

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 AND ARRANGEMENT OF
ROTHMANS, BENSON & HEDGES INC.

Applicant

TENTH REPORT OF THE MONITOR
July 7, 2022

INTRODUCTION

1. On March 22, 2019, Rothmans, Benson & Hedges Inc. (“**RBH**”, the “**Company**” or the “**Applicant**”) applied for and obtained an initial order (the “**Initial Order**”) under the *Companies' Creditors Arrangement Act* (“**CCAA**”) that, amongst other things, (i) granted a stay of proceedings in favour of the Applicant and a limited stay of proceedings in favour of members of the PMI Group from certain proceedings and Other Pending Litigation, and (ii) appointed EYI as Monitor of the Applicant in this CCAA proceeding (the “**CCAA Proceeding**”).
2. On April 25, 2019, this Court issued a further amended and restated Initial Order (the “**Second Amended and Restated Initial Order**”) and amongst other things, extended a limited stay of proceedings to the Other Defendants.
3. Pursuant to an Order dated March 22, 2022, the Stay Period was extended to September 30, 2022.

PURPOSE

4. The purpose of this tenth report of the Monitor (the “**Tenth Report**”) is to provide information to this Court with respect to:
 - i) a management update for the Applicant; and

- ii) the motion authorizing the Applicant to post collateral, bonds and/or other security of up to \$5 million (the “**New Excise Duty Security**”) as required by recent amendments to the *Excise Act* and permitting the New Excise Duty Security to be required, received and/or held by the relevant party notwithstanding any restrictions to the contrary in the Second Amended and Restated Initial Order.

TERMS OF REFERENCE

- 5. In preparing this Tenth Report and making the comments herein, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by the Applicant, the Luongo Affidavits (as defined below), and discussions with RBH management (collectively, the “**Information**”). Except as described in this Tenth Report:
 - i) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited, or otherwise attempted to verify the accuracy or completeness of such information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards (“**GAAS**”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information; and
 - ii) some of the information referred to in this Tenth Report consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in Chartered Professional Accountants of Canada Handbook, has not been performed.
- 6. Future oriented financial information referred to in this Tenth Report was prepared based on the Company’s estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

7. Unless otherwise indicated, the Monitor's understanding of factual matters expressed in this Tenth Report concerning the Applicant and its business is based on the Information, and not independent factual determinations made by the Monitor.
8. As a result of the global COVID-19 pandemic (the "**COVID Pandemic**"), the Monitor has been unable to attend at the RBH Toronto head office or meet with RBH's management team in person. As such, all of the Monitor's communications with RBH have taken place remotely.
9. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
10. Capitalized terms used but not defined in this Tenth Report are defined in the affidavit of Peter Luongo sworn July 6, 2022 in connection with the New Excise Duty Security motion and his prior affidavits (collectively, the "**Luongo Affidavits**"), the Proposed Monitor's Pre-filing Report dated March 22, 2019 and the Monitor's prior reports (together, the "**Monitor's Reports**") and the Second Amended and Restated Initial Order.
11. Copies of the Monitor's Reports, including a copy of this Tenth Report, and all motion records and Orders in the CCAA Proceeding are available on the Monitor's website at www.ey.com/ca/rbh. The Monitor has also established a toll-free phone number that is referenced on the Monitor's website so that parties may contact the Monitor if they have questions with respect to the CCAA Proceeding.

MANAGEMENT UPDATE

12. The Monitor has been advised that in July 2022, Peter Luongo, RBH's Managing Director will join another division of the Philip Morris International group of companies. Mr. Luongo will be replaced by Mindaugas Trumpaitis. Mr. Trumpaitis was most recently the President Director of a PMI affiliate in Indonesia. While Mr. Luongo will no longer be Managing Director, he will continue as a Director of RBH.

UPDATE ON THE APPLICANT'S VAPING PRODUCTS

13. As described in previous reports of the Monitor, the Applicant launched VEEV, a vaping product into a limited segment of the Canadian market during fall 2021. Furthermore, the Monitor understands that the Applicant launched VEEBA, a disposable vaping product into a limited segment of the Canadian market during summer 2022. The Applicant imports packaged vaping products from Europe and from Asia for the Canadian duty-paid market.

NEW TAXATION OF VAPING PRODUCTS

14. The Canadian Federal government announced in its 2022 budget that an excise duty on vaping products will be implemented effective October 1, 2022, which requires all vaping products to be packaged with an excise stamp affixed to the product as evidence that duties have been paid. To obtain the necessary excise tax stamps, RBH must apply for a vaping excise license.
15. The Monitor understands that the Canada Revenue Agency (“CRA”) has advised the Applicant that excise stamps will only be provided if the Applicant posts the New Excise Duty Security to meet a condition of the vaping excise tax license application. The amount of security ranges from \$5,000 to a maximum of \$5 million and is based on the estimated monthly duty payable for the vaping products.

NEW EXCISE DUTY SECURITY

16. The Second Amended and Restated Initial Order authorizes the Applicant to post Bonding Collateral in an aggregate amount not exceeding \$31,100,000 to provide security in the ordinary course and consistent with past practices in relation to the collection and remittance of excise taxes and customs and import duties.
17. The Monitor understands that the new excise duty on vaping products that was announced in the 2022 budget is a new excise duty framework and therefore is not “consistent with past practice”. The Applicant is required to post the New Excise Duty Security in order for it to satisfy one of the conditions of the vaping excise license application and acquire the requisite stamps to continue selling its vaping products in the Canadian market. Failure to post the

New Excise Duty Security and obtain the excise stamps would prevent RBH from being able to continue to sell its vaping products in the Canadian market.

18. The Monitor also understands that the relief being requested is relatively urgent based on the lead time required for manufacturing and importing the Applicant's vaping products into Canada. It is necessary for RBH to obtain the applicable vaping excise stamps and begin applying them to the product as soon as possible in order to have the Applicant's vaping products packaged with the requisite excise stamps and available for sale in Canada by October 1, 2022.

CONCLUSION AND RECOMMENDATION

19. For the reasons outlined in this Tenth Report, the Monitor supports the relief sought by the Applicant in its motion and respectfully recommends that this Court grant an order authorizing the Applicant to post the New Excise Duty Security of up to \$5 million.

All of which is respectfully submitted this 7th day of July, 2022.

ERNST & YOUNG INC.
In its capacity as Monitor of
Rothmans, Benson & Hedges Inc.

Per:



Murray A. McDonald
Chairman

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 ROTHMANS, BENSON & HEDGES INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

TENTH REPORT OF ERNST & YOUNG INC.

Cassels Brock & Blackwell LLP

2100 SCOTIA PLAZA
40 KING STREET WEST
TORONTO, ON M5H 3C2

R. Shayne Kukulowicz

Tel: 416-860-6463

Email: skukulowicz@casselsbrock.com

Jane Dietrich

Tel: 416-860-5223

Email: jdietrich@casselsbrock.com

Joseph Bellissimo

Tel: 416-860-6572

Email: jbellissimo@casselsbrock.com

Monique Sassi

Tel: 416-860-6886

Email: msassi@casselsbrock.com

Lawyers for the Monitor