

**RSM** Richter

**Supplement to the First Report  
of RSM Richter Inc.  
as CCAA Monitor of  
Nexient Learning Inc. and  
Nexient Learning Canada Inc.**

**RSM Richter Inc.**  
Toronto, July 7, 2009

# Table of Contents

1.	INTRODUCTION.....	1
1.1	Purposes of this Report	1
2.	SALE PROCESS .....	2
3.	CONCLUSION AND RECOMMENDATION .....	2

## Table of Appendices

Clean Version of Proposed Sale Process	“A”
Black-lined Version of Proposed Sale Process	“B”

**Court File No.: CV-09-8257-00CL**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
- COMMERCIAL LIST -**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
NEXIENT LEARNING INC. AND  
NEXIENT LEARNING CANADA INC.**

**SUPPLEMENT TO THE FIRST REPORT OF RSM RICHTER INC.  
AS CCAA MONITOR OF  
NEXIENT LEARNING INC. AND  
NEXIENT LEARNING CANADA INC.**

**July 7, 2009**

## **1. INTRODUCTION**

This report supplements the Monitor's first report dated July 3, 2009 (the "First Report").

Unless otherwise stated, capitalized terms contained in this report have the meanings ascribed to them in the First Report.

### **1.1 Purposes of this Report**

The purpose of this supplemental report is to advise this Honourable Court of certain revisions to the terms of the recommended Sale Process.

## 2. SALE PROCESS

The following are two changes to the criteria for a bid to be a Qualified Bid:

- the bid must specify that a transaction would close on or prior to August 15, 2009; and
- the bid shall not be considered a Qualified Bid unless it provides for cash consideration to satisfy the Comerica debt in full, or, to the extent that Comerica consents, in its discretion, the assumption of the Comerica debt.

Copies of the clean and black-lined versions of the proposed Sale Process are attached as Appendices "A" and "B", respectively.

## 3. CONCLUSION AND RECOMMENDATION

The Monitor is of the view that the proposed changes are reasonable.

\* \* \*

All of which is respectfully submitted,

A handwritten signature in cursive script that reads "RSM Richter Inc.".

**RSM RICHTER INC.  
IN ITS CAPACITY AS CCAA MONITOR OF  
NEXIENT LEARNING INC. AND  
NEXIENT LEARNING CANADA INC.  
AND NOT IN ITS PERSONAL CAPACITY**

---

## SALE PROCESS OVERVIEW

---

A summary of the proposed sale process ("Sale Process") is as follows:

1. Subject to Court approval, the Asset Purchase Agreement (the "Stalking Horse APA") among Nexient Learning Inc., Nexient Learning Canada Inc. (collectively, the "Company") and 2210961 Ontario Limited (the "Stalking Horse") would be a stalking horse offer in the Sale Process detailed herein.
2. The Stalking Horse APA contemplates that the Stalking Horse will acquire substantially all of the Company's business and assets (the "Assets").
3. The Monitor's corporate finance group was engaged prior to these proceedings to assist the Company with a sale process. The Monitor's corporate finance group, in consultation with the Company, has prepared a list of prospective purchasers which it believes could have an interest in acquiring the Company's Assets. The Monitor will contact all parties identified as well as any additional parties that come to its attention. Certain of the prospective purchasers have commenced diligence and continue to evaluate the opportunity.
4. An interest solicitation letter providing an overview of the Company's business, the transaction contemplated by the Stalking Horse APA and the acquisition opportunity will be distributed to all prospective purchasers identified by the Monitor.
5. Upon execution of a confidentiality agreement, the Monitor will provide prospective purchasers with a confidential information memorandum and access to an electronic data room which will include financial and other Company information.
6. The Monitor will facilitate diligence by prospective purchasers, including arranging meetings with the Company's management and key employees, as appropriate. All such meetings will be held in the presence of a representative of the Monitor.
7. Prospective purchasers will be provided with an electronic version of the Stalking Horse APA so that they can submit a form of offer in the form of the Stalking Horse APA.
8. Prospective purchasers will be entitled to submit offers for the assets of the Company on an individual basis or *en bloc*. Preference will be given to *en bloc* offers. Offers for portions of the business will still be required to meet the definition of a Qualified Bid, as defined in paragraph 10 below. The Monitor shall also have the right to combine offers submitted on piece-meal basis.
9. Offers will be required to be submitted to the Monitor by 10:00 am (Toronto time) on August 4, 2009 (the "Offer Deadline"), being four weeks from the contemplated making of the Sale Process order, if so made.

10. For a party to be a qualified bidder, the bidder's offer will have to be:

- substantially in the form of the Stalking Horse APA, with any changes to the offer blacklined against the Stalking Horse APA;
- at least \$100,000 greater than the purchase price in the Stalking Horse APA;
- submitted with a deposit of at least 15% of the Purchase Price;
- no more conditional or burdensome than the Stalking Horse APA;
- supported, in the sole discretion of the Monitor, by evidence of financing sufficient to close a transaction within the timelines detailed in these procedures;
- irrevocable until August 15, 2009 and specify that the closing shall take place prior to August 15, 2009; and
- for greater certainty, an offer shall not be considered a Qualified Bid unless it provides for cash consideration to satisfy the Comerica Debt in full, or, to the extent that Comerica consents, in its discretion, the assumption of the Comerica Debt.

The party submitting an offer that meets the above criteria would be a "Qualified Bidder" and any such offer would be a "Qualified Bid".

11. In the event that one or more parties submits a Qualified Bid, the Qualified Bidder or Qualified Bidders and the Stalking Horse will be invited to submit a final offer (each a "Final Offer" and collectively, the "Final Offers") by 5 pm on August 5, 2009 (the "Final Offer Deadline"). The Monitor, exercising its reasonable business judgement, will select the best of the Final Offers (the "Winning Bid") and will seek Court approval of the Winning Bid and a vesting order in connection with the transaction contemplated by the Winning Bid within five (5) business days following the Final Offer Deadline. Each of the Final Offers shall be irrevocable until August 15, 2009.
12. If no Qualified Bids are received by the Offer Deadline, the Monitor shall bring a motion for an approval and vesting order in connection with the transaction contemplated by the Stalking Horse APA by no later than August 11, 2009.
13. In executing the Sale Process, the Monitor will have the right to amend the Sale Process as it considers appropriate including, without limitation, extending the Offer Deadline and the Final Offer Deadline on notice to the Stalking Horse and all other prospective purchasers.

## SALE PROCESS OVERVIEW

---

A summary of the proposed sale process ("Sale Process") is as follows:

1. Subject to Court approval, the Asset Purchase Agreement (the "Stalking Horse APA") among Nexient Learning Inc., Nexient Learning Canada Inc. (collectively, the "Company") and 2210961 Ontario Limited (the "Stalking Horse") would be a stalking horse offer in the Sale Process detailed herein.
2. The Stalking Horse APA contemplates that the Stalking Horse will acquire substantially all of the Company's business and assets (the "Assets").
3. The Monitor's corporate finance group was engaged prior to these proceedings to assist the Company with a sale process. The Monitor's corporate finance group, in consultation with the Company, has prepared a list of prospective purchasers which it believes could have an interest in acquiring the Company's Assets. The Monitor will contact all parties identified as well as any additional parties that come to its attention. Certain of the prospective purchasers have commenced diligence and continue to evaluate the opportunity.
4. An interest solicitation letter providing an overview of the Company's business, the transaction contemplated by the Stalking Horse APA and the acquisition opportunity will be distributed to all prospective purchasers identified by the Monitor.
5. Upon execution of a confidentiality agreement, the Monitor will provide prospective purchasers with a confidential information memorandum and access to an electronic data room which will include financial and other Company information.
6. The Monitor will facilitate diligence by prospective purchasers, including arranging meetings with the Company's management and key employees, as appropriate. All such meetings will be held in the presence of a representative of the Monitor.
7. Prospective purchasers will be provided with an electronic version of the Stalking Horse APA so that they can submit a form of offer in the form of the Stalking Horse APA.
8. Prospective purchasers will be entitled to submit offers for the assets of the Company on an individual basis or *en bloc*. Preference will be given to *en bloc* offers. Offers for portions of the business will still be required to meet the definition of a Qualified Bid, as defined in paragraph 10 below. The Monitor shall also have the right to combine offers submitted on piece-meal basis.
9. Offers will be required to be submitted to the Monitor by 10:00 am (Toronto time) on August 4, 2009 (the "Offer Deadline"), being four weeks from the contemplated making of the Sale Process order, if so made.



10. For a party to be a qualified bidder, the bidder's offer will have to be:

- substantially in the form of the Stalking Horse APA, with any changes to the offer blacklined against the Stalking Horse APA;
- at least \$100,000 greater than the purchase price in the Stalking Horse APA;
- submitted with a deposit of at least 15% of the Purchase Price;
- no more conditional or burdensome than the Stalking Horse APA;
- supported, in the sole discretion of the Monitor, by evidence of financing sufficient to close a transaction within the timelines detailed in these procedures; Deleted: and
- irrevocable until August 15, 2009 and specify that the closing shall take place prior to August 15, 2009; and Formatted: Font color: Auto  
Deleted: .
- for greater certainty, an offer shall not be considered a Qualified Bid unless it provides for cash consideration to satisfy the Comerica Debt in full, or, to the extent that Comerica consents, in its discretion, the assumption of the Comerica Debt. Formatted: Font color: Auto

The party submitting an offer that meets the above criteria would be a "Qualified Bidder" and any such offer would be a "Qualified Bid".

11. In the event that one or more parties submits a Qualified Bid, the Qualified Bidder or Qualified Bidders and the Stalking Horse will be invited to submit a final offer (each a "Final Offer" and collectively, the "Final Offers") by 5 pm on August 5, 2009 (the "Final Offer Deadline"). The Monitor, exercising its reasonable business judgement, will select the best of the Final Offers (the "Winning Bid") and will seek Court approval of the Winning Bid and a vesting order in connection with the transaction contemplated by the Winning Bid within five (5) business days following the Final Offer Deadline. Each of the Final Offers shall be irrevocable until August 15, 2009.
12. If no Qualified Bids are received by the Offer Deadline, the Monitor shall bring a motion for an approval and vesting order in connection with the transaction contemplated by the Stalking Horse APA by no later than August 11, 2009.
13. In executing the Sale Process, the Monitor will have the right to amend the Sale Process as it considers appropriate including, without limitation, extending the Offer Deadline and the Final Offer Deadline on notice to the Stalking Horse and all other prospective purchasers.