

CAPRIUS INC  
Form PRE 14A  
December 22, 2010

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a)  
of the Securities Exchange Act of 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to §240.14a-12

CAPRIUS, INC.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

Common Stock, par value \$0.01 per share, and Preferred Stock, par value \$0.01 per share, of Caprius, Inc.

(2) Aggregate number of securities to which transaction applies:

5,431,865 shares of Common Stock outstanding and owned by stockholders (other than treasury shares and shares of Common Stock issuable pursuant to warrants granted to Vintage Capital Group, LLC expected to be exercised prior to the record date), plus 8,625,000 shares of Common Stock underlying the conversion rights of the holders of Preferred Stock.

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

The filing fee, calculated in accordance with Section 14(g) of Exchange Act, was determined by multiplying \$0.0000713 by the aggregate value of transaction.

(4) Proposed maximum aggregate value of transaction:

\$913,696 The aggregate value of transaction was determined by multiplying (i) 14,056,865 shares of Common Stock by (ii) \$0.065, the per share merger consideration.

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(5)Total fee paid:

\$ 65.14

.. Fee paid previously with preliminary materials.

.. Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

- |    |   |
|----|---|
| 1) | Amount Previously Paid:                       |
| 2) | Form, Schedule or Registration Statement No.: |
| 3) | Filing Party:                                 |
| 4) | Date Filed:                                   |
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PRELIMINARY COPY, SUBJECT TO COMPLETION  
DATED DECEMBER 22, 2010

CAPRIUS, INC.  
10 Forest Avenue  
Paramus, New Jersey 07652

\_\_\_\_\_, 2011

Dear Stockholder:

You are cordially invited to attend a special meeting of stockholders of Caprius, Inc. (“Caprius”) to be held on \_\_\_\_\_, 2011, at 10:00 a.m., New York time, at the offices of Carter Ledyard & Milburn LLP at 2 Wall Street (18th Floor), New York, N.Y. Holders of record of Caprius Common Stock and Preferred Stock outstanding at the close of business on \_\_\_\_\_ 2011 will be entitled to notice of and to vote at the special meeting. Notice of the special meeting and the related proxy statement is enclosed. We urge you to read the accompanying proxy statement carefully as it sets forth details of the proposed merger and other important information related to the merger (the “Merger”).

At the special meeting, you will be asked to adopt the Agreement and Plan of Merger, dated as of November 10, 2010 (the “Merger Agreement”), among Caprius, Vintage Capital Group, LLC (“Vintage”), and Capac Co., a newly-formed wholly-owned subsidiary of Vintage. As a result of the Merger contemplated by the Merger Agreement, Caprius will become a wholly-owned subsidiary of Vintage. This is a going-private transaction.

If the Merger is completed, at the effective time of the Merger, the conversion of our capital stock (other than any shares owned by Vintage or Merger Sub, by Caprius as treasury stock, or by any stockholders who have properly exercised their appraisal rights with respect to such shares) would be as follows (and without interest and less any applicable withholding tax):

- (i) if you are a holder of our common stock, you will be entitled to receive \$0.065 per share in cash for each share of Common Stock you hold;
- (ii) if you are a holder of our Series E Convertible Preferred Stock (“Series E Preferred”), you will be entitled to receive \$40.625 in cash in exchange for each share of Series E Preferred which you hold, which per share consideration represents the common-equivalent consideration for such Series E Preferred based on its current conversion ratio of 625 shares of our common stock per share and the per common share merger consideration of \$0.065; and
- (iii) if you are a holder of our Series F Convertible Preferred Stock (“Series F Preferred”), you will be entitled to receive \$6.50 in cash in exchange for each share of Series F Preferred which you hold, which per share consideration represents the common-equivalent consideration for such Series F Preferred based on its current conversion ratio of 100 shares of our common stock per share and the per common share merger consideration of \$0.065.

The receipt of cash in exchange for shares of our common stock or preferred stock in the Merger will constitute a taxable transaction for U.S. federal income tax purposes. A copy of the Merger Agreement is included as Annex A to the attached proxy statement.

A special committee of the Caprius board of directors, consisting of two non-employee independent directors, negotiated and reviewed the terms and conditions of the proposed Merger and, after considering the fairness opinion of an investment bank, the analysis of its financial advisor and other factors, unanimously recommended to the Caprius board of directors that it approve and adopt the Merger Agreement and the transactions contemplated thereby. The Caprius board of directors, after considering various factors including the recommendation of the special committee and the fairness opinion of the special committee’s financial advisor, (i) determined that the Merger is advisable, and in the best interests of, Caprius and the unaffiliated stockholders of Caprius, (ii) authorized, approved

and declared advisable the Merger Agreement, the Merger and the other transactions contemplated by the Merger Agreement, (iii) resolved that the Merger Agreement be submitted to Caprius stockholders for their consideration and (iv) recommended that the Caprius stockholders vote to adopt the Merger Agreement. The Caprius board of directors recommends that you vote “FOR” the proposal to adopt the Merger Agreement and “FOR” the proposal to adjourn the special meeting, if necessary.

The completion of the Merger is subject to various conditions set forth in the Merger Agreement, including adoption of the Merger Agreement by the affirmative vote of holders of a majority in voting power of the outstanding shares of common stock and preferred stock, voting as a single class on an as-converted basis, at the special meeting. The Caprius stockholders will have statutory appraisal rights in accordance with the General Corporation Law of the State of Delaware. The transaction is not subject to a financing condition.

In the materials accompanying this letter, you will find a Notice of Special Meeting of Stockholders, a proxy statement relating to the actions to be taken by stockholders at the special meeting and a proxy card. Included in the proxy statement is the opinion of the special committee’s financial advisor, Hempstead & Co., Incorporated, relating to the fairness, from a financial point of view, of the consideration provided in the Merger. The proxy statement contains important information about the Merger Agreement and the Merger. We encourage you to read the entire proxy statement (including its annexes) carefully.

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Whether or not you plan to attend the special meeting, please complete, date, sign and return, as promptly as possible, the enclosed proxy by mail in the accompanying reply envelope, or submit your proxy by telephone or the Internet. Stockholders who attend the meeting may revoke their proxies and vote in person. Your vote is very important regardless of the number of shares of common stock or preferred stock that you own. If you fail to submit a proxy or vote in person, or fail to instruct your broker how to vote, it will have the same effect as a vote against the proposal to adopt the Merger Agreement.

Thank you for your cooperation and continued support.

Very truly yours,

Dwight Morgan, President and Chief Executive Officer

Neither the Securities and Exchange Commission nor any state securities regulatory agency has approved or disapproved the Merger, passed upon the merits or fairness of the Merger or passed upon the adequacy or accuracy of the disclosure in this document. Any representation to the contrary is a criminal offense.

The attached proxy statement is dated \_\_\_\_\_, 2011 and is first being mailed to stockholders on or about \_\_\_\_\_, 2011.

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PRELIMINARY COPY, SUBJECT TO COMPLETION  
DATED DECEMBER 22, 2010

CAPRIUS, INC.  
10 Forest Avenue  
Paramus, New Jersey 07652

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS  
TO BE HELD ON \_\_\_\_\_, 2011

To the Stockholders of Caprius, Inc.:

A Special Meeting of Stockholders of Caprius, Inc., a Delaware corporation (“Caprius,” “we” or “us”), will be held on \_\_\_\_\_, 2011, at the offices of Carter Ledyard & Milburn LLP at 2 Wall Street (18th Floor), New York, N.Y. at 10:00 a.m., New York time (the “Special Meeting”), for the following purposes:

1. To consider and vote on a proposal to adopt the Agreement and Plan of Merger, dated as of November 10, 2010 (“Merger Agreement”), by and among Caprius, Vintage Capital Group, LLC, a Delaware limited liability company (“Vintage”), and Capac Co., a Delaware corporation and a wholly-owned subsidiary of Vintage (“Merger Sub”).
2. To consider and vote on a proposal to adjourn the Special Meeting to a later date or time, if necessary or appropriate, to solicit additional proxies in favor of the proposal to adopt the Merger Agreement.
3. To consider and vote on such other business as may properly come before the Special Meeting or any adjournments or postponements thereof.

A copy of the Merger Agreement is attached as Annex A to the accompanying proxy statement. Pursuant to the terms of the Merger Agreement, Merger Sub will merge with and into Caprius, which we refer to as the “Merger.” At the effective time of the Merger, with respect to the issued and outstanding Caprius capital stock immediately prior to the effective time of the Merger (other than shares held by Caprius in treasury, shares held by Vintage or Merger Sub and shares owned by stockholders who have properly exercised appraisal rights with respect to such shares),

- (i) each share of our common stock par value \$0.01 per share (“Common Stock”), will be converted into the right to receive \$0.065 in cash;
- (ii) each share of our Series E Convertible Preferred Stock, par value \$0.01 per share (“Series E Preferred”), will be converted into the right to receive \$40.625 in cash, which per share consideration represents the common-equivalent consideration for the Series E Preferred based on its current conversion ratio of 625 shares of Common Stock per share and the per common share merger consideration of \$0.065; and
- (iii) each share of our Series F Convertible Preferred Stock, par value \$0.01 per share (“Series F Preferred” and together with the Series E Preferred, the “Preferred Stock”) will be converted into the right to receive \$6.50 in cash, which per share consideration represents the common-equivalent consideration for the Series F Preferred based on its current conversion ratio of 100 shares of Common Stock per share and the per common share merger consideration of \$0.065; all of which will be without interest and subject to applicable withholding tax.

Only holders of record of Common Stock and of Preferred Stock as of the close of business on \_\_\_\_\_, 2011 are entitled to notice of and to vote at the Special Meeting and or any adjournment or postponement thereof. In voting on the proposals, the Common Stock and the Preferred Stock (on an as-converted basis) vote as a single class. The adoption of the Merger Agreement requires the affirmative vote of the holders of a majority in voting power of the outstanding shares of Common Stock and Preferred Stock entitled to vote on the proposal to adopt the Merger Agreement, voting as a single class. As of the record date, Vintage held \_\_\_\_\_ shares of Common Stock, constituting approximately \_\_\_\_% of our outstanding shares of Common Stock, and also a warrant exercisable into \_\_\_\_\_ additional shares of

Common Stock.

Under Delaware law, in connection with the Merger, our stockholders are entitled to seek appraisal of their shares and obtain payment in cash for the fair value thereof, but only if they submit a written demand for an appraisal before the vote is taken on the Merger Agreement and comply with applicable provisions of Delaware law. A copy of the Delaware statutory provisions relating to appraisal rights is attached as Annex C to the accompanying proxy statement and a summary of these provisions can be found in the section entitled “Appraisal Rights” in the proxy statement.

Your vote is important. Therefore, your failure to vote in person at the Special Meeting or to submit a signed proxy card or to submit your proxy by telephone or Internet will have the same effect as a vote by you “AGAINST” the adoption of the Merger Agreement. Approval of the proposal to adjourn the Special Meeting, if necessary or appropriate, to solicit additional proxies requires the affirmative vote of holders of a majority in voting power of the shares present in person or by proxy at the Special Meeting and entitled to vote on the proposal. Properly executed proxy cards with no instructions indicated on the proxy card will be voted “FOR” the proposal to adopt the Merger Agreement and “FOR” the proposal to adjourn the Special Meeting, if necessary or appropriate, to solicit additional proxies in favor of the proposal to adopt the Merger Agreement. Even if you plan to attend the Special Meeting in person, we recommend that you complete, sign, date and return the enclosed proxy or submit your proxy by telephone or Internet prior to the Special Meeting to ensure that your shares will be represented if you become unable to attend. If you attend the Special Meeting, you may revoke your proxy and vote in person if you wish, even if you have previously returned your proxy card. If you hold your shares through a bank, broker or other custodian, you should follow the instructions for voting provided by your bank, broker or other custodian and, if you intend to vote your shares in person at the Special Meeting, you must first obtain a legal proxy from such custodian.

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No person has been authorized to give any information or to make any representations other than those set forth in the proxy statement in connection with the solicitation of proxies made hereby, and if given or made, such information must not be relied upon as having been authorized by Caprius.

We urge you to read the accompanying proxy statement carefully as it sets forth details of the proposed Merger and other important information related to the Merger.

By Order of the Board of Directors

Dwight Morgan, President and Chief Executive Officer

Paramus, New Jersey

\_\_\_\_\_, 2011

**IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR STOCKHOLDER MEETING TO BE HELD ON \_\_\_\_\_, 2011.**

The Proxy Statement and Annual Report are available at our website at [www.Caprius.com](http://www.Caprius.com).

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Annex A Agreement and Plan of Merger, dated as of November 10, 2010, by and among Caprius, Inc., Vintage Capital Group, LLC, and Capac Co. A-1

Annex B Opinion of Hempstead & Co. Incorporated, dated November 10, 2010. B-1

Annex C Section 262 of the Delaware General Corporation Law. C-1

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## SUMMARY

The following summary highlights only selected information from this proxy statement and may not contain all of the information that may be important to you. Accordingly, we encourage you to read this proxy statement carefully in its entirety, including the annexes and the other documents referred to or incorporated by reference in this proxy statement. Each item in this summary includes a page reference directing you to a more complete description of that topic. See "Where You Can Find More Information" on page \_\_ of this proxy statement.

### Purpose of the Stockholder Vote

You are being asked to consider and vote upon a proposal to adopt the Agreement and Plan of Merger, dated as of November 10, 2010, (the "Merger Agreement"), by and among Caprius, Inc. ("Caprius", the "Company" or "we," "us," "our" or similar terms), Vintage Capital Group, LLC ("Vintage") and Capac Co. ("Merger Sub"), and the Merger contemplated thereby, at a special meeting to be held on \_\_\_\_\_ 2011 (the "Special Meeting"). See "The Special Meeting" beginning on page \_\_ and "The Merger Agreement" beginning on page \_\_ of this proxy statement.

### The Parties to the Merger (See page \_\_)

#### Caprius, Inc.

Caprius, Inc. is a Delaware corporation engaged in the infectious medical waste disposal business through our wholly-owned subsidiary MCM Environmental Technologies, Inc. which developed, markets and sells the SteriMed and SteriMed Junior compact on-site systems that simultaneously shred and chemically disinfect regulated medical waste under our proprietary registered bio-degradable chemical known as Ster-Cid. The SteriMed Systems are sold in both the domestic and international markets. We conduct our business from our offices in Paramus, New Jersey as well as in Michigan and Israel.

#### Vintage Capital Group, LLC and Capac Co.

Vintage is a Delaware limited liability company engaged in principal investment activities, including in operating business and early stage investments through equity investments, debt purchases, restructurings and turnarounds, debtor in possession financing and sale-leaseback transactions. Vintage, with a capital base exceeding \$150 million, combines decades of investment, operating and management skills. It is based in Los Angeles, California. Merger Sub was formed solely for the purpose of entering into the Merger Agreement and consummating the transactions contemplated thereby, and has not carried on any business or activities to date, except activities incidental to its formation and in connection with the Merger Agreement and the transactions contemplated thereby. In September 2009, Vintage entered into a secured loan arrangement with Caprius. As of \_\_\_\_\_, 2011, Vintage had advanced approximately \$\_\_\_ million in cash to Caprius, exclusive of an additional \$\_\_\_ million of capitalized obligations owed to Vintage, pursuant to a Senior Secured Promissory Note due December 16, 2010. On December 16, 2010, the maturity of such Note was extended to the earlier of (i) February 1, 2011 or (ii) the termination of the Merger Agreement. The Vintage loan arrangement included affirmative and negative covenants by Caprius, including restrictions on extraordinary corporate transactions, such as mergers. As of the record date, Vintage directly owned \_\_\_ shares of Caprius common stock, representing approximately \_\_\_% of the voting power of our capital stock, and also held warrants exercisable for \_\_\_ additional shares of Caprius common stock at an exercise price of \$0.01 per share (the "Vintage Warrant"). Pursuant to the Merger Agreement, Vintage agreed to limit its exercise of the Vintage Warrant for purposes of the approval of the Merger and the Merger Agreement to not more than 40% of the voting power of our capital stock as of the record date for the Special Meeting. Vintage and Merger Sub are private companies. See "Certain Relationships" beginning on page \_\_ of this proxy statement.

The Merger Agreement and Merger Consideration (See page \_\_\_)

Pursuant to the Merger Agreement, at the effective time of the Merger, Merger Sub will be merged with and into Caprius with Caprius continuing as the surviving corporation and becoming a wholly-owned subsidiary of Vintage. We sometimes use the term “surviving corporation” in this proxy statement to refer to Caprius as the surviving corporation following the Merger. Pursuant to the Merger (other than shares held by us in treasury, shares owned by Vintage or Merger Sub and shares owned by stockholders who have properly exercised appraisal rights under Section 262 of the General Corporation Law of the State of Delaware (which we refer to as the “DGCL”)), (i) each share of Caprius common stock, par value \$0.01 per share (“Common Stock”), will be automatically be cancelled and converted into the right to receive \$0.065 per share in cash, (ii) each share of our Series E Convertible Preferred Stock, par value \$0.01 per share (“Series E Preferred”) will be converted into the right to receive \$40.625 in cash, which per share consideration for the Series E Preferred represents the common-equivalent consideration for such Series E Preferred based on its current conversion ratio of 625 shares of our Common Stock; and (iii) each share of our Series F Convertible Preferred Stock, par value \$0.01 per share (“Series F Preferred”) will be converted into the right to receive \$6.50 in cash, which per share consideration for the Series F Preferred represents the common-equivalent consideration for such Series F Preferred based on its current conversion ratio of 100 shares of our Common Stock \$0.065, all without interest and less any applicable withholding tax. We refer to the foregoing consideration, collectively, as the “Merger Consideration.”

We are working toward completing the conditions to the Merger contained in the Merger Agreement. The completion of the Merger is subject to various conditions set forth in the Merger Agreement, including fulfillment of the customary closing conditions, adoption of the Merger Agreement by the affirmative vote of holders of a majority in voting power of the outstanding shares of Common Stock and Preferred Stock entitled to vote thereon at the Special Meeting to be called after the Company files with and obtains clearance from the staff of the Securities and Exchange Commission (the "SEC") of the requisite proxy material and completion of the Merger by June 30, 2011. However, we cannot predict the exact timing of the completion of the Merger or whether the Merger will be completed. See "The Merger Agreement – Conditions to Completion of the Merger" beginning on page \_\_\_ of this proxy statement.

#### Going-Private Transaction

The proposed Merger will be a &#8