

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-11-039418-104

SUPERIOR COURT  
(Commercial Division)

IN THE MATTER OF THE JUDICIAL  
REORGANIZATION PROCEEDINGS OF:

COMPAÑIA MEXICANA DE AVIACION,  
S.A. DE C.V.,

Insolvent Debtor

And

MARU E. JOHANSEN,

Foreign Representative / Petitioner

And

SAMSON BELAIR DELOITTE &  
TOUCHE INC.

Information Officer

*AMENDED*  
**TENTH MOTION FOR THE EXTENSION OF THE STAY PERIOD**  
(Sections 46 and following of the Companies' Creditors Arrangement Act, R.C.S. 1985 c. C-36)

TO THE HONOURABLE MR. JUSTICE BRIAN RIORDAN, SITTING IN COMMERCIAL  
DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, PETITIONER  
RESPECTFULLY SUBMITS AS FOLLOWS:

I. INTRODUCTION

1. On August 5<sup>th</sup>, 2010, this Honourable Court issued an Order on a Motion for Recognition of Foreign Proceedings (hereinafter the "**Initial Order**") extending the protection of the *Companies' Creditors Arrangement Act* (hereinafter the "**CCAA**") to Compania Mexicana de Aviacion S.A. de C.V. (hereinafter the "**Insolvent Debtor**" or "**Mexicana**");
2. Pursuant to the Initial Order, Samson Belair Deloitte & Touche Inc. was appointed as Information Officer of the Insolvent Debtor (hereinafter the "**Information Officer**") and a stay of proceedings was ordered until November 10<sup>th</sup>, 2010 (hereinafter the "**Stay Period**");

3. By successive orders of this Honorable Court rendered on November 16<sup>th</sup>, 2010, January 13<sup>th</sup>, 2011, April 14<sup>th</sup>, 2011, July 8<sup>th</sup>, 2011, September 20<sup>th</sup>, 2011, November 29<sup>th</sup>, 2011, February 27<sup>th</sup>, 2012, May 17<sup>th</sup>, 2012 and August 23, 2012, the Initial Order was extended until November 23, 2012, as appears from the court record herein;
4. By the present motion, Petitioner seeks an order granting a tenth extension of the Stay Period for an indefinite period ending at the earliest of the following dates (i) in approximately ninety (90) days on February 21<sup>st</sup>, 2013, or (ii) ten (10) days following the new termination date to be established by the Mexican Court, the whole for the reasons more fully detailed hereinafter;

## II. MEXICANA'S OPERATIONS AND ACTIVITIES

5. Mexicana and its affiliates operate Mexicana Airlines, historically Mexico's largest airline. Mexicana and its affiliates carry passengers and cargo to destinations worldwide;
6. To effectuate a restructuring of its business and financial affairs, on August 2<sup>nd</sup>, 2010 Mexicana voluntarily filed a petition for commencement of a corporate reorganization proceeding (hereinafter the "**Mexican Proceedings**") before Mexico's "*Juzgado Décimo Primero de Distrito en Materia Civil en el Distrito Federal*" (hereinafter the "**Mexican Court**") under Mexico's *Ley de Concursos Mercantiles* (hereinafter the "**Concurso Law**"), the whole as appears from a certified copy of the said petition, bearing the Seal of the Federal District Court for Civil Matters of the Federal District of Mexico, already communicated as Exhibit R-1 in support of the Motion for Recognition of Foreign Proceedings;
7. In connection with the commencement of the Concurso Proceedings, Mexicana's Board of Directors authorized the filing of the Concurso proceedings and appointed Petitioner herein Maru E. Johansen, as its Foreign Representative and specifically authorized the Foreign Representative to seek relief before US Courts under Chapter 15 of the U.S. Bankruptcy Code, the whole as appears from copies of the original Spanish version of a Resolution of the Board of Directors of Mexicana dated July 30<sup>th</sup>, 2010 and of the official English translation of same resolution, communicated of the resolution of the Board of Directors already communicated *en liasse* as Exhibit R-2 in support of the Motion for Recognition of Foreign Proceedings;
8. Similarly, Mexicana's Board of Directors appointed Petitioner herein Maru E. Johansen as its Foreign Representative and specifically authorized the Foreign Representative to seek relief before Canadian Courts under the CCAA, the whole as appears from copies of the original Spanish version of a Resolution of the Board of Directors of Mexicana dated August 4<sup>th</sup>, 2010 and of the official English translation of same resolution, already communicated *en liasse* as Exhibit R-3 in support of the Motion for Recognition of Foreign Proceedings;
9. Following the filing of the petition commencing the Concurso Proceedings, an examination of Mexicana's books and records was conducted by a Court-appointed individual and consequently, on September 6<sup>th</sup>, 2010, the Mexican Court issued a "business reorganization judgment," whereby a stay of seizures, foreclosures and execution of judgments was put in place, and Mexicana began the process of reorganization, the whole as appears from a copy of the said judgment in its original

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Spanish version as well as a copy of the official English translation thereof, already communicated as Exhibits R-1-A and R-1-B in support of the First Motion to Extend;

10. On August 28<sup>th</sup>, 2010, Mexicana announced the suspension of its flights;

### III. RECENT RESTRUCTURING DEVELOPMENTS

11. Since the Ninth Extension Order, Mexicana had continued to resolve important business and legal issues relevant to its restructuring efforts, the whole as more fully detailed hereinafter;

#### A. MEXICAN EXTENSION ORDER RENDERED UNDER THE CONCURSO LAW

12. On November 14<sup>th</sup>, 2011, the Mexican Court issued an order advising the new computation of the delays, which ultimately results in a deadline of February 10<sup>th</sup>, 2012 for the conciliation period, the whole as appears from a copy of the said Order in its original Spanish version as well as a copy of the official English translation thereof (hereinafter the "**November 14<sup>th</sup> Order**"), which were already communicated in support of the Sixth Motion to Extend as Exhibit R-2A and Exhibit R-2B;
13. On February 8<sup>th</sup>, 2012, the Mexican Court issued an order suspending indefinitely the deadline of February 10<sup>th</sup>, 2012 for the conciliation period, the whole as appears from a copy of said Order in its original Spanish version as well as a copy of the official English translation thereof (hereinafter the "**February 8<sup>th</sup> Order**"), which were already communicated in support of the Sixth Motion to Extend as Exhibit R-1A and Exhibit R-1B;
14. The February 8 Order supersedes any previous order with respect to the delays;
15. To date, no further order has been rendered by the Mexican Court with respect to the computation of the delays under the Mexican Proceedings;

#### B. NEW DEVELOPMENTS IN THE CONTEXT OF THE MEXICAN PROCEEDINGS

16. Although Mexicana has moved forward with its business plan and negotiations with suppliers and creditors, the whole as more fully detailed hereafter, some judicial complications, which are totally outside the control of Mexicana, occurred over the last weeks and are creating additional delays in order for the restructuring of the company to be completed;
17. Indeed, further to a complaint made by some of Mexicana's creditors (all government controlled) namely, Bancomext, Mexico City Airport, Aeropuertos y Servicios Auxiliares and Profeco, Judge Felipe Consuelo-Soto, who had been presiding over Mexicana's business reorganization proceedings under the *Concurso Mercantil*, has been temporarily removed from the case while the federal administrative agency *Consejo Federal de la Judicatura* (Judiciary Council) investigates the complaint, the whole as appears from various press releases, already communicated *en liasse* in support of the Ninth Motion to Extend as Exhibits R-2;

18. As of August 13, 2012, Justice Edith Alarcon-Meixueiro (hereinafter "**Justice Alarcon**") was appointed to preside over the Mexican Proceedings, and although this replacement is temporary, there is no certainty on how long the investigation will take;
19. Moreover, pursuant to the Concurso Law, an Administrator and a Conciliator were appointed and currently Mr. Gerardo Badin was cumulating both functions,
20. However, on August 1, 2012 the Secretariat of Communications and Transport of Mexico (hereinafter the "**SCT**") issued a notice by which it requested the appointment of a new Administrator and a new Conciliator. As such, Mr. Jose Luis Stein-Velazco was proposed as the new Administrator, and the SCT asked Justice Alarcon to formalize a request to the appropriate federal entity, IFECOM, to appoint a new Conciliator, the whole as appears from a copy of the Notice issued by the SCT, already communicated in support of the Ninth Motion to Extend as Exhibits R-3;
21. In response to SCT's notice, on or about September 3<sup>rd</sup>, 2012, Mr. Badin issued a comprehensive report of his activities in his capacity as Administrator and Conciliator, the whole as appears from a copy of the original Spanish version thereof, communicated herewith as **Exhibit R-1**;
22. By order dated September 13, 2012 (hereinafter the "**September 13 Order**"), Justice Alarcon declared that the SCT proceedings were legally unacceptable and therefore confirmed Mr. Gerardo Badin in his functions as Administrator and Conciliator, the whole as appears from the original Spanish version of the September 13 Order, communicated herewith as **Exhibit R-2**, from the original Spanish Version of an information bulletin issued by Gerardo Badin dated September 17, 2012, communicated herewith as **Exhibit R-3** and from a certified English translation of said information bulletin, dated September 17, 2012 summarizing the various points made by Justice Alarcon in the September 13 Order (the "**September 17 Bulletin**"), communicated herewith as **Exhibit R-4**;
23. As it appears from Exhibit R-2, in the September 13 Order, Justice Alarcon also stated that she was of the opinion that the information disclosed by Mexicana in both internal and external media has been accurate and factually supported at the various stages of the restructuring process;
24. Finally, Justice Alarcon added that, at the time, Mexicana had only three pending issues to resolve in order to complete its restructuring process, namely: (i) to complete the recapitalization of the business; (ii) to obtain the Aviation Operator Certificate (AOC) and (iii) to conclude negotiations with the two primary creditor banks, the whole as it appears from Exhibit R-4;
25. Moreover, on September 20, 2012, Justice Alarcon rendered an order whereby she confirmed Mexicana's rights to the routes granted by concession from the Mexican Government and that the use of these routes by other airlines pending Mexicana's restructuring was and remains strictly temporary, the whole as appears from a copy of the original Spanish version of the September 20, 2012, communicated herewith as **Exhibit R-5** and from a certified English translation of said order, communicated herewith as **Exhibit R-6**

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**C. NEW CORPORATE GROUP DESIGNATED AS PREFERRED INVESTOR**

26. In the months prior to the Seventh extension order, Mexicana, the Conciliador and the Mexican Government were in negotiation with at least six (6) groups of prospective investors for the acquisition and recapitalization of Mexicana (hereinafter the "**Potential Investors**"), including, among others Group Med Atlantica (hereinafter "**Med Atlantica**") and a group of investors led by Ivan Barona (hereinafter "**Barona**");
27. Group Med Atlantica was one of the Potential Investors that completed their due diligence with respect to the Insolvent Debtor and that advised Mexicana and the Conciliador accordingly;
28. Since the Seventh Extension Order, Group Med Atlantica had demonstrated to the satisfaction of the Mexican Court, that it had the required funds to recapitalize the Insolvent Debtor;
29. Moreover, the Mexican Minister of Finance had recently conducted its due diligence with respect to the provenance of the funds, and was able to confirm that these funds were not derived from proceeds of crime;
30. Once the verification of the provenance of the funds was finalized, the Insolvent Debtor became in a position to complete the steps required to finalize negotiations with Med Atlantica in order to draft and execute a binding agreement that would provide the funding of Mexicana's restructuring plan and continued operations;
31. The first step in this endeavour was the execution of an agreement providing for the transfer of the shares of Nuevo Grupo Aeronáutico, the parent company of Mexicana, which were held by Tenedora K (95%) and the pilots' union (5%), to Group Med Atlantica (the "**Transfer Agreement**");
32. Although intensive negotiations took place between the various entities composing Med Atlantica and Tenedora K in order to determine the exact terms and conditions of the Transfer Agreement, and notwithstanding the fact that Justice Consuelo Soto, who was formerly presiding the Mexican Proceedings, was directly involved in order facilitate said negotiations, it appears that the transfer of the share was never perfected, although it is not possible for the Petitioner or for Mexicana to confirm this, as the transaction or presumed transaction between Med Atlantica and Tenedora K is private in nature and neither Petitioner nor representatives of Mexicana have been apprised of same;
33. In light of the foregoing, by Order rendered on October 1<sup>st</sup>, 2012 (hereinafter the "**October 1<sup>st</sup> Order**"), Justice Alarcon ordered Med Atlantica to provide the Court, by no later than October 3, 2012, with the following information:
  - (i) the name of at least one Mexican partner entity forming part of the Med Atlantica group designated to acquire the Shares of of Nuevo Grupo Aeronáutico. Indeed, because Med Atlantica is a Spanish enterprise, it must comply with the Mexican law regarding foreign capital holdings of Mexican business entities;
  - (ii) evidence of the legal status of such entity forming part of the Med Atlantica Group and its financial capacity;

- (iii) evidence that the Mexican entity(ies) forming part of the Med Atlantica Group, alone or in conjunction with other members of the Med Atlantica group, had at least US\$100M on deposit in a Mexican financial institution;

the whole as appears from the original Spanish version of the October 1<sup>st</sup> Order, communicated herewith as **Exhibit R-7**;

34. However, by Order rendered on October 10, 2012 (hereinafter the "**October 10 Order**"), Justice Alarcon declared that Med Atlantica was no longer the preferred investor with respect to the restructuring process of Mexicana. Indeed, in the October 10 Order, Justice Alarcon explained that Med Atlantica did not comply with the requirements contained in the October 1<sup>st</sup> Order insofar as it failed to show proof of (i) the legal existence of the Mexican partner, namely Bahia De Banderas S.A. de C.V., and (ii) the financial capability of same. In the October 10 Order, Justice Alarcon also denied the 10 day extension sought by Med Atlantica in order to attempt to comply with the requirements contained in the October 1<sup>st</sup> Order, the whole as appears from the original Spanish version of the October 10 Order, communicated herewith as **Exhibit R-8**;
35. Moreover, by Order rendered on October 15, 2012 (hereinafter the "**October 15 Order**"), Justice Alarcon appointed Barona, on his own behalf and acting as Secretary of the Board of Directors of BF International Mining Traders (hereinafter "**BF International**"), as "sole and potential" investors in Mexicana, notably in light of the persistent and uninterrupted interest shown by them, the whole as appears from a the original Spanish version of the October 15 Order, communicated herewith as **Exhibit R-9** and from a certified translation of the October 15 Order, communicated herewith as **Exhibit R-10**;
36. Pursuant to the October 15 Order, Justice Alarcon ordered Barona and BF International to provide to the Bank of Mexico and to the National Banking and Securities Commission (hereinafter collectively the "**Financial Institutions**") certified copies and official translation of all the documents that were shown to the Court to evidence their financial capability to support the restructuring process, in order for the Financial Institutions to then provide to the Court a detailed report with respect to, notably, the legal and financial strength of these documents, the whole as it appears from the October 15 Order, Exhibit R-10;
37. Most recently, by Order rendered on October 30, 2012 (hereinafter the "**October 30 Order**"), Justice Alarcon ordered Barona and BF International's due diligence process with respect to Mexicana would start no later than November 6, 2012, and would need to be completed within 44 business days, namely no later than approximately January 11, 2013 (depending on Christmas holidays) the whole as appears from original Spanish version of the October 15 Order, communicated herewith as **Exhibit R-11**;
38. As appears from the above, Justice Alarcon has now taken a much more directive approach in order to maximize the chances of success of the restructuring process undertaken by Mexicana;

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**D. PARTIAL OPERATIONS OF MEXICANA AND ITS AFFILIATES**

39. Since the Eight Extension Order, Mexicana, through one of its affiliates, Mexicana MRO, S.A. de C.V. (hereinafter "**MRO**") has continued to operate a portion of the group's business, namely maintenance services including major services to other airlines in its maintenance bases located at Mexico City International Airport and at Guadalajara International Airport;
40. For the purposes of the operations, Mexicana provides MRO with all of the necessary administrative and technical staff, IT and other services with the exception of mechanics which is provided by another affiliate of Mexicana;
41. Mexicana therefore invoices MRO for the services provided, which generates income for Mexicana and allows for the continued, although severely diminished, operation of Mexicana's management staff in order to keep Mexicana afloat until the restructuring is complete;
42. Moreover, Mexicana continues its efforts at collection of its accounts receivables, which also generates much needed cash to support the head office operations, which are critical to the Company's restructuring efforts;
43. Mexicana's MRO division continues to be the principal source of revenue of Mexicana pending its restructuring;

**E. CONSENT OF CREDITORS TO A POTENTIAL RESTRUCTURING PLAN**

44. Over the course of the last year, the Conciliador has been contacting the Insolvent Debtor's Creditors in order to determine what percentage of debt reduction ("*quitas*") they would be willing to accept with respect to their claims against Mexicana;
45. As such, the Conciliador has been able to successfully reach agreements in principle with the majority of the Insolvent Debtor's Creditors and has obtained their consent to a potential restructuring plan (a "*Concurso Agreement*") which would provide for the payment of their claims in accordance with the debt reduction percentage agreed upon or, in the case of those creditors that have not agreed to a specific debt reductions, on the basis of the average debt reduction granted by the creditors having so agreed (hereinafter the "**Creditor Agreement**");
46. In fact, the Conciliador has expressed to the Mexican Court that he has obtained the consent of Sixty Five and Two Tenth percent (65.2%) of the Insolvent Debtor's creditors, which results in an average debt reduction of Eighty Two and Four Tenths percent (82.4%), the whole as appears from the February 8<sup>th</sup> Order, Exhibits R-1A and R-1B to the Seventh Motion to Extend;
47. Although the Creditor Agreement is drafted (in Spanish form only at this point) to a very large extent, it will still require the approval of Mr. Barona's Group, which approval will only be given once due diligence has been completed;
48. It therefore appears that the Creditor Agreement, although not yet finalized, is supported in principle by a vast majority of the Insolvent Debtor's creditors;

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#### F. PROGRESS TOWARDS ISSUANCE OF THE AOC

49. In recent weeks, a dispute has arisen between the SCT, the Conciliator and Mexicana with respect to the financial and technical requirements for the issuance of the OAC. Although this issue is not pressing at this time, Mexicana and the Conciliator are hopeful that the change in government officials which will occur on December 1<sup>st</sup>, 2012 as a result of the election of a new government in Mexico this past summer will allow for a resolution of such dispute and allow for the issuance of the AOC;

#### G. DEVELOPMENTS WITH IATA

50. On or about February 24, 2012, IATA served upon Mexicana a *Motion for and Order Regarding the final settlement of the Debtor's outstanding balance with the IATA Clearing house and for the final distribution of BSP and CASS Proceeds* (the "**IATA Motion**"), the whole as appears from the Court record herein;
51. On September 19, 2012, this Honourable Court rendered an *Interim Order regarding the final settlement of the Debtor's outstanding balance with the IATA Clearing house and for the final distribution of BSP and CASS Proceeds* (the "**Interim Order**"), the whole as appears from the court record herein;
52. The hearing of the IATA Motion was therefore continued before the Honourable Justice Riordan to December 6, 2012;
53. Pursuant to the Interim Order, the Court gave effect to the "Approved Process" for the settlement and compensation of charges by Mexicana to other IATA member airlines and vice-versa;
54. On or about October 1<sup>st</sup>, 2012, IATA and Mexicana executed a letter agreement with respect to the start date of the Approved Process and regarding notices to be provided, the whole as appears from a copy of the said letter agreement, communicated herewith as **Exhibit R-12**;
55. The Approved Process will run for approximately 11 weeks and is currently slated to terminate on December 12, 2012. Unfortunately, because of unforeseen delays in the execution of the letter agreement, Exhibit R-12, it appears that the result of the Approved Process will not be known prior to the hearing Scheduled for December 6, 2012, such that Mexicana and IATA have agreed to request a short postponement thereof to a date in January 2013;

#### IV. EXTENSION OF THE STAY PERIOD

56. Notwithstanding the progress made by the Insolvent Debtor since the Ninth Extension Order, the extension of the Stay Period sought through the present Motion is necessary in order to provide the Insolvent Debtor an adequate time period to, notably, complete the steps required in order implement the recapitalization process that will provide the funding of Mexicana's restructuring plan and continued operations, to restart flight operations, as well as finalize the Creditor Agreement and submit same to the Mexican Court for approval;



57. Given the uncertainty of the deadline for the conciliation period under the Concurso Law following the February 8<sup>th</sup> Order as well as the most recent developments, including the judiciary changes under the Mexican Proceedings, Petitioner respectfully submits that this Honourable Court should render an Order extending the Stay Period for an indefinite period ending on the earliest of the following dates: (i) February 21<sup>st</sup>, 2013, or (ii) ten (10) days following the new termination date to be established by the Mexican Court;
58. In this respect, Petitioner Maru E. Johansen undertakes to immediately advise the Information Officer, this Honorable Court and the members of the service list of the new termination date of the conciliation period to be established by the Mexican Court,
59. Petitioner and the Insolvent Debtor are of the view that extending the Stay Period for such a period is appropriate in the present circumstances;
60. The Information Officer has indicated that it will be filing with the Court a report informing the Court and Mexicana's stakeholders of the various steps taken by Mexicana since the Ninth Extension Order;
61. Since the Ninth Extension Order, the Insolvent Debtor has acted and continues to act in good faith and with due diligence;
62. Based on the foregoing, Petitioner respectfully asks this Court to extend the Stay Period (as defined in the Order on a Motion for Recognition of Foreign Proceedings rendered by this Court in this matter on August 5<sup>th</sup>, 2010) until the earliest of the following dates:
  - 62.1 February 22<sup>nd</sup>, 2013 or;
  - 62.2 Ten (10) days following the service by Petitioner or the Information Officer to the members of the service list of a Notice advising of the new termination date of the conciliation period established by the Mexican Court;
63. The present Motion is well founded in fact and in law.

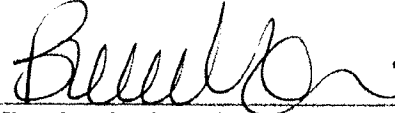
**WHEREFORE, MAY IT PLEASE THIS COURT:**

- [ 1 ] **GRANT** the present Motion;
- [ 2 ] **PRAY ACTE** of the undertaking of Petitioner Maru E. Johansen to immediately advise the Information Officer, this Honorable Court and the members of the service list of the new termination date of the conciliation period to be established by the Mexican Court,
- [ 3 ] **EXTEND** the Stay Period (as defined in the Order on a Motion for Recognition of Foreign Proceedings rendered by this Court in this matter on August 5<sup>th</sup>, 2010) until the earliest of the following dates:
  - (i) ~~February 22<sup>nd</sup>, 2013~~ or;  
*NOVEMBER 20<sup>th</sup>, 2013*
  - (ii) ten (10) days following the service by Petitioner or the Information Officer to the members of the service list of a Notice advising of the new termination date of the conciliation period established by the Mexican Court,

the whole subject to all of the other terms of the Initial Order, as amended and extended

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- [ 4 ] **DECLARE** that the notice of presentation hereof is proper and sufficient;
  - [ 5 ] **ORDER** that the order to be rendered on the present motion shall be executory notwithstanding appeal;
  - [ 6 ] **THE WHOLE WITHOUT COSTS**, save and except in the event of contestation.

Montreal, November <sup>20</sup>~~18~~, 2012



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**Borden Ladner Gervais L.L.P.**  
Attorneys for Petitioner

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-11-039418-104

SUPERIOR COURT  
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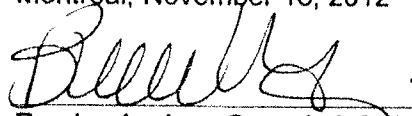
**NOTICE OF PRESENTATION**

**TO: Service List**

**PLEASE TAKE NOTICE** that the *Tenth Motion for the Extension of the Stay Period* will be presented for adjudication before the Honourable Judge Brian Riordan of the Superior Court, sitting in and for the district of Montreal, on **November 22<sup>nd</sup>, 2012, in room 17.09 at 2:15 p.m.**, or so soon thereafter as counsel may be heard at the Montreal Courthouse located, at 1 Notre-Dame Street East.

**PLEASE GOVERN YOURSELVES ACCORDINGLY.**

Montreal, November 16, 2012

  
Borden Ladner Gervais L.L.P.  
Attorneys for Petitioner

**SUPERIOR COURT**  
(Commercial Division)  
**DISTRICT OF MONTREAL**  
No.: 500-11-039418-104

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REORGANIZATION PROCEEDINGS OF:**

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and

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And

**SAMSON BELAIR DELOITTE & TOUCHE**  
Information Officer

**AMENDED MOTION FOR THE EXTENSION  
OF THE STAY PERIOD**

**O R I G I N A L**

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