

CANADA

SUPERIOR COURT
COMMERCIAL DIVISION

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, RSC 1985, C
C-36, AS AMENDED

N°: 500-11-040900-116

KITCO METALS INC.

PETITIONER

and

RSM RICHTER INC.

MONITOR

CORRECTED
ORDER APPROVING A PROCESS TO SOLICIT CLAIMS AND FOR THE ESTABLISHMENT
OF A CLAIMS BAR DATE

SEEING Kitco Metals Inc.'s (the "**Petitioner**") Motion for an Order Approving a Process to Solicit Claims and for the Establishment of a Claims Bar Date, pursuant to Sections 9, 10 and 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**") (the "**Motion**"), the exhibit, the schedules and the affidavit of Denis Majeau filed in support thereof, as well as the submissions of counsel present at the hearing;

WHEREFORE, THE COURT:

SERVICE

- [1] **ORDERS** that the Motion is properly presentable today [and that the time for service of the Motion is hereby abridged];

DEFINITIONS

- [2] **ORDERS** that the following terms in this Order shall, unless otherwise indicated, have the following meanings ascribed thereto:

- a) **"Business Day"** means a day, other than a Saturday, a Sunday, or a non-juridical day (as defined in article 6 of the Code of Civil Procedure, R.S.Q., c. C-25, as amended);
- b) **"CCAA"** means the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended;
- c) **"CCAA Proceedings"** means the proceedings in respect of the Petitioner before the Court commenced pursuant to the CCAA;
- d) **"Claim"** means any right of any Person against the Petitioner in connection with any indebtedness, liability or obligation of any kind of the Petitioner owed to such person and any interest accrued thereon or costs payable in respect thereof, whether liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation is based in whole or in part on facts existing prior to the Determination Date, or which would have been claims provable in bankruptcy had the Petitioner become bankrupt on the Determination Date, and, without limitation, shall include (i) any Unaffected Claim, or (ii) any Restructuring Claim, provided however, that in no case shall a Claim include an Excluded Claim;
- e) **"Claims Bar Date"** means 5:00 p.m. (Montréal time) on July 20, 2012;
- f) **"Court"** means the Québec Superior Court (Commercial Division);
- g) **"Creditor"** means any Person having a Claim and may, where the context requires, include the assignee of a Claim or a trustee, interim receiver, receiver, receiver and manager, or other Person acting on behalf of such Person and includes a Known Creditor. A Creditor shall not include an Excluded Creditor in respect of that Person's claim resulting from an Excluded Claim;

- h) **"Creditors' Instructions"** means the instructions for Creditors, including a Proof of Claim and an instruction letter explaining how to complete same, and a copy of this Order;
- i) **"Creditors' List"** means a list of all Known Creditors;
- j) **"Creditors' Meeting"** means the meeting of the Petitioner's Creditors to be convened for the purposes of voting on the Plan, and any adjournment thereof;
- k) **"Customer Deposit"** means any and all funds forwarded to the Petitioner by its clients, deposited by Petitioner in segregated accounts and held for the benefit of said clients, as appears from the Petitioner's customer deposit ledger;
- l) **"Customer Pool"** means any and all participations of the Petitioner's clients in the Pool Accounts managed by the Petitioner, as appears from the Petitioner's customer pool ledger;
- m) **"Designated Newspapers"** means The Globe & Mail (national edition) and La Presse;
- n) **"Determination Date"** means June 8, 2011;
- o) **"Excluded Claim"** means any right of any Person against the Petitioner in connection with (i) any indebtedness, liability or obligation of any kind which came into existence after the Determination Date and any interest thereon, including any obligation of the Petitioner toward creditors who have supplied or shall supply services, utilities, goods or materials or who have or shall have advanced funds to the Petitioner after the Determination Date, but only to the extent of their claims in respect of the supply of such services, utilities, goods, materials or funds after the Determination Date and (ii) any right of any client of the Petitioner in connection with any Customer Deposit, Customer Pool or Precious Metal in Storage;
- p) **"Excluded Person"** means a Person having a Claim in respect of an Excluded Claim but only in respect of such Excluded Claim and to the extent that the Plan does not otherwise affect such Claim;

- q) **"Initial Order"** means the order of this Court made on July 7, 2011 under the CCAA;
- r) **"Known Creditor"** means a Creditor listed in Schedule "A";
- s) **"Monitor"** means RSM Richter Inc., in its capacity as monitor pursuant to the Initial Order;
- t) **"Newspaper Notice"** means the notice of this Order to be published in the Designated Newspapers on the Publication Date in accordance with paragraph [3], which shall set out the Claims Bar Date and the Creditors' Instructions, being substantially in the form of Schedule "B" hereto;
- u) **"Person"** means any individual, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, governmental body or agency, or any other entity;
- v) **"Plan"** means a plan filed or to be filed by the Petitioner pursuant to the CCAA, as such plan may be amended or supplemented from time to time;
- w) **"Pool Account"** means any and all unallocated metal deposits of gold, silver, platinum, palladium, rhodium, or such other metals, purchased through the Petitioner;
- x) **"Precious Metal in Storage"** means any and all gold, silver, platinum, palladium, rhodium, or such other metals, kept in storage by Petitioner on behalf of its clients as appears from the Petitioner's customer precious metal storage ledger;
- y) **"Proof of Claim"** means the form of Proof of Claim for Creditors referred to in paragraph 6 hereof, being substantially in the form of Schedule "C" hereto;
- z) **"Publication Date"** means the date on which the publication of the Newspaper Notice in all of the Designated Newspapers has been completed;
- aa) **"Restructuring Claim"** means any right of any Person against the Petitioner in connection with any indebtedness, liability or obligation of any kind owed to such Person arising out of the restructuring, repudiation, or termination of any contract, lease, employment agreement, collective agreement or other agreement,

whether written or oral, after the Determination Date, including any right of any Person who receives a notice of repudiation or termination from the Petitioner; provided however, that a Restructuring Claim shall not include an Excluded Claim;

bb) “**Unaffected Claim**” shall have the meaning ascribed to such term in the Plan;

NOTIFICATION PROCEDURE

- [3] **ORDERS** that the form of Newspaper Notice, which is hereby approved, shall be published by the Monitor in the Designated Newspapers within twenty (20) days from the date of this Order;
- [4] **ORDERS** that the Monitor shall publish on its website at www.rsmrichter.com, within twenty (20) days of this Order, a copy of the Known Creditors' List and of the Creditors' Instructions;
- [5] **ORDERS** that, in addition to the publication referred to in paragraph [3], the Monitor shall send, by regular mail, a copy of the Creditors' Instructions to each Known Creditor within twenty (20) days of this Order;

CLAIMS PROCEDURE

- [6] **ORDERS** that, unless otherwise authorized by this Court, a Creditor who does not file a Proof of Claim by the Claims Bar Date shall not be entitled to any further notice, shall not be entitled to participate as a Creditor in these proceedings, shall not be entitled to vote on any matter in these Proceedings, including the Plan, or from advancing a Claim against the Petitioner or from receiving a distribution under the Plan;

DETERMINATION OF CLAIMS AND CREDITORS MEETING

- [7] **ORDERS** that the applicable procedures for reviewing and determining Claims and for calling, holding and conducting the Creditors' Meeting shall be established by further Order of the Court. Notice of such procedures shall be provided to the service list in these proceedings and to the Creditors who have timely filed a Proof of Claim in accordance with the terms hereof;

NOTICE OF TRANSFERS

- [8] **ORDERS** that, if a Creditor who has a Claim transfers or assigns all of its Claim and the transferee or assignee delivers evidence satisfactory to the Monitor of its ownership of all of such Claim and a written request to the Monitor, not later than the Claims Bar Date, or such later time that the Monitor may agree to, that such transferee's or assignee's name be included on the list of Creditors in lieu of the transferor or assignor;
- [9] **ORDERS** that if the holder of a Claim or any subsequent holder of the whole of a Claim who has been acknowledged by the Monitor as the Creditor in respect of such Claim, transfers or assigns the whole of such Claim to more than one Person or part of such Claim to another Person or Persons, such transfer or assignment shall not create a separate Claim or Claims and such Claim shall continue to constitute and be dealt with as a single Claim notwithstanding such transfer or assignment, and the Monitor and the Petitioner shall in each such case not be bound to recognize or acknowledge any such transfer or assignment and shall be entitled to give notices to and to otherwise deal with such Claim only as a whole and then only to and with the Person last holding such Claim in whole as the Creditor in respect of such Claim, provided such Creditor may by notice in writing to the Monitor direct that subsequent dealings in respect of such Claim, but only as a whole, shall be with a specified Person and in such event, such Creditor, such transferee or assignee of the Claim as a whole shall be bound by any notices given or steps taken in respect of such Claim with such Person in accordance with this Order;

NOTICES AND COMMUNICATIONS

- [10] **ORDERS** that any notice or other communication to be given under this Order by a Creditor to the Monitor or the Petitioner shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if given by mail, telecopier, courier or other means of electronic communication addressed to:

Monitor: RSM Richter Inc.

Attention: Gilles Robillard, CA, CIRP and Andrew Adessky, CA, CIRP

Address: 2 Place Alexis Nihon, Suite 1820, Montreal, Quebec, H3Z 3C2

Fax: 514-934-8603

E-mail: kitco@rsmrichter.com

Petitioner: Kitco Metals Inc.

Attention: Mr. Denis Majeau, CA

Address: 620, Cathcart, 9th Floor, suite 900, Montreal, Quebec, H3B 1M1

Fax: 514-227-3168

E-mail: kitcoclaim@kitco.com

With a Copy to: Gowling Lafleur Henderson LLP

Attention: Me Patrice Benoit and Me Yves Ouellette

Fax: 514-876-9550 / 514-876-9521

E-mail: kitco@gowlings.com

- [11] **ORDERS** that any document sent by the Monitor pursuant to this Order may be sent by e-mail, ordinary mail, registered mail, courier or facsimile transmission. A Creditor shall be deemed to have received any document sent pursuant to this Order two (2) Business Days after the document is sent by mail and one (1) Business Day after the document is sent by courier, e-mail or facsimile transmission. Documents shall not be sent by ordinary or registered mail during a postal strike or work stoppage of general application;

AID AND ASSISTANCE OF OTHER COURTS

- [12] **REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province or any court or any judicial, regulatory or administrative body of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order;

GENERAL PROVISIONS

- [13] **ORDERS** that for the purposes of this Order, all Claims that are denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada noon spot rate of exchange for exchanging currency to Canadian dollars on the Determination Date;
- [14] **ORDERS** that the Monitor shall use reasonable discretion as to the adequacy of completion and execution of any document completed and executed pursuant to this Order and, where the Monitor is satisfied that any matter to be proven under this Order

has been adequately proven, the Monitor may waive strict compliance with the requirements of this Order as to the completion and execution of documents;

- [15] **ORDERS** that references in this Order to the singular include the plural, to the plural include the singular and to any gender include the other gender;
- [16] **ORDERS** that the Monitor may apply to this Court for advice and direction in connection with the discharge or variation of its powers and duties under this Order;
- [17] **ORDERS** the provisional execution of this Order notwithstanding appeal;
- [18] **THE WHOLE** without costs.

Montreal, April 20, 2012

A handwritten signature in cursive script, appearing to read 'Mark Schrager', written in dark ink.

THE HONOURABLE MARK SCHRAGER, J.S.C.