

C A N A D A

(Commercial Division)

PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT

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No: 500-11-031970-078

IN THE MATTER OF THE *COMPANIES  
CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, c. C-36, as amended:

POSITRON TECHNOLOGIES INC.,

DEBTOR / Petitioner

-and-

RSM RICHTER INC.,

Monitor

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**MOTION TO ESTABLISH THE PROCEDURE AND TO FIX A DATE FOR THE  
CREDITORS' MEETING**

*(Subsection 11(4) of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36)*

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**TO ONE OF THE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL  
DIVISION FOR THE DISTRICT OF MONTREAL, THE PETITIONER RESPECTFULLY  
STATES:**

1. On November 28, 2007, this court issued an order (the "**Initial Order**") under subsection 11(3) of the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of the Petitioner, Positron Technologies Inc. ("**PTI**"), which Initial Order, inter alia:
  - a) declared that PTI is a debtor company to which the CCAA applies;
  - b) stayed all proceedings and remedies taken or that might be taken in respect of PTI or any of its property without leave of the court, except as otherwise set forth in the Initial Order;
  - c) authorized PTI to carry on business in a manner consistent with the preservation of their property and to make certain payments in connection with its business;
  - d) appointed RSM Richter Inc. (Mr. Yves Vincent, FCA, CIRP) as monitor of PTI in these proceedings (hereinafter the "**Monitor**" or "**RSM Richter**"); and
  - e) permitted PTI to file with this Court one or more plans of compromise or arrangement under the CCAA between PTI and its creditors or some of them;

the whole as appears from the Court record;

2. The Initial Order established December 20, 2007 as the “Stay Termination Date” (as defined therein), the whole as appears from the Court record;
3. This Court has extended the Initial Order from time to time until and including February 13, 2009, the whole as appears from the Court record;
4. In parallel to the present Motion, PTI is also seeking another extension extending the Initial Order until **March 31, 2009**, the whole with a view to file its plan of arrangement;
5. On January 25, 2008, Justice Christiane Alary granted PTI’s Motion to Establish a Claims Process, the whole as more fully appears from the Court record;
6. PTI expects to file its plan prior to March 31, 2009 and now seeks the Court’s permission to establish a procedure and fix a date for the Creditors Meeting to consider the plan (hereinafter the “**Creditors Meeting**”) in Montreal, Quebec;
7. If the plan is approved by the creditors, PTI would appear before this Court within five (5) days thereafter to obtain the sanction of the Court;
8. PTI requests that the Court grants RSM Richter Inc., in its capacity as Monitor, the powers set out in the conclusions of the present Motion with respect to the procedure and the fixing of the Creditors’ Meeting;
9. RSM Richter Inc. expects that the Creditors’ Meeting will be held on **March 19, 2009**;
10. The present Motion is well founded both in fact and in law.

**WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:**

**I. SERVICE**

1. **ORDER** that the Motion is properly presentable today and that the delays for service of the Motion are hereby abridged;

**II. DEFINITIONS**

2. **DECLARE** that the following terms in this Order shall, unless otherwise indicated, have the following meanings:
  - (a) “**BIA**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
  - (b) “**Business Day**” means a day other than a Saturday, a Sunday, or a non-judicial day (as defined in article 6 of the *Code of Civil Procedure*, R.S.Q., c. C-25, as amended);
  - (c) “**CCAA**” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;
  - (d) “**CCAA Proceedings**” means the proceedings in respect of PTI under the CCAA;

- (e) **“Claim”** means any right of any Person against PTI in connection with any indebtedness, liability or obligation of any kind of PTI owed to such person, whether liquidated or unliquidated, determined or contingent, mature or unmatured, disputed or undisputed, legal or equitable, secured or unsecured, present or future, known or unknown, including any interest accrued thereon or costs payable in respect thereof up to the Determination Date, whether or not such right is executory or anticipatory in nature, whether a principal debt or a guarantee or a surety, including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation is based in whole or in part on facts existing prior to the Determination Date, or which would have been a claim provable in bankruptcy had PTI become bankrupt on the Determination Date, and, without limitation, shall include (i) any Unaffected Claim, and (ii) any Restructuring Claim, provided however that in no case shall an Excluded Claim be a “Claim”;
- (f) **“Claims Bar Date”** means 5:00 p.m. (Montreal time) on June 30, 2009;
- (g) **“Court”** means the Superior Court of Quebec (Commercial Division);
- (h) **“Creditor”** means any Person having a Claim and may, where the context requires, include an assignee or a trustee, interim receiver, receiver, receiver/manager or other Person in right of such Person, and includes a Known Creditor, provided however that in no case shall an Excluded Creditor be a “Creditor” in respect of an Excluded Claim;
- (i) **“Creditors Information Package”** means the information package for Creditors, including a Proof of Claim form, an instruction letter explaining how to complete the form, a copy of the Plan and a copy of this Order;
- (j) **“Creditors List”** means a list of all Known Creditors;
- (k) **“Creditors Meeting”** means all meetings of Creditors to be convened for the purposes of voting on the Plan;
- (l) **“Determination Date”** means January 25, 2008;
- (m) **“Excluded Claim”** includes any right of any Person against PTI in connection with any indebtedness, liability or obligation of any kind which came into existence after the Determination Date, and any interest thereon, including without limitation any obligation toward creditors who have supplied or shall supply services, utilities, goods or materials or who have or shall have advanced funds to PTI after the Determination Date, but only to the extent of such services, utilities, goods, materials or funds actually supplied after the Determination Date and to the extent that such claims are not otherwise affected by the Plan;

- (n) “**Excluded Creditor**” includes a Person having an Excluded Claim, but only in respect of such Excluded Claim and only to the extent that the Plan does not otherwise affect said Person;
- (o) “**Initial Order**” means the order of this Court in the CCAA Proceedings made on November 28, 2007;
- (p) “**Known Creditor**” means a Creditor whose Claim is included in PTI’s books and records, any Creditor whose claim is acknowledged by PTI, and any Creditor whose Claim becomes known to the Monitor;
- (q) “**Monitor**” means RSM Richter Inc., in its capacity as monitor pursuant to section 11.7 of the CCAA and the Initial Order;
- (r) “**Notice of Revision or Disallowance**” means the notice advising a Creditor that the Monitor has revised or disallowed all or part of such Creditor’s Claim set out in its Proof of Claim and setting out the reasons for such revision or disallowance;
- (s) “**Person**” means any individual, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, government body or agency, or any other entity;
- (t) “**Plan**” means a plan of compromise or arrangement filed or to be filed by PTI pursuant to the CCAA, as such plan may be amended or supplemented from time to time;
- (u) “**Proof of Claim**” means the Proof of Claim form filled out by the Creditor and sent to the Monitor evidencing the Creditor’s Proven Claim. Such Proof of Claim must be accompanied by a statement of account, invoice, or affidavit in support thereof;
- (v) “**Proven Claim**” means the amount of any Claim of any Creditor as of the Determination Date including interest to determined in accordance with the provisions of the CCAA and this Order, and proven by delivering a Proof of Claim to the Monitor;
- (w) “**Restructuring Claim**” means any right of any Person against PTI arising after the Determination Date, in connection with any indebtedness, liability or obligation of any kind owed to such Person arising out of the restructuring of PTI, or the repudiation or termination of any contract, lease, employment agreement, collective agreement or other agreement, whether written or oral, including any right of any Person who receives a notice of repudiation or termination from PTI and any Claims from the tax authorities resulting, directly or indirectly, from the acceptance of the Plan by the Creditors and its approval by the Court, including any Claims for Goods and Services Tax and for Sales Tax payable following a reduction and/or a settlement of PTI’s debt, provided however that in no case shall an Excluded Claim be a Restructuring Claim;

- (x) **“Unaffected Claim”** shall have the meaning ascribed to such term in the Plan, subject to the terms of the Initial Order;
- (y) **“Voting Claim”** of a Creditor means the Proven Claim of the Creditor unless the Proven Claim of the Creditor is not finally determined at the time of the Creditors Meeting, in which case it means the Claim of the Creditor which is accepted for voting purposes in accordance with the provisions of this Order, the Plan and the CCAA;

### **III. CREDITORS MEETING**

- 3. **ORDER** that the Creditors Meeting be held on March 19, 2009 in order to analyze and vote on the Plan for all Creditors, the whole as outlined in the Plan to be filed;
- 4. **ORDER** that the Creditors Meeting be subject to the following process:
  - (a) The Monitor, after consulting with PTI determine the time and place for the Creditors Meeting to be held on March 19, 2009;
  - (b) The Monitor will send to all Creditors a notice of the Creditors Meeting in order to approve the Plan, a copy of the Plan, a power of attorney and a voting letter and will publish such a notice as provided for in paragraph 5(b) hereafter;
  - (c) The Creditors Meeting will be held by the Monitor and all Proofs of Claim will be deposited in accordance with the terms of this Order;
  - (d) A representative of the Monitor will act as president of the Creditors Meeting and will decide all questions raised during the Meeting, notably its adjournment, its postponement, its continuation or its closing;
  - (e) A Creditor can appeal any decision of the Monitor in Court within five (5) days of the decision rendered by the Monitor;
  - (f) The only persons that can assist the Creditors Meeting are the Persons including the holders of proxies, having a right to vote at the Creditors Meeting and their lawyers, their directors, auditors as well as the attorneys of PTI; all other persons can be allowed to attend the Meeting by invitation of the president or with the unanimous consent of the Creditors present at the Creditors Meeting;
  - (g) Each Creditor will have the right to attend the Creditors Meeting and vote in person or by proxy if prior to the Claims Bar Date, such Creditor has filed with the Monitor a Proof of Claim (accompanied by a statement of account, invoice or affidavit in support of its Claim) acceptable to the Monitor in accordance with the Order issued by Justice Alary on January 25, 2008 on the Motion to Establish a Claims Process;
  - (h) Each Creditor who is not present or who is not represented by proxy at the Creditors Meeting can vote on the Plan by filing with the Monitor a voting letter duly completed which stated its vote prior to the beginning of the Creditors Meeting, failing which such Creditor will forfeit its right to vote;

- (i) Each Creditor having a right to vote will have a number of votes equal to the amount of dollars of its Proof of Claim as accepted by the Monitor or otherwise determined by the Court;

#### **IV. ROLE OF THE MONITOR**

5. **ORDER** that the Monitor, in addition to all powers and obligations in virtue of the LACC, will have the power to do the following:

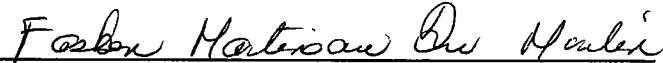
- (a) Send at least fifteen (15) days prior to the Creditors Meeting by ordinary mail, registered mail, courier, fax or email to all known Creditors of PTI, a copy of the Creditors Information Package, a notice of attendance of the Creditors Meeting, a proxy and a voting letter;
- (b) Act as president of the Creditors Meeting and will decide any and all questions or issues raised during the meeting, each Creditor having the right to appeal such a decision within five (5) days;
- (c) Prepare a Creditor Information Package as well as all other necessary documents relevant to the filing of the Proofs of Claim and the Creditors Meeting;
- (d) Under reserve of the Claims Bar Date, allow each Creditor having a Proven Claim to attend the Creditors Meeting and to vote in person or by proxy if the Creditor has filed its Proof of Claim with the Monitor;
- (e) In the event that the determination has not been made by the Monitor prior to the Creditors Meeting, the Monitor, in accordance with the Initial Order, the Plan and the present Order, will determine the admissibility in whole or in part of the Proofs of Claim. This determination by the Monitor acting in collaboration with PTI will be deemed to be the Voting Claim for the purpose of voting at the Creditors Meeting;
- (f) In the event that the Monitor rejects a Proof of Claim at the Creditors Meeting, he shall mark the proof as objected to and allow the Creditor to vote subject to the vote being declared invalid in the event of the objection being sustained;
- (g) Register all voting results of the Creditors at the Creditors Meeting;
- (h) File and present to the Court all procedures, motions or other requests that the Monitor deems necessary concerning:
  - (i) the affairs of PTI;
  - (ii) the Plan;
  - (iii) the determination of the rights of PTI, its Creditors, shareholders or any other party;
- (i) Obtain from PTI all necessary information concerning its financial situation and its progress in its restructuring plans;

- (j) Make all payments required under the Plan;
- (k) Execute all contracts, agreements or other documents as well as any other necessary acts in order to give full effect to the Plan;
- (l) File or oppose any Claim or procedure concerning the assets of PTI after having consulted PTI;
- (m) Certify true copy of the present Order and any modification or renewal of this Order or any other Order;
- (n) Send notices to suspend procedures as if he was a trustee in bankruptcy concerning any and all procedures, judicial claims or administrative matters;
- (o) Conclude any agreement with the objective of protecting PTI, its assets, Creditors or to give effect to the Plan;
- (p) Exercise all the powers of a trustee in accordance with a notice of intention or proposal under the *Bankruptcy and Insolvency Act* with the objective of assisting PTI with the filing and the realization of its Plan;

**V. GENERAL**

- 6. **RESERVE** the rights of PTI and the Monitor to file any and all motions to amend the procedure to be followed during the Creditors Meeting;
- 7. **RESERVE** PTI and the Monitor's rights to file a motion in order to modify or clarify the powers and obligations of the Monitor;
- 8. **ORDER** that the Monitor shall use reasonable discretion as to the adequacy of completion and execution of the directions outlined in this Order;
- 9. **ORDER** that the Monitor may apply to this Court for advice and directions in connection with the discharge or variation of its powers and duties under this Order;
- 10. **ORDER** the provisional execution of this Order notwithstanding appeal;
- 11. **THE WHOLE** without costs.

Montréal, this February 11, 2009

  
**Fasken Martineau DuMoulin LLP**  
Attorneys for Petitioner

**AFFIDAVIT**

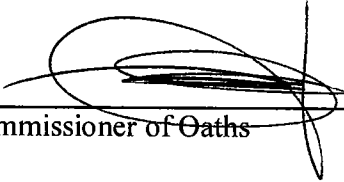
I, the undersigned, Dominic Deveaux, having my professional address at 65 René-Lévesque Blvd. East, suite 202, Montreal, Province of Quebec, H2X 1N2, do solemnly declare:

- 11. I am a duly authorized representative of Petitioner in the present case;
- 12. All the facts alleged in the present Motion are true.

AND I HAVE SIGNED:

  
\_\_\_\_\_  
Dominic Deveaux

Solemnly affirmed before me, in Montreal,  
on February 11, 2009

  
\_\_\_\_\_  
Commissioner of Oaths





**NOTICE OF PRESENTATION**

TO : **Me Stéphane Hébert**  
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**TAKE NOTICE** that the Motion to Establish a Date for the Creditors Meeting will be presented for adjudication before a judge of the Superior Court, commercial chamber, on **February 12, 2009**, at **9:00 a.m.**, or as soon as Counsel can be heard, at the Montreal Court House located at 1 Notre-Dame St. East in Montreal, Québec, in room **16.12**.

**DO GOVERN YOURSELVES ACCORDINGLY.**

Montréal, this February 11, 2009



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**Fasken Martineau DuMoulin LLP**  
Attorneys for Petitioner

No : 500-11-031970-078

PROVINCE OF QUÉBEC  
SUPERIOR COURT  
DISTRICT OF MONTREAL

In the matter of the *Companies Creditors  
Arrangement Act*, R.S.C. 1985, c. C-36, as  
amended:

**POSITRON TECHNOLOGIES INC.**

Petitioner

And

**RSM RICHTER INC.**

Monitor

10640/273363.00001

BF1339

**MOTION TO ESTABLISH THE PROCEDURE AND  
TO FIX A DATE FOR THE CREDITORS' MEETING**  
*(Subsection 11(4) of the Companies' Creditors  
Arrangement Act, R.S.C. 1985, c. C-36). AFFIDAVIT,  
NOTICE OF PRESENTATION*

ORIGINAL

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