

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial Division)

No. : 500-11-055122-184

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 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-

FNX-INNOV INC.
SOCIÉTÉ FINANCIÈRE MANUVIE
SUN LIFE DU CANADA, COMPAGNIE D'ASSURANCE VIE

COMPAGNIE D'ASSURANCE DU CANADA SUR LA VIE
L'EMPIRE, COMPAGNIE D'ASSURANCE-VIE

Mises-en-causes

MOTION FOR THE ISSUANCE OF AN APPROVAL AND VESTING ORDER
(Sections 36 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36
(the "CCAA"))

TO THE HONORABLE JUSTICE CHANTAL CORRIVEAU, J.C.S., SITTING IN THE
COMMERCIAL DIVISION IN AND FOR THE DISTRICT OF MONTREAL, THE MONITOR
RESPECTFULLY SUBMITS THE FOLLOWING:

A. INTRODUCTION

1. By the present motion (the "**Motion**"), Deloitte Restructuring Inc. ("**Deloitte**" and the "**Monitor**") seeks the approval of a transaction authorizing the sale and assignment of The S.M. Group Inc.'s ("**SM Group**") rights under and pursuant to ten (10) life insurance policies (the "**Insurance Policies**").¹
2. More specifically, the Monitor hereby requests the issuance of an approval and vesting order pursuant to Section 36 of the CCAA which, among other things:
 - i) approves the transaction (the "**Transaction**") contemplated by the purchase offer submitted by Mr. Eddy Savoie (the "**Purchaser**") dated May 9, 2019, as amended by a revised offer on May 23, 2019, following an auction held at the offices of the undersigned counsel, the purpose of which was to maximize the value of SM Group's rights under the Insurance Policies, for the benefit of its stakeholders; and
 - ii) assigns to and vests in the Purchaser (or a company to be designated by the Purchaser) all of SM Group's rights and obligations under the Insurance Policies, free and clear of any encumbrances.in accordance with the terms set forth in the draft Approval and Vesting Order (the "**Proposed Order**") communicated herewith as **Exhibit R-1**.
3. Both Alaris Royalty Corp. ("**Alaris**") and Integrated Private Debt Fund V LP ("**IPDF**"), secured creditors of SM Group have advised the Monitor that they support the Transaction, as well as the Proposed Order.

¹ All capitalized terms used but not otherwise defined in this Motion have the meaning ascribed to them in the Initial Order rendered on August 24, 2018 (as amended on September 21, 2018 and November 12, 2018).

B. BACKGROUND

4. On application of Alaris and IAM, this Court rendered an Initial Order in respect of the Debtors on August 24, 2018 commencing the present proceedings under the CCAA (the "**CCAA Proceedings**"). Pursuant to the Initial Order, LGBM Inc. was appointed as Chief Restructuring Officer (the "**CRO**") and Deloitte was appointed as monitor.
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 November 12, 2018, this Court rendered the Approval and Vesting Order whereby it:
 - i) approved the transaction between the Vendors and FNX-Innov Inc., Thornhill G.P. and 11054953 Canada Inc. (the "**FNX Transaction**") and its governing agreements;
 - ii) 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
 - iii) extended the Stay Period and the application of the Initial Order to December 19, 2018.
7. On December 10, 2018, this Court issued an order (the "**First Assignment Order**"), pursuant to which it:
 - i) authorized the assignment to FNX of the rights, benefits, obligations and interests of the Vendors (as defined in the Approval and Vesting Order) under various specific agreements;
 - ii) approved an "administrative" assignment process whereby FNX could seek and obtain the assignment in its favour of the Vendors' rights, benefits, obligations and interests under additional agreements within a 60-day period following the final closing of the FNX Transaction (the "**Post-Closing Administrative Assignment Process**"); and
 - iii) extended the Stay Period and the application of the Initial Order to March 8, 2019.
8. On December 13, 2018, this Court rendered another assignment order authorizing the assignment to FNX of the Vendors' rights, benefits, obligations and interests under certain other agreements with the consent of the relevant counterparties and on the same terms as those contemplated in the First Assignment Order.
9. On February 19, 2019, this Court issued an order (oral reasons reported on April 17, 2019), *inter alia*, assigning certain agreements to FNX, in accordance with the Post-Closing Administrative Assignment Process, and declaring that, for greater certainty, the rights, benefits, obligations and interests of any of the Vendors under one or more bids, tenders, offers, *devis*, *soumissions*, and *offres de services* (collectively, "**Tenders**") constituted "agreements" within the meaning of the First Assignment Order.

10. On March 1, 2019, this Court rendered judgment on an Application for Declaratory Judgment 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**"), which Compensation Judgment is currently subject to an appeal filed by the City of Montreal.
11. On March 8, 2019, this Court issued an order extending the Stay Period and the application of the Initial Order to May 10, 2019.
12. On May 10, 2019, this Court issued another order pursuant to which it:
 - i) assigned FNX the rights, benefits, obligations and interests of the Debtors under various additional agreements and approved the procedure for notifying the counterparties to such agreements;
 - ii) approved an additional "administrative" assignment procedure similar to the one already approved by this Court, which would allow the Purchasers to identify and seek the assignment of additional agreements and/or Tenders for 90-day period; and
 - iii) extended the Stay Period and the application of the Initial Order to November 15, 2019.
13. As previously alluded in the Monitor's report to the Court, the Monitor has, in parallel with the above, taken steps in an attempt to monetize the Debtors' remaining assets, which include SM Group's rights to the Insurance Policies.

C. THE MONITOR'S EFFORTS IN RELATION TO THE SALE OF THE INSURANCE POLICIES

14. SM Group is currently the holder and beneficiary of the following ten (10) insurance policies (i.e. the Insurance Policies) insuring the life of two of its former executives, Mr. Poulin and Mr. Laganière:

Insurer	Premiums Paid by SM Group as at May 28, 2019	Policy Number(s)	Policy Date (as amended)	Holder/ Beneficiary	Person Insured	Amount Insured
<i>Société Financière Manuvie</i>	\$1,872,000	5367330	May 30, 2013	SM Group	Bernard Poulin	\$2.50M
		5778987	February 27, 2013	SM Group	Bernard Poulin	\$2.28M
		8942846	December 17, 2009	SM Group	Bernard Poulin	\$3.0M

Insurer	Premiums Paid by SM Group as at May 28, 2019	Policy Number(s)	Policy Date (as amended)	Holder/ Beneficiary	Person Insured	Amount Insured
		8709872	December 1, 2005	SM Group	Gérard Laganière	\$2.29M
<i>Sun Life du Canada, compagnie d'assurance-vie</i>	\$1,400,000	AV-J332, 672-8	February 4, 2011	SM Group	Gérard Laganière	\$2.0M
		AV-J211, 580-9	December 15, 2010	SM Group	Gérard Laganière	\$3.0M
<i>Compagnie d'Assurance du Canada sur la Vie</i>	\$1,515,000	15389847	March 1, 2010	SM Group	Bernard Poulin	\$2.0M
		13214740	May 11, 2007	SM Group	Bernard Poulin	\$5.0M
<i>L'Empire, Compagnie d'Assurance-Vie</i>	\$661,000	004029977L	November 29, 2005	SM Group	Bernard Poulin	\$1.93M
		004029953L	January 14, 2002	SM Group	Bernard Poulin	\$1.93M

15. As appears from the above, as at May 28, 2019, SM Group had paid \$5,449,000 in premiums under the Insurance Policies, and the total amount insured by the Insurance Policies is collectively valued at approximately \$25.92M. A copy of each of the Policies is attached hereto at **Exhibits R-2 to R-11**.
16. Over the past few weeks, in light of the significant value associated with SM Group's rights under the Insurance Policies, the Monitor consulted Alaris and IAM with respect to the potential monetization of such rights.
17. Both Alaris and IAM advised the Monitor as to their consent to have the Monitor solicit interests and entertain offers, if any, in respect of SM Group's rights under the Insurance Policies, while minimizing the costs related thereto, due to the financial constraints caused by the insolvency of the Debtors.
18. Over the course of the last few weeks, the Monitor was approached by two parties (including the Purchaser) interested in acquiring SM Group's rights under the Insurance Policies.

19. The Monitor's efforts and discussions with these two (2) interested parties (including the Purchaser) ultimately resulted in each of them submitting offers to purchase SM Group's rights under the Insurance Policies on May 2, 2019 (which was amended on May 16, 2019) and on May 9, 2019, respectively, which offers are communicated herewith, *under seal*, as **Exhibit R-12**, **Exhibit R-13**, and **Exhibit R-14** respectively.
20. Both these offers stipulated, *inter alia*, that the completion of any transaction with regards to SM Group's rights under the Insurance Policies would remain subject to, *inter alia*, the approval from this Court.
21. In an effort to maximize the value of SM Group's rights under the Insurance Policies, the Monitor, in consultation with Alaris and IAM, invited the above two (2) offerors to participate in an auction (the "**Auction**") so as to provide an opportunity to submit a revised offer to the Monitor.
22. On May 16, 2019, the Monitor informed the above two (2) offerors that the Auction would take place on May 23, 2019 at 3:30 p.m. at the offices of the undersigned. A copy of such correspondence containing the parameters of the Auction is communicated herewith, *under seal*, as **Exhibit R-15**.
23. Each of these two (2) offerors agreed to participate in the Auction, to proceed with such Auction on the basis of a specific baseline price and to provide the Monitor with a deposit in the amount of \$100,000 in advance of the Auction.
24. At the close of the Auction, the highest offer which had been submitted with respect to SM Group's rights under the Insurance Policies was submitted by the Purchaser, as appears from the minutes of the Auction and the revised offer submitted by the Purchaser (the "**Winning Bid**"), communicated herewith, *under seal*, as **Exhibit R-16**.
25. The Purchaser now seeks to acquire SM Group's rights to the Insurance Policies through an Asset Purchase Agreement ("**APA**"), which will contain substantially similar terms to those governing the Winning Bid (Exhibit R-16).
26. The Winning Bid is subject to, *inter alia*, the following conditions:
 - i) the Transaction shall be approved by this Court and SM Group's rights under the Insurance Policies shall be vested into the Purchaser free and clear of any lien, hypothec, charge, deemed trust or other encumbrance or title as declared opposable to the party to the Insurance Policies pursuant to the Proposed Order;
 - ii) an asset purchase agreement shall have been entered into in a form satisfactory to the Purchaser;
 - iii) the Proposed Order will have not been stayed, varied in any material respect, set aside or appealed before the Closing Date; and
 - iv) this Motion must be duly served on each insurance company party to the Insurance Policies, prior to the hearing seeking the issuance of the Proposed Order.

D. GROUNDS FOR THIS MOTION

27. The Monitor respectfully submits that the Transaction is fair and reasonable, and is likely the best offer that the Monitor can receive in the current circumstances, without incurring the additional and significant costs associated with a formal sales process. Any additional marketing efforts will unlikely yield a significantly higher offer and may result in additional costs and delays.
28. Alaris and IAM, first ranking secured creditors of SM Group, have advised the Monitor that they are supportive of the Transaction, as well as of the Proposed Order.
29. In light of the foregoing, the Monitor submits that it is appropriate, in the present circumstances, for this Court to approve the Transaction and render the Proposed Order, and that such Proposed Order be declared executory notwithstanding appeal.

WHEREFORE, MAY THIS COURT:

GRANT the present Motion for the Issuance of an Approval and Vesting Order (the "Motion");

DECLARE that the notices given for the presentation of the Motion are proper and sufficient;

ISSUE an order in the form of the draft order filed in support of the Motion as Exhibit R-1;

ORDER the sealing of Exhibits R-12, R-13, R-14, R-15 and R-16 filed in support of the Motion;

ORDER provisional execution notwithstanding appeal;

THE WHOLE without costs, save in case of contestation.

Montreal, June 3, 2019



STIKEMAN ELLIOTT LLP

Lawyers for the Monitor

Deloitte Restructuring Inc.

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AFFIDAVIT

I, the undersigned, Martin Franco, having a place of business at 1190 avenue des Canadiens-de-Montreal, Suite 500, Montreal, Quebec, H3B 0M7, solemnly declare:

I am a Partner, Restructuring of the Monitor;

All the facts alleged in the *Motion for the Issuance of an Approval and Vesting Order* are true.

AND I HAVE SIGNED:


MARTIN FRANCO


SOLEMNLY DECLARED before me
in Montréal this 3rd of June, 2019

Commissioner of Oaths



NOTICE OF PRESENTATION

TO: the Service List

TAKE NOTICE that the *Motion for the Issuance of an Approval and Vesting Order* will be presented for adjudication before one of the Honourable Judges of Superior Court, sitting in practice in and for the District of Montréal, in the Montréal Courthouse, 1 Notre-Dame Street East, on June 6, 2019 in room 16.12, at 9:00 a.m. or so soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

Montreal, June 3, 2019



STIKEMAN ELLIOTT LLP

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Mises-en-causes

LIST OF EXHIBITS IN SUPPORT OF THE MOTION FOR THE ISSUANCE OF AN APPROVAL AND VESTING ORDER
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- | | |
|---|---|
| Exhibit R-1: | Draft Approval and Vesting Order |
| Exhibit R-2: | Policy number 5367330 dated May 30, 2013 and insuring Mr. Bernard Poulin in the amount of \$2.50M by <i>Société Financière Manuvie</i> |
| Exhibit R-3: | Policy number 5778987 dated February 27, 2013 and insuring Mr. Bernard Poulin in the amount of \$2.28M by <i>Société Financière Manuvie</i> |
| Exhibit R-4: | Policy bearing numbers AV-J332, 672-8 dated February 4, 2011 and insuring Mr. Gérard Laganière in the amount of \$2.0M by <i>Sun Life du Canada, compagnie d'assurance-vie</i> |
| Exhibit R-5: | Policy bearing numbers AV-J211, 580-9 dated December 15, 2010 and insuring Mr. Gérard Laganière in the amount of \$3.0M by <i>Sun Life du Canada, compagnie d'assurance-vie</i> |
| Exhibit R-6: | Policy number 15389847 dated March 1, 2010 insuring Mr. Bernard Poulin in the amount of \$2.0M by <i>Compagnie d'Assurance du Canada sur la Vie</i> |
| Exhibit R-7: | Policy number 8942846 dated December 17, 2009 insuring Mr. Bernard Poulin in the amount of \$3.0M by <i>Société Financière Manuvie</i> |
| Exhibit R-8: | Policy number 13214740 dated May 11, 2007 insuring Mr. Bernard Poulin in the amount of \$5.0M by <i>Compagnie d'Assurance du Canada sur la Vie</i> |
| Exhibit R-9: | Policy number 8709872 dated December 1, 2005 insuring Mr. Gérard Laganière in the amount of \$2.29M by <i>Société Financière Manuvie</i> |
| Exhibit R-10: | Policy number 004029977L dated November 29, 2005 and insuring Mr. Bernard Poulin in the amount of \$1.93M by <i>L'Empire, Compagnie d'Assurance-Vie</i> |
| Exhibit R-11: | Policy number 004029953L dated January 14, 2002 and insuring Mr. Bernard Poulin in the amount of \$1.93M by <i>L'Empire, Compagnie d'Assurance-Vie</i> |
| Exhibit R-12:
[confidential seal] | Offer made by an offeror to Deloitte Restructuring Inc. in its capacity as Monitor on May 2, 2019 |
| Exhibit R-13:
[confidential seal] | Offer made by Eddy Savoie to Deloitte Restructuring Inc. in its capacity as Monitor on May 9, 2019 |

- Exhibit R-14:** Amended offer made by an offeror to Deloitte Restructuring Inc. in its capacity as Monitor on May 16, 2019
[confidential seal]
- Exhibit R-15:** Correspondence from the Monitor containing the parameters of the Auction dated May 16, 2019
[confidential seal]
- Exhibit R-16** Minutes of the auction and revised offer of Mr. Eddy Savoie dated May 23, 2019
[confidential seal]

Montreal, June 3, 2019



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Mises-en cause

BS0350

File: 140238-1002

MOTION FOR THE ISSUANCE OF
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AFFIDAVIT, NOTICE OF PRESENTATION, LIST OF
EXHIBITS AND EXHIBITS R-1 TO R-16

ORIGINAL

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