

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

B E T W E E N:

NATIONAL BANK OF CANADA

Applicant

- and -

AXIOM REAL-TIME METRICS INC.

Respondent

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY
AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C43, AS AMENDED

**AIDE MEMOIRE OF THE RECEIVER
(Motion by the Receiver Returnable July 15, 2025)**

1. This Aide Memoire is filed on behalf of KSV Restructuring Inc. (“**KSV**”), in its capacity as Court-appointed receiver and manager (the “**Receiver**”) of the undertaking, property and assets of Axiom Real-Time Metrics Inc. (the “**Company**”) in connection with its motion originally returnable on Friday July 11, 2025, adjourned by Justice Kimmel to Tuesday, July 15, 2025, and in support of the Receiver’s ongoing recommendation for the approval of the Sitero Transaction (defined below). The Receiver continues to rely on its Factum dated July 7, 2025, including the case law cited therein, for the purpose of this motion.

The Sale Approval Motion

2. On July 7, 2025, KSV, in its capacity as proposed receiver, delivered a motion record and factum for a motion returnable July 11, 2025 seeking approval of a sale transaction (the “**Sitero Transaction**”) pursuant to an asset purchase agreement dated July 6, 2025 (the “**Sitero APA**”) among the Receiver, Sitero Canada Inc. (“**Sitero**”), and Sitero LLC, as guarantor of certain payment obligations under the Sitero APA (the “**Sale Approval Motion**”).

3. The Sitero Transaction resulted from a sale process (the “**Sale Process**”) conducted by SSG Capital Advisors, LLC (“**SSG**”), an investment bank engaged by the Company. KSV, acting as advisor to National Bank of Canada (“**NBC**”), consulted with SSG throughout the Sale Process.

4. A summary of the Sitero APA and the Sitero Transaction is set out in the Proposed Receiver's Report dated July 7, 2025 (the "**Proposed Receiver's Report**"), which includes the Proposed Receiver's recommendation that the Sitero Transaction be approved for the following reasons:

- (a) the Company and GPP made extensive efforts to raise capital. SSG, which has sector experience, participated in the Financing Transaction Process¹, and when that failed, conducted the Sale Process in consultation with KSV;
- (b) SSG sourced three sale opportunities and concluded that the Sitero Transaction maximizes recoveries and is the best available transaction. The Proposed Receiver does not believe that a superior transaction is likely to be completed if the Sale Process is continued, and, in any event, the Company lacks liquidity to continue it further;
- (c) the Earn-Out is payable upon execution of each Performance Contract, not their performance, reducing collection risk. If the Sitero Transaction is not approved, the Pipeline Opportunities will have no value;
- (d) the Sitero Transaction allows the Company's business to continue, which is anticipated to significantly preserve employment and avoid disruption to ongoing clinical trials;
- (e) the liquidation value of the assets is immaterial. Other than cash, accounts receivable are the only liquid assets and are unlikely to yield net recoveries if operations are discontinued. The SR&ED Refunds are an excluded asset and are assumed to have the same value regardless of whether the Sitero Transaction is completed;
- (f) NBC, which is expected to incur a significant shortfall, supports the Sitero Transaction;
- (g) SSG advised the Proposed Receiver that:
 - (i) the Sitero Transaction maximizes value in the circumstances;
 - (ii) the Sitero Transaction is the best option; and
 - (iii) further time marketing is unlikely to produce a better offer.
- (h) the "urgency issues" discussed in Section 7 of the Proposed Receiver's Report.

¹ Capitalized terms used but not defined herein have the meanings ascribed to them in the Proposed Receiver's Report, the Supplement to the Proposed Receiver's Report (the "**Supplemental Report**") and/or the First Report of the Receiver dated July 14, 2025 (the "**First Report**").

5. At 10:10 p.m. on July 10, 2025, Loopstra Nixon LLP (“**Loopstra**”), counsel to Andrew Schachter (“**Schachter**”), the Company’s founder, served a term sheet offering to purchase the Assets (the “**Alternative Transaction**”).

6. Prior to the Sale Approval Motion on July 11, 2025, the Proposed Receiver filed the Supplemental Report, which included a cash flow forecast for the period from June 30 to August 17, 2025 (the “**Cash Flow Forecast**”). The forecast projected a negative cash flow of approximately \$2.15 million over that period if the Company continued to operate in receivership and the Sitero Transaction was not approved.

7. Also prior to the Sale Approval Motion on July 11, 2025, Schachter filed an affidavit, among other things:

- (a) advising of his opposition to the Sitero Transaction;
- (b) stating that he was excluded from participating in the Sale Process; and
- (c) requesting an adjournment to allow the Court the opportunity to consider the Alternative Transaction.

8. As set out in her Endorsement (the “**Endorsement**”), Justice Kimmel adjourned the Sale Approval Motion to 10:00 a.m. on July 15, 2025, on the following terms:

- (a) Schachter was given 24 hours to submit updated detailed terms of the Alternative Transaction and related financing commitments, including interim funding if closing is to occur after the week of July 14, 2025;
- (b) the Receiver was directed to consult with SSG regarding Schachter’s involvement or lack thereof in the Sale Process and provide any relevant comments on the fairness of the process;
- (c) Sitero was to consider extending the irrevocability of its offer to July 15, 2025, and, if willing to proceed, work with the Receiver and the Company to finalize any remaining closing matters; and
- (d) the Receiver was to file a further supplementary report (i.e., the First Report) by 5:30 p.m. EDT on July 14, 2025.

The 1001 Ontario Transaction

9. On July 13, 2025, Loopstra submitted a new offer package (the “**Offer Package**”)² on behalf of 1001294310 Ontario Inc. (“**1001 Ontario**”), for the purchase of substantially all the Assets (the “**1001 Ontario Transaction**”), pursuant to an asset purchase agreement dated July 13, 2025 (the “**1001 Ontario APA**”), with 1001 Ontario, as purchaser, and Agenus Inc. (“**Agenus**”), as guarantor.

² Schachter had delivered a substantially identical package on July 12, 2025.

10. On Sunday July 14, 2025, at approximately 10:40 a.m. EDT, Schachter filed a further affidavit.

Review by the Receiver

11. In accordance with the Endorsement, on July 14, 2025, the Receiver filed the First Report, which:

- (a) provides the Receiver's findings concerning the issues set out in the Endorsement;
- (b) summarizes the Offer Package; and
- (c) sets out the basis for the Receiver's continued recommendation that the Court issue the Vesting Order approving the Sitero Transaction.

Receiver's Concerns Regarding the 1001 Ontario Transaction

12. Although the purchase price under the 1001 Ontario APA is potentially greater than that under the Sitero APA, the Receiver considers the 1001 Ontario Transaction to be inferior due to closing risk associated with its proposed August 15, 2025 closing date. In this regard:

- (a) no evidence has been provided that 1001 Ontario has cash available to fund the purchase price due on closing (\$1.5 million), which amount is not guaranteed by Agenus;
- (b) no evidence has been provided of 1001 Ontario's ability to pre-fund the full amount of cash required to operate the business to August 15, 2025. The Receiver requested two deposits: (i) \$500,000 to fund estimated operating costs to closing; and (ii) 15% of the cash purchase price payable on closing, both of which were expressly stated to be premised on a quick closing;
- (c) the Receiver is concerned about the value of the Agenus guarantee (both in respect of the operational funding commitment and the Earn-Out Payments commitment), (as discussed below);
- (d) the Receiver is also concerned about the Company's ability to continue to operate in receivership until August 15, 2025 for the following reasons:
 - (i) NBC had advised it is not prepared to fund the business beyond July 15, 2025, and therefore there is no certain source of funding for operations beyond that period;
 - (ii) the Receiver has concerns that the funding required to operate the business to August 15, 2025 will exceed the amount reflected in the Cash Flow Forecast given the book value of the accounts payable (approximately \$9.8 million), their aging (92% over 90 days), the relatively nominal payments to vendors included in the Cash Flow and other pressures on the business, including from customers whose studies are impacted by the receivership;

- (iii) the Company's CEO has advised the Receiver that he is not prepared to be involved with the business if 1001 Ontario is the successful bidder and several weeks are required to close the transaction;
- (iv) the CEO has advised the Receiver of concerns expressed to him by certain employees if 1001 Ontario is the successful bidder. Certain employees have expressed similar concerns to the Receiver; and
- (v) the business has been undercapitalized for several months, many clinical studies are delayed, and customer funds have been used for unintended purposes.

Agenus Guarantee

13. To support its ability to meet its obligations under the 1001 Ontario Transaction, Agenus provided the Receiver with the Joint Letter, which includes: (i) Agenus's Form 8-K dated May 12, 2025, filed with the U.S. Securities and Exchange Commission, which discloses cash and cash equivalents of approximately US\$24.3 million as of March 31, 2025; (ii) a statement that Agenus has cash and cash equivalents of approximately US\$8.3 million as of the date of the Joint Letter; and (iii) a press release dated June 3, 2025 announcing the Zydus Transaction, which contemplates upfront cash consideration of US\$75 million payable to Agenus in August 2025, subject to customary closing conditions and satisfactory due diligence.

14. If in fact Agenus has cash and cash equivalents of approximately US\$8.3 million as of the date of the Joint Letter, its cash position has declined by US\$16 million between March 31, 2025 and that date. A review of Agenus's publicly available financial information for its last five fiscal years reflects similar negative cash flow trends.

15. Between January 1, 2020 and December 31, 2024, Agenus's net losses totaled approximately US\$932 million, and its negative EBITDA for the same period totals approximately US\$502 million. The Form 8-K discloses a net loss of US\$26.4 million for the three months ending March 31, 2024. As of December 31, 2024, Agenus had negative retained earnings of approximately US\$2.2 billion, reflecting a history of recurring losses.

16. The Receiver understands from its discussions with Loopstra that the 1001 Ontario Transaction cannot close until August 15, 2025 because the Zydus Transaction is not scheduled to close before that date. Although the 1001 Ontario Transaction is stated to be unconditional, it appears tied to the completion of the Zydus Transaction.

Recommendations

17. Based on its diligence since the Sale Approval Motion and its concerns regarding a delayed closing, the Receiver continues to recommend that the Court grant the Vesting Order approving the Sitero Transaction for the following reasons:

- (a) the reasons provided in Section 8 of the Proposed Receiver's Report;

- (b) the Sale Process was conducted in a fair, efficient, and proper manner, taking into account the Company's significant financial pressures and illiquidity;
- (c) Schachter took no steps to participate in the Sale Process, notwithstanding that he was aware of it from the date that SSG's engagement letter was signed. Schachter did not contact SSG to advise of his interest in acquiring the business or the Assets prior to submitting the 1001 Ontario offer. The 1001 Ontario offer was submitted after the transaction to approve the Sitero APA was served on the Service List, and is based on the Sitero APA;
- (d) approval of the Sitero Transaction preserves the integrity of the Sale Process;
- (e) although the Joint Letter calls for payment of the deposits requested by the Receiver, the Receiver was clear that the amounts of those deposits were premised on a timely closing. In any event, it is the Receiver's view that these deposits are not sufficient to compensate the Receiver if the 1001 Ontario Transaction fails to close;
- (f) NBC has advised that it will only fund operations to July 15, 2025. 1001 Ontario has not provided evidence that it has funding available to meet the Company's cash requirements in the Cash Flow Forecast, and the Receiver is concerned that the actual requirements may actually exceed the amounts forecasted;
- (g) despite being asked, no commitment has been made that 1001 Ontario is prepared to pre-fund operating costs and/or amounts payable in excess of those in the Cash Flow Forecast, if necessary. The Receiver is therefore of the view that 1001 Ontario has not adequately addressed the concerns regarding a timely closing raised by the Receiver during the Sale Approval Motion and identified by Justice Kimmel in paragraph 25(a) of the Endorsement;
- (h) 1001 Ontario has also not provided evidence that it can fund the purchase price due on closing (\$1.5 million);
- (i) the Receiver is unable to place any value on the Agenus guarantee at this time;
- (j) the Receiver has concerns regarding the ability of the Company to continue operating in receivership for the reasons noted in the First Report;
- (k) NBC has advised it supports the Receiver's recommendation. NBC is the only economic stakeholder with an interest in either transaction; and
- (l) Sitero is prepared to close the Sitero Transaction forthwith.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 14th day of July, 2025

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in its capacity as the Receiver**

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Proceedings commenced at TORONTO

AIDE MEMOIRE OF THE RECEIVER

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