

SUPREME COURT OF NOVA SCOTIA

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

AND IN THE MATTER OF A PLAN OR ARRANGEMENT OF 3306133 NOVA SCOTIA LIMITED, 1003940 NOVA SCOTIA LIMITED, HEADLINE PROMOTIONAL PRODUCTS LIMITED, BRACE CAPITAL LIMITED, BRACE HOLDINGS LIMITED AND 4648767 NOVA SCOTIA LIMITED

BETWEEN:

Fiera Private Debt Fund III LP and Fiera Private Debt Fund V LP,
each by their general partner, Fiera Private Debt GP Inc.

Applicants

-and-

3306133 Nova Scotia Limited, 1003940 Nova Scotia Limited, Headline Promotional Products Limited, Brace Capital Limited, Brace Holdings Limited and 4648767 Nova Scotia Limited

Respondents

BRIEF OF LAW

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

George Benchetrit

Tel: 416.218.1141

Email: george@chaitons.com

David Im

Tel: 416.218.1124

Email: dim@chaitons.com

Lawyers for the Monitor

BURCHELL WICKWIRE BRYSON LLP

1900 - 1801 Hollis Street
Halifax, NS B3J 3N4

Marc Dunning

Tel: (902) 482-7017

Email: mdunning@bwblp.ca

Lawyers for the Monitor (Local Counsel)

TO: The Service List

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To the Honourable Justice Keith, KSV Restructuring Inc., in its capacity as court-appointed CCAA¹ monitor (the “**Monitor**”), submits:

PART I - OVERVIEW

1. The Monitor brings this motion seeking an order, among other things: (a) approving an extension of the Stay Period to June 27, 2025; (b) approving the Third Amendment to Interim Financing Term Sheet (as defined below); and (c) approving the Seventh Report and the Monitor’s activities described therein.

¹ Capitalized terms not defined herein have the meaning defined in the Seventh Report of the Monitor dated March 14, 2025 (the “**Seventh Report**”).

PART II - FACTS

Background²

2. The Companies are private companies incorporated under the laws of Nova Scotia.
3. Prior to the closing of the Media Companies Transaction, the Media Companies published The Chronicle Herald, the Cape Breton Post, The Telegram (St. John's) and The Guardian (Charlottetown), as well as several digital publications.
4. The Media Companies' names were changed to 1003940 Nova Scotia Limited (formerly known as The Halifax Herald Limited) ("**1003**") and 3306133 Nova Scotia Limited (formerly known as Saltwire Network Inc.), being their original numbered companies, following completion of the Media Companies Transaction.
5. The Media Companies own the following locations (the "**Real Properties**") from which they presently operate or formerly operated, each of which is currently listed for sale:
 - (a) 311 Bluewater Road, Bedford;
 - (b) 2 Second Street, Yarmouth;
 - (c) 255 George Street, Sydney; and
 - (d) 36 Austin Street, St. John's.
6. As of the date of the ARIO, the Media Companies had approximately 390 employees and 800 independent contractors. The Media Companies currently have no employees as all former employees were either terminated or hired by PNI or its affiliates. The Monitor has retained the

² Seventh Report, at s. 2.0, paras. 1-3, 8-9, and s. 3.0.

Former COO as an independent contractor to assist with the wind-down of the Companies and the sales of the Real Properties.

Stay Extension³

7. The Stay Period currently expires on March 28, 2025.
8. The Monitor recommends that the Stay Period be extended to June 27, 2025 for the following reasons, among others:
 - (a) the Stay Extension will allow for the continued marketing of the Real Properties;
 - (b) the Stay Extension will allow for time to deal with the remaining wind-down activities, including the preparation and filing of tax returns and refunds to be claimed utilizing any Canadian Journalism Tax Credits that may be applicable to the Media Companies;
 - (c) the Monitor does not believe that any creditor will be materially prejudiced if the extension is granted as the Cash Flow Forecast projects that the Companies are forecasted to be able to meet their obligations, assuming the Third Amendment to Interim Financing Term Sheet is approved; and
 - (d) as of the date of this Seventh Report, the Monitor is not aware of any party opposed to the requested extension.

³ Sixth Report, at s. 6.0, paras. 1-2.

Amended Interim Financing Facility⁴

9. The Interim Financing Facility was amended and restated pursuant to an interim financing term sheet dated as of March 22, 2024 and again on April 22, 2024 (the “**Amended and Restated Interim Financing Term Sheet**”). The Amended and Restated Interim Financing Term Sheet has been amended four times, resulting in a borrowing limit of \$7 million.

10. In December 2024, the Companies repaid \$500,000 of the balance owing to the Interim Lender, which, pursuant to the terms of the Amended and Restated Interim Financing Term Sheet, automatically reduced the maximum facility amount.

11. It had been forecasted that certain of the sales of the Companies’ real properties would have closed by now; however, the contemplated transactions were terminated, and additional funding is required to fund the costs of these proceedings.

12. The Monitor has prepared a cash flow forecast from February 24, 2025 to June 28, 2025 (the “**Cash Flow Forecast**”).

13. The Cash Flow Forecast reflects that, absent further recoveries (such as a sale of one of the Real Properties, HST refunds or an advance under the program being administered by the Canadian Journalism Collective under Bill C-18), the Companies are projected to require approximately \$450,000 of funding during the forecast period.

14. The Monitor has discussed the Companies’ borrowing requirements with Fiera. The Amended and Restated Interim Financing Term Sheet matured on September 13, 2024. Fiera, as Interim Lender, has advised that it is prepared to extend the maturity date to December 31, 2025

⁴ Seventh Report, s. 4.0, paras. 3, and s. 4.1, paras. 1, 3-6.

and to advance up to \$500,000 under the Amended and Restated Interim Financing Term Sheet subject to the following amendments (the “**Third Amendment to Interim Financing Term Sheet**”):

- (a) Amendment Fee and Standby Fee: an amendment of \$10,000, plus applicable taxes, shall be payable plus a standby charge on the unused portion of the Facility Amount equal to 1.00% per annum payable monthly in arrears;
- (b) Additional conditions include:
 - (i) The Court shall have issued an order amending the ARIIO in form and substance acceptable to the Interim Lender and its legal counsel, which shall, among other things: (i) approve the Third Amendment to Interim Financing Term Sheet; (ii) authorize the amendment to the definition of Facility Amount; (iii) authorize the additional advance contemplated by the Third Amendment to Interim Financing Term Sheet; (iv) confirm that the DIP Lender’s Charge shall secure any and all obligations under the DIP Facility (as amended by the Third Amendment to Interim Financing Term Sheet); and (v) amend the definition of Maturity Date in paragraph 9(v) of the Interim Financing Term Sheet until December 31, 2025; and
 - (ii) The Court shall have granted an order extending the Stay Period to June 28, 2025.

Monitor's Activities⁵

15. Since the date of the Sixth Report, the Monitor, with the assistance of the Former COO, has, among other things:

- (a) continued to assist PNI to transition the Media Companies' business pursuant to the transition services agreement with PNI dated August 23, 2024;
- (b) provided information to CBRE regarding the Real Properties;
- (c) corresponded with the parties involved in the George Street Transaction;
- (d) provided information to Infinity to assist with its conduct of the auctions at the Bluewater and Austin Street facilities and to deal with the removal of the large printing press;
- (e) coordinated the preparation of internal financial statements and corporate income tax returns for 2024 for each of the Media Companies;
- (f) provided financial and operational reporting to Fiera, as required pursuant to the Interim Financing Facility;
- (g) monitored the Companies' receipts and disbursements and provided financial and operational reporting required under the Interim Financing Facility;
- (h) engaged extensively with its counsel, Chaitons LLP, as well as Fiera and Norton Rose Fulbright Canada LLP (Fiera's legal counsel) regarding various matters relating to these proceedings, including employee issues and pension issues;

⁵ Seventh Report, s. 5.0.

- (i) assisted the Companies in their dealings with suppliers;
- (j) reviewed correspondence from Osler, Hoskin & Harcourt LLP, counsel representing Eckler Admin Corp Ltd., appointed as the interim administrator of the Herald Retirement Plan (the “**Plan**”), regarding the Plan’s claims against 1003 and its directors and officers; and
- (k) prepared the Seventh Report.

PART III - ISSUES AND ANALYSIS

16. The issues to be addressed on this motion are whether this Court should approve: (a) the proposed extension of the Stay Period; (b) the proposed Third Amendment to Interim Financing Term Sheet; and (c) the Monitor’s activities.

PART IV - LAW & ARGUMENT

A. Extension of the Stay Period

17. Pursuant to Section 11.02(2) of the CCAA, the Court has the jurisdiction to extend the stay of proceedings after an initial order has been made.⁶

18. The Court may not make the order unless: (a) the Court is satisfied that the circumstances exist that make the order appropriate; and (b) the Court is satisfied that the debtor has acted, and is acting, in good faith and with due diligence.⁷

19. In CCAA cases as in these proceedings where the Court has granted enhanced powers to the CCAA monitor, the monitor is held to the good faith standard otherwise applicable to the

⁶ CCAA, [s 11.02\(2\)](#).

⁷ CCAA, [s 11.02\(3\)](#).

CCAA debtor(s).⁸ In that capacity, the Monitor believes it is discharging its duties and obligations under the CCAA and other orders made in these proceedings in good faith and with due diligence.

20. The proposed extension of the Stay Period is appropriate in this case for the reasons set out above in paragraph 8.

B. Approval of the Third Amendment to Interim Financing Term Sheet

21. In determining whether to grant a charge to secure the interim financing sought, the following factors described in Section 11.2 of the CCAA are to be considered:⁹

- (a) whether notice has been given to secured creditors who are likely to be affected by the subject charge;
- (b) whether the amount of the interim financing to be secured by the charge is appropriate and necessary having regard to the debtor's cash flow statement;
- (c) whether the charge secures an obligation that would exist before the order is made; and
- (d) the factors listed in subsection 11.2(4) of the CCAA.

22. The factors listed under subsection 11.2(4) of the CCAA are: (a) the period during which the Companies are expected to be subject to proceedings under the CCAA; (b) how the Companies' business and financial affairs are to be managed during the CCAA proceedings; (c) whether the Companies' management has the confidence of its major creditors; (d) whether the proposed

⁸ *Forme Development Group Inc. (Re)*, Court File No.: CV-18-608313-00CL ([Endorsement of Mr. Justice Hainey](#)) February 20, 2020; *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al*, Court File No.: CV-24-00713245-00CL ([Endorsement of Madame Justice Steele](#)) July 31, 2024.

⁹ CCAA, [s 11.2](#).

interim financing would enhance the prospects of a viable compromise or arrangement; (e) the nature and value of the Companies' property; (f) whether any creditor would be materially prejudiced as a result of the security or charge; and (g) the Monitor's report filed in connection with the Companies' cash-flow statement.¹⁰

23. The Monitor respectfully submits that the terms of the Third Amendment to Interim Financing Term Sheet are reasonable and appropriate for the following reasons:¹¹

- (a) it is projected to be sufficient to fund the Companies during the Stay Extension period;
- (b) the terms of the Third Amendment to Interim Financing Term Sheet are reasonable based on comparable facilities summarized in the Monitor's prior reports; and
- (c) without the re-advance, the Companies are not projected to have sufficient funding to operate their business and fund these proceedings.

C. Approval of the Monitor's Activities

24. As noted by R.S.J. Morawetz (as he then was) in *Target Canada Co. (Re)*¹², requests to approve a CCAA monitor's report are not unusual, and there are good policy and practical reasons for the court to do so, including:

- (a) allowing the monitor and stakeholders to move forward confidently with the next step in the proceeding by fostering the orderly building-block nature of CCAA proceedings;

¹⁰ CCAA, [s 11.2\(4\)](#).

¹¹ Seventh Report at s. 4.1, para. 8.

¹² [Target Canada Co \(Re\)](#), [2015 ONSC 7574](#) at para 23.

- (b) bringing the monitor's activities in issue before the court, allowing an opportunity for the concerns of the court or stakeholders to be addressed, and any problems to be rectified in a timely way;
- (c) providing certainty and finality to processes in a CCAA proceeding and activities undertaken (e.g., asset sales), all parties having been given an opportunity to raise specific objections and concerns;
- (d) enabling the court tasked with supervising the CCAA process to satisfy itself that the monitor's court-mandated activities have been conducted in a prudent and diligent manner;
- (e) providing protection for the monitor not otherwise provided by the CCAA; and
- (f) protecting creditors from the delay in distributions that would be caused by:
 - (i) re-litigation of steps taken to date; and
 - (ii) potential indemnity claims by the monitor.

25. For all of these reasons, approval of the Seventh Report and the Monitor's activities described therein is appropriate at this stage.

PART V - RELIEF SOUGHT

26. For the reasons set out above, the Monitor respectfully requests the relief set out above in paragraph 1.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of March, 2025.



CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

George Benchetrit

Tel: 416.218.1141

Email: george@chaitons.com

David Im

Tel: 416.218.1124

Email: dim@chaitons.com

Lawyers for the Monitor

SCHEDULE “A”

LIST OF AUTHORITIES

1. [*Forme Development Group Inc. \(Re\)*, Court File No.: CV-18-608313-00CL.](#)
2. [*In the Matter of a Compromise or Arrangement of Balboa Inc. et. al.*, Court File No.: CV-24-00713245-00CL.](#)
3. [*Target Canada Co \(Re\)*, 2015 ONSC 7574.](#)

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Companies’ Creditors Arrangement Act, RSC 1985, c C-36

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company’s property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

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2024 Hfx No. 531463

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	<div><div>CHAITONS LLP 5000 Yonge Street, 10th Floor Toronto, Ontario M2N 7E9</div><div>George Benchetrit Tel: 416-218-1141 Email: george@chaitons.com</div><div>David Im Tel: 416-218-1124 Email: dim@chaitons.com</div><div>Lawyers for the Monitor</div></div>