

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No.: 500-11-052101-173

**SUPERIOR COURT
(Commercial Division)**

Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, RSC
1985, c. C-36, as amended

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

ALLIANCE HANGER INC., a legal person
and corporation having its registered office
at 2500 rue Guénette, in the City of
Montreal, Province of Québec, H4R 2H2;

Debtor

-and-

ERA GROUP INC./GROUPE ERA INC., a
legal person and corporation having its
registered office at 2500 rue Guénette, in
the City of Montreal, Province of Québec,
H4R 2H2;

Applicant

-and-

KPMG INC., a legal person and corporation
having a place of business at 600 boul. de
Maisonneuve West, Suite 1500, in the City
of Montreal, Province of Québec, H3A 0A3;

Proposed Monitor

**APPLICATION FOR THE ISSUANCE OF AN INITIAL ORDER UNDER THE
COMPANIES' CREDITORS ARRANGEMENT ACT,
RSC 1985, c. C-36, as amended**

TO ONE OF THE JUSTICES OF THE COMMERCIAL DIVISION OF THE QUEBEC
SUPERIOR COURT FOR THE DISTRICT OF MONTRÉAL, EXERCISING THE
JURISDICTION OF A "COURT" AS DEFINED IN AND PURSUANT TO THE
COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, c. C-36, AS
AMENDED, ERA GROUP INC. (the "Applicant") SUBMITS THAT:

I. INTRODUCTION

1. The Applicant, a creditor of the Debtor, Alliance Hanger Inc. (the "**Debtor**"), hereby seeks the issuance of an "Initial Order" in respect of the Debtor pursuant to the provisions of the *Companies' Creditors Arrangement Act* (the "**CCAA**") in order for the Debtor to:

- (a) facilitate the reorganization of the Debtor's finances and business; and
- (b) submit a Plan of Compromise, Arrangement and Reorganization (a "**Plan**") in order to compromise and arrange certain of the Debtor's debts and reorganize the Debtor's equity pursuant to the relevant provisions of the CCAA and the *Canada Business Corporations Act* (the "**CBCA**"),

all with a view of rendering the Debtor solvent and viable and allowing the Debtor to stay in and continue its business.

2. This Application is presented by the Applicant and not the Debtor because:

- (a) as will be hereafter detailed, the Debtor's shareholder groups and Board of Directors do not share a common vision of the Debtor's future and are deadlocked;
- (b) the Debtor no longer has the ability to meet its obligations as they become due, has lost the support of its key-secured lenders and is insolvent.

3. The Debtor is a "debtor company" as defined in the CCAA and has claims against it well in excess of \$5,000,000, including, *inter alia*:

- (a) Debts owed to the hereafter defined "Secured Lenders" aggregating approximately \$8,356,000;
- (b) Debts owing to the hereafter defined "Affected Creditors" aggregating \$3,900,000; and
- (c) Debts owing to its ordinary creditors other than the Affected Creditors (*i.e.*, the trade creditors and other payables) aggregating approximately \$780,000.

4. The Debtor has its registered office and places of business within the district of Montreal and the jurisdiction of this Court.

II. THE PARTIES

A. THE DEBTOR

5. The Debtor is a Montreal-based, private corporation which was incorporated in 2013 pursuant to the *CBCA*, as appears from copies of search results from Corporations Canada and the *Registraire des Entreprises* CIDREQ report in

respect of the Debtor, copies of which are communicated herewith *en liasse* as **Exhibit P-1**.

6. The Debtor manufactures and distributes plastic hangers which it sells in North America and Europe.
7. The Debtor employs approximately 100 employees at its 116,000 square foot manufacturing plant situated at 2850 rue Botham in the City of Montreal, Province of Quebec and has offices (which it shares with the Applicant) situated at 2500 rue Gu enette, in the City of Montreal, Province of Quebec.
8. The Debtor's sole directors are Jean-Luc Lavergne and Edward Reichman.
9. The Debtor has issued a total of 100 Class "A" shares (being voting common shares) (the "**Common Shares**") and 2,700,000 Class "F" shares (being non-voting preferred shares) (the "**Preferred Shares**"). While disputed by certain of its shareholders, these Common Shares and Preferred Shares are held and owned as follows:

Shareholder	Common Shares	Preferred Shares
6187820 CANADA INC. (a corporation ultimately controlled by Jean-Luc Lavergne)	32.5	--
9170-9402 QU�EBEC INC. (a corporation ultimately controlled by Mark Schneiderman and Gerry Shapiro)	32.5	--
GESTION MARC TREMBLAY INC. (a corporation ultimately controlled by Marc Tremblay)	10	--
EDWARD REICHMAN	25	--
APPLICANT (a corporation ultimately controlled by Jean-Luc Lavergne, Mark Schneiderman and Gerry Shapiro)	--	1,350,000
POLINEX PLASTICS INC. (a corporation ultimately controlled by Devir Bitton and Edward Reichman) and its bankruptcy trustee, Raymond Chabot Inc.	--	1,350,000

10. On the basis of a Share Purchase Agreement dated January 1, 2014, a copy of which is communicated herewith as **Exhibit P-2**, 6187820 Canada Inc. and 9170-9402 Qu ebec Inc. contend that they each own and hold 40 Common Shares and that Edward Reichman owns and holds only 10 Common Shares.

Edward Reichman disagrees with this contention. For the purposes of the Orders sought herein and an eventual Plan, this dispute is irrelevant.

III. THE DEBTOR'S HISTORY

A. THE SHAREHOLDERS AGREEMENT

11. On November 6, 2013, the then holders of the Debtor's common shares entered into a "Shareholder Agreement", a copy of which is communicated herewith as **Exhibit P-3** (the "**Shareholders Agreement**").
12. The Shareholders Agreement envisaged that each of the Applicant and Polinex Plastics Inc. would combine their plastic hanger businesses by selling such businesses to a to-be-created corporation, i.e. the Debtor (then known as "Polinex ERA Inc.") and that the Debtor would be managed by two shareholder groups, namely "Group ERA" and "Group Polinex".
13. The Shareholders Agreement called for the Debtor to have two directors, one designated by "Group ERA" and one designated by "Group Polinex". The Debtor's current directors were so designated: Jean-Luc Lavergne of "Group ERA" and Edward Reichman of "Group Polinex".
14. The Shareholders Agreement further provided that certain matters and decisions in respect of the Debtor be agreed to by both "Group ERA" and "Group Polinex".

B. THE ASSET PURCHASE AGREEMENTS

15. On January 1, 2014, the Debtor entered into a separate "Asset Purchase Agreement" (collectively the "**Asset Purchase Agreements**") with each of the Applicant and Polinex Plastics Inc. whereby:
 - (a) the Debtor purchased certain assets from the Applicant for a price consisting of a combination of cash, the issuance of 1,350,000 Preferred Shares and an unpaid balance of purchase price of \$950,000, as appears from the Asset Purchase Agreement executed between the Debtor and the Applicant, a copy of which is communicated herewith as **Exhibit P-4**; and
 - (b) the Debtor purchased certain assets from Polinex Plastics Inc. for a price consisting of a combination of cash, the issuance of 1,350,000 Preferred Shares and an unpaid balance of purchase price of \$950,000, as appears from the Asset Purchase Agreement executed between the Debtor and Polinex Plastics Inc., a copy of which is communicated herewith as **Exhibit P-5**.
16. As a result of the Asset Purchase Agreement executed between the Debtor and the Applicant, the Debtor still owes the Applicant \$950,000.

IV. DEBTOR'S CREDITORS

A. SECURED CREDITORS

17. The Debtor's secured creditors (the "**Secured Creditors**") are as follows:

(a) Toronto-Dominion Bank ("**TD Bank**")

TD Bank is the Debtor's working capital lender and has extended a secured revolving credit facility to the Debtor margined against the Debtor's accounts receivable and inventory (the "**TD Facility**").

The TD Facility is secured by hypothecs ranking first over the Debtor's accounts receivable and inventory and second against all the Debtor's other property. The current indebtedness under the TD Facility is approximately \$4,800,000.

(b) Roynat Inc. ("**Roynat**")

Roynat has extended a non-revolving loan to the Debtor (the "**Roynat Facility**") repayable by scheduled monthly capital/interest payments.

The Roynat Facility is secured by hypothecs ranking first over all of the Debtor's property other than accounts receivable and inventory and second on accounts receivable and inventory. The current indebtedness under the Roynat Facility is approximately \$1,650,000.

(c) The Business Development Bank of Canada ("**BDC**")

BDC has extended a non-revolving loan to the Debtor (the "**BDC Facility**") repayable by scheduled monthly capital/interest payments.

The BDC Facility is secured by hypothecs ranking first over all of the Debtor's property other than accounts receivable and inventory and second on accounts receivable and inventory. The current indebtedness under the BDC Facility is approximately \$1,906,000.

18. The hypothecs securing the Roynat Facility and the BDC Facility rank *pari passu* as between Roynat and BDC.

19. While each of TD Bank, Roynat and BDC insist on a significant capital injection into the Debtor in order for each of them to continue extending financial support to the Debtor, the Orders sought herein are not directed at TD Bank, Roynat or BDC, do not seek to stay or in any manner affect TD Bank, Roynat and BDC and treat each of TD Bank, Roynat and BDC as "Unaffected Creditors".

B. AFFECTED CREDITORS

20. In addition to owing \$950,000 to each of the Applicant and Polinex Plastics Inc., the following creditors (all being entities related to the Debtor's shareholders) advanced the following loans to the Debtor on the following dates, as appears from copies of cheques and statements of deposit produced herewith under seal *en liasse* as **Exhibit P-6**, all of which loans remain unpaid, namely:

Date of Advance	Amount	Creditor
March 11, 2014	\$500,000	Shapiro General Partnership (a general partnership ultimately controlled by Gerry Shapiro and Mark Schneiderman)
February 11, 2015	\$200,000	Shapiro General Partnership
July 21, 2016	\$100,000	Shapiro General Partnership
July 22, 2016	\$100,000	3903460 Canada Inc. (a corporation ultimately controlled by Jean-Luc Lavergne)
September 16, 2016	\$300,000	Shapiro General Partnership
September 26, 2016	\$200,000	Shapiro General Partnership
October 26, 2016	\$250,000	Shapiro General Partnership
November 3, 2016	\$250,000	4511531 Canada Inc. (a corporation ultimately controlled by Jean-Luc Lavergne)
November 11, 2016	\$100,000	Applicant
Total:	\$2,000,000	

21. The above unpaid loan advances together with \$950,000 owing to each of the Applicant and Polinex Plastics Inc. under the Asset Purchase Agreements total \$3,900,000 (the "**Affected Claims**"). The creditors of the Affected Claims are the Applicant, Polinex Plastics Inc., Shapiro General Partnership, 3903460 Canada Inc. and 4511531 Canada Inc. (the "**Affected Creditors**").
22. The Orders sought and the Plan contemplated hereby seek to stay, affect and ultimately compromise and arrange the Affected Claims owing to the Affected Creditors. As opposed to the Debtor's other ordinary creditors, the Affected Creditors are either shareholders of the Debtor or entities related to some of the Debtor's shareholders.

C. **OTHER ORDINARY CREDITORS**

23. In addition to the Affected Claims owing to the Affected Creditors, the Debtor owes approximately \$780,000 to its other ordinary creditors (i.e., trade creditors and other payables). These creditors and their claims will be unaffected by the Orders sought herein and the Plan contemplated hereby.
24. The Orders sought hereby seek to stay and affect only the claims of the Affected Creditors and the Plan contemplated hereby will seek to compromise and arrange only the claims of such Affected Creditors. All other claims of all other creditors (including, without limitation, the Secured Creditors and all ordinary claims of ordinary creditors other than the Affected Creditors) will be "Unaffected Creditors" holding "Unaffected Claims" and will not be stayed or affected by the Orders sought herein or affected, compromised or arranged by the Plan contemplated hereby.
25. Any claims by the Debtor's shareholders will also be stayed by the Orders sought herein.

V. **DEBTOR'S CRISIS**

A. **LIQUIDITY CRISIS**

26. Over the past year, the Debtor's sales volumes have dropped significantly, mainly as a result of the loss of significant purchases from one major customer.
27. This significant drop in sales volume resulted in significant losses. For the period ended November 30, 2016, the Debtor incurred a loss in excess of \$1.1 Million as appears from the Debtor's internal financial statements communicated herewith as **Exhibit P-7**.
28. As a result of a loss of sales and other issues, the Debtor's inventories (carried on its books at approximately \$6 Million) require a significant write-down, which will result in further losses.

29. All of the foregoing have put great strain on the Debtor's ability to borrow under the TD Facility and the TD Facility was fully, and in many cases, overly utilized.
30. TD Bank has recently indicated to the Applicant and the Debtor that:
 - (a) TD Bank will no longer consider the Debtor's inventory as marginable collateral under the TD Facility; and
 - (b) TD Bank requires an immediate cash injection (which may be converted to an ultimate equity injection) of at least \$3.7 Million into the Debtor, failing which TD Bank will not continue to avail the TD Facility to the Debtor. TD Bank has very recently repeated and formalized this request, as appears from a letter sent by TD Bank's attorneys to the Debtor, a copy of which is produced herewith as **Exhibit P-8**.
31. Each of Roynat and BDC have indicated that, without a proper revolving credit facility from TD Bank or any other bank, Roynat and BDC could not continue to support the Debtor under the Roynat Facility and the BDC Facility respectively.
32. Essentially, without an immediate cash injection of at least \$3.7 Million into the Debtor, the Debtor's doom is sealed and the Debtor will be forced into liquidation. Such liquidation will result in:
 - (a) the cessation of the Debtor's business;
 - (b) the discontinued use of its 116,000 square foot premises;
 - (c) the loss of 100 jobs; and
 - (d) an almost certain total loss to be suffered by all of the Debtor's ordinary creditors.
33. All of the Debtor's outstanding Common Shares and Preferred Shares have absolutely no value, such that the only stakeholders (other than the employees) currently having an economic interest in the Debtor are its creditors.
34. It would be unfair and prejudicial to the Debtor and the Debtor's creditors if the Debtor's fate were to be sealed as a result of an intractable dispute between its shareholders as hereafter described.
35. As quickly as possible following the issuance of the Orders sought herein, the Debtor will conduct an expedited claims process for its Affected Creditors and formulate and present a Plan to its Affected Creditors with a view to compromising and arranging the Affected Claims and reorganizing the Debtor's share capital in order to allow for the much-needed fresh equity investment of at least \$3.7 Million into the Debtor (the "**Equity Investment**").
36. In accordance with the CCAA requirements, the Applicant will, at the hearing of the present Application, produce the requisite cash-flow in respect of the Debtor.

37. In order to expedite the Debtor's restructuring and formulate and present a Plan for the Debtor, the Applicant is, contemporaneously with the presentation of this Application, presenting the Court with a separate Application seeking to implement a claims process in respect of the Affected Claims.

B. DEADLOCK

38. As a result of the composition of the Debtor's Board of Directors and the provisions of the Shareholders Agreement, the Debtor is dead-locked.
39. Of the holders of the Debtor's Common Shares, all but Edward Reichman understand and agree that the Debtor's liquidity crisis requires the immediate Equity Investment.
40. As a result of the Shareholders Agreement, the Debtor's Board of Directors consists of two Directors: Jean-Luc Lavergne and Edward Reichman. Jean-Luc Lavergne agrees that the Debtor's liquidity crisis requires the immediate Equity Investment.
41. On the other hand, Edward Reichman is unprepared to participate in any Equity Investment. Rather, Edward Reichman's sole focus is on either:
 - (a) having the Debtor and/or some of the Debtor's other shareholders purchase his Common Shares, despite the fact that these Common Shares, in light of the Debtor's insolvency, have absolutely no value; or
 - (b) sitting back and have some of the Debtor's other shareholders make the entire Equity Investment without any contribution on his part and, thereafter, maintain the dead-lock.
42. If this dead-lock persists, there will be no Equity Investment in the Debtor and the Debtor will be forced to liquidate, producing the dire consequences previously detailed in this Application.
43. It is precisely for this reason that the Applicant, and not the Debtor, is presenting this Application, as permitted pursuant to the relevant provisions of the CCAA.

VI. RELIEF SOUGHT

A. STAY OF PROCEEDINGS

44. The Applicant submits that it is appropriate that the Orders sought herein be granted as the Debtor is insolvent, is not able to meet its obligations as they become due, and requires a stay of proceedings against the Affected Creditors and the Debtor's shareholders only (collectively, the "**Stayed Parties**"). All other creditors, including the Secured Creditors, will not be affected by this Application or the stay of proceedings sought herein.

45. Accordingly, the Applicant hereby requests a stay of proceedings against the Stayed Parties for a period of 30 days from the date of the Initial Order to be rendered as per the Draft Initial Order attached hereto as **Exhibit P-9** (the "**Draft Initial Order**").

B. APPOINTMENT OF A MONITOR

46. KPMG Inc. ("**KPMG**"), a licensed bankruptcy trustee and the Proposed Monitor, is aware of the Debtor's precarious financial situation.
47. KPMG has informed the Applicant that it consents to act as the Debtor's Monitor.
48. In accordance with the CCAA requirements, KPMG will, separately, file its report as the proposed Monitor, supporting the issuance of the Orders sought herein (the "**KPMG Report**").
49. The Applicant believes that it is in the best interest of all of the Debtor's stakeholders that KPMG act as Monitor of the company pursuant to the CCAA.
50. In addition to any powers, rights or obligations provided for by the CCAA, the Applicant hereby requests that this Court grant KPMG the powers, rights, obligations and protections detailed in the Draft Initial Order.

C. POST-FILING DIP FINANCING CHARGE

51. The Equity Investment is urgently required but it will be impossible to achieve prior to the Plan contemplated hereby being approved by the Affected Creditors and then sanctioned by this Court. Pending such occurrences, the Debtor urgently requires at least \$3.7 Million in order to meet its liquidity crisis and to avoid a cessation of its business.
52. 9170-9402 Québec Inc. (the "**DIP Lender**") is one of the holders of the Debtor's Common Shares. The DIP Lender is prepared to enter into an agreement with the Debtor pursuant to which the DIP Lender will, subject to the Court's issuance of the Orders sought in the Draft Initial Order, provide the therein contained loan (the "**DIP Loan**") to the Debtor pursuant to a "DIP Loan Term Sheet" dated February 10, 2017 (the "**DIP Loan Term Sheet**"). A copy of the DIP Loan Term Sheet is communicated herewith as **Exhibit P-10**.
53. Pursuant to the DIP Loan Term Sheet, the DIP Lender is prepared to lend up to \$5 Million to the Debtor on a revolving basis totally interest-free and fee-free in order to bridge the eventual occurrence of the Equity Investment.
54. The DIP Loan will be secured by a priority charge (the "**DIP Lender Charge**") on all present and after acquired property of the Debtor and will rank *after* the Administration Charge and all security held by the Secured Lenders in accordance with the Draft Initial Order.

55. Subject to the Court's issuance of the Order sought in the Draft Initial Order and on the basis of the terms, conditions and provisions of the DIP Facility Documents, the DIP Lender will immediately advance at least \$3.7 Million to the Debtor which will serve as a "life-line" to the Debtor until such time as the Equity Investment is made. It is currently contemplated that the proceeds of the eventual Equity Investment will be used to repay the DIP Loan.
56. Subject to the issuance by this Court of the Orders sought herein and its approval of the DIP Lender Charge, the DIP Loan will be used, *inter alia*, to:
 - (a) fund the Debtor's working capital and solve its liquidity crisis; and
 - (b) pay costs and expenses associated with these CCAA proceedings.
57. Despite its current liquidity issues, the Debtor has a viable business. The DIP Loan is critical to the Debtor's ongoing business operations and restructuring of its business, the whole as set out in the KPMG Report.
58. The DIP Loan is beneficial to the Debtor and its stakeholders as it will allow the Debtor to continue its operations as a going concern and preserve value to the benefit of its creditors, employees and other stakeholders.
59. No creditor will be materially prejudiced as a result of the DIP Loan and the DIP Lender Charge envisaged by the Order sought herein.
60. The Applicant and the Proposed Monitor believe that it is in the Debtor's best interest, as well as that of its stakeholders, that the Debtor accepts the DIP Loan.
61. Unless the DIP Loan is extended, it is expected that the Debtor will run out of liquidities and will not be able to pursue any meaningful restructuring alternatives.

D. ADMINISTRATION CHARGE

62. The Applicant seeks a \$300,000 administration charge (the "**Administration Charge**"), which shall affect the Debtor's assets and secure the payment to be made to KPMG and its legal counsel, and to the Applicant's legal counsel for professional fees, charges and disbursements, the whole as set forth in the Draft Initial Order. The Administration Charge will rank after the security of the Secured Creditors but before the DIP Lender Charge.

E. PUBLICATION REQUIREMENTS

63. Since the relief sought herein and the eventual Plan to be filed will only affect the Stayed Parties, there is no need to advise any party other than the Stayed Parties of these proceedings. The Stayed Parties will receive full notice of the Initial Order from the Proposed Monitor.
64. The publication or sending of notices to any parties other than the Stayed Parties will have a detrimental effect on the Debtor and its business. In particular,

notices (in newspapers or otherwise) to ordinary creditors other than the Affected Creditors will only serve to hurt the Debtor's credit worthiness with respect to its ordinary creditors, who the Debtor will continue to pay in the ordinary course of business.

65. Accordingly, the Applicant and the Proposed Monitor believe that the Proposed Monitor should be dispensed from the requirement to provide public notice (in newspapers or otherwise) containing the prescribed information pursuant to the CCAA. In such respect, only the Stayed Parties should receive notice of these proceedings from the Proposed Monitor and the Proposed Monitor shall make these proceedings available on its website, the whole in conformity with Section 23(1)(a) CCAA.

VII. CONCLUSIONS

66. The Draft Initial Order is based on the standard CCAA Initial Order form issued by the Superior Court of Québec, Commercial Division.
67. For the reasons set forth herein, the Applicant respectfully submits that it is necessary and appropriate that the relief sought herein be granted.
68. This Application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:

- A. **GRANT** this Application;
- B. **ISSUE** an order substantially in the form of the Draft Initial Order communicated herewith as **Exhibit P-9**, (the "**Order**");
- C. **ORDER** the provisional execution of the Order notwithstanding appeal;
- D. **THE WHOLE** without costs, save and except in case of contestation and, in such case, against the contesting party(ies).

Montreal, February 10, 2017

(SGD.) Kugler Kandestin LLP
KUGLER KANDESTIN LLP
Attorneys for the Applicant

M^o Gerald Kandestin
M^o David Stolow
M^o Jeremy Cuttler
1 Place Ville-Marie, Suite 1170
Montreal, Québec, H3B 2A7
Tel. 514-878-2861
Fax. 514-875-8424
gkandestin@kklex.com
dstolow@kklex.com
jcuttler@kklex.com

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KUGLER KANDESTIN LLP

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No.: 500-11-052101-173

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ALLIANCE HANGER INC.

Debtor

-and-

ERA GROUP INC./GROUPE ERA INC.

Applicant

-and-

KPMG INC.

Proposed Monitor

AFFIDAVIT

I, the undersigned, Mark Schneiderman, carrying on business and domiciled for the purposes hereof at 440-800 rue du Square-Victoria, Montréal, Québec H4Z 1A1, solemnly affirm that:

1. I am an Officer of Era Group Inc., the Applicant to the present Application for the Issuance of an Initial Order (the "**Application**");
2. I have read the attached Application; and
3. All the facts alleged in the Application are true and correct.

AND I HAVE SIGNED:

(SGD.) Mark Schneiderman
MARK SCHNEIDERMAN

Solemnly affirmed before me at Montreal,
Quebec, on February 10, 2017

(SGD.) Darlene W. Pitt #198 577
Commissioner for Oaths for Québec

TRUE COPY
Kugler Kandestin LLP.
KUGLER KANDESTIN LLP

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Debtor

-and-

ERA GROUP INC./GROUPE ERA INC.

Applicant

-and-

KPMG INC.

Proposed Monitor

NOTICE OF PRESENTATION

TO:

ALLIANCE HANGER INC.
2500 rue Guénette
Montreal, QC H4R 2H2

EDWARD REICHMAN
245 av. Bloomfield
Outremont, QC H2V 3R6

Me Zavier Levine
Levine, Frishman, Lancy
zlevine@levinefrishman.com
Attorney for Edward Reichman

Me Michel La Roche
Miller Thomson LLP
mLAROCHE@millerthomson.com
Attorney for Business
Development Bank of Canada
-and- Roynat Inc.

Me Steven Shein
Kaufman Laramée
sshein@klcanada.com
Attorney for TD Bank

Me Mark E. Meland
Fishman Flanz Meland Paquin LLP
mmeland@ffmp.ca
Attorney for the Proposed Monitor,
KPMG INC.

TAKE NOTICE that the present *Application for the Issuance of an Initial Order* will be presented for adjudication before the Honourable Martin Castonguay, J.S.C., sitting in the Commercial Division of the Superior Court of Quebec, in and for the district of Montreal, on **February 16, 2017 at 11:30 A.M.** in **Room 16.12** of the Montreal Courthouse.

DO GOVERN YOURSELVES ACCORDINGLY

MONTREAL, February 10, 2017
(SGD.) Kugler Kandestin LLP

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KUGLER KANDESTIN LLP

KUGLER KANDESTIN LLP
Attorneys for the Applicant
Me Gerald F. Kandestin
Me David Stolow
Me Jeremy Cuttler
1 Place Ville Marie, Suite 1170
Montreal, Québec H3B 2A7
Tel.: 514 878-2861 / Fax: 514 875-8424
gkandestin@kklex.com
dstolow@kklex.com
jcuttler@kklex.com