Court File No. CV-25-00746939-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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 INSOLVENY ACT*, R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43, AS AMENDED

FACTUM OF THE APPLICANT
(RECEIVERSHIP ORDER)

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000
Toronto, ON M5K 1E7
Fax: 416.216.3930

Jennifer Stam LSO#: 46735J
Tel: 416. 202.6707
jennifer.stam@nortonrosefulbright.com

Lauren Archibald LSO# 87151U
Tel: 416.278.3787
lauren.archibald@nortonrosefulbright.com

Lawyers for the Applicant

TO: **THE SERVICE LIST**

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FACTUM OF THE APPLICANT

PART I - INTRODUCTION

1. The applicant, National Bank of Canada (the "**Applicant**"), is bringing this Application seeking an order appointing KSV Restructuring Inc. ("**KSV**") as receiver and manager (the "**Receiver**"), without security, of all the assets, undertaking, and property (collectively, the "**Property**") of Axiom Real-Time Metrics Inc. ("**Axiom**" or the "**Company**") pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended (the "**CJA**").

2. The Applicant is a secured lender of the Company pursuant to an offer of financing dated as of January 29, 2024 (the "**Offer of Financing**"). Under the terms of the Offer of Financing, the Applicant has advanced funds to the Company and is currently owed

$10,405,079.53, inclusive of accrued interest and fees (collectively, the "**Indebtedness**). The Indebtedness is due and payable in full and remains outstanding. The Company has committed numerous other defaults under the Offer of Financing, all of which are continuing.[1]

3. Great Point Partners III L.P. ("**GPP**"), the Company's equity sponsor, has advanced several million dollars in recent months to support the Company. However, on or about May 16, 2025, as a result of a failed refinancing process, GPP's counsel advised that, other than with respect to certain employee-related obligations, it was no longer prepared to continue to provide funding to support the Company's business and operations.[2]

4. As a condition of a short-term forbearance agreement between the Applicant and the Company (the "**Forbearance Term Sheet**"), SSG Advisors, LLC ("**SSG**") was recently engaged to conduct an expedited sale process (the "**Sales Process**") to determine whether a transaction could be completed for the sale of the Company's business as a going concern. Over the past several weeks, SSG has conducted a highly expedited but extensive canvassing of the market to assess interest in the business.[3]

5. If appointed as the Receiver, KSV intends to immediately bring a motion in the receivership for a sale of substantially all of the Company's business and assets (the "**Transaction**") that would allow the Company to continue to operate without disruption for the benefit of its stakeholders, including its clients and employees.[4]

6. Capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the Affidavit of Sonia de Lorenzi sworn July 4, 2025.

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[1] Affidavit of Sonia de Lorenzi sworn July 4, 2025 ("**Lorenzi Affidavit**"), paras 4 and 30, Application Record of the Applicant ("**Application Record**"), Tab 2, pp 30, 36 and 37.
[2] Lorenzi Affidavit, para 6, Application Record, Tab 2, p 30.
[3] Lorenzi Affidavit, paras 33-35, Application Record, Tab 2, p 38.
[4] Lorenzi Affidavit, para 3, Application Record, Tab 2, p 30.

PART II - SUMMARY OF FACTS

The Company

7. The Company is a privately owned and incorporated pursuant to the laws of the Province of Ontario. The Company is located at 5520 Explorer Drive, Suite 400, Mississauga, ON, L4W 5L1, and provides, among other things, software, project management, clinical consulting, results analysis, and data management solutions for clients in the life sciences sector.[5]

8. GGP, through GPP II – Axiom, LLC (a special purpose entity), is the controlling shareholder of the Company. The Company is also indirectly owned by Andrew Schachter ("**Schachter**") through Thinkworks Inc., an entity controlled by Schachter.[6]

The Secured Facilities

9. Pursuant to the Offer of Financing, the Applicant agreed to make certain loans available to the Company (the "**Credit Facility**"). As security for the Credit Facility, the Company granted to the Applicant the following security (collectively, the "**Security Documents**"): (i) a general security agreement dated as of March 11, 2024 (the "**GSA**"); (ii) an insurance assignment, warranty, and undertaking dated as of March 11, 2024; and (iii) a notice of security in intellectual property dated as of March 11, 2024.[7]

10. As of July 3, 2025, the Company is indebted to the Applicant in the amount of the Indebtedness.[8]

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[5] Lorenzi Affidavit, paras 9 and 11, Application Record, Tab 2, pp 31-32.
[6] Lorenzi Affidavit, para 10, Application Record, Tab 2, p 31.
[7] Lorenzi Affidavit, paras 13-14, Application Record, Tab 2, pp 32-33.
[8] Lorenzi Affidavit, para 4, Application Record, Tab 2, p 30.

Defaults and Events Leading Up to this Application

11. The Credit Facility pursuant to the Offer of Financing closed on March 11, 2024 (the "**Effective Date**"). On May 16, 2024, less than two (2) months after the Effective Date, the Applicant received a notice (the "**BDC Notice**") from counsel for Business Development Bank of Canada ("**BDC**"), which stated that J2ASM Inc. ("**J2ASM**") was in default of its obligations pursuant to a loan agreement with BDC (the "**BDC Loan**").[9]

12. The BDC Notice indicated BDC's intention to demand repayment and to enforce its security under the BIA to J2ASM and the Company (as the guarantor of the BDC Loan). The BDC Notice constituted a default under the Offer of Financing. On May 22, 2024, the Applicant sent a notice of default to the Company and reserved all of its rights and remedies under the Offer of Financing and the Security Documents.[10]

13. Around the same time that the Applicant received the BDC Notice, the Applicant became aware of additional issues relating to the Company, the true financial position of the Company, and the conduct of Schachter, including, but not limited to, the following:[11]

(a) it became apparent that the Company was experiencing significant financial distress;

(b) there had been significant overstatements of the Company's revenues, which meant that a pro forma compliance certificate that had been delivered by the Company to the Applicant on the Effective Date (the "**Pro Forma Compliance**

[9] Lorenzi Affidavit, paras 21-22, Application Record, Tab 2, p 34.
[10] Lorenzi Affidavit, paras 16 and 22, Application Record, Tab 2, pp 33 and 34.
[11] Lorenzi Affidavit, para 24, Application Record, Tab 2, p 35.

Certificate") was inaccurate and misrepresented the Company's historical financial position and its financial position as of that date; and

(c) allegations by GPP that Schachter had misused funds.

14. Over the next several months, GPP and the Company sought further investment, including by retaining SSG to provide investment banking services to the Company, with a focus on: (i) reviewing private placement alternatives to Axiom, if any; (ii) selling all or part of Axiom to any party if instructed to do so by the Company; and/or (iii) restructuring Axiom's balance sheet with existing stakeholders. However, none of the discussions with various prospectives investors and other parties were successful.[12]

15. During this time, the Company continued to experience negative cash flow and further funding was injected by GPP over those months, as needed. On October 4, 2024, the Applicant sent a further default notice as a result of the Company's failure to comply with various financial covenants (together with the default notice sent on May 22, 2024, the "**2024 Default Notices**"). The Applicant also indicated that it considered the inaccuracies contained in the Pro Forma Compliance Certificate to be a misrepresentation of the Company (as given by Schachter) and it reserved the right to rely on the misstatement as an event of default under the Offer of Financing.[13]

16. In November 2024, the Company advised the Applicant that it had entered into discussions with potential equity investors who were interested in investing in the Company. Recently, the Company advised the Applicant that its discussions with one of the potential equity investors had stalled. On May 20, 2025, the Applicant issued a demand for repayment

[12] Lorenzi Affidavit, paras 8 and 26, Application Record, Tab 2, pp 31 and 35.
[13] Lorenzi Affidavit, paras 26 and 28, Application Record, Tab 2, pp 35-36.

and a notice of intention to enforce security pursuant to section 244 of the BIA (the "**Demand and 244 Notice**").[14]

17. As set out in the Demand and 244 Notice, as well as the 2024 Default Notices, several events of default under the Offer of Financing have occurred, including the following:[15]

(a) the commencement of the BDC Proceedings;

(b) failure to deliver (i) unqualified audited financial statements combined with management discussion and analysis containing required information within 120 days of the Company's financial year ended June 30, 2024, (ii) interim unaudited financial statements on a trailing twelve month basis together with a compliance certificate containing the required information as set out in the Offer of Financing within 45 days of the quarters ended September 30, 2024, December 31, 2024, and March 31, 2025, and (iii) quarterly breakdown of capitalized software development costs between maintenance and growth within 45 days of the quarters ended September 30, 2024, December 31, 2024, and March 31, 2025;

(c) failure to (A) maintain a Ratio of Total Net Debt to Adjusted EBITDA of 3.25:1.00; and (B) maintain an interest coverage ratio of 3.0:1.0;

(d) failure to maintain a fixed-charge coverage ratio of at least 1.20:1:00; and

(e) delivery of the Pro Forma Compliance Certificate that contained material misrepresentations and misstatements.

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[14] Lorenzi Affidavit, paras 7 and 29, Application Record, Tab 2, pp 31 and 36.
[15] Lorenzi Affidavit, para 30, Application Record, Tab 2, pp 36-37.

The Forbearance Term Sheet and the Sales Process

18. The Company did not have the cash flow to remain operational for more than a few weeks without further funding. However, after discussions with SSG and the Applicant's financial advisor, KSV, it was determined that the prospects for a going concern sale in the event of immediate receivership were highly uncertain.[16]

19. In late May and early June, the Applicant and the Company engaged in discussions regarding the terms of the Forbearance Term Sheet, whereby, among other things: (a) the Applicant would agree to forbear from enforcement; and (b) the Company would engage SSG to conduct the Sales Process to determine whether there was a viable going concern transaction for the Company. On June 6, 2025, the Company and the Applicant entered into the Forbearance Term Sheet, which provided for forbearance under the Offer of Financing and the Security Documents to June 27, 2025 (unless terminated earlier in accordance with its terms, the "**Forbearance Period**").[17]

20. Shortly thereafter, SSG conducted a highly expedited but extensive canvassing of the market to assess interest in the business, which lead to the Transaction. It is KSV's intention to seek approval of the Transaction immediately on a "quick flip" basis as soon as it is appointed as the Receiver and at the same hearing as the hearing for its appointment as the Receiver.[18]

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[16] Lorenzi Affidavit, para 32, Application Record, Tab 2, pp 37.
[17] Lorenzi Affidavit, paras 33-34, Application Record, Tab 2, p 38.
[18] Lorenzi Affidavit, para 35, Application Record, Tab 2, p 38.

III - STATEMENT OF ISSUES, LAW & AUTHORITIES

21. The only issue raised on this Application is whether the Court should appoint KSV as the Receiver of the Property of the Company pursuant to subsection 243(1) of the BIA and section 101 of the CJA.

It is Just and Convenient for this Court to Appoint the Receiver

22. Section 101 of the CJA provides courts with the ability to appoint a receiver where it is "just or convenient."[19] Similarly, subsection 243(1) of the BIA provides that, on an application by a secured creditor, this Court may appoint a receiver to do any of the following if it considers it to be "just or convenient to do so" to: (a) take possession over the assets of an insolvent person, (b) exercise any control that the Court considers advisable over the insolvent person's property and business, or (c) take any other action that the Court considers advisable.[20]

23. Under the BIA, a secured creditor who intends to enforce its security on all or substantially all of the property of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person, may satisfy the applicable notice requirement by delivering at least ten days' prior written notice of the secured creditor's intention to enforce its security.[21] As defined in section 2 of the BIA, the term "secured creditor" means, among other things, a "person holding a mortgage, hypothec, pledge, charge or lien on or against the property of the debtor or any part of that property as security for a debt due or accruing due to the person from the debtor […]."[22]

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[19] *Courts of Justice Act*, R.S.O. 1990, c. C-43, s. 101.
[20] *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ["**BIA**"], s. 243(1).
[21] BIA, s. 244.
[22] BIA, s. 2.

24. In determining whether it is "just or convenient" to appoint a receiver under either the BIA or CIA, the court "must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto,"[23] which includes the rights of the secured creditor under its security.[24] Neither the BIA nor the CJA set out a list of factors to be considered when determining whether it is just and convenient to appoint a receiver. Nevertheless, in evaluating whether the appointment of a receiver is appropriate, this Court has considered a range of non-exhaustive factors, including the following:[25]

(a) the need to stabilize and preserve the debtor's business;

(b) the loss of confidence in the debtor's management;

(c) the likelihood of maximizing return to the parties; and

(d) the balance of convenience to the parties.

25. It is well established that the appointment of a receiver, while generally considered an extraordinary remedy, "is significantly reduced when dealing with a secured creditor who has the right to a receivership under its security arrangements […]."[26] Furthermore, this Court has recognized that there is a clear distinction between cases where the borrower is in default and those where no default has occurred, and has held that burden is lowered in cases where the loan and security documents are in default.[27]

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[23] *Bank of Nova Scotia v Freure Village of Clair Creek*, 1996 CanLII 8258 at para 10.
[24] *Ibid.*
[25] *Maple Trade Finance Inc. v CY Oriental Holdings Ltd.*, 2009 BCSC 1527 at para 25; also *Canadian Equipment Finance and Leasing Inc. v The Hypoint Company Limited*, 2022 ONSC 6186 at para 25; see also *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc.*, 2020 ONSC 1953 at para 45 [***BCIMC***].
[26] *BCIMC* at para 43; See also *C & K Mortgage et al. v 11282751 Canada Inc. et al.*, 2024 ONSC 1039 at para 17.
[27] *Confederation Life Insurance Co. v Double Y Holdings Inc.,* 1991 CarswellOnt 1511 (Westlaw) at para 20. See also *Royal Bank v Brodak Construction Services Inc.,* 2002 CanLII 49590 (ONSC) at para 11.

26. Having regard to the foregoing considerations, the appointment of the Receiver is just and convenient in the circumstances for the following reasons, among other things:[28]

(a) it is clear that the Applicant is a secured creditor pursuant to the Security Documents and is entitled to make an application under subsection 243(1) of the BIA;

(b) the Company has defaulted in its obligations to the Applicant under the Offer of Financing;

(c) the Company is an "insolvent person" under the BIA[29] because the Company is unable to meet its obligations as they generally become due;

(d) the Applicant delivered the Demand and 244 Notice to the Company and all related statutory notice periods have since expired;

(e) the Forbearance Term Sheet contemplates the appointment of KSV as the Receiver upon the expiration of the Forbearance Period, and, pursuant to the terms of the GSA, the Applicant has the right to appoint a receiver;

(f) the appointment of a receiver will allow it to bring a motion to sell the Company's business immediately, if the Transaction is approved by the Court;

(g) KSV is qualified to act as the Receiver under the BIA, is consenting to do so, and is familiar with the Property as the Applicant's financial advisor; and

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[28] Lorenzi Affidavit, para 37, Application Record, Tab 2, p 39.
[29] BIA, s. 2.

(h) the proposed powers of the Receiver are within the scope of those listed in subsection 243(1) of the BIA and are consistent with the powers generally granted by the Court.

PART IV - ORDER REQUESTED

27. The Applicant respectfully requests a receivership order substantially in the form attached to the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of July, 2025.

Jennifer Stam

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000
Toronto, ON M5K 1E7
Fax: 416.216.3930

Jennifer Stam LSO#: 46735J
Tel: 416. 202.6707
jennifer.stam@nortonrosefulbright.com

Lauren Archibald LSO# 87151U
Tel: 416.278.3787
lauren.archibald@nortonrosefulbright.com

Lawyers for the Applicant

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Bank of Nova Scotia v Freure Village of Clair Creek*, 1996 CanLII 8258
2. *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc.*, 2020 ONSC 1953
3. *C & K Mortgage et al. V 11282751 Canada Inc. et al.*, 2024 ONSC 1039
4. *Canadian Equipment Finance and Leasing Inc. v The Hypoint Company Limited*, 2022 ONSC 6186
5. *Confederation Life Insurance Co. v Double Y Holdings Inc.,* 1991 CarswellOnt 1511
6. *Maple Trade Finance Inc. v CY Oriental Holdings Ltd.*, 2009 BCSC 1527
7. *Royal Bank v Brodak Construction Services Inc.,* 2002 CanLII 49590

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

***Bankruptcy and Insolvency Act*, R.S.C. 1985, C. B-3, as amended**

Definitions

2 ***insolvent person*** means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

[…]

secured creditor means a person holding a mortgage, hypothec, pledge, charge or lien on or against the property of the debtor or any part of that property as security for a debt due or accruing due to the person from the debtor, or a person whose claim is based on, or secured by, a negotiable instrument held as collateral security and on which the debtor is only indirectly or secondarily liable, and includes

[…]

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just and convenient to do so:

> **(a)** take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or sued in relation to a business carried on by the insolvent person or bankrupt;
>
> **(b)** exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
>
> **(c)** take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

(a) the insolvent person consents to an earlier enforcement under subsection 244(2); or

(b) the court considers it appropriate to appoint a receiver before then.

[…]

Advance notice

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

(a) the inventory,

(b) the accounts receivable, or

(c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

No advance consent

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

***Courts of Justice Act*, R.S.O. 1990, C. C-43, as amended**

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

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NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000
Toronto ON M5K 1E7

Jennifer Stam LSO#: 46735J
Tel: 416. 202.6707
jennifer.stam@nortonrosefulbright.com

Lauren Archibald LSO# 87151U
Tel: 416.278.3787
lauren.archibald@nortonrosefulbright.com

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