

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No. 500-11-062372-236

SUPERIOR COURT
(Commercial Division)

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED:**

CAPCIUM INC., a legal person having its head office at 7300 TransCanada Highway, in the city of Pointe-Claire, district of Montreal, province of Québec, H9R 1C7

-and-

GELCAN CORPORATION INC., a legal person having its head office at 7300 TransCanada Highway, in the city of Pointe-Claire, district of Montreal, province of Québec, H9R 1C7

Debtors

-and-

THE BANK OF NOVA SCOTIA, a chartered bank constituted in virtue of the *Bank Act* having an office at 40, King Street West, 12th Floor, in the city of Toronto, province of Ontario, M5H 3Y2

Applicant

-and-

RAYMOND CHABOT INC., having a place of business at 600, De La Gauchetière Street West, in the city and district of Montreal, province of Québec, H3B 4L8

Proposed Monitor

**APPLICATION FOR AN INITIAL ORDER, AN AMENDED AND
RESTATED INITIAL ORDER AND OTHER RELIEF**

(Sections 9, 11 and following, and 36 of the *Companies' Creditors Arrangement Act*
(the "CCAA"))

TO THE HONOURABLE JUSTICE MICHEL A. PINSONNAULT OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION IN AND FOR THE JUDICIAL DISTRICT OF MONTREAL, THE APPLICANT HEREBY RESPECTFULLY SUBMITS:

I - INTRODUCTION

1. Capcium Inc. ("**Capcium**") provides softgel custom manufacturing technology services for the pharmaceutical, over-the-counter and health and wellness industries. Gelcan Corporation Inc. ("**Gelcan**" and together with Capcium, the "**Debtors**") is a subsidiary of Capcium which provides the same services, but for the cannabis industry. The Debtors partner with their clients to support early-stage product development, softgel encapsulation needs, product commercialization and provide solutions to challenges faced by their clients to bring their product on the market.
2. Capcium currently owes over \$27.2 million to its creditors.
3. The Applicant, The Bank of Nova Scotia (the "**Applicant**" or the "**Secured Creditor**"), is currently owed over \$6.2 million, in principal and interest, by Capcium pursuant to senior-secured credit facilities which have been terminated and the advances made thereunder recalled as a result of Capcium's repetitive defaults under the Credit Agreement as well as the Standstill Agreement (as these terms are defined hereinafter).
4. The financial situation of the Debtors has significantly deteriorated over the past few years, namely as a result of the short-term and lasting impacts of the COVID-19 pandemic, including major delays in the construction of their new facility, construction cost overruns, delays to obtain certain licences and a reduction in equipment purchases to compensate for the construction cost overruns.
5. Despite the additional credit facilities made available to the Debtors by the Applicant and several measures which have been implemented, including at the request of the Applicant, in order to address their declining financial situation, the Debtors have been unable to restructure their business and financial affairs in order to attain profitability. In fact, Capcium has never reported any profits and during its 2022 financial year, its reported losses totalled \$24 million, which amount takes into account the revenues of \$7.7 million generated by Capcium.

6. The Debtors' management estimates that further investments in capital expenditures for the purchase of equipment of approximately \$11.5 million are necessary to attain profitability.
7. On March 23, 2023, all of Capcium's directors resigned. As at the date hereof, the only remaining officer employed by Capcium is Richard Italia, the Chief Executive Officer.
8. Absent a board of director and a management team in place, there is little, if any, perspective that the Debtors will be able to successfully restructure their business and financial affairs. Unless immediate relief is granted that allows for the preservation of the value of the Debtors' business and assets as a going concern, all of the Debtors' stakeholders could be seriously prejudiced.
9. In light of the foregoing, the Applicant, in its capacity as first ranking, perfected Secured Creditor over all the assets of Capcium, has brought an application to commence proceedings under the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of the Debtors and is seeking from this Court the issuance of an initial order, among other things:
 - (a) declaring that the Debtors are "debtor compan[ies]" to which the CCAA applies;
 - (b) granting a stay of proceedings in favour of the Debtor and its directors and officers for an initial period of 10 days (the "**Stay Period**");
 - (c) appointing Raymond Chabot Inc. ("**Raymond Chabot**") as Monitor (the "**Proposed Monitor**") – a "super" monitor with all the necessary powers to manage the Debtors' affairs and to implement the restructuring process;
 - (d) granting an administration charge in the initial amount of CAN \$150,000 (the "**Administration Charge**") over all of the Debtor's assets, property and undertaking (the "**Property**") to secure the payment of the professional fees and disbursements of the Applicant's legal counsel, the Debtors' legal counsel, the Monitor and the Monitor's legal counsel incurred both before and after the date of the Initial Order, which charge is proposed to rank in priority to all other encumbrances, including over the claims of the federal and provincial governments subject to a deemed trust; and
 - (e) approving an interim financing facility in the initial amount of \$250,000 (the "**DIP Facility**") to be provided by the Applicant subject to and on the terms and conditions of the interim financing term sheet dated May 17, 2023 (the "**DIP Term Sheet**") and granting a charge in the initial amount of CAN \$300,000 (the "**DIP Charge**") over the Property to secure the DIP Financing, which charge is proposed to rank in priority to all other encumbrances, including over the claims of the federal and provincial governments subject to a deemed trust, except for the Administration Charge. At the time of the

Comeback Hearing, the Applicant will ask this Court to increase the DIP Facility to \$1,200,000 and the corresponding DIP Charge to \$1,440,000.

10. More specifically, the Applicant seeks the issuance of an order substantially in the form of the draft initial order (the “**Proposed Initial Order**”) filed in support hereof as **Exhibit A-1** as well as the draft sale process order (the “**Proposed Sale Process Order**”) filed in support hereof as **Exhibit A-2** and at the time of the Comeback Hearing will seek the issuance of the draft amended and restated initial order filed in support hereof as **Exhibit A-3**. The foregoing order are collectively hereinafter referred to as the “**Proposed Orders**”).
11. The Applicant understands that the Debtors consent to the relief being sought pursuant to the Proposed Orders.

II - OVERVIEW OF THE DEBTORS’ BUSINESS AND CORPORATE STRUCTURE

A. Overview of the Debtors’ Business

12. As previously mentioned, the Debtors provide softgel custom manufacturing technology services for the pharmaceutical, over-the-counter, cannabis and health and wellness industries. The Debtors’ mission is to become the contract development manufacturing organization of choice for its target industries.
13. Prior to the resignation of all but one of its officers, Capcium had a best-in class management team comprised of members with extensive encapsulation and pharmaceutical expertise to spearhead its mission.
14. The Debtors’ core specialization consists in softgel encapsulation services. Capcium provides its services from a newly built state-of-the-art facility of 150,000 square feet located at 7300 TransCanada Highway, in the city of Pointe-Claire, Québec H9R 1C7 (the “**Pointe-Claire Plant**”). The Pointe-Claire Plant is pharmaceutical grade and compliant with all major cGMP pharmaceutical standards including Health Canada, FDA, and EMEA. As a result, Capcium has the ability to service the highest-grade pharmaceutical production and the capacity to produce millions of soft gels annually.
15. In addition to its encapsulation services, the Debtors provide complementary services to their clients, including:
 - (a) bottling services: the Debtors deliver convenient reliable one stop shop integration of manufacturing, filling and secondary packaging for soft gels with a variety of bottle configurations;
 - (b) printing services: the Debtors provide solutions for all types of printing needs to meet ingredient composition requirements for the intended markets for all types of pharmaceutical and nutritional products;

- (c) analytical testing: the Debtors employ expert quality assurance and quality control teams which ensure that the implementation of their laboratory services are done in a fully GMP-compliant manner;
 - (d) on-site warehouse storage: the Debtors have an on-site warehouse that is cGMP compliant and allows for the storage of both raw materials and finished goods ensuring the optimal humidity & temperature controls are kept;
 - (e) on-site procurement: the Debtors' seasoned procurement team is there to support turnkey product offering. With a strong relationship with their vendors, they follow market price fluctuations and plan inventory control to minimize price variances for the Debtors' customers;
 - (f) project management: the Debtors' team comprises experienced professionals with decades of experience in the industry, ensuring the most efficient project planning and team management so that their clients' product gets the treatment and prioritization it deserves; and
 - (g) logistics and compliance support: the Debtors' logistics and compliance team carries on vital and critical roles in ensuring that the proper raw materials are in place for production and that manufactured products are processed as efficiently as possible to avoid delays in shipping to clients.
16. Through their extensive service offering, the Debtors are able to provide softgel custom manufacturing technology services that support early stage product development all the way through product commercialization and provide additional support for its clients for new product launches, product enhancements and the development of solutions for clients facing challenges bringing a product on the market.
17. Capcium offers its services to clients operating in the following industries:
- (a) pharmaceutical industry: Capcium leverages ways to increase efficiency to accelerate time to market through a more collaborative, customer-focused drug life cycle. Its precision-focused, pharmaceutical-grade cGMP manufacturing operation's agility supports the specific needs of its pharmaceutical customers. Capcium provides services to clients mostly in the therapeutic areas of oncology, gastrointestinal, cardiology, pain and inflammation, and women's health.
 - (b) over-the-counter industry: Capcium is dedicated to developing and manufacturing name brand and non-prescription drug products in the most cost-effective solutions to support the growing market demand, from pain relievers analgesics, to cough and cold medication; and
 - (c) health and wellness/nutritional industry: Capcium's ability to handle oils, complex pastes and size diversity formulations with no leakages, ensures that the final dose product will be compliant with all the regulations, meeting

its label claim and achieve its optimal ingredient delivery. Capcium provides its services to clients in the therapeutic areas of diet and digestion, heart, immune system, joints, omega, prenatal, women's health, vitamins and men's health.

18. Gelcan offers the same services; however its services are offered specifically to clients in the cannabis industry.
19. The Debtors have obtained and currently hold, among others, the following licences and certifications which are critical to their business and required for their operations:
 - (a) a Drug Establishment Licence issued by Health Canada under the *Food and Drugs Act Regulation* (Division 1A) (the "**DEL Licence**"). Capcium must hold a DEL Licence in order to manufacture and distribute drug product;
 - (b) A Site Licence issued by the Canadian Minister of Health under Section 29 of the *Natural Health Products Regulations* SOR/2003-196 (the "**Natural Health Products Regulation**") under the *Food and Drugs Act*, RSC 1985, c F-27 (the "**Site Licence**"). The Site Licence allows the Capcium to manufacture natural health products and sell such products in Canada;
 - (c) A Site Licence for the Pointe-Claire Plant issued by the USA Food and Drug Administration, to manufacture and package, various dietary supplement categories, including proteins, amino acids, fats, lipid substances, vitamins, minerals, herbal, botanicals and animal by-products and extracts;
 - (d) A Cannabis Act Site Licence under the *Cannabis Act*, SC 2018, c 16 (the "**Cannabis Licence**") collectively with the other licences, the "**Licences**"). The cannabis industry is highly regulated and a Licence is necessary to cultivate, process and sell cannabis for medical and non-medical purposes. The Licence allows Gelcan to possess, transport, store, destroy, sale of bulk of cannabis and conduct research and development; and
 - (e) An NSF Certification which assures suppliers, retailers, regulators and consumers that an independent organization has reviewed its products to comply with specific standards of safety and quality (the "**Certification**").
20. It is imperative that these Licences and the Certification be maintained in good standing in order to maximize value for the benefit of all of the Debtors' stakeholders.

B. Corporate Structure

21. Capcium is a private company incorporated under the *Canada Business Corporations Act* which was founded in August 2012. The current corporate entity is the result of an amalgamation which occurred in January 2015. It has a multiple

stage share capital comprised of common, Series “A” and Series “B” shares and is owned in by numerous shareholders.

22. Capcium has two wholly owned subsidiaries, Gelcan and Capcium USA Corp. (“**Capcium USA**”). Capcium USA is not a debtor in this CCAA application.
23. Gelcan was established as a corporate entity in order to segregate Capcium’s cannabis contracts from the rest of Capcium’s operations. Gelcan holds the Cannabis Licence and is the sole entity which provides manufacturing services for the cannabis industry.
24. A copy of the statement of information of a legal person on the business registry for Capcium and Gelcan are filed in support hereof, *en liasse*, as **Exhibit A-4**.

III - THE DEBTORS’ FINANCIAL SITUATION

A. The Debtors’ Financial Difficulties

25. Capcium is a company that remains at the “start-up” stage of its business cycle. Since its inception, Capcium has not been able to generate any profits and has reported significant losses.
26. In 2016, with the financial support of strategic investors, Capcium initiated the construction of the Pointe-Claire Plant, a first of its kind and innovative state-of-the-art facility, designed specifically for the development and manufacturing of pharmaceutical, over the counter and health and wellness products. The construction of the Pointe-Claire Plant was the first step in Capcium’s strategic plan to increase sales by accommodating larger volumes of production and opening its services to the pharmaceutical market. At the time the project was initiated, Capcium projected that the Pointe-Claire Plant would allow it to reach potential sales in the order of \$62 million per year.
27. Unfortunately, as a result of the COVID-19 pandemic and cost overruns caused major delays in the completion of the plant, which in turn delayed the ramping up of Capcium’s production volumes and consequently negatively impacted its sales projections.
28. Capcium’s projected sales also assumed that it would be able to obtain Health Canada and FDA licences necessary for its operations shortly after the completion of the new facility. This assumption did not materialize, again largely as a result of the COVID-19 pandemic which caused significant delays in the treatment of licence applications. Without the required licences, Capcium was unable to begin production as expected which further impacted its sales – Capcium was unable to achieve sales targets for pharmaceutical products it anticipated to manufacture for the Canadian and US markets as a result.

29. In order to compensate for the cost overruns, Capcium had to cut in its equipment purchase budget, which reduced Capcium's production capacity and therefore impeded its ability to attain profitability in accordance with its projections.
30. As a result of the foregoing circumstances, the Debtors' have been unable to meet their obligations to the Applicant, and revenues have been significantly insufficient to support the fixed cost structure that was established on the basis of projections which ultimately did not materialize.
31. In 2021, less than one year after construction of the Pointe-Claire Plant was completed, Capcium was forced to effect a sale and leaseback transaction with a third-party, ARE-Canada No. 5 Holdings, ULC ("**ARE**"), in order to generate liquidity which were applied in reduction of the Applicant's debt and injected in the Debtors' cashflow.
32. The Debtors' obligations under the lease with ARE for the Pointe-Claire Plant amount to approximately \$341,000 per month.
33. The most recent cashflow projections provided by the Debtors' management demonstrate that the Debtors need a short-term cash injection of \$3 million to maintain their operations and continue their business in the normal course for the next 3 months, as appears from the projected cashflow for the period ending July 28, 2023, filed in support hereof as **Exhibit A-5**.
34. At this time, none of the current shareholders are willing to invest further money to support the Debtors – since 2020, Capcium's shareholders have injected more than \$14.9 million in order to support the Debtors' cashflow needs.
35. In light of the foregoing and in order to preserve available cash, the Debtors have significantly reduced their operations and have exhausted their remaining liquidity to pay their employees, suppliers and other creditors in the normal course of business. All of the directors have resigned.

B. The Debtors' Current Financial Situation

36. As of December 31, 2022, the Debtors appear to have total liabilities amounting to approximately \$62,050,000, as appears from the unaudited balance sheet prepared by Capcium and attached as **Exhibit A-6** (the "**Financial Statements**"). Exhibit A-6 also includes the last set of audited financial statements from the fiscal year ended 2021, which show total liabilities, on a consolidated basis, of approximately \$59,098,375.
37. As of December 31, 2022, the Financial Statements indicate that the Debtors had total assets of approximately \$58,914,000. The realization value of these assets, in a liquidation, would be substantially lower than the book value.
38. In addition, the Applicant is owed approximately \$6,227,364.94 (plus accrued interest, costs and fees until the date of repayment, the "**Indebtedness**"). The

Applicant demanded repayment of the Indebtedness, and the Debtors failed to repay the Indebtedness on or before time required.

39. Accordingly, the Debtors are insolvent.
40. The Applicant, with the consent of the Debtors, has determined that the initiation of proceedings under the CCAA was necessary to, among other things, preserve the value of the Debtors' assets while a sale process was conducted in respect of the Debtors' business and/or assets with a view to maximizing value for the benefit of all of the Debtors' stakeholders, including the Applicant.

IV - THE DEBTORS' STAKEHOLDERS

A. The Secured Creditor

41. On September 20, 2019, Capcium, as borrower, the Secured Creditor and Roynat Inc. ("**Roynat**"), as lenders, entered into a credit agreement (the "**Credit Agreement**") pursuant to which the Secured Creditor and Roynat made available to Capcium the following credit facilities:

- (a) a revolving credit facility made available by the Secured Lender in the maximum principal amount of \$8,000,000 in order to finance the acquisition of equipment as well as for general corporate purposes (the "**Initial Revolving Facility**"); and

- (b) a term facility in the principal amount of \$20,000,000 made available in two disbursements by Roynat.

A copy of the Credit Agreement is filed in support hereof as **Exhibit A-7**.

42. Capcium's obligations under the Credit Agreement are secured by a Deed of Immovable and Movable Hypothec over all of the present and future movable and immovable property of Capcium in the amount of \$46,650,000 (the "**Deed of Hypothec**"). A copy of the Deed of Hypothec is filed in support hereof as **Exhibit A-8**.
43. On November 16, 2020, the Credit Agreement was amended pursuant to an amended and complementary credit agreement dated November 16, 2020 (the "**Amended and Complementary Credit Agreement**"). The Amended and Complementary Credit Agreement amended the Credit Agreement to, among other things, add Gelcan as a guarantor under the Credit Agreement. A copy of the Amended and Complementary Credit Agreement is filed in support hereof as **Exhibit A-9**.
44. Gelcan's guarantee obligations are secured by a Deed of Immovable and Movable Hypothec over all of the present and future movable and immovable property of Gelcan in the amount of \$46,650,000 (the "**Gelcan Hypothec**"). A copy of the Gelcan Hypothec is filed in support hereof as **Exhibit A-10**.

45. As further described hereinafter, the Debtors are in default of their obligations towards the Secured Lender. As at the date hereof, the Debtors are indebted towards the Secured Lender in the amount of the Indebtedness.

B. Investissement Québec

46. The Debtors are indebted towards Investissement Québec (“**IQ**”) in the amount of approximately \$16,800,000.
47. The amounts owed to IQ are secured by a subordinate hypothec against the Debtors’ assets. IQ has received notice of the present Application.

C. Employees

48. At the peak of their operations, the Debtors employed 132 employees. As of this Application, the Debtors have only 25 employees.
49. None of the Debtors’ employees are unionized and the Debtors do not maintain any pension plans.

D. Other Important Creditors

50. It is believed the Debtors also owe approximately \$2,800,000 to unsecured creditors.

V - THE APPLICANT’S ATTEMPTS TO ACCOMMODATE THE DEBTORS AND THE MEASURES IMPLEMENTED IN AN ATTEMPT TO IMPROVE THE DEBTORS’ OPERATIONS AND LIQUIDITY POSITION

51. On March 2, 2020, the Applicant and Roynat issued a notice of default to Capcium, a copy of which is filed in support hereof as **Exhibit A-11**, declaring Capcium in default of its obligations under the Credit Agreement insofar as Capcium:
- (a) failed to maintain its immovable property, namely the Pointe-Claire Plant, free of any other encumbrances;
 - (b) failed to meet the Funded Debt to Capitalization Ratio; and
 - (c) failed to meet the minimum EBITDA required under the Credit Agreement.
- (collectively, the “**Defaults**”)
52. As a result of the Defaults and further to discussions between the parties, the Applicant, Roynat and Capcium entered into a standstill agreement on June 22, 2020, which agreement was subsequently amended on April 9, 2021, October 21, 2021, and March 7, 2022 (as amended, the “**Standstill Agreement**”). Gelcan subsequently became a party to the Standstill Agreement pursuant to one of the

amendments. A copy of the Standstill Agreement and its amendments are filed in support hereof, *en liasse*, as **Exhibit A-12**.

53. Notwithstanding Capcium's defaults under the Credit Agreement, the Applicant and Roynat continued to work with and accommodate Capcium. As part of its efforts to accompany and accommodate Capcium, the Applicant made available to Capcium an additional revolving credit facility in the maximum principal amount of \$2,900,000 (the "**Additional Revolving Facility**" together with the Initial Revolving Facility the "**Facilities**") which Additional Revolving Facility was provided for the purpose of ensuring the Debtors has additional liquidity in order to mitigate the impact of the COVID-19 pandemic on their operations.
54. Export Development Canada guaranteed up to 80% of the Additional Revolving Facility under Export Development Canada's Business Credit Availability Program Guarantee, which was part of the relief measures implemented by the federal government in response to the adverse impacts of the pandemic.
55. In April 2021, the Secured Lender, *inter alia*, requested that the Debtors obtain an equity injection of \$1,250,000. The Debtors were able to secure the requested equity injection albeit not within the delays provided for under the Standstill Agreement. The equity injection was made in July 2021.
56. As previously mentioned, in order to generate liquidity to partially repay its obligations under the Credit Agreement, Capcium and ARE entered into an agreement of purchase and sale pursuant to which ARE agreed to purchase from and leaseback to Capcium the Pointe-Claire Plant in a transaction scheduled to close on October 26, 2021.
57. The sale and leaseback of the Pointe-Claire Plant closed as expected and all amounts owing to Roynat were paid in full from the sale proceeds. The Debtors paid down part of the indebtedness owing to the Secured Lender, but remained indebted towards the Secured Lender under the Facilities.
58. However, in order to complete the lease agreement with ARE, the Debtors sought and obtained a letter of credit in the amount of \$1,691,221 from the Secured Lender, naming ARE as beneficiary, to secure the Debtors' obligations under the lease and as a security deposit.
59. As at the date hereof, the Standstill Agreement is expired and has been since September 20, 2022.
60. On March 24, 2023, the Secured Lender's attorneys issued to the Debtors a demand letter and a notice of intention to enforce security pursuant to subsection 244(1) of the BIA. A copy of the demand letter and BIA notice is attached as **Exhibit A-13**.
61. On May 9, 2023, the Secured Lender's attorneys issued to Capcium a prior notice of the exercise of a hypothecary right pursuant to articles 2757 and following of the

Civil Code of Québec. A copy of said notice of intention is filed in support hereof as **Exhibit A-14**.

62. The Debtors did not repay the Indebtedness on or before the date set out in the demand letter and, as at the date hereof, remain indebted towards the Secured Lender for the full amount of the Indebtedness.

VI - THE PROPOSED RESTRUCTURING

63. Canadian courts have recognized that creditors have standing to commence proceedings in respect of a debtor company under the CCAA and have authorized the initiation of such proceedings on numerous occasions, including where there are concerns regarding the capabilities of the debtor company or its management to effectively and successfully implement a restructuring.
64. The commencement of CCAA proceedings has also been regarded as a proper exercise of creditors' rights where, ideally, such proceedings will preserve the going-concern value of the insolvent business and allow it to continue for the benefit of the debtor company's stakeholders.
65. The relief contemplated in this Application is necessary and appropriate given the circumstances leading up to this Application, the resignation of all of the Debtors' directors and of all but one of its officers as well as the potential prejudice to the Applicant and the other stakeholders of the Debtors in the absence of immediate relief being granted.
66. Furthermore, the integral role to be played by the Proposed Monitor, an officer of the Court will contribute to the success of the Applicant's proposed restructuring and provide additional assurances that the process will be implemented in a transparent, fair, efficient and impartial manner and with consideration of the interests of all stakeholders.
67. The Debtors' equipment is specialized for the production and manufacture of specialized pharmaceutical and natural health products. The Debtors have critical Licenses and a Certification that require the operations to continue – albeit at a significantly reduced level – in order to be maintained. The most value-maximizing transaction is a going concern sale of the Debtors' business, including the Licenses and where the equipment remains in place at the Pointe-Claire Plant. In order to ensure that the foregoing is possible, the Debtors need to preserve the employment of a certain limited number of employees in order to:
- (a) Continue to meet the requirements under the Licences and the Certification;
 - (b) Maintain the operation of certain equipment – the interruption of the operations of such equipment would result in significant costs upon resumption of the operations; and

(c) Comply with the sanitization requirements under the Licences and the Certification.

68. ARE, as landlord, has agreed to support the CCAA proceeding through various accommodations.
69. Accordingly, in order to best position the Debtors to achieve a value-maximizing transaction, the Applicant determined that a CCAA proceeding was the best process to ensure the preservation of the Licenses, while providing the Proposed Monitor with enhanced powers to manage the Debtors' business and conduct a sale process to solicit offers for a broad range of executable transactions in respect of the Debtors' business and/or assets.
70. The Applicant's proposed restructuring contemplates the implementation of a transparent and court-supervised process aimed at stabilizing the Debtors' operations and identifying one or more transaction(s) in respect of the Debtors' business and/or assets that would, ideally, permit the continuation of all or part of their business as a going concern.
71. In the absence of a board of directors who can act on behalf of the Debtors and a management team to lead a restructuring, including a sale process, the Proposed Monitor will occupy a central role in the process as it will be empowered to act for and on behalf of the Debtors in the context of the proposed restructuring, in consultation with the Applicant and for the benefit of all of the Debtors' stakeholders.
72. The Applicant will provide significant support to the restructuring process by making additional financing available to the Debtors under the DIP Facility, ensuring that the process is fully-funded and can be implemented in accordance with the Proposed Orders, and permitting the continuation of the Debtors' core operations during this time.

VII - RELIEF SOUGHT UNDER THE PROPOSED ORDERS

A. Appointment and powers of the Proposed Monitor

73. The Proposed Monitor, Raymond Chabot, will have carriage of the proposed CCAA proceedings and will be authorized to act for and on behalf of the Debtors, in consultation with the Applicant, and in accordance with the terms of the Proposed Orders.
74. Raymond Chabot is a licensed insolvency trustee, is qualified to act as Monitor, has agreed to act in that capacity and there are no restrictions precluding the Proposed Monitor from acting as Monitor in the present proceedings.
75. The Proposed Monitor has acquired an extensive and in-depth existing knowledge and understanding of the Debtors' business. Such in-depth knowledge will be useful and will enable the Proposed Monitor to assume the role of monitor in the

CCAA proceedings without delay and without the duplication of significant costs that would be required for a different insolvency professional firm to familiarize itself with the business operations and financial situation of the Debtors and the proposed restructuring process.

76. In light of the Debtors' financial constraints and the need to proceed expeditiously with their restructuring on a cost-effective basis, the Applicant is seeking the appointment of the Proposed Monitor as monitor in the CCAA proceedings.
77. Further, given that all of the Debtors' directors have resigned and, as a result, the Debtors no longer have a decision-making body to lead them through the restructuring process. As such, it is appropriate that the Proposed Monitor be granted enhanced powers, including the powers required to control and manage the Debtors' business and affairs.
78. It is therefore respectfully submitted that Raymond Chabot should be appointed as monitor with the powers contemplated by the Proposed Initial Order.

B. Stay of Proceedings

79. The Applicant requests that all proceedings against the Debtors as well as against their directors and officers and any of their property be stayed for an initial period of ten (10) days in accordance with the CCAA.
80. The stay of proceedings will preserve the *status quo* during the restructuring and prevent creditors and other stakeholders from taking any steps to try and better their positions in comparison to other creditors. All stakeholders generally, including creditors, will benefit from the stay of proceedings.
81. At the Comeback Hearing, the Applicant will request a further extension of the Stay Period of sufficient time to allow for the Proposed Monitor to fully complete the Sale Process (as defined hereinafter) without having to incur additional costs to return to Court solely to seek a stay extension during the Sale Process.

C. The DIP Facility and the DIP Charge Should be Approved

82. The Applicant has agreed to make available to the Debtors a DIP Facility in the total aggregate amount of \$1,200,000 (in such capacity, the "**DIP Lender**") subject to the terms and conditions of the DIP Term Sheet filed in support hereof as **Exhibit A-15**.
83. The Applicant is initially requesting that this Court approve the DIP Facility for an initial amount of \$250,000, which amount is proposed to be increased to \$1,200,000 at the time of the Comeback Hearing.

84. The terms and conditions of the DIP Term Sheet are comparable to those generally available in the market for financing of this nature and will not be prejudicial to stakeholders considering as it will ultimately allow the Proposed Monitor to maximize value for the Debtors' business and/or assets for the benefit of all of the Debtors' stakeholders.
85. The purpose of the DIP Term Sheet is to, among other things, fund the costs of these CCAA proceedings and the ongoing operations of the Debtors during same. Maintaining the operations of the Debtors is the best means to preserve the Licences and maximize the value for the stakeholders of the Debtors through a going concern sale of the Debtors' business, including the Licences.
86. An overview of the key commercial terms and conditions of the DIP Term Sheet are set out below:
 - (a) a non-revolving facility in the maximum principal amount of CAN \$1,200,000 (the "**DIP Facility**");
 - (b) a commitment fee of \$30,000, representing 2.5% of the amount of the DIP Facility;
 - (c) an interest rate equal to Scotia's prime rate of interest plus 6%;
 - (d) an initial DIP Charge in the amount of \$300,000, which amount is proposed to be increased to \$1,440,000 at the time of the Comeback Hearing, securing the Debtors' obligations under the DIP Term Sheet, including the repayment of the DIP Facility, in favour of the Secured. The DIP Charge is proposed to rank in priority to all other encumbrances, including over the claims of the federal and provincial governments subject to a deemed trust;
 - (e) the maturity date shall be September 10, 2023, at the latest.
87. As indicated in the Debtors' 13-week cash flow forecast in respect of the Debtors (the "**Cash Flow Forecast**"), Exhibit A-5, with the DIP Financing, the Debtors will have sufficient funds to fund their operations during this CCAA proceeding.
88. Given the current financial situation of the Debtors, including their cash position, the DIP Facility is necessary to ensure that the Debtors will have sufficient funds to implement the proposed restructuring.
89. The DIP Facility is the only feasible financing alternative available and is on terms that are fair, reasonable and adequate. The initial amount requested under the DIP Facility is limited to what is necessary for the Debtors to "keep the lights on" during the initial Stay Period.
90. As things currently stand, absent the DIP Facility, the Debtor are expected to run out of cash in the short term and, as such, it is urgent for this Court to authorize the DIP Facility.

91. IQ, which is the only other secured creditor of the Debtors, as well as the Canada Revenue Agency and *Revenu Québec* have received notice of the present Application.

92. It is therefore respectfully submitted that the Debtors should be authorized to borrow an initial amount of up to \$250,000 during the initial Stay Period, which amount should be increased to \$1,200,000 at the time of the Comeback Hearing. Further, the Court should grant the corresponding DIP Charge in the initial amount of \$300,000, which charge should be increased to \$1,440,000 at the time of the Comeback Hearing, and that the DIP Charge should rank in priority to all other encumbrances, including the claims of the federal and provincial governments subject to a deemed trust, except for the Administration Charge.

D. The Sale Process and the Bidding Procedures Should be Approved at the Initial Hearing

93. The Applicant and the Proposed Monitor have developed a sale process (the “**Sale Process**”) to be conducted in respect of the business and/or assets of the Debtors in order to solicit offers for a broad range of executable transactions in respect of same and as a means of seeking to maximize the value of the Debtors’ Property and, to the extent possible, preserve the going concern value of the Debtors’ business.

94. A copy of the proposed bidding procedures (the “**Bidding Procedures**”) is attached as Schedule A to the Draft Sale Process Order. The Applicant seeks approval of the Sale Process at this initial stage, rather than waiting for the Comeback Hearing, to allow the Proposed Monitor to immediately begin the implementation of the Sale Process as the Debtors’ limited financial resources limit the available runway to conduct same. Approving the Sale Process and the Bidding Procedures at the initial hearing, will ensure that the time for prospective bidders to conduct their due diligence is maximized, which in turn will further the remedial objectives of the CCAA, which include the maximization of recovery for the Debtors’ creditors, including the Applicant.

95. Given the significantly limited resources of the Debtors and the costs needed to be incurred in order to maintain their operations, it is in the interests of all of the Debtors’ stakeholder that the Sale Process and the Bidding Procedures be approved as soon as possible, namely for the reason stated above.

96. A brief overview of the key terms and conditions of the Sale Process as provided for in the Bidding Procedures are set out below:

(a) the Sale Process will be conducted by the Proposed Monitor, in consultation with the Applicant;

(b) the Proposed Monitor will identify prospective investors and purchasers and will provide such prospective bidders with a teaser letter as well as access

to a virtual data room upon the execution of a non-disclosure agreement at the latest by May 17, 2023;

- (c) there will be two phases to identify a successful bid:
- (i) a 30-day non-binding LOI phase further to which prospective bidders will be required to provide a non-binding letter of intent to qualify as qualified bidders;
 - (ii) a binding offer phase further to which qualified bidders will be required to submit binding qualified bids;
 - (iii) in the event the Proposed Monitor receives several qualified bids, it may, without being obliged to do so, conduct an auction to select a successful bid; and
 - (iv) the Proposed Monitor, after having entered into a definitive agreement with the successful bidder, will apply to the Court for an order approving any transaction contemplated by the successful bid.

97. The Proposed Monitor is ready to immediately begin the implementation of the Sale Process, subject to this Court's approval of same.
98. It is respectfully submitted that the proposed Sale Process – to be conducted in accordance with the Bidding Procedures – which has been reviewed and approved by the Proposed Monitor, is fair and reasonable and should be approved as soon as possible in order to advance the restructuring process for the benefit of all of the Debtors' stakeholders.

E. Administration Charge

99. The Applicant's legal counsel as well as the Proposed Monitor and its legal counsel (collectively, the "**Professionals**") are necessary to the administration of these CCAA proceedings, including the SISP, and to ensure a successful restructuring of the Debtors.
100. The Professionals advised the Applicant that they are willing to provide or continue to provide their professional services during the restructuring only if they are protected by a priority charge on Capcium's present and future assets, property and undertakings (the "**Property**"), as security for their respective fees and disbursements relating to the services rendered in respect of Capcium in the amount of \$150,000.
101. The Applicant requests this Court grant the Administration Charge in the maximum amount of \$150,000 to secure the professional fees and disbursements of the Applicant's legal counsel, the Proposed Monitor and its legal counsel.

102. The Administration Charge is proposed to rank in priority to all other encumbrances, including over the claims of the federal and provincial governments subject to a deemed trust.
103. IQ, which is the only other secured creditor of the Debtors, as well as the Canada Revenue Agency and *Revenu Québec* have received notice of the present Application.
104. It is respectfully submitted that it is appropriate in the circumstances to grant the Administration Charge requested.

VIII - CONCLUSIONS

FOR THESE REASONS, MAY IT PLEASE THE COURT:

- [1] **GRANT** the present *Application for an Initial Order, an Amended and Restated Initial Order and Other Relief Application*;

AT THE INITIAL HEARING OF THE APPLICATION

- [2] **RENDER** an initial order (the “**First Day Order**”) substantially in the form of the draft order communicated herewith as **Exhibit A-1**;
- [3] **RENDER** an order approving the Sale Process (the “**Sale Process Order**”) substantially in the form of the draft communicated herewith as **Exhibit A-2**.

AT THE COMEBACK HEARING OF THE APPLICATION

- [4] **RENDER** an amended and restated initial order (the “**Amended and Restated Initial Order**”) substantially in the form of the draft order communicated herewith as **Exhibit A-3**;
- [5] **THE WHOLE** with costs.

Montreal, May 15, 2023

Miller Thomson seveal

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Mtre Asim Iqbal

Mtre Rosemarie Sarrazin

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Our File: 0180518.0049

SWORN DECLARATION

I, the undersigned, **Rachel Davies**, Senior Manager at The Bank of Nova Scotia, having an office at 40, King Street West, 12th Floor, in the city of Toronto, province of Ontario, M5H 3Y2, do solemnly declare:

1. I am one of the Applicant's representative in the present case;
2. All the facts alleged in the present *Application for an Initial Order, an Amended and Restated Initial Order and Other Relief* are true.

AND I HAVE SIGNED:

DocuSigned by:

Rachel Davies

C10CBA012372460

RACHEL DAVIES

Solemnly declared before me in Montréal
This 15th day of May 2023

DocuSigned by:

Renée Boucher #79408

72588DB243E24B8...

Commissioner of Oath for the Province
of Québec

**NOTICE OF PRESENTATION
COMMERCIAL DIVISION**

TO : Service List

TAKE NOTICE that *Application for an Initial Order, an Amended and Restated Initial Order and Other Relief* shall be presented in the Commercial Division of the Superior Court of the Montréal Courthouse Montréal, on **May 17, 2023** at **14:15**, or as soon as counsel may be heard, virtually, in room 16.04 which can be accessed via the link below.

Par vidéoconférence : teams@teams.justice.gouv.qc.ca

ID de la conférence VTC : 1197347661

PLEASE GOVERN YOURSELF ACCORDINGLY.

Montreal, May 15, 2023



Miller Thomson LLP

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Mtre Rosemarie Sarrazin

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Our File: 0180518.0049

N° **500-11-062372-236**

COURT **SUPERIOR
(Commercial Division)**

DISTRICT **MONTRÉAL**

**IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS
AMENDED :**

CAPCIUM INC.

-and-

GELCAN CORPORATION INC.

Debtors

-and-

THE BANK OF NOVA SCOTIA QUÉBEC INC.

Applicant

-and-

RAYMOND CHABOT INC.

Proposed Monitor

**APPLICATION FOR AN INITIAL ORDER, AN
AMENDED AND RESTATED INITIAL ORDER
AND OTHER RELIEF
(Section 9, 11 and following, and 36 of CCAA)**

ORIGINAL

RÉF. : MICHEL LA ROCHE
ROSEMARIE SARRAZIN 0180518.0049

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