

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial Division)

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.

Petitioner

and

RSM RICHTER INC.

Monitor

MOTION TO ESTABLISH A CLAIMS PROCESS
(*Subsection 11(4) of the Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36)

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

I. PROCEEDINGS TO DATE

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. On December 10, 2007, this court authorized PTI to accept the offer of Triton Electronique Inc. to purchase the assets and business of PTI and, as such, authorized PTI to sell its assets and business to Triton Electronique Inc. pursuant to the terms of this offer, the whole as appears from the court record (the "**Transaction**").
4. On December 20, 2007, this court extended the Initial Order until and including January 25, 2008, the whole as appears from the court record.
5. On December 21, 2007, the Monitor filed a certificate confirming that the Transaction had been completed, the whole as appears from the court record.
6. On December 24, 2007, the Monitor made a partial distribution of the sale proceeds resulting from the Transaction to PTI's secured creditors, as authorized by the judgment rendered by this court on December 10, 2007.
7. As part of this distribution, the Monitor, on the advice of its counsels, kept a portion of the sale proceeds in reserve regarding (i) the Administration Charge (as defined in the Initial Order), (ii) the D&O Charge (as defined in the Initial Order), (iii) a potential claim of the fiscal authorities for sales taxes, and (iv) one of Quorum Investment Pool Limited Partnership's debentures since the hypothec did not respect the formalities required to validly guarantee the payment of that debenture.
8. As described more fully below, PTI is confident that most of the above-mentioned outstanding issues will be resolved enabling PTI to formulate a plan of arrangement to be presented to its creditors (the "**Plan**"), and therefore believes that it would be in the interest of all that this court establish a process for the determination of the claims of creditors (the "**Claims Process**"), as set out in the conclusions of the present motion.
9. As described more fully below, PTI expects to be in a position to file the Plan within 75 days, that is on April 9, 2008, whereupon they would appear before this court to establish a procedure and fix a date for the meeting of creditors to consider the Plan (the "**Creditors Meeting**") in Montreal, Québec; if the Plan is approved by the creditors they would appear before this court within five days thereafter to obtain the sanction of the court.

II. THE PLAN OF ARRANGEMENT

10. PTI envisions a Plan whereby unsecured creditors will be paid a portion of their claims within thirty (30) days of the plan receiving court sanction, with additional payments made over time thereafter.

11. The Plan will also provide for the payment of secured claims according to their terms or upon terms agreed to with secured creditors.
12. PTI is confident that the terms of the Plan will be both feasible and acceptable to its Creditors.
13. In the event that the Plan is approved by the requisite majority of each class of creditor, the PTI would then apply to this court within five days of the Creditors Meeting in order to have the Plan sanctioned by this court.

III. CLAIMS PROCESS ORDER

14. In light of the foregoing, PTI requests that the court establish a Claims Process according to the terms set out in the conclusions of the present motion, so as to permit it to determine the quantum of claims that will be subject to the Plan.
15. PTI has acted, and continues to act, in good faith and with due diligence.

IV. ADDITIONAL POWERS AND OBLIGATIONS OF THE MONITOR

16. PTI requests that the court grant to RSM Richter, in its capacity as Monitor, the powers set out in the conclusions of the present motion with respect to the claims process and the Creditors Meeting.

V. ADDITIONAL MEASURES

17. PTI requests that the court reserve the right of PTI and of the Monitor to file, if necessary, a subsequent motion in order to:
 - (a) modify the procedure applicable to the valuation of claims;
 - (b) modify the procedure applicable to the holding of the Creditors Meeting;
 - (c) expand, modify or clarify the powers and obligations of the Monitor with respect to the above; and/or
 - (d) approve any additional measures useful or necessary to PTI's restructuring.
18. All the facts alleged in the present Motion appear from the Court record herein;
19. The present Motion is well founded both in facts and in law.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT:

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 March 7, 2008;
- (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, 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 referred to in subparagraph 6(a) hereof, 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 referred to in paragraphs 5 and 6 hereof;
- (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. CLAIMS PROCEDURE

- 3. **ORDER** that the Monitor shall publish on its website at [www.rsmrichter.com/Restructuring/Positron Technologies.aspx](http://www.rsmrichter.com/Restructuring/Positron%20Technologies.aspx), on or before 5:00 p.m. (Montreal time) on February 5, 2008, a copy of the Creditors List and of the Creditors Information Package;
- 4. **ORDER** that the Monitor shall send, by regular mail, a copy of the Creditors Information Package to each Known Creditor postmarked no later than February 7, 2008;
- 5. **ORDER** that, unless otherwise authorized by this Court, a Creditor who does not file a Proof of Claim by the Claims Bar Date shall not be entitled to any further notice, shall not be entitled to participate as a Creditor in these proceedings, shall not be entitled to vote on any matter in these CCAA Proceedings, including the Plan, and shall not be entitled to assert a Claim against PTI nor to receive a distribution under the Plan;
- 6. **ORDER** that the following procedure shall apply with respect to all Proofs of Claim received by the Monitor before the Claims Bar Date:
 - (a) the Monitor, together with PTI, shall review the Proof of Claim to determine the amount of the Proven Claim for voting and distribution purposes. Where applicable, the Monitor shall send the Creditor a Notice of Revision or Disallowance by mail, fax or courier or by e-mail or other means of electronic communication;
 - (b) a Creditor who receives a Notice of Revision or Disallowance and wishes to dispute it shall, within ten (10) days of the receipt of Notice of Revision or Disallowance, file a motion with the Court appealing said Notice of Revision or Disallowance, and serve a copy of such motion to PTI and the Monitor;

- (c) unless otherwise authorized by this Court, if the Creditor does not file a motion appealing a Notice of Revision or Disallowance within the delay provided for above, such Creditor shall be deemed to have accepted the value of its Proven Claim as set out in the Notice of Revision or Disallowance;
- (d) where the Proven Claim has not been finally determined prior to the date of any Creditor's Meeting, the Monitor, in conjunction with PTI, will determine the amount of the Voting Claim;

IV. EVIDENCE THAT CLAIM WAS PAID

7. **ORDER** that, should the Monitor receive evidence satisfactory to it that the Claim of a Creditor was paid in part or in full by PTI or other party prior to the Determination Date, such Claim shall be reduced or deleted, for the purposes of distributions under the Plan;

V. NOTICES AND COMMUNICATIONS

8. **ORDER** that any notice or other communication to be given under this Order by a Creditor to the Monitor or PTI shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if given by mail, fax, courier or other means of electronic communication addressed to:

Monitor:

RSM Richter Inc.
Attention: Yves Vincent, FCA, CIRP
Fax: 514 934-3504
Email: yvincent@rsmrichter.com

With a Copy to:

McCarthy Tétrault LLP
Attention: Alain N. Tardif
Fax: 514 875-6246
E-mail: atardif@mccarthy.ca

9. **ORDER** that any document sent by the Monitor pursuant to this Order may be sent by ordinary mail, registered mail, courier, fax, or e-mail, and Creditors shall be deemed to have received any document sent pursuant to this Order two (2) Business Days after the document is sent by mail and one (1) Business Day after the document is sent by courier, fax or e-mail, provided however that documents shall not be sent by ordinary or registered mail during a postal strike or work stoppage of general application;

VI. AID AND ASSISTANCE OF OTHER COURTS

10. **REQUEST** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province or any court or any judicial, regulatory or administrative body of the United

States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order;

VII. GENERAL PROVISIONS


11. **ORDER** that for the purposes of this Order, all Claims that are denominated in a foreign currency shall be converted to Canadian dollars at the nominal noon exchange rate of the Bank of Canada on the Determination Date;
12. **ORDER** that the Monitor shall use reasonable discretion as to the adequacy of completion and execution of any document completed and executed pursuant to this Order and, where the Monitor is satisfied that any matter to be proven under this Order has been adequately proven, the Monitor may waive strict compliance with the requirements of this Order as to the completion and execution of documents;
13. **ORDER** that references in this Order to the singular include the plural, to the plural include the singular and to any gender include the other gender;
14. **ORDER** that the Monitor may apply to this Court for advice and direction in connection with the discharge or variation of its powers and duties under this Order;
15. **ORDER** the provisional execution of this Order notwithstanding appeal;
16. **THE WHOLE** without costs.

MONTREAL, January 24, 2008

(s) Fasken Martineau Dumoulin LLP

FASKEN MARTINEAU DUMOULIN LLP
Attorneys for the Petitioner,
Positron Technologies Inc.

TRUE COPY


FASKEN MARTINEAU DUMOULIN LLP

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Commercial Division)

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.

Petitioner

and

RSM RICHTER INC.

Monitor

NOTICE OF PRESENTATION

TO : **Me Didier Culat**
Langlois Kronström Desjardins
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johanne.pilon@invest-quebec.com

TAKE NOTICE that the Motion to establish a claims process and to call a meeting of creditors will be presented for adjudication before a judge of the Superior Court, commercial chamber, on **January 25, 2008**, at 9:30 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 **15.04**.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, January 24, 2008

(s) Fasken Martineau DuMoulin LLP

FASKEN MARTINEAU DUMOULIN LLP
Attorneys for the Petitioner,
Positron Technologies Inc.

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