin CCAA Proceedings and the Applicants and/or the Monitor, on behalf of certain of the Debtors, intend to pursue their claims in the context of Poulin's bankruptcy proceedings.
20. It is therefore respectfully submitted that additional time is required to explore and, if appropriate, pursue various potential avenues to realizing on certain of the Debtors' remaining assets, the whole for the benefit of the SM Group's creditors.

A. Completion of the implementation of the Transaction

21. Pursuant to the Transition Financing Agreement, the Transition Financing is to be reimbursed once the Transition Lender (as defined therein) receives satisfactory confirmation that all of the SM Group's employees retained following the Transaction have received the payments owed to them under Wage Earner Protection Program ("**WEPP Payments**").
22. As will appear from the Monitor's Fifth Report, the Monitor has yet to receive all of the information necessary to finalize its calculations in respect of the WEPP Payments, as is required in order to permit the reimbursement of the Transition Financing.
23. As will further appear from the Monitor's Fifth Report, various oppositions have been, or may be filed by certain counterparties to agreements for which the assignment to FNX has been sought pursuant to the Post-Closing Assignment Process, which was authorized pursuant to the Assignment Order and is an essential part of the Transaction's implementation.

24. Consequently, it is respectfully submitted that an extension of the Stay Period is necessary to allow the Monitor to take the necessary steps, in its own capacity and on behalf of the Debtors, to complete the implementation of the Transaction.

IV. CONCLUSION

25. In light of the foregoing, the Applicants respectfully submit, with the support of the Monitor, that the relief sought pursuant to this Application should be granted.

26. Given the need to complete the Restructuring process as quickly as possible, it is respectfully requested that this Court order the provisional execution of the order sought pursuant to this Application, notwithstanding any appeal.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Joint Application to Extend the Stay Period* of the Applicants (the “**Application**”);

RENDER an Order substantially in the form of the draft *Extension Order* filed in support of the Application as **Exhibit A-1**;

THE WHOLE WITHOUT COSTS, except in the case of contestation.

Montréal, March 5, 2019

Montréal, March 5, 2019

(s) Miller Thomson LLP

(s) McCarthy Tétrault LLP

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AFFIDAVIT

I, the undersigned, **DARREN DRISCOLL**, Chief Financial Officer of Alaris Royalty Corp., having a place of business at 250, 333 – 24th Avenue S. W., Calgary, Alberta, T2S 3E6, solemnly affirm that all of the facts alleged in the present *Joint Application to Extend the Stay Period* that do not otherwise appear from the Court record are true.

AND I HAVE SIGNED:

DARREN DRISCOLL

SOLEMNLY DECLARED before me

at _____

this ____ day of March, 2019

Commissioner of Oaths/Notary Public

AFFIDAVIT

I, the undersigned, **GREG DIMMER**, Managing Director of Integrated Asset Management Corporation, having a place of business at 2000 McGill College Avenue, Suite 600, Montréal, Québec, H3A 3H3, solemnly affirm that all of the facts alleged in the present *Joint Application to Extend the Stay Period* that do not otherwise appear from the Court record are true.

AND I HAVE SIGNED:

GREG DIMMER

SOLEMNLY DECLARED before me

at _____

this ____ day of March, 2019

Commissioner of Oaths/Notary Public

NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the present application will be presented for adjudication before the Honourable Justice Chantal Corriveau of the Superior Court of Quebec, sitting in the commercial division for the district of Montreal, at the Montreal Courthouse, located at 1 Notre-Dame Street East, Montreal, Quebec, H2Y 1B6, on **March 8, 2019** at **1:45 p.m.** in **room 15.04.**

Montréal, March 5, 2019

(s) Miller Thomson LLP

Miller Thomson LLP
Lawyers for the Applicant
Integrated Private Debt Fund V LP
M^{tre} Kyla Mahar
M^{tre} Michel Laroche

Montréal, March 5, 2019

(s) McCarthy Tétrault LLP

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M^{tre} Jocelyn T. Perreault
M^{tre} Noah Zucker

EXHIBIT A-1

SUPERIOR COURT
(COMMERCIAL DIVISION)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No: 500-11-055122-184

Date: March 8, 2019

PRESIDING: THE HONOURABLE CHANTAL CORRIVEAU, S.C.J.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, C C-36, AS AMENDED:

LE GROUPE SMI INC./THE SMI GROUP INC. et al.

Debtors

-and-

LE GROUPE S.M. INTERNATIONAL S.E.C. et al.

Mises-en-cause

-and-

ALARIS ROYALTY CORP.

INTEGRATED PRIVATE DEBT FUND V LP.

Applicants

-and-

DELOITTE RESTRUCTURING INC.

Monitor

EXTENSION ORDER

[1] **ON READING** the *Joint Application to Extend the Stay Period* (the "**Application**"), of the Applicants, Alaris Royalty Corp. and Integrated Private Debt Fund V LP, as well as the affidavits filed in support thereof;

[2] **SEEING** the Monitor's Fifth Report;

[3] **SEEING** the submissions of the attorneys present at the hearing of the Application and the testimony of the witnesses heard;

- [4] **SEEING** the provisions of the *Companies' Creditors Arrangement Act* ("**CCA**");
- [5] **SEEING** the Initial Order rendered on August 24, 2018 (as amended on September 21 and November 12, 2018, the "**Initial Order**");

THE COURT:

- [6] **GRANTS** the Application;
- [7] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly returnable today and hereby dispenses the Applicants with any further notification thereof;
- [8] **ORDERS** that the Stay Period (as defined in the Initial Order) and the application of the Initial Order is extended until May 10, 2019;
- [9] **ORDERS** the provisional execution of this Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

THE WHOLE WITHOUT LEGAL COSTS.

CHANTAL CORRIVEAU, J.S.C.

**SUPERIOR COURT
(Commercial Division)**

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL
No.: 500-11-055122-184**

**IN THE MATTER OF THE COMPANIES' CREDITORS
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Monitor

**JOINT APPLICATION TO EXTEND THE STAY
PERIOD AND EXHIBIT A-1**

BC0847

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