

+

COUR SUPÉRIEURE

"Chambre commerciale"

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N° : 500-11-039458-100

DATE : LE 20 JANVIER 2011

SOUS LA PRÉSIDENCE DE : Me PIERRE PELLERIN
REGISTRAIRE

DANS L'AFFAIRE DE LA PROPOSITION DE:

POWER CANADA CABLES LTD./LES CÂBLES POWER CANADA LTÉE
Débitrice

et

RSM RICHTER INC.
Syndic/Requérant

POWER BATTERY CO., INC.
Intimée

JUGEMENT

- [1] LA COUR, est saisie d'une requête en ratification de proposition et pour une ordonnance de réorganisation;
- [2] VU la requête et les allégués;

- [3] Vu les représentations soumises par le procureur de la partie débitrice à l'effet que la partie débitric(POWER CANADA CABLES LTD./LES Câbles POWER CANADA LTÉE) n'est nullement habilitée à satisfaire les termes de la proposition telle que soumise à l'approbation des créanciers;
- [4] ATTENDU qu'il est donc recommandé au tribunal de refuser la ratification de la proposition
- [5] VU les dispositions de l'article 63 (4) L.F.I.;
- [6] **PAR CES MOTIFS:**
- [7] **ORDONNE** que la demande de ratification de la proposition soumise aux créanciers soit refusée;
- [8] **DÉCLARE** que la débitrice POWER CANADA CABLES LTD./LES Câbles POWER CANADA LTÉE est réputée avoir effectué une cession de biens à compter d'aujourd'hui.

COPIE CONFORME



GREFFIÈRE ADJOINTE

(Signé): PIERRE PELLERIN
REGISTRAIRE

/MC

Me Gerald Kandestin
KUGLER KANDESTIN
Procureur de la partie débitrice

Me Denis St-Onge
GOWLINGS LAFLEUR HENDERSON
Procureur de la Banque Nationale du Canada

20 Janvier 2011
16.10
9h00

ABC

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial Division)

IN THE MATTER OF THE PROPOSALS
OF:

NO.: 500-11-039457-102
SUP NO.: 41-1393380

**POWER BATTERY (IBERVILLE) LTD./
BATTERIES POWER (IBERVILLE) LTÉE,**
a corporation duly incorporated according
to law having its head office at 6290,
boulevard des Grandes-Prairies, in the
City of Saint-Léonard, Province of Quebec,
H1P 1A2.

"PBI"

20 janvier 2011
Vu la requête des allégués
via les représentants autorisés par le
procureur de la partie de la partie débitrice
Powerr Canada Cables Ltd a l'effet que
la dite partie n'est nullement habilitée
à satisfaire les termes de la proposition
telle que soumise à l'effet de la proposition
attendu qu'il est donc spécifiquement
interdit de refuser la ratification de la
vu

NO.: 500-11-039458-100
SUP NO.: 41-1393388

**POWER CANADA CABLES LTD./
LES CÂBLES POWER CANADA LTÉE**
a corporation duly incorporated according
to law having its head office at 6290,
boulevard des Grandes-Prairies, in the
City of Saint-Léonard, Province of Quebec,
H1P 1A2.

"PCC"

21-12-2010
mis au
0-01-2011, 8h10 à 9h00

BATTERIE UNIVERSELLE LTÉE
a corporation duly incorporated according
to law having its head office at 6290,
boulevard des Grandes-Prairies, in the
City of Saint-Léonard, Province of Quebec,
H1P 1A2.

"BU"

collectively, Debtors/Petitioners

OK DONNE que le demandeur de ratification
de la proposition, telle que soumise aux
instances sont refusées.
DECLARE que la partie débitrice,
Powerr Cables Ltd est infirmée et non
effective une assignation visant à
compter d'un quel que

POWER BATTERY CO., INC.
a New Jersey, U.S.A. corporation having a
place of business at 25 McLean
Boulevard, Patterson, New Jersey, U.S.A.
07514-1507

Respondent

-and-

[Handwritten signature]
[Handwritten number 38]

RSM RICHTER INC.

in its capacity as Trustee to each of the Proposals of the Debtors/Petitioners, having its place of business at 2 Place Alexis Nihon, Suite 1820, Montreal, Quebec, H3Z 3C2.

Trustee

**MOTION FOR APPROVAL OF PROPOSAL AND FOR A REORGANIZATION ORDER
(Section 58 of the *Bankruptcy and Insolvency Act*, Canada
and Section 191 of the *Canada Business Corporations Act*)**

TO ONE OF THE HONORABLE JUSTICES OF THE COMMERCIAL DIVISION OF THE SUPERIOR COURT FOR THE DISTRICT OF MONTREAL SITTING AS THE "COURT" AS DEFINED AND DESIGNATED UNDER THE RELEVANT PROVISIONS OF BOTH THE *BANKRUPTCY AND INSOLVENCY ACT*, CANADA AND, TO THE EXTENT APPLICABLE, THE *CANADA BUSINESS CORPORATIONS ACT*, DEBTORS/PETITIONERS RESPECTFULLY SUBMIT THE FOLLOWING:

1. Petitioners Power Battery (Iberville) Ltd./Batteries Power (Iberville) Ltée ("PBI"), Power Canada Cables Ltd./Les Câbles Power Canada Ltée ("PCC") and Batteries Universelle Ltée ("BU") are corporate entities (collectively "Debtors" or "Petitioners") governed by the following legislation:
 - (a) PBI is a corporation governed by the *Canada Business Corporations Act* ("CBCA");
 - (b) PCC is a corporation governed by the *Canada CBCA*; and
 - (c) BU is a company governed by Part IA of the *Companies' Act*, Quebec.
2. Copies of PBI's Articles of Incorporation and all amendments to date pursuant to the relevant provisions of the CBCA (the "PBI Articles") are produced herewith as **EXHIBIT P-1**
3. The shareholdings of the Debtors are as follows:
 - (a) all of PCC's and BU's issued and outstanding shares are owned and held by PBI; and
 - (b) all of PBI's issued and outstanding shares (the "Existing Shares") are held by Respondent Power Battery Co., Inc. ("Existing Holder" or "Respondent"), a New Jersey U.S.A. corporation.

4. Each of the Debtors filed a *Notice Of Intention To Make A Proposal* pursuant to the relevant provisions of the *Bankruptcy and Insolvency Act, Canada* ("**BIA**"), in general, and Section 50.4(1) thereof, in particular, on August 12, 2010 with RSM Richter Inc. ("**Trustee**") as trustee thereunder, all as appears of record herein.
5. By Judgments rendered by the Registrar or Deputy Registrar of this Honorable Court on September 9, 2010, October 22, 2010 and November 25, 2010, the delays for each of the Debtor's filing a proposal envisaged by Section 50.4(8) and (9) *BIA*, were extended until January 7, 2011, all as appears of record herein.
6. On December 3, 2010, each of PBI and BU filed a proposal dated December 1, 2010 entitled "Proposal" (the "**PBI Proposal**" and the "**BU Proposal**" respectively). On December 3, 2010, PCC filed a proposal dated December 1, 2010 entitled "Proposal" which was then amended by an "Amended Proposal" dated and filed on December 17, 2010 (the "**PCC Proposal**"). The PBI Proposal, the PCC Proposal and the BU Proposal (collectively the "**Proposals**") are produced herewith as **EXHIBITS P-2, P-3 and P-4** respectively.
7. The PBI Proposal is subject to and provides for the "reorganization" of PBI pursuant to Section 191 *CBCA* consisting of this Honorable Court's ordering the following amendments to the PBI Articles (the "**Equity Restructuring**"), namely:
 - (a) With respect to all Existing Shares:
 - (i) the conversion of all Existing Shares into shares redeemable for cancellation by PBI for the aggregate price (for all Existing Shares) of \$1.00; and
 - (ii) thereafter, the deemed redemption for cancellation of all Existing Shares by PBI for the aggregate redemption price (for all Existing Shares) of \$1.00 and the cancellation of all Existing Shares;
 - (b) The creation of the "New Shares" (as defined in the PBI Proposal); and
 - (c) Such other amendments and/or restating of the PBI Articles,all as more fully set forth in PBI's proposed draft "Articles of Reorganization" (the "**Articles of Reorganization**"), a copy of which is produced as **EXHIBIT P-5**.
8. The Equity Restructuring is essential and necessary for the success of the Proposals and for the survival of the Debtors. The Equity Restructuring is in the best interests of all of the Debtor's stakeholders (including their creditors and employees). The reasons for the foregoing are as follows:
 - (a) Each of the Debtors and PBI, in particular, is insolvent and, in consequence thereof, has sought application of the relevant provisions of

the *BIA*;

- (b) Each of the Debtors and PBI, in particular, has no shareholder's equity and, as a consequence, PBI's Existing Shares have no value. PBI (and effectively each of the other Debtors) exists, at the present time, for the benefit of its creditors and not for the benefit of the Existing Holder of PBI's Existing Shares;
 - (c) The only manner by which PBI (and each of the other Debtors) can survive financially, restructure and bring value to its creditors and other stakeholders is for PBI to receive a fresh equity investment;
 - (d) Subject only to fulfillment of the "Proposal Conditions" (as defined in the PBI Proposal) and this Honorable Court's approving each of the Proposals and ordering the Equity Restructuring, Michel Caron or one or more entities designated by him, being the "Investor" as defined in the PBI Proposal (the "**Investor**") is prepared to make, among other commitments to PBI's banker/secured creditor, an equity investment into PBI of at least \$1 Million (the "**Investment**"), in order to allow PBI (and each of the other Debtors) to fund payment of all amounts required to be paid under the Proposals and to provide working capital funds for the Debtors. The Investors conditional undertaking is produced as **EXHIBIT P-6**.
9. As of the date hereof, the foregoing "Proposal Conditions" have not been fulfilled. At the hearing of this Motion, the Debtors and the Trustee will be in a position to confirm to this Honorable Court whether or not such "Proposal Conditions" have been fulfilled. The present Motion has been filed on this basis due to the urgency of this matter. If such "Proposal Conditions" have not been fulfilled, the Debtors will not seek this Honorable Court's approval of the Proposals as herein set forth.
10. The PBI Proposal provides that, immediately after approval of each of the Proposals and ordering of the Equity Restructuring:
- (a) The Articles of Reorganization will be sent to the "director" (as envisaged by Section 191(4) *CBCA*) in order to obtain a "certificate" confirming the equity restructuring (as envisaged by Section 191(5) *CBCA*); and
 - (b) Upon issuance of such "certificate", the Investor will make the Investment into PBI in consideration of receiving such number of the therein defined "New Shares" for the issuance price of \$1.00 for each such "New Share" so issued up to the total amount of the Investment.
11. The Trustee called meetings of each of the Debtor's creditors for December 17, 2010, giving notice to such creditors of such meetings in the manner and with the documentation set forth in Section 51(1) *BIA* (the "**Notices of Meeting**"). A copy of the Notices of Meeting are produced herewith as **EXHIBITS P-7** (for PBI), **EXHIBIT P-8** (for PCC) and **EXHIBIT P-9** (for BU).

12. At each of the meetings of each the Debtor's creditors held on December 17, 2010, the Trustee tabled and distributed to all creditors present a report (the "**Trustee's Reports**") which were also sent as part of the foregoing Notices of Meeting, in which the Trustee explained each of the Proposals (including the equity restructuring) and recommended that the creditors of each of the Debtors approve each of the Proposals. The amended PCC Proposal (which increased the payment to ordinary creditors) was tabled at PCC's meeting of creditors on December 17, 2010 and was explained by the Trustee to PCC's creditors in attendance at such meeting.
13. The creditors of each of the Debtors entitled to vote on each of the Proposals at each of the meetings held on December 17, 2010, voted to approve each of the Proposals by majorities greater than the statutory majorities required under the provisions of the *BIA*, the whole as will appear from the Trustee's hereafter defined "Proposal Report".
14. Each of the Proposals provide for payment in full of all of the therein defined "Crown Claims", "Employee Claims" and "Preferred Claims" and thereafter provide for the following lump-sum payments (to be paid within 60 days following approval of each of the Proposals), namely:
 - (a) \$700,000 to be distributed by the Trustee, on a *pro rata* basis, to PBI's "Ordinary Creditors";
 - (b) \$55,000 to be distributed by the Trustee, on a *pro rata* basis, to PCC's "Ordinary Creditors"; and
 - (c) \$20,000 to be distributed by the Trustee, on a *pro rata* basis, to BU's "Ordinary Creditors".
15. Each of the Proposals comply with all of the requirements set forth in the relevant provisions of the *BIA* and the terms with each of the Proposals are reasonable and are calculated to benefit the general body of the affected creditors of each of the respective Debtors.
16. There are no reasons under any of the relevant provisions of the *BIA*, for this Honorable Court to refuse or delay approval of the Proposals.
17. There are no reasons, under any of the relevant provisions of the *CBCA*, for this Honorable Court to refuse or delay approval of the Equity Restructuring.
18. Both the Proposals as well as the respective Notices of Meeting sent by the Trustee contained a notice of hearing of the present Motion.
19. Each of the respective Notices of Meeting (containing notice of hearing of the present Motion) were sent by the Trustee to the following persons, namely:

- (a) in respect of PBI's Proposal, to all of PBI's creditors, the Official Receiver and Respondent (being the Existing Holder of all of PBI's Existing Shares);
 - (b) in respect of PCC's Proposal, to all of PCC's creditors and the Official Receiver; and
 - (c) in respect of BU's Proposal, to all of BU's creditors and the Official Receiver.
20. Accordingly, notices of the hearing of the present Motion were sent (together with and forming part of the Proposals and the respective Notices of Meeting) to all of the creditors of each of the Debtors, the Official Receiver and, with respect to PBI, to Respondent (being the Existing Holder of all of PBI's Existing Shares), more than 15 days prior to the date of the hearing of the present Motion.
21. Moreover, as appears from the PBI Proposal, Respondent (being the Existing Holder of all of PBI's Existing Shares), acknowledged receipt in lieu of service of the notice of hearing of the present Motion and consented, for all purposes, to the Equity Restructuring and the granting of the present Motion.
22. It is essential to the financial success of the Debtors and the success of the Proposals and it is in the best interests of all of the Debtors' creditors and other stakeholders that the Investment be made immediately. Unless the Investment is made immediately, the Debtors cannot survive financially and the Proposals will fail.
23. In light of the following urgent requirements, the Trustee has forwarded or shall forward to the Official Receiver and file with this Honorable Court the report of the Trustee required by Section 58(d) *BIA* (the "**Proposal Report**") but it is impossible to delay the hearing of the present Motion until the relevant delays set forth in Section 58 *BIA* have expired.
24. For the foregoing urgent reasons, Petitioners, with the concurrence of the Trustee, requests that this Honorable Court order a waiver and shortening of all of the relevant delays for the filing of the Proposal Report set forth in Section 58 *BIA*.
25. It is in the best interests of each of the Debtor's creditors and other stakeholders that this Honorable Court approve each of the Proposals and order the Equity Restructuring.
26. The present Motion is well founded both in fact and in law.

WHEREFORE, Debtors/Petitioners pray for judgment of this Honorable Court:

- A. **ORDERING** the waiver and shortening of all of the relevant delays set forth in Section 58 *BIA* for the sending to the Official Receiver and the filing with this Honorable Court of the Trustee's Report envisaged by Section 58(d) *BIA*;
- B. **APPROVING** the "Proposal" dated December 1, 2010 of Power Battery (Iberville) Ltd./Batteries Power (Iberville) Ltée ("**PBI**"), produced as **EXHIBIT P-2** herein, for all purposes as envisaged and required under the relevant provisions of the *Bankruptcy and Insolvency Act, Canada*;
- C. **APPROVING** the "Amended Proposal" dated December 17, 2010 of Power Canada Cables Ltd./Les Câbles Power Canada Ltée ("**PCC**"), produced as **EXHIBIT P-3** herein, for all purposes as envisaged and required under the relevant provisions of the *Bankruptcy and Insolvency Act, Canada*;
- D. **APPROVING** the "Proposal" dated December 1, 2010 of Batterie Universelle Ltée ("**BU**"), produced as **EXHIBIT P-4** for all purposes as envisaged and required under the relevant provisions of the *Bankruptcy and Insolvency Act, Canada*; and
- E. **ORDERING** the "reorganization" of PBI and further **ORDERING** that PBI's Articles of Incorporation (and all amendments to date thereof) be amended in accordance with the terms, conditions and provisions of PBI's proposed draft "Articles of Reorganization", a copy of which is produced as **EXHIBIT P-5**, as envisaged by the relevant provisions of the *Canada Business Corporations Act*,

the whole without costs except in the event of contestation and then with costs against the contesting party(ies).

MONTREAL, December 17, 2010


KUGLER KANDESTIN L.L.P.

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial Division)

IN THE MATTER OF THE PROPOSALS OF:

NO.: 500-11-039457-102
SUP NO.: 41-1393380

**POWER BATTERY (IBERVILLE) LTD./
BATTERIES POWER (IBERVILLE) LTÉE,**
a corporation duly incorporated according to
law having its head office at 6290, boulevard
des Grandes-Prairies, in the City of Saint-
Léonard, Province of Quebec, H1P 1A2.

"PBI"

NO.: 500-11-039458-100
SUP NO.: 41-1393388

**POWER CANADA CABLES LTD./
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a corporation duly incorporated according to
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Léonard, Province of Quebec, H1P 1A2.

"PCC"

NO.: 500-11-039459-108
SUP NO.: 41-1393389

BATTERIE UNIVERSELLE LTÉE
a corporation duly incorporated according
to law having its head office at 6290,
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Saint-Léonard, Province of Quebec, H1P 1A2.

"BU"

collectively, **Debtors/Petitioners**

-and-

POWER BATTERY CO., INC.
a New Jersey, U.S.A. corporation having a
place of business at •, New Jersey, U.S.A.

Respondent

-and-

RSM RICHTER INC.
in its capacity as Trustee to the Proposals of
the Debtors/Petitioners, having its place of
business at 2 Place Alexis Nihon, Suite 1820,
Montreal, Quebec, H3Z 3C2.

Trustee

SOLEMN AFFIRMATION

I, the undersigned, **BENOIT GINGUES**, a licensed trustee and duly authorized representative of the firm RSM Richter Inc., carrying on business at 2 Place Alexis Nihon, Suite 1820, Montreal, Quebec, H3Z 3C2:


1. THAT I am a licensed trustee and a duly authorized representative of RSM Richter Inc., the Trustee in the present a "*Motion For Approval Of A Proposal And A Reorganization Order*" and, as such, have knowledge of all of the facts alleged in such Motion;
2. THAT all of the facts alleged in the present Motion are, to my knowledge, true and correct.

AND I HAVE SIGNED:

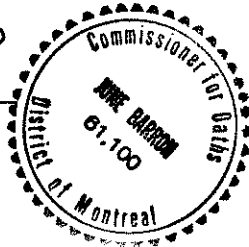


BENOIT GINGUES

SOLEMNLY AFFIRMED before me at the City of Montreal, Province of Quebec, this 17th day of **December, 2010**

 #61.100

Commissioner of Oaths



CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial Division)

IN THE MATTER OF THE PROPOSALS OF:

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collectively, **Debtors/Petitioners**

-and-

POWER BATTERY CO., INC.
a New Jersey, U.S.A. corporation having a
place of business at •, New Jersey, U.S.A.

Respondent

-and-

RSM RICHTER INC.
in its capacity as Trustee to the Proposals of
the Debtors/Petitioners, having its place of
business at 2 Place Alexis Nihon, Suite 1820,
Montreal, Quebec, H3Z 3C2.

Trustee

SOLEMN AFFIRMATION

I, the undersigned, **REGIS J. REHEL**, carrying on business at its head office at 6290, boulevard des Grandes-Prairies, in the City of Saint-Léonard, Quebec, H1P 1A2, hereby solemnly declare the following:

1. THAT I am President of each of Power Battery (Iberville) Ltd./Batteries Power (Iberville) Ltée, Power Canada Cables Ltd./Les Câbles Power Canada Ltée and Batterie Universelle Ltée, the Petitioners in the present "*Motion For Approval Of A Proposal And A Reorganization Order*" (the "**Motion**") and, as such, have knowledge of all of the facts alleged in such Motion.

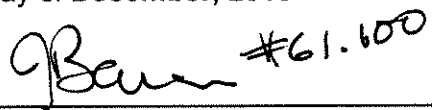
2. THAT all of the facts alleged in the present Motion are, to my knowledge, true and correct.

AND I HAVE SIGNED:

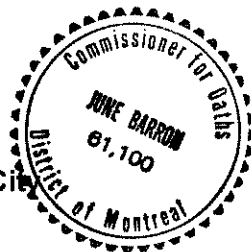


REGIS J. REHEL

SOLEMNLY AFFIRMED before me at the City of Montreal, Province of Quebec, this 17th day of **December, 2010**



Commissioner of Oaths in and for the City and District of Montreal



CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial Division)

IN THE MATTER OF THE PROPOSALS OF:

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"BU"

collectively, **Debtors/Petitioners**

-and-

POWER BATTERY CO., INC.
a New Jersey, U.S.A. corporation having a
place of business at •, New Jersey, U.S.A.

Respondent

-and-

RSM RICHTER INC.
in its capacity as Trustee to the Proposals of
the Debtors/Petitioners, having its place of
business at 2 Place Alexis Nihon, Suite 1820,
Montreal, Quebec, H3Z 3C2.

Trustee

NOTICE OF PRESENTATION

TO: **RSM Richter Inc.** (in its capacity as Trustee to each of the above Proposals)
2, Place Alexis Nihon
Suite 1820
Montreal, Quebec
H3Z 3C2

Attention: Mr. Benoit Gingues

GENTLEMEN :

TAKE NOTICE that the present "*Motion For Approval Of A Proposal And A Reorganization Order*" shall be presented for adjudication before one of the Honorable Judges of the Quebec Superior Court, Commercial Division, sitting in **Room 16.10** of the Montreal Courthouse, located at 1 Notre-Dame Street, East, Montreal, Quebec at **9h00 a.m.** on **December 21, 2010** or so soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, this 17th day of December, 2010



KUGLER KANDESTIN L.L.P.

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial Division)

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collectively, **Debtors/Petitioners**

-and-

POWER BATTERY CO., INC.
a New Jersey, U.S.A. corporation having a
place of business at 25 McLean
Boulevard, Patterson, New Jersey, U.S.A.
07514-1507

Respondent

-and-

RSM RICHTER INC.


in its capacity as Trustee to each of the Proposals of the Debtors/Petitioners, having its place of business at 2 Place Alexis Nihon, Suite 1820, Montreal, Quebec, H3Z 3C2.

Trustee

<p>LIST OF EXHIBITS</p>

EXHIBIT P-1	Power Battery (Iberville) Ltd. Articles of Incorporation and Articles of Amendments;
EXHIBIT P-2	Proposal dated December 1, 2010 of Power Battery (Iberville) Ltd.;
EXHIBIT P-3	Proposal dated December 1, 2010 and Amended Proposal dated December 17, 2010 of Power Canada Cables Ltd.;
EXHIBIT P-4	Proposal dated December 1, 2010 of Batterie Universelle Ltée.;
EXHIBIT P-5	Draft Articles of Reorganization of Power Battery (Iberville) Ltd.;
EXHIBIT P-6	Commitment letter dated December 1, 2010 from Investor;
EXHIBIT P-7	Notice of Meeting from Trustee for Power Battery (Iberville) Ltd.;
EXHIBIT P-8	Notice of Meeting from Trustee for Power Canada Cables Ltd.;
EXHIBIT P-9	Notice of Meeting from Trustee for Batterie Universelle Ltée.

MONTREAL, this 17th day of **December, 2010**


KUGLER KANDESTIN L.L.P.