

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial Division)

No. 500-11-062372-236

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED:**

CAPCIUM INC.

-and-

GELCAN CORPORATION INC.

Debtors

-and-

THE BANK OF NOVA SCOTIA

Applicant

-and-

RAYMOND CHABOT INC.

Monitor

**APPLICATION FOR THE ISSUANCE OF AN ORDER
EXTENDING THE STAY PERIOD¹**
(Section 11.02(2) of the *Companies' Creditors Arrangement Act*)

**TO THE HONOURABLE JUSTICE MICHEL A. PINSONNAULT OF THE SUPERIOR COURT,
SITTING IN THE COMMERCIAL DIVISION IN AND FOR THE JUDICIAL DISTRICT OF
MONTREAL, THE APPLICANT HEREBY RESPECTFULLY SUBMITS:**

I - ORDERS SOUGHT

1. By way of the present *Application for the Issuance of an Order Extending the Stay Period* (the "**Application**"), the Monitor seeks the issuance of an order substantially in the form of the draft order communicated herewith as **Exhibit R-1** extending the Stay Period (as defined below) until and including September 29, 2023.

¹ Capitalized terms used in this Application and not otherwise defined shall have the meanings ascribed to them in the ARIO.

II - PROCEDURAL BACKGROUND

2. On May 15, 2023, the Applicant filed an application pursuant to the *Companies Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended, (the “**CCAA**”) entitled *Application for an Initial Order, an Amended and Restated Initial Order and Other Relief* (the “**Initial Application**”).
3. On May 17, 2023, the Superior Court of Quebec (Commercial Division) (the “**Court**”) partially granted the Initial Application and rendered an Initial Order which, *inter alia*, stayed all proceedings and remedies taken or that might be taken in respect of Capcium Inc. (“**Capcium**”) and Gelcan Corporation Inc. (“**Gelcan**” and together with Capcium, the “**Debtors**”), and any of their Property, Directors or Officers, until May 26, 2023 (the “**Stay Period**”).
4. On May 17, 2023, the Court further granted the Initial Application and rendered a Bidding Procedure Order approving a Sale and Investment Solicitation Process (the “**SISP**”) in respect of the Assets of Debtors.
5. On May 26, 2023, the Court granted the remaining conclusions of the Initial Application and rendered an Amended and Restated Order (the “**ARIO**”) which, *inter alia*, extended the Stay Period until July 24, 2023.
6. On July 24, 2023, the Court granted an Extension Order which, *inter alia*, extended the Stay Period until and including September 6, 2023.

III - RESTRUCTURING EFFORTS SINCE THE COMMENCEMENT OF THE CCAA PROCEEDINGS²

7. In accordance with the powers granted to the Monitor under the Bidding Procedure Order, the Monitor initiated the SISP in consultation with The Bank of Nova Scotia (“**Scotia**”).
8. The SISP provided for two mandatory phases to identify a successful bid:
 - (a) a non-binding letter of intent (“**LOI**”) phase to qualify Prospective Bidders as Qualified Bidders, with a deadline set to June 19, 2023 (“**Phase 1**”); and
 - (b) a binding offer phase where Qualified Bidders submit binding Qualified Bids, with a deadline set to July 10, 2023 (“**Phase 2**”).
9. The Monitor solicited over seventy parties, including potential strategic bidders and potential financial bidders, and populated a data room for review by potential bidders.
10. On the Phase 1 bid deadline, the Monitor received non-binding LOIs.
11. On July 10, 2023, the deadline to submit binding offers in Phase 2 of the SISP, no offer was received that met the criteria established by the SISP.

² Capitalized terms used in this section and not otherwise defined have the meanings ascribed to the in the Bidding Procedure Order.

12. In light of the foregoing, and with the endorsement of Scotia, the Monitor determined that it was in the best interest of Capcium's stakeholders to reopen the SISP (the "**Amended SISP**") and set new deadlines for the submission of LOIs in Phase 1 and of offers in Phase 2 as follows:
 - (a) the Phase 1 bid deadline was extended until 4:00 p.m., on August 4, 2023; and
 - (b) the Phase 2 bid deadline was extended until 4:00 p.m., on August 22, 2023.
13. In the context of the Amended SISP, the Monitor solicited the potential bidders targeted initially and potential buyers who had expressed an interest in participating in the SISP, but had not submitted an LOI within the required deadline.
14. On August 22, 2023, the Monitor received four (4) offers by the Phase 2 bid deadline; however, none of the offers received met the criteria established by the SISP.
15. Following discussions with the bidders having submitted offers and various stakeholders, including Scotia and Investissement Québec, the Monitor rejected all offers received in the context of the Amended SISP.
16. The Monitor thereafter requested that bidders submit improved offers by no later than August 30, 2023. Two additional potential bidders were also invited to submit a bid at this time.
17. On August 30, 2023, the Monitor received five (5) new or improved offers. Further to requests by the Monitor, two bidders agreed to waive certain conditions contained in their respective offer.
18. Further to discussions with various stakeholders, including Scotia and Investissement Québec, the Monitor has narrowed down its analysis to the two offers received which have the least conditions and expects to be in a position to accept one of the offers (the "**Successful Bid**"), subject to this Court's approval, in the coming days.

IV - RELIEF SOUGHT

19. Since the commencement of these CCAA Proceedings, the Monitor, the Debtors and Scotia have acted and continue to act in good faith and with due diligence.
20. As will appear from the cash flow forecast which will be appended to the Third Report of the Monitor to be filed in connection with this Application, the Debtors have sufficient funds to continue their restructuring during the requested extension of the Stay Period.
21. An extension of the Stay Period is necessary for the Monitor to identify the Successful Bid and, subsequently, for the Monitor and the successful bidder to negotiate and finalize the transactional documents in connection with the Successful Bid.
22. The Monitor believes and respectfully submits that an extension of the Stay Period until September 29, 2023 is reasonable in the circumstances, as it will allow additional time for the Monitor to, namely, finalize an asset purchase agreement in connection with the Successful Bid and submit same to this Court for approval.

23. The alternative, a bankruptcy liquidation of the Debtors, would jeopardize the value of the Debtors' assets which include various permits and licenses which are currently being maintained in the context of the CCAA proceedings.
24. The requested extension of the Stay Period will not cause any prejudice to the various stakeholders, but rather will allow for the Monitor to submit the Successful Bid to this Court for approval, which is to the benefit of the Debtors and their various stakeholders.
25. Scotia, the Debtors' most important secured creditor, is supportive of this Application.
26. In light of the foregoing, the Monitor respectfully submits that the present Application should be granted in accordance with its conclusions.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

RENDER an order substantially in the form of the draft order communicated as **Exhibit R-1**;

THE WHOLE without legal costs, save in case of contestation.

Montréal, September 5, 2023

McCarthy Tétrault, s.e.n.c.r.l., s.r.l.

McCarthy Tétrault LLP

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**NOTICE OF PRESENTATION
COMMERCIAL DIVISION**

TO : Service List

TAKE NOTICE that *Application for the Issuance of an Order Extending the Stay Period* shall be presented in the Commercial Division of the Superior Court of the Montréal Courthouse, on **September 6, 2023** at **9:00**, or as soon as counsel may be heard, virtually, in room 16.04 which can be accessed via the link below.

By videoconference : teams@teams.justice.gouv.qc.ca
ID of the conference VTC : 1197347661

PLEASE GOVERN YOURSELF ACCORDINGLY.

Montréal, September 5, 2023

McCarthy Tétrault, s.é.n.c.r.l., s.r.l.

McCarthy Tétrault LLP
Lawyers for the Monitor

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AFFIDAVIT

I, the undersigned, Emmanuel Phaneuf, Partner, Raymond Chabot Inc., domiciled for the purpose hereof at 600 de la Gauchetière Street West, Suite 2000, Montréal, Québec, H3B 4L8, solemnly affirm that all the facts alleged in the present *Application for the Issuance of an Order Extending the Stay Period* are, to the best of my knowledge, true.

AND I HAVE SIGNED,



Dominic Deslandes

EMMANUEL PHANEUF

SOLEMNLY AFFIRMED TO BEFORE ME BY
TECHNOLOGICAL MEANS IN
MONTREAL, this 5th day of September, 2023

Pascale Bédard

COMMISSIONER OF OATHS
FOR THE PROVINCE OF QUÉBEC

