

**SUPERIOR COURT**  
(Commercial Division)

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

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

**THE SMI GROUP INC.**  
**THE S.M. GROUP INC.**  
**CLAULAC INC.**  
**SMI CONSTRUCTION INC.**  
**ÉNERPRO INC.**  
**S.M. INTERNATIONAL GROUP (CONSTRUCTION) INC.**  
Debtors

-and-

**THE S.M. GROUP INTERNATIONAL LP**  
**THE S.M. GROUP (ONTARIO) INC.**  
**AMÉNATECH INC.**  
**LABO S.M. INC.**  
**S.M. INDUSTRIAL CONSULTANTS INC.**  
**S.M. CONSULTANTS INC.**  
**3215288 CANADA INC. (FORMERLY CSP SECURITY CONSULTING INC.)**  
**THE S.M. GROUP INTERNATIONAL (S.A.) INC.**  
**LE GROUPE S.M. INTERNATIONAL (CONSTRUCTION) EURL**  
**SM SAUDI ARABIA CO LTD.**  
**THE S.M. GROUP INTERNATIONAL SARL**  
**THE S.M. GROUP INTERNATIONAL ALGÉRIE EURL**  
**S.M. UNITED EMIRATES GENERAL CONTRACTING LLC**  
**SMI-ENERPRO GREEN FUND GP INC.**  
**SMI-ENERPRO GREEN FUND LP**  
**9229-4263 QUÉBEC INC.**  
Mises-en-cause

-and-

**ALARIS ROYALTY CORP.**  
**INTEGRATED PRIVATE DEBT FUND V LP**  
Applicants

-and-

**DELOITTE RESTRUCTURING INC.**  
Monitor

-and-

**AXOR EXPERTS-CONSEILS INC.**, a corporation duly constituted having its registered office at 5101 Buchan Street, Suite 400, Montréal, Quebec, H4P 1S4;  
Impleaded Party

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**JOINT APPLICATION FOR AN EXTENSION AND APPROVAL ORDER**  
(Sections 11 and 11.02 (2) of the *Companies' Creditors Arrangement Act*)

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**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, Alaris Royalty Corp. and Integrated Private Debt Fund V LP, seek, on behalf of the Debtors and the Mises-en-cause (collectively, the "**Debtors**"):

- (a) an extension of the application of the Initial Order rendered on August 24, 2018 (as amended on September 21 and November 12, 2018 and extended from time to time, the "**Initial Order**") to May 10, 2020; and
- (b) the approval of a settlement concluded between the Monitor and the Impleaded Party, Axor Experts-Conseils Inc. ("**Axor**"),

the whole in accordance with the draft Extension and Settlement Approval Order (the "**Proposed Order**") communicated herewith as **Exhibit A-1**.

2. It is respectfully submitted that the Application should be granted given that:

- (a) the requested extension of the Stay Period (as defined in the Initial Order) until May 10, 2020, is necessary given the Monitor's implication as respondent to an pending appeal before Court of Appeal of Quebec; and
- (b) the proposed settlement should be approved and implemented as it is fair, reasonable and agreed by the only creditors of the Debtors that are affected by such settlement.

3. The Monitor supports the relief contemplated in the Proposed Order, the whole as will be explained more fully in the Monitor's Eighth Report to the Court (the "**Monitor's Eighth Report**") to be filed prior to the hearing of this Application.

**II. BACKGROUND**

4. On application of the Applicants, this Court rendered the Initial Order on August 24, 2018 commencing these proceedings under the CCAA (the "**CCAA**"),

- Proceedings**) Pursuant to the Initial Order, the Monitor was appointed as CCAA monitor of the Debtors.
5. On September 21, 2018, this Court issued an order, *inter alia*, amending the Initial Order and extending the Stay Period to November 14, 2018.
  6. On October 25, 2018, the Monitor filed an application with a view to permitting the payment of certain amounts owed to one of the Debtors, Les Consultants S.M. Inc. ("**SM Consultants**") by Les Ponts Jacques Cartier et Champlain Incorporée ("**PJCCI**"), on terms that would preserve the rights of certain potentially affected parties (as amended on November 2, 2018, the "**PJCCI Application**").
  7. On November 7, 2018, prior to the presentation of the PJCCI Application, Axor filed an application seeking, *inter alia*, the payment of the amounts allegedly owed to it by SM Consultants (the "**Axor Claim**").
  8. On November 8, 2018, this Court granted the PJCCI Application and ordered PJCCI to pay the Monitor certain amounts to be held in trust (the "**Amounts in Trust**") and released with 30 days unless claims were asserted by certain parties, in which case, the Monitor was required to maintain a portion of the Amounts in Trust sufficient to cover any such claims pending further order of this Court, as appears from the order (the "**PJCCI Order**"), attached hereto as **Exhibit A-2**.
  9. On November 12, 2018, this Court rendered an order, *inter alia*, approving a transaction involving the sale of substantially all of the assets of certain of the Debtors (the "**Vendors**") to FNX-Innov Inc. (formerly 11017870 Canada Inc., "**FNX**") and certain entities related to it and extending the Stay Period and the application of the Initial Order to December 19, 2018.
  10. On December 10, 2018, this Court issued an order assigning the rights, benefits, obligations and interests of the Vendors under various agreements to FNX and extending the Stay Period and the application of the Initial Order to March 8, 2019.
  11. On December 11, 2018, the Monitor, having not received any further claims against the Amounts in Trust in accordance with the PJCCI Order, released the Amounts in Trust less the amount of the Axor Claim.
  12. On March 1, 2019, this Court rendered judgment on an application filed by the Monitor in connection with the City of Montreal's right to operate compensation in respect of certain amounts owed to the Vendors (the "**Compensation Judgment**").
  13. On March 8, 2019, this Court issued an order extending the Stay Period and the application of the Initial Order to May 10, 2019.
  14. On April 10, 2019, the Court of Appeal of Quebec granted leave to the City of Montreal to appeal the Compensation Judgment and established a procedural timetable for the adjudication of the appeal (the "**Compensation Appeal**").

15. On May 10, 2019, this Court issued an order, *inter alia*, extending the Stay Period and the application of the Initial Order until November 15, 2019.
16. On July 19, 2019 this Court approved a transaction involving the sale and assignment of various insurance policies subscribed on the life of Bernard Poulin (“**Poulin**”) for the benefit of certain Debtors (the “**Life Insurance Policies**”), and the transaction closed thereafter.
17. On September 12, 2019, the Compensation Appeal was heard by the Court of Appeal and the matter was taken under advisement.
18. On October 22, 2019, Axor confirmed to the Monitor and the Applicants that it agreed to the essential terms of a settlement of the Axor Claim (the “**Settlement**”) and requested that a draft agreement be prepared to formalize the transaction, the whole as appears from several emails between counsel for Axor, the Monitor and the Applicants, communicated herewith *under seal* as **Exhibit A-3**.
19. The terms of the Settlement are reflected in the draft confidential Settlement Agreement (the “**Draft Settlement Agreement**”) which has been circulated between the parties and will be finalized prior to the hearing, communicated herewith *under seal* as **Exhibit A-4**.

### **III. THE RELIEF SOUGHT IS NECESSARY AND APPROPRIATE**

#### **A. The requested extension of the Stay Period should be granted**

20. As noted above, the Court of Appeal heard the Compensation Appeal on September 12, 2019 and took the case under advisement.
21. As at the date of this Application, the Compensation Appeal remains under advisement such that no judgment has been rendered.
22. The Applicants therefore have no choice but to seek the extension of the Stay Period until the Compensation Appeal is finally determined, given that the Monitor is the respondent to the appeal.
23. Moreover, given the amounts at issue and the questions raised by the Compensation Appeal, it is possible that, following the judgment of the Court of the Appeal, one or more of the parties may seek leave to appeal that judgment to the Supreme Court of Canada.
24. In order to avoid the costs of seeking additional incremental extensions of the Stay Period, an extension to May 10, 2020 is requested to, in all likelihood, allow for sufficient time for the Compensation Appeal to be finally determined.
25. Following the disposition of the Life Insurance Policies, the Monitor’s activities in the context of the CCAA proceedings are expected to be minimal such that the continuation of the process will not generate significant costs, as appears from the Monitor’s Eighth Report.

26. With respect to the SM Group's claims against Poulin, the Monitor has filed proofs of claim in Poulin's bankruptcy proceedings on behalf of 3215288 Canada Inc. (formerly CSP Security Consulting Inc.), S.M. Group International LP, The S.M. Group Inc. and Les Services de Personnel S.M. inc. (in the latter case, in its capacity as trustee in bankruptcy) for amounts totaling more than \$8,000,000 (the "**Bankruptcy Claims**").
27. The Monitor will continue to assert the Bankruptcy Claims on behalf of the relevant members of the SM Group during the Stay Period. In the event that further actions are necessary to assert such claims after the completion of the CCAA Proceedings, appropriate measures will be implemented.
28. The Applicants and the Debtors, with their affairs now being managed by the Monitor in consultation with the Applicants, have acted, and are acting in good faith and with due diligence.
29. FNX, which has an important interest in the outcome of the Compensation Appeal and the CCAA Proceedings also supports the requested extension to the Stay Period.
30. It is therefore respectfully submitted that the requested extension to the Stay Period and the application of the Initial Order should be granted.

**B. The Settlement should be approved and implemented**

31. Pursuant to the PJCCI Order, the Monitor cannot release the remaining Amounts in Trust without a further order of this Court.
32. As noted above and as appears from the Draft Settlement Agreement, the Monitor and Axor have agreed to settle the Axor Claim without any admission and in order to avoid the costs of adjudicating such claim.
33. The Applicants are the only party with any economic interest in the determination of the Axor Claim and have consented to the terms of the Settlement.
34. Moreover, the Monitor is of the view that the settlement is fair and reasonable in the circumstances, as appears from the Monitor's Eighth Report.
35. It is therefore respectfully submitted that the Court should approve the Settlement and authorize the parties to enter into the Draft Settlement Agreement subject to any further adjustments as agreed to by the Monitor, Axor and the Applicants.

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**GRANT** the present *Joint Application for an Assignment and Approval Order* (the "**Application**");

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

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

Montréal, November 8, 2019

(s) Miller Thomson LLP

Miller Thomson LLP  
Lawyers for the Applicant  
Integrated Private Debt Fund V LP  
M<sup>re</sup> Kyla Mahar  
M<sup>re</sup> Michel Laroche

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Montréal, November 8, 2019

(s) McCarthy Tétrault LLP

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**AFFIDAVIT**

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I, the undersigned, **MARTIN FRANCO**, Senior Vice-President at Deloitte Restructuring Inc., having a place of business at 1190 Avenue des Canadiens-de-Montréal, Suite 500, Montréal, Québec, H3B 0M7, solemnly affirm that all of the facts alleged in the present *Joint Application for an Assignment and Approval Order* that do not otherwise appear from the exhibits thereto and the Court record are true.

AND I HAVE SIGNED:



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**MARTIN FRANCO**

SOLEMNLY DECLARED before me  
at Montréal, Québec  
this 8 day of November, 2019



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Commissioner of Oaths for the Province of Québec



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**NOTICE OF PRESENTATION**

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**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, on **November 12, 2019** at the Montreal Courthouse, located at 1 Notre-Dame Street East, Montreal, Quebec, H2Y 1B6, at **2:00 p.m. in room 16.12.**

Montréal, November 8, 2019

(s) Miller Thomson LLP

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Miller Thomson LLP  
Lawyers for the Applicant  
Integrated Private Debt Fund V LP  
M<sup>tre</sup> Kyla Mahar  
M<sup>tre</sup> Michel Laroche

Montréal, November 8, 2019

(s) McCarthy Tétrault LLP

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M<sup>tre</sup> Alain N. Tardif  
M<sup>tre</sup> Jocelyn T. Perreault  
M<sup>tre</sup> Noah Zucker



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**LIST OF EXHIBITS**

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- A-1:** Proposed Order
- A-2:** Order of November 8, 2019
- A-3:** *Under Seal* draft settlement agreement
- A-4:** *Under Seal* email exchange between counsel

Montréal, November 8, 2019

(s) Miller Thomson LLP

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Miller Thomson LLP  
Lawyers for the Applicant  
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M<sup>tre</sup> Kyla Mahar  
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Montréal, November 8, 2019

(s) McCarthy Tétrault LLP

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Impleaded Party

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**JOINT APPLICATION FOR AN EXTENSION AND  
APPROVAL ORDER AND EXHIBITS A-1 TO A-4**

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**ORIGINAL**

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