

**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N°: 500-11-064718-246

DATE : FEBRUARY 24, 2025

BY THE HONOURABLE DAVID R. COLLIER, J.S.C.

VALEO PHARMA INC.

and

VPI PHARMACEUTICALS INC. / VPI PHARMACEUTIQUES INC.

and

VALEO PHARMA CORP.

Debtors

and

ERNST & YOUNG INC.

Monitor

and

XEDITON PHARMACEUTICALS INC.

Purchaser

and

**THE DIRECTOR APPOINTED PURSUANT TO THE CANADA BUSINESS
CORPORATIONS ACT**

**THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL
RIGHTS OF QUÉBEC, represented by the QUÉBEC MINISTRY OF JUSTICE**

HEALTH CANADA

RETRAITE QUEBEC

Mis-en-cause

**REASONS FOR ORDERS ISSUED ON FEBRUARY 4, 2025
PURSUANT TO THE COMPANIES' CREDITORS ARRANGEMENT ACT**

[1] On February 4, 2025, this Court issued three Orders which i) approved the sale to Xediton Pharmaceuticals Inc. (Xediton) of the shares and certain assets of Valeo Pharma Inc., ii) discharged certain hypothecs registered against the debtors' property, and iii) granted additional powers to the Court-appointed Monitor and extended the Amended and Restated Initial Order until April 30, 2025. These are the reasons for those Orders.

[2] The debtors are related pharmaceutical companies engaged in the sale in Canada of branded pharmaceutical and hospital specialty products. The parent company, Valeo Pharma Inc., is a publicly traded Canadian company listed on the Toronto Stock Exchange.

[3] Faced with operating losses and a liquidity crisis, the debtors (collectively "Valeo"), commenced proceedings under the *Companies' Creditors Arrangement Act*¹ (CCA) on September 27, 2024. An initial ten-day protective order was issued by the Court appointing Ernst & Young as Monitor, staying proceedings against Valeo and granting interim financing to the debtors.

[4] On October 11, 2024, the Court issued an Amended and Restated Initial Order extending additional interim financing to Valeo and authorizing it to initiate a sale and investment solicitation process (SISP) for the sale of all or part of its business. The additional interim financing allowed Valeo to maintain its business operations during the sales process.

[5] The SISP was conducted over three months by the Monitor, in consultation with Valeo and Sagard Healthcare Partners, Valeo's interim lender and a secured creditor. In a report dated January 23, 2025, the Monitor recommended that the Court approve a transaction concluded with Xediton for the purchase of Valeo Pharma's shares and selected assets under the terms of a reverse vesting order.

[6] The transaction with Xediton was subsequently amended to eliminate balance of sale payments by the purchaser. The Court approved the amended transaction on February 4, 2025.

[7] Under the terms of the amended transaction, Xediton acquires the issued and outstanding shares of Valeo Pharma, and indirectly the shares of the other debtors, in consideration of a payment of 20 million dollars. Under the reverse vesting structure,

¹ R.S.C., 1985, c.C-36.

Valeo transfers some of its unwanted liabilities and assets to a newly incorporated entity, ResidualCo, prior to Xediton's share purchase.

[8] Under the transaction a pension plan administered by Valeo will be transferred to ResidualCo and eventually wound down. Furthermore, Xediton will terminate Valeo's lease for warehouse and office space.

[9] Xediton will retain 36 of Valeo's 60 employees, although within 30 days after closing Xediton may elect not to retain some of the 36 employees who are no longer required to transfer the business. All employees not retained by Valeo will be paid their salary and vacation benefits before being transferred to ResidualCo, who will then terminate the employees' contracts and assume the employer's liabilities.

[10] The Court accepts the Monitor's recommendation that the Xediton transaction results in the most advantageous outcome for stakeholders. In the Court's view, the transaction best fulfils the objectives of the CCAA.

[11] Xediton's offer was obtained following a robust two-stage solicitation process. The Monitor initially contacted 93 prospective purchasers/investors. In November 2024, the Monitor received 10 non-binding letters of intent. Following an analysis of these LOI's, six persons were deemed to qualify under the SISP procedures to submit phase 2 binding offers. Two binding offers were received in December 2024. Only Xediton's offer was for substantially all of Valeo's business, and the price offered by Xediton was substantially higher than that of the competing bid.

[12] Given the thorough SISP process the Court accepts the Monitor's opinion that Xediton's offer is the most advantageous one for stakeholders. A sale or liquidation of Valeo's assets, either thorough a receivership or bankruptcy, would generate a considerably smaller return for creditors and other stakeholders. Under the Xediton transaction, not all secured creditors will be fully repaid and there is no amount for unsecured creditors, however a bankruptcy or liquidation would not have generated a better result.

[13] The pension plan administered by Valeo is in a deficit position and under no scenario is it likely that the five remaining beneficiaries would have continued to receive pension payments.

[14] Much of the value provided by the Xediton transaction is generated through the reverse vesting structure. Through the share purchase, Xediton acquires many of Valeo's existing supply and distribution contracts. Xediton also acquires Valeo's licenses, permits and authorizations that are necessary to operate in a highly regulated pharmaceutical industry. Finally, Xediton may benefit from Valeo's carry-forward tax losses and tax attributes. None of these assets could have been transferred under a traditional asset sale.

[15] There is also a social and economic benefit to maintaining Valeo's business as a supplier of pharmaceutical products in Canada.

[16] There is also a benefit to Valeo's employees who will keep their jobs in the restructured company.

[17] For those employees who will not be retained in the new Valeo, the Court expects they will receive compensation under the *Wage Earner Protection Program Act* (WEPPA), since the structure of the transaction appears to meet the statutory requirements.

[18] In this regard, the Court's Approval and Reverse Vesting Order (ARVO) gives effect to the Xediton transaction with regards to employees. Paragraphs 32 and 34 of the ARVO stipulate that any unretained employee is transferred from Valeo to ResidualCo, who then terminates the employee's contract and assumes all employment liabilities. Given the transfer of Valeo's employees to ResidualCo, paragraph 35 of the ARVO declares that ResidualCo is the former employer of the employees who have been terminated and that ResidualCo meets the prescribed criteria of section 3.2 of the *Wage Earner Protection Program Regulations*.

[19] Section 5(5) of WEPPA requires the Court to determine whether a former employer meets the criteria prescribed by s. 3.2 of the *Regulations*. In this case, the criteria are met, because ResidualCo "is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations."

[20] In issuing the ARVO the Court has determined one criterion of eligibility for payment under WEPPA (s. 5(1)(b)(iv)). It is for the Minister to decide under s. 9 of the statute whether individual applicants meet the other criteria found at subsections 5(1)(a), 5(1)(b)(iv) and 5(1)(c) WEPPA.

[21] Since the Xediton transaction maximizes recovery for creditors, maintains Valeo's business operations, and does not unfairly prejudice any group of stakeholders, the Court is of the opinion that the transaction should be approved.

[22] To allow for the transition of Valeo's business to Xediton it is appropriate to extend the terms of the Amended and Restated Initial Order to April 30, 2025, and to grant additional powers to the Monitor to, *inter alia*, distribute sales proceeds, deal with employee issues and manage ResidualCo's affairs.

[23] It is for these reasons that the Orders were issued on February 4, 2025.

[24] La traduction française de ce jugement sera déposée ce jour au greffe de la Cour supérieure.

Signature
numérique de
David R. Collier
Date :
2025.02.24
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Hearing dates: February 3 and 4, 2025

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