

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

FORMERXBC HOLDING USA INC.
(f/k/a XEBEC HOLDING USA INC.), *et al.*,

Debtor in a foreign proceeding.¹

Chapter 15

Case No. 22-10934 (KBO)

Jointly Administered

**DECLARATION OF JEAN-FRANÇOIS NADON, CPA, CIRP, LIT, ON BEHALF OF
DELOITTE RESTRUCTURING INC., IN ITS CAPACITY AS COURT-APPOINTED
MONITOR IN THE CANADIAN PROCEEDING, IN SUPPORT OF FOREIGN
REPRESENTATIVE'S MOTION FOR ORDER (I) RECOGNIZING AND ENFORCING
CCAA VESTING ORDER; (II) APPROVING THE SALE OF CERTAIN OF THE
DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, AND
ENCUMBRANCES; AND (III) GRANTING RELATED RELIEF**

I, Jean-François Nadon, CPA, CIRP, LIT, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury under the laws of the United States, as follows:

1. I am practicing my profession in the Montréal office's restructuring services department of Deloitte Restructuring Inc. and am a duly authorized representative of Deloitte Restructuring Inc. (the "**Monitor**"). The Monitor has acted as the monitor of the above-captioned debtors (the "**Debtors**"), in a proceeding (the "**Canadian Proceeding**") commenced under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and

¹ The Debtors in the chapter 15 proceedings and the last four digits of their federal tax identification numbers are: FormerXBC Inc. (f/k/a Xebec Adsorption Inc.) (0228), 11941666 Canada Inc. (f/k/a Xebec RNG Holdings Inc.) (N/A), Applied Compression Systems Ltd. (N/A), 1224933 Ontario Inc. (f/k/a Compressed Air International Inc.) (N/A), FormerXBC Holding USA Inc. (f/k/a Xebec Holding USA Inc.) (8495), Enerphase Industrial Solutions Inc. (1979), CDA Systems, LLC (6293), FormerXBC Adsorption USA Inc. (f/k/a Xebec Adsorption USA Inc.) (0821), FormerXBC Pennsylvania Company (f/k/a The Titus Company) (9757), FormerXBC NOR Corporation (f/k/a Nortekbelair Corporation) (1897), FormerXBC Flow Services – Wisconsin Inc. (f/k/a XBC Flow Services – Wisconsin Inc.) (7493), California Compression, LLC (4752), and FormerXBC Systems USA, LLC (f/k/a Xebec Systems USA LLC) (4156). The location of the Debtors' corporate headquarters and the Debtors' foreign representative is: 730 Industriel Boulevard, Blainville, Quebec, J7C 3V4, Canada.

pending before the Superior Court of Québec (Commercial Division) in the District of Montréal (the “**Canadian Court**”). I am authorized to provide this declaration on behalf of the Monitor.

2. I submit this declaration (“**Declaration**”) in support of the Motion for Order (I) Recognizing and Enforcing the CCAA Vesting Order; (II) Approving the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, and Encumbrances; and (III) Granting Related Relief (the “**Sale Motion**”)², which seeks approval of the BioStream Transaction.

3. In preparing this Declaration, I reviewed the (a) Sale Motion; (b) the proposed order with respect to the Sale Motion; (c) the Canadian Vesting Order; (d) the Purchase Agreement, the Binding LOI, and other documents relating to the BioStream Transaction; (e) other relevant filings in these chapter 15 cases and in the Canadian Proceeding; and (f) the relevant provisions of the CCAA as they relate to the sale of assets and cross-border insolvencies or these chapter 15 cases.

The BioStream Transaction

4. Following the closing of a separate sale transaction with Ivys that did not include assets located in the United States, Ivys expressed an interest in acquiring the Purchased Assets from FormerXBC.

5. The Debtors and the Monitor subsequently engaged in discussion with Ivys regarding such a transaction, which culminated in FormerXBC and Ivys executing the Binding LOI, pursuant to which Ivys agreed in principle to purchase the Purchased Assets.

6. On August 3, 2023, the parties entered into the Purchase Agreement. Buyer requested the terms of the Purchase Agreement remain confidential until it could satisfy the Buyer Conditions.

² Capitalized but undefined terms herein shall have the meanings set forth in the Sale Motion.

7. On or around August 30, 2023, Buyer informed the Monitor that the Buyer Conditions had been satisfied.

8. The Purchase Agreement requires entry of the Sale and Recognition Order as an additional condition precedent to Closing. Buyer and Seller have satisfied all other conditions precedent to Closing.

9. The BioStream Transaction is the result of the Debtors' thorough, transparent, and fair marketing and sale process – the Canadian Court-approved SISP, which included extensive stakeholder negotiations and engagement, and subsequent sales efforts which ultimately resulted in entry into the Binding LOI and the Purchase Agreement.

10. The Purchase Agreement is the result of an extensive marketing process undertaken by the Debtors and their advisors and the product of arm's-length, good-faith negotiations between the Debtors and Ivys.

11. Prior to entering into the Purchase Agreement and filing the Canadian Application, the Debtors had exhausted all reasonable options for attracting bids for the assets subject to the sale that are higher and better than Ivys' offer. More specifically, the Debtors and the Financial Advisor were engaged in the SISP for six months, followed by additional sale efforts by the Debtors, and have been unable to attract any higher and better offers for the Purchased Assets, whether through the sale of the Debtors' entire business as a going concern, or through the sale of only FormerXBC's assets.

12. I believe there is no evidence of fraud or collusion in the terms of the Purchase Agreement and that no party has engaged in any conduct that would cause or permit the BioStream Transaction to be set aside under section 363(m) of the Bankruptcy Code.

[Signature Page Follows]

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that, based upon my knowledge, information, and belief as set forth herein, the foregoing is true and correct.

Dated: September 8, 2023

/s/ Jean-François Nadon
Jean-François Nadon, CPA, CIRP, LIT
Deloitte Restructuring Inc., in its capacity as
Monitor in the Canadian Proceeding