

CANADA

SUPERIOR COURT  
COMMERCIAL DIVISION

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N°: 500-11-040900-116

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

KITCO METALS INC.

Petitioner

and

RICHTER ADVISORY GROUP INC.

Monitor

and

HERAEUS METALS NEW YORK LLC

Respondent

APPLICATION FOR A DECLARATORY JUDGMENT REGARDING THE CURRENCY  
CONVERSION RATE APPLICABLE TO THE CLAIM OF  
HERAEUS METALS NEW YORK LLC  
(Sections 9 and 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36  
("CCAA"))

TO THE HONOURABLE MARIE-ANNE PAQUETTE, J.S.C., SITTING IN COMMERCIAL  
DIVISION, IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER (OR "KITCO")  
RESPECTFULLY SUBMITS AS FOLLOWS:

**INTRODUCTION**

1. On June 8, 2011, the Petitioner filed a Notice of Intention to make a proposal under the Bankruptcy and Insolvency Act;
2. On July 7, 2011, this Court issued an initial order (the "**Initial Order**") pursuant to section 11.02 of the CCAA in respect of Kitco and Richter Advisory Group Inc. was appointed Monitor (the "**Monitor**");
3. On April 18, 2012, this Court issued an *Order Approving a Process to Solicit Claims and for the Establishment of a Claims Bar Date* (the "**Claims Order**"), the whole as more fully appears from a copy of the Claims Order filed in support hereof for ease of reference (without its schedules) as **Exhibit R-1**;

4. On July 20, 2012, the Respondent, Heraeus Metals New York LLC ("**Heraeus**"), entered an unsecured claim for an amount of CA \$4,968,326, the whole as more fully appears from a copy of Heraeus' proof of claim (the "**Heraeus POC**") filed in support hereof as **Exhibit R-2**;
5. In the Spring/Summer of 2016, within the scope of the discussions surrounding Kitco's *Motion for Authorization to Reimburse a Loan* (the "**Upstream Loan Motion**"), Heraeus informed Kitco that it did not consider its claim to be limited to CA \$4,968,326 as a result of a disagreement with respect to the applicable currency conversion rate;
6. This disagreement is reflected in the Acknowledgement Agreement entered into between Kitco and Heraeus on August 8, 2016 in connection with the Upstream Loan Motion. A copy of the Acknowledgement Agreement is filed in support hereof as **Exhibit R-3**. It states as follows at section 1.3:  

"1.3 Heraeus' Claim  
The parties are in disagreement about the outstanding amount owed to Heraeus due to the applicable currency conversion rate, but they agree to postpone the resolution of these issues to a later date. In that respect, regardless of any of Kitco's personal accounting book entries, the parties agree and acknowledge that the payment of the Upstream Loan and ancillary transactions are without admission nor prejudice to Heraeus' alleged right to claim the full amount of its outstanding claim, including the amount owed to it by KIL, and to the right of Kitco and KIL to contest same."
7. For the reasons more fully set out below, Kitco hereby seeks an order declaring that the currency conversation rate applicable to Heraeus' claim is the rate established by the Claims Order (R-1), which states as follows:  

"[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 [June 8, 2011]."
8. As appears from the Heraeus POC (R-2), this rate (US \$1 = CA \$0.978) was applied to Heraeus' claim by both Heraeus and the Monitor (see the Monitor's calculation in the top left corner);
9. The basis upon which Heraeus now seeks to apply a different rate is not clear to Kitco. The rate that Heraeus wishes to apply is also unclear;
10. That said, through the Acknowledgement Agreement (R-3), Kitco has undertaken to seek the authorization of this Court to pay 100% of the remaining balance of Heraeus' claim by May 31, 2017. It is thus important that the amount of that claim be determined beforehand;

## HERAEUS' CLAIM

11. As appears from the documents attached in support of the Heraeus POC (R-2), Heraeus' claim stems from the following:
  - a. US \$375,600 for alleged losses resulting from Kitco's failure to honour a forward contract for the purchase of 4,000 toz of rhodium<sup>1</sup> (see Heraeus' letter of August 31, 2011 filed with the Heraeus POC (R-2));
  - b. US \$4,704,489 following an Assignment of Claim by Kitco International Limited ("KIL") to Heraeus on July 20, 2012 (see the Assignment of Claim filed with the Heraeus POC (R-2));
12. Since the onset of these CCAA proceedings, the Court has authorized Kitco to pay partial dividends to its trade creditors (excluding related parties) on three occasions;
13. The first was on April 17, 2014, when the following payments were authorized:
  - a. Payment of 100% of proven claims under \$20,000, for a total of approximately thirty (30) claims and \$180,000;
  - b. Payment of 50% of proven claims between \$20,000 and \$100,000, for a total of approximately five (5) and \$191,000; thus resulting in a partial dividend of approximately \$96,000;
  - c. Payment of 35% of proven claims over \$100,000, which include the claims of G4S International Logistics (USA), Inc. ("G4S") and Heraeus for a total of approximately \$5.471 million; thus resulting in a partial dividend of approximately \$1.914 million;
14. The second was on May 25, 2016, when the following payments were authorized to be made on or prior to August 15, 2016:
  - a. 100% of all remaining proven claims under \$100,000 for a total of approximately \$85,000;
  - b. \$126,940 to G4S;
  - c. \$1,229,412 to Heraeus;
15. The third was on October 27, 2016, when the following payments were authorized:
  - a. To be made on or prior to November 15, 2016:
    - i. \$68,167.41 to G4S;
    - ii. \$681,674.04 to Heraeus;

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<sup>1</sup> Rhodium is one of the rarest and most valuable precious metals and is part of the platinum group. It is commonly measured in Troy Ounces using the abbreviations "toz" or "oz t". A toz is about 10% heavier than the ounce (oz) used for everyday purposes. It is the equivalent of about 31 grams.

- b. To be made on or prior to March 31, 2017:
  - i. \$50,000 to G4S;
  - ii. \$500,000 to Heraeus;
- 16. Kitco's motion materials and the ensuing orders contained a number of references to the balance of Heraeus' claim. Until the most recent request to pay a partial dividend, which was made after the Upstream Loan Motion and after the Acknowledgement Agreement (R-3), those references were uncontested by Heraeus;
- 17. For example, paragraph 30 of Kitco's *Amended Motion for a Tenth Extension of the Initial Order and for Authorization to Pay a Partial Dividend* stated that "Kitco seeks authorization to pay [...] \$1,229,412 to Heraeus, which would reduce this creditor's claim to \$2 million", the whole as more fully appears from a copy of that motion filed in support hereof for ease of reference as **Exhibit R-4**;
- 18. As a result of the partial dividends paid to Heraeus to date, and when applying the currency conversion rate established by the Claims Order and used in the Heraeus POC, the balance of Heraeus' claim is currently CA \$1,318,326, the whole as more fully appears from a table prepared by Kitco to summarize the evolution of Heraeus' claim, which is filed in support hereof as **Exhibit R-5**;

## **REASONS**

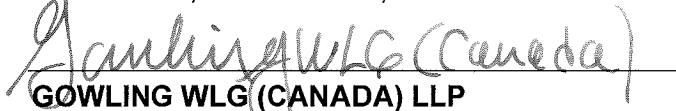
- 19. The Claims Order is clear with respect to the applicable currency conversion rate. Kitco submits that there is *res judicata* on this issue and that the order sought herein could be rendered on this basis alone;
- 20. Nevertheless, Kitco submits that Heraeus' failure to raise the currency conversion issue sooner constitutes a *fin de non recevoir*, namely for the following reasons:
  - a. Until recently, Heraeus appeared to be in agreement with the rate established by the Claims Order; it applied it in the Heraeus POC and, for years, made no objection to Kitco's references to the balance of its claim, which were based on that rate;
  - b. Heraeus is a sophisticated creditor. According to its own website, it is part of the broader Heraeus group with revenues of nearly €13 billion and approximately 12,500 employees in more than 100 subsidiaries in 38 countries, the whole as appears from a print-out of Heraeus' website filed in support hereof as **Exhibit R-6**;
  - c. As a result of the partial dividends paid to date, a number of other creditors having claims in US dollars have been paid 100% of their claim based on the currency conversion rate established by the Claims Order. To apply a different (and more favourable) conversion rate to the Heraeus POC would be contrary to the spirit of the CCAA and the notion that all creditors are to be treated equally. The table filed in support hereof as **Exhibit R-7** provides examples of such creditors;

- d. It would appear that Heraeus' decision to raise an issue with the currency conversion rate at such a late stage was brought on by the weakening Canadian dollar. One can imagine that Heraeus' position would be quite different had the Canadian dollar strengthened versus the US dollar since the Determination Date of June 8, 2011. Had that been the case, would Kitco or the Monitor have been allowed to disregard the Claims Order and apply a different rate to proofs of claim filed in US dollars?
21. Finally, in addition to the foregoing, the currency conversion rate established by the Claims Order is in line with section 43 CCAA;
22. Kitco has served the present application upon all interested parties;
23. Kitco submits that the notice given of the presentation of this application is adequate and sufficient;
24. The present application is well founded in fact and in law;

**FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:**

- [1] **GRANT** the present application;
- [2] **DECLARE** that the currency conversion rate applicable to the proof of claim filed by Heraeus Metals New York LLC (R-2) is that established at paragraph 13 of the *Order Approving a Process to Solicit Claims and for the Establishment of a Claims Bar Date* issued on April 18, 2012 and that the claim of Heraeus Metals New York LLC shall be converted to Canadian dollars at a rate of US \$1 to CA \$0.978;
- [3] **DECLARE** that, following the partial dividends paid to date, the remaining balance of the claim of Heraeus Metals New York LLC is currently CA \$1,318,326;
- [4] **DECLARE** that the notices given of the presentation of this application are adequate and sufficient;
- [5] **THE WHOLE** with costs against Heraeus Metals New York LLC.

MONTREAL, December 1<sup>st</sup>, 2016

  
**GOWLING WLG (CANADA) LLP**  
 Lawyers for Petitioner

CANADA

SUPERIOR COURT  
COMMERCIAL DIVISION

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N°: 500-11-040900-116

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

**KITCO METALS INC.**

Petitioner

and

**RICHTER ADVISORY GROUP INC.**

Monitor

and

**HERAEUS METALS NEW YORK LLC**

Respondent

**AFFIDAVIT OF DENIS MAJEAU**

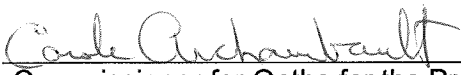
I, the undersigned, Denis Majeau, Chief Financial Officer, doing business at 620 Cathcart, Suite 900, City of Montreal, Province of Quebec, H3B 1M1, solemnly declare as follows:

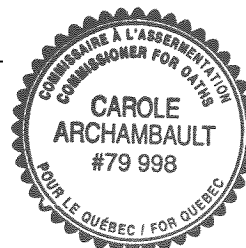
1. I am the Chief Financial Officer of Petitioner, Kitco Metals Inc.;
2. All the facts alleged in the present Application for a Declaratory Judgment Regarding the Currency Conversion Rate Applicable to the Claim of Heraeus Metals New York LLC are true.

AND I HAVE SIGNED:

  
DENIS MAJEAU

SWORN TO before me in Montreal  
this 1<sup>st</sup> day of December, 2016

  
Commissioner for Oaths for the Province of Quebec



CANADA

SUPERIOR COURT  
COMMERCIAL DIVISION

PROVINCE OF QUEBEC  
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CREDITORS ARRANGEMENT ACT, R.S.C. 1985,  
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**KITCO METALS INC.**

Petitioner

and

**RICHTER ADVISORY GROUP INC.**

Monitor

and

**HERAEUS METALS NEW YORK LLC**

Respondent

**NOTICE OF PRESENTATION**

TO: The Service List

and

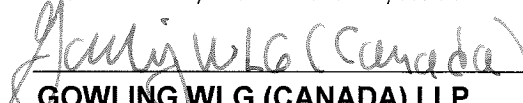
Me Sylvain Vauclair  
WOODS S.E.N.C.R.L.  
2000 avenue McGill College  
Bureau 1700  
Montréal QC H3A 3H3

*Lawyers for Richter Advisory Group Inc.*

**TAKE NOTICE** that the present *Application for a Declaratory Judgment Regarding the Currency Conversion Rate Applicable to the Claim of Heraeus Metals New York LLC* will be presented for adjudication before the Honourable Marie-Anne Paquette of the Superior Court of Quebec, sitting in practice division, at **9:00 a.m. on February 14, 2017** in room 16.12 of the Courthouse located at 1 Notre-Dame St. East, Montreal, or so soon as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, December 1<sup>st</sup>, 2016

  
**GOWLING WLG (CANADA) LLP**  
Lawyers for Petitioner

CANADA

SUPERIOR COURT  
COMMERCIAL DIVISION

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N°: 500-11-040900-116

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

**KITCO METALS INC.**

Petitioner

and

**RICHTER ADVISORY GROUP INC.**

Monitor

and

**HERAEUS METALS NEW YORK LLC**

Respondent

**LIST OF EXHIBITS**  
**(Currency conversation rate)**

**EXHIBIT R-1:** Claims Order (without its schedules)

**EXHIBIT R-2:** Heraeus' proof of claim

**EXHIBIT R-3:** Acknowledgement Agreement with Heraeus dated August 8, 2016

**EXHIBIT R-4:** Kitco's Amended Motion for a Tenth Extension of the Initial Order and for Authorization to Pay a Partial Dividend

**EXHIBIT R-5:** Table prepared by Kitco to summarize the evolution of Heraeus' claim

**EXHIBIT R-6:** Print-out of Heraeus' website

**EXHIBIT R-7:** Table to summarize certain claims and dividend payments.

MONTREAL, December 1<sup>st</sup>, 2016

  
**GOWLING WLG (CANADA) LLP**

Lawyers for Petitioner

# **EXHIBIT R-1**

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

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

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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-judicial 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 22, 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](http://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;

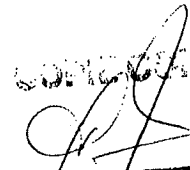
**GENERAL PROVISIONS**

- [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 18, 2012

  
\_\_\_\_\_  
THE HONOURABLE MARK SCHRAGER, J.S.C.

  
\_\_\_\_\_  
court adjoint

# **EXHIBIT R-2**

375,600. +  
 4,704,489. +  
 002.....  
USD 5,080,089. \*  
 5,080,089. x  
 0.978 =  
 4,968,327.042 +

ichter Inc.

RSM Richter Inc.  
 2 Place Alexis Nihon, Suite 1820  
 Montréal, Québec H3Z 3C2  
 Téléphone: 514.934.3400  
 Facsimile: 514.934.8603  
 E-mail: kitco@rsmrichter.com

0. C  
 QUÉBEC  
 MONTRÉAL  
 00-11-040900-116  
 ESTATE NO.: 0000069-2011-QC

SUPERIOR COURT  
 (Commercial Division)  
 (Sitting as a court designated pursuant to the  
 Companies' Creditors Arrangement Act,  
 R.S.C. 1985, c. C-36, as amended)

IN THE MATTER OF THE PLAN OF COMPROMISE AND  
 ARRANGEMENT OF:

KITCO METALS INC.

Petitioner

- and -

RSM RICHTER INC.

Monitor

# PROOF OF CLAIM

## 1) PARTICULARS OF THE CREDITOR

- (i) Full legal name of the Creditor: Heraeus Metals New York LLC (the "Creditor")  
 (ii) Full mailing address of the Creditor: 540 Madison Avenue, New York, New York  
 (iii) Telephone number of the Creditor: 1-212-752-2709 and 1-514-397-3337  
 (iv) Fax number of the Creditor: 212-752-7141  
 (v) Name of the authorized representative of the Creditor: Mr Jean FONTAINE / Stikeman, ELLIOTT  
 (vi) E-mail address of authorized representative of the Creditor: jfontaine@stikeman.com

## 2) DECLARATION

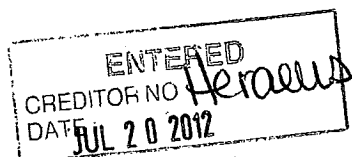
I, \_\_\_\_\_ (name of Creditor or authorized representative of the Creditor)  
 hereby certify that (check and complete the appropriate boxes):

- ☐ I am a Creditor of Kitco Metals Inc.;
- ☒ I am counsel (indicate the title or function) of to Heraeus Metals New York LLC  
 which is a Creditor of Kitco Metals Inc.;
- ☒ I have knowledge of all the circumstances connected with the claim described herein.

## 3) CLAIM

- (i) CLAIM WHICH AROSE UP TO AND INCLUDING JUNE 8, 2011: \$ 4,968,326

(Note: 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 June 8, 2011. Exchange rates for the American dollar and the Euro, at that date, were the following: US \$1 = CA \$0.978; 1 EURO = CA \$1.4266)



(check and complete appropriate box)

☒ UNSECURED CLAIM OF CA\$ 4,968,326

That in respect of this debt, the Creditor does not hold any assets of the Petitioner as security. *OR*

☒ Regarding the amount of CA\$ 4,968,326 the undersigned does not claim a right to a priority.

☐ Regarding the amount of CA\$ \_\_\_\_\_ the undersigned claims a right to a priority under section 136 of the *Bankruptcy and Insolvency Act* (Canada) or would claim such a priority if the current proof of claim was filed pursuant to this Act.

☐ SECURED CLAIM OF CA\$ \_\_\_\_\_

*OR* That in respect of this debt, the Creditor holds assets of the Petitioner valued at CA\$ \_\_\_\_\_ as security, particulars of which are as follows.  
(Give full particulars of the security, including the date on which the security was given and attach a copy of the security documents)

#### 4) PARTICULARS OF CLAIM

The details relating to the claim as well as the supporting documents are submitted as follows:

- ☐ A detailed, complete statement of account;
- ☒ The invoices;
- ☒ Any agreement/contract/assessment giving rise to the claim, including calculations of the amounts claimed;
- ☒ Documents relating to the sale and/or the assignment of the claim and/or the agreement relating to the exercise of the Creditor's voting right during the Creditors' meeting;
- ☒ All other relevant documents.

#### 5) FILING OF CLAIM

Pursuant to the claims and meetings procedure Order establishing the claims process granted by the Superior Court on April 18, 2012 and corrected on April 20, 2012, the Claims Bar Date has been fixed to July 20, 2012 at 5:00 P.M., Montréal Time, for claims which arose up to and including June 8, 2011.

Creditors who will not have filed a proof of claim with the supporting documents by the Claims Bar Date in compliance with the Order and instructions thereto will receive no other notice, and unless a new Order is rendered by the Superior Court, (i) shall not be entitled to participate as a Creditor to the proceedings, (ii) shall not be entitled to vote on any matter relating to these proceedings, including the Plan of compromise and arrangement of Kitco Metals Inc. (the "Plan"), (iii) shall not be entitled to assert any claim against Kitco Metals Inc., (iv) nor shall be entitled to receive any distribution under the Plan.

DATED at Montréal this 20<sup>th</sup> day of July, 2012.

*[Signature]*  
(Signature of witness)

*[Signature]*  
(Signature of the Creditor or of its authorized representative)

\_\_\_\_\_  
(Please print name)

C. JEAN FONTAINE  
(Please print name)

# Heraeus

Heraeus Precious Metals  
Management LLC  
540 Madison Avenue  
New York, NY 10022

Contact Name: David Gallagher  
Phone: (212) 752-2180  
Fax: (212) 752-7141  
E-mail:  
david.gallagher@heraeus.com

August 31, 2011

Via e-mail

## INVOICE

Kitco Metals Inc.  
620 Cathcart #900  
Montreal, QC, H3B 1M1  
Canada

Attn: Bart Kitner, Tim O'Dwyer

On April 19, 2011 we agreed to sell to you for value July 25, 2011 4,000 toz. rhodium at \$2,330.87/oz.  
Trade 1547017 value 9,323,480.00

On July 27 we declared KMI in default of its obligations with respect to the July 25 contract.

Between July 28 and August 23 we sold for spot value 4,000 toz. rhodium at 1,861.97 average price.  
Trade 1635168 value -7,447,880.00

On May 26 KMI sent by wire payment for KMI's performance with respect to the July 25 contract.  
-1,500,000.00

**NET DUE to Heraeus**

**375,600.00**

Payment due by wire transfer August 31, 2011.  
(interest on unpaid balances will accrue at a rate of 1% per month)

Remit to:

JP Morgan Chase NY  
ABA 021 000 021  
A/C Heraeus Precious Metals Management LLC  
A/C 400 470 144

# Heraeus

July 27, 2011

Kitco Metals Inc.  
620 Cathcart, Suite 900  
Montreal, Canada  
H3B 1M1

Attn: Bart Kitner  
E-Mail [bkitner@kitco.com](mailto:bkitner@kitco.com)

Re: Rhodium Forward Contract

Dear Mr. Kitner,

This letter is written on behalf of Heraeus Precious Metals Management LLC ("HPMN").

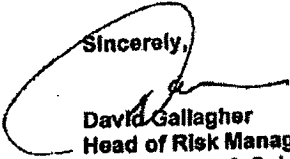
Reference is made to the Forward Contract between HPMN and Kitco Metals Inc. for 4000 toz. Rhodium at a forward price of \$2,330.87/toz. and a maturity date of July 25, 2011. As you know, the maturity date of July 25 has come and gone without your performing.

Therefore, HPMN will begin to exercise its rights and remedies as necessary to protect its position under this contract. Specifically, HPMN will begin to sell the Rhodium covered by the July 25 Forward Contract in a commercially reasonable manner, to realize what is, in its judgment, a reasonable price. It will take some time to complete this process, and only then will we know the total amount of our damages, if any.

Should HPMN suffer any loss, the \$1.5 million advance made on May 26 of this year will first be set-off against it.

This letter is without prejudice to any rights that we may have in respect of the 908.41 toz. Of Rhodium which HPMN is holding as collateral. We undertake not to execute on this collateral without giving you at least 15 days advance written notice.

Sincerely,



David Gallagher  
Head of Risk Management  
for Frederick J. Salek  
Vice President and General Counsel



Kitco Metals Inc.

620 Cathcart #900  
Montréal, QC, H3B 1M1

JULY 28<sup>th</sup>, 2011

BY E-MAIL

(david.galagher@heraeus.com)

HERAEUS PRECIOUS METALS MANAGEMENT LLC  
540 Madison Avenue  
New York, NY  
10022

Attention: David Gallagher, Head of risk management

Re: Rhodium Forward Contract

Dear Mr. Gallagher:

We refer you to your letter addressed to the undersigned of even date.

As you know, Kitco Metals Inc. ("Kitco"), a perfectly viable and profitable company, was forced to seek protection under the *Companies' creditors arrangement Act* in the wake of aggressive and unjustified proceedings taken by the Quebec Revenue Agency ("QRA"). Even though Kitco vigorously denies all claims and allegations made against it by the QRA, it is nevertheless compelled, under the applicable text legislation, to pay the amount claimed (which it will be entitled to recover only after a successful resolution of its contestation), wherefore the necessity to obtain the Court's protection in order for Kitco to be able to carry on its daily operations.

Kitco has been unable to purchase the 4,000 Toz. of rhodium at the forward price of \$2,330.80/Toz. on the forward contract's maturity date of July 25, 2011 solely because of these very unique and unforeseen circumstances.

We have taken note of your intention to begin to sell the rhodium in a commercially reasonable manner. We remind you of your obligation to act in such a way as to minimize your damages. In that respect, we confess being surprised by the fact that Heraeus sold the 4,000 Toz. of rhodium related to the forward contract entered into with Kitco International LTD and which matured on June 29, last within a delay of only 20 days. As you well know, the rhodium market counts a limited number of players and it is therefore volatile. The dumping on the market of a significant quantity of rhodium within a short period of time has inevitably an adverse effect on the market price for this commodity. All this in a context where it is expected that, given current market conditions, especially with a US traded rhodium ETF expected to be launched shortly, the price of rhodium will likely increase in the upcoming months.

Tel: (514) 875-4820 • Toll Free: 1-877-775-4826 • Fax: (514) 875-7484  
www.kitco.com



**Kitco Metals Inc.**

620 Cathcart #900

Montréal, QC, H3B 1M1

We are forwarding a copy of your letter, as well as of the present response, to RSM Richter Inc., the Monitor appointed by the Court to supervise the restructuring process. Indeed, as we understand it, Richter might have a say on your right to apply the \$1,5 M. that Kitco sent to you last May on any loss that you may suffer as a result of the sale of the rhodium. We further understand that unless Richter is able to satisfy itself that Heraeus holds a valid and enforceable security on this amount of \$1,5 M. or that the application of this \$1,5 M. in payment of any loss suffered by Heraeus does not otherwise constitute a preference under the Canadian legislation, this issue will have to be brought to the attention of the Court supervising our ongoing process under the *Companies' creditors arrangement Act*.

Finally, Kitco strongly denies and contest that the 908,41 TOZ of rhodium that Heraeus is presently holding constitutes collateral or other form of security of Kitco's obligations under the above-mentioned forward contract. Heraeus is holding this rhodium pursuant to storage arrangements entered into with Kitco in trust for its customer pools. Kitco never agreed to the use of the said rhodium by Heraeus as collateral in connection with its forward contract or in connection with the forward contracts entered into between Heraeus and Kitco International Limited.

Sincerely,

A handwritten signature in dark ink, appearing to read "B. Kitner", written over a horizontal line.

Bart Kitner, President

c.c. Me Patrice Benoit, Gowlings, Attorneys for Kitco Metals Inc.  
Me Andrew Adessky, RSM Richter Inc.  
Me Sylvain Vauclair, McCarthy Tétrault, Attorneys for RSM Richter Inc.

**ASSIGNMENT OF CLAIM** entered into as of July 20, 2012 (the "**Agreement**")

**AMONG:**                    **KITCO INTERNATIONAL LIMITED**  
                                  (the "**Assignor**")

**AND:**                      **HERAEUS METALS NEW YORK LLC** (formerly known as Heraeus  
                                  Precious Metals Management LLC)  
                                  (the "**Assignee**")

**AND:**                      **KITCO METALS INC.**  
                                  (the "**Debtor**")

**WHEREAS**, the Debtor owes to the Assignor an aggregate amount of US \$10,209,682.62, in principal and interest (the "**KMI Debt**");

**WHEREAS**, the Assignor owes to the Assignee an aggregate amount of US\$4,704,489, in principal, interest and fees (the "**KIL Indebtedness**"); and

**WHEREAS** upon the terms of this Agreement, the Assignor agrees to assign to the Assignee a portion of the KMI Debt in the amount of US\$4,704,489 (the "**Assigned Claim**").

**THEREFORE**, in consideration for the mutual covenants and acknowledgements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Acknowledgements**

- 1.1 The Debtor acknowledges that the KMI Debt is due and owing to the Assignor without any reduction, restriction, set-off rights or otherwise, and that, following the assignment of the Assigned Claim to the Assignee, the Assigned Claim will be owing to the Assignee and the balance of the KMI Debt, being an amount of US \$5,505,193.62 (the "**KMI Balance**"), will remain owed to the Assignor, without set-off, counterclaim or novation. The Debtor further acknowledges and confirms that notwithstanding the assignment of the Assigned Claim, the Assignor will retain all of its claims and rights in relation to the KMI Balance.
- 1.2 The Assignor acknowledges that the KIL Indebtedness is due and owing to the Assignee and that the KIL Indebtedness will continue to be entirely owed to the Assignee following the assignment of the Assigned Claim, without any reduction. The Assignor acknowledges and confirms that the assignment of the Assigned Claim will not impair or affect in any way the claims and rights of the Assignee in relation to the KIL Indebtedness. Notwithstanding the foregoing, the Assignee hereby irrevocably undertakes to apply any and all proceeds of the Assigned Claim, collected by way of a

dividend payable by the Debtor in the context of its restructuring under the Companies Creditors' Arrangement Act or otherwise, in permanent reduction of KIL Indebtedness. In the event that the Assignee is fully repaid of KIL Indebtedness, it shall, upon request by the Assignor, reassign to the Assignor for an amount of one dollar US (US \$1.00) any remaining portion of the Assigned Claim.

## **2. Assignment**

As and from the date hereof, the Assignor sells, conveys, transfers and assigns to the Assignee all of the Assignor's rights, title and interest in the Assigned Claim and all present and future claims and rights of action forming part thereof.

## **3. Representations and Warranties of the Assignor**

The Assignor represents and warrants to the Assignee as follows and acknowledges that the Assignee is relying upon the following representations and warranties in connection with the transactions contemplated by this assignment:

- (a) the Assignor has the power and capacity to enter into, and to perform its obligations under this Agreement, and this Agreement has been duly executed and delivered by the Assignor and is a valid and binding obligation of the Assignor, enforceable against it in accordance with its terms; and
- (b) there are no agreements or restrictions that in any way limit or restrict the assignment and transfer to the Assignee of the Assigned Claim as effected hereby.

## **4. Consent and acknowledgment of the Debtor**

The Debtor consents to the present assignment and confirms that any and all payments in respect of the Assigned Claim will be made directly to the Assignee.

## **5. General Provisions**

- 5.1 Each of the parties hereto shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other may require from time to time for the purpose of giving effect to this Agreement and shall use all reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement.
- 5.2 This Agreement shall be governed by and construed in accordance with the laws of the Province of Québec and the laws of Canada applicable therein.
- 5.3 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- 5.4 The parties confirm that they have expressly requested that this Agreement be drafted in English. *Les parties confirment que la présente Convention a été rédigée en anglais conformément à leur volonté.*

IN WITNESS WHEREOF, the parties hereto have executed this assignment on the date referred to above.

KITCO INTERNATIONAL LIMITED

Per: 

HERAEUS METALS NEW YORK LLC

Per: 

KITCO METALS INC.

Per: 

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# **EXHIBIT R-3**

**ACKNOWLEDGEMENT AGREEMENT** entered into as of August 8, 2016 (the "**Agreement**")

**AMONG:** **KITCO INTERNATIONAL LIMITED**  
("**KIL**")

**AND:** **HERAEUS METALS NEW YORK LLC** (formerly known as Heraeus Precious Metals Management LLC)  
("**Heraeus**")

**AND:** **KITCO METALS INC.**  
("**Kitco**")

**AND:** **3609979 CANADA INC.**  
("**Shareholder**")

WHEREAS on June 8, 2011, Kitco filed a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (the "**NOI**");

WHEREAS at the time of the filing of Kitco's NOI, Kitco owed an amount of US\$10,209,682.62 to KIL representing the balance of the loan made by KIL to Kitco (the "**Upstream Loan**");

WHEREAS on June 20, 2012, KIL, as assignor, Heraeus, as assignee, and Kitco, as debtor, have entered into an assignment of claim pursuant to which, among others, KIL assigned to Heraeus all of its rights, title and interest in a portion of the Upstream Loan namely an amount of US\$4,704,489 (the "**Assigned Claim**") and all present and future claims and rights of action forming part thereof as guarantee of the repayment of the amount of US\$4,704,489 (in principal, interest and fees as of June 20, 2012) owed by KIL to Heraeus;

WHEREAS on July 7, 2011, the Superior Court (commercial division) of the Province of Québec of the district of Montreal (the "**Superior Court**") issued an initial order (the "**Initial Order**") pursuant to section 11.02 of the *Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36* ("**CCAA**") in respect of Kitco and appointed Richter Advisory Group Inc. (formerly RSM RITCHER INC.) as monitor (the "**Monitor**");

WHEREAS on June 29, 2016, Kitco presented to the Superior Court (500-11-040900-116) a motion for authorization to reimburse the balance of the Upstream Loan to KIL pursuant to Sections 9 and 11 of the CCAA (the "**Motion**"), the whole as set out in the Motion;

WHEREAS Kitco and Heraeus have negotiated certain terms and conditions in connection with the Upstream Loan;

AND THEREFORE, in consideration for the mutual covenants and acknowledgements contained herein and for the reasons explained in the Motion and subject to the terms and conditions set out herein:

**1. Acknowledgements**

**1.1 Preamble**

The preamble shall form an integral part of this Agreement and shall have the same force as any other provision hereof.

**1.2 Transactions**

The parties agree and accept that the following transactions take place on or prior to August 19, 2016:

- a) Payment by Kitco to Heraeus of an amount of CAD\$1,229,362 as payment of a portion of its claim, which includes an amount of CAD\$1,138,487 as repayment of a portion of the Assigned Claim (the "August 2016 Payment").
- b) Payment of the Upstream Loan by Kitco to KIL.

**1.3 Heraeus' claim**

The parties are in disagreement about the outstanding amount owed to Heraeus due to the applicable currency conversion rate, but they agree to postpone the resolution of these issues to a later date. In that respect, regardless of any of Kitco's personal accounting book entries, the parties agree and acknowledge that the payment of the Upstream Loan and ancillary transactions are without admission nor prejudice to Heraeus' alleged right to claim the full amount of its outstanding claim, including the amount owed to it by KIL, and to the rights of Kitco and KIL to contest same.

**1.4 Interim payments**

Kitco undertakes to file and present on or before October 3, 2016 a motion requesting the authorization of the Superior Court to:

- a) pay a portion of Heraeus' claim, namely an amount of CAD\$500,000 to Heraeus on or before November 15, 2016 and a proportionate amount to its other creditor G4S ("G4S") (collectively, the "November 2016 Payments");
- b) pay a portion of Heraeus' claim, namely an amount of CAD\$500,000 to Heraeus on or before March 31, 2017 and a proportionate amount to its other creditor G4S (collectively, the "March 2017 Payments");

## 1.5 Additional payments

In addition to the November 2016 Payments and March 2017 Payments, Kitco agrees and undertakes to seek the authorization of the Superior Court to make, subject to cash flow availability, payments to Heraeus in reduction of its claim, from the following sources:

- 1) all the sums, less the November 2016 Payment, held into the trust account of the Monitor (or the agent of the Monitor) which are held in accordance with the terms and conditions of the Order for a sixth extension of the Initial Order and other orders of The Honourable Mark Schrager of the Superior Court on March 13, 2013 representing 90% of the "net proceeds" (within the meaning given to such expression in the order) to be received from the sale of any commercial and residential units in the Altitude project; and
- 2) the amounts to be remitted by the Agence du Revenu du Québec and the Attorney General of Canada to Kitco in accordance with the judgement of the Honorable Marie-Anne Paquette of the Superior Court on February 1, 2016 for which an applicable for permission to appeal a decision has been filed on February 19, 2016.

## 1.6 Final payment

Subject to authorization of the Superior Court, Kitco undertakes to pay to Heraeus on or before May 31, 2017 the balance of its claim.

## 1.7 Default

In the event of any default under this Agreement, Kitco acknowledges that Heraeus will oppose any further extension of the Initial Order.

## 1.8 Dividend paid by KIL to the Shareholder

In consideration of the payments and undertakings described in sections 1.2, 1.4, 1.5 and 1.6 hereof, Heraeus will not oppose the Motion and agrees accordingly to the payment of the dividend from KIL to the Shareholder as contemplated in the Motion.

## 2. General Provisions

- 2.1 Each of the parties hereto shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other may require from time to time for the purpose of giving effect to this Agreement and shall use all reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement.
- 2.2 This Agreement shall be governed by and construed in accordance with the laws of the Province of Québec and the laws of Canada applicable therein.
- 2.3 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.



# **EXHIBIT R-4**

CANADA

SUPERIOR COURT  
COMMERCIAL DIVISION

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
N°: 500-11-040900-116

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

**KITCO METALS INC.**

Petitioner

and

**RICHTER ADVISORY GROUP INC.**

Monitor

**AMENDED MOTION FOR A TENTH EXTENSION OF THE INITIAL ORDER AND FOR  
AUTHORISATION TO PAY A PARTIAL DIVIDEND**

**(Section 11.02 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36  
("CCAA"))**

**TO THE HONOURABLE MARIE-ANNE PAQUETTE, J.S.C., SITTING IN COMMERCIAL  
DIVISION, IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER (OR "KITCO")  
RESPECTFULLY SUBMITS AS FOLLOWS:**

**INTRODUCTION**

1. On June 8, 2011, the Petitioner filed a Notice of Intention to make a proposal under the Bankruptcy and Insolvency Act (the "**NOI**");
2. On July 7, 2011, this Court issued an initial order (the "**Initial Order**") pursuant to section 11.02 of the CCAA in respect of Kitco;
3. The Initial Order established that the initial "**Stay Period**" (as defined therein) would expire on July 27, 2011;
4. The Stay Period has since been extended on nine previous occasions and expires on May 31, 2016, the whole as appears from the Court record;
5. By the present, Kitco seeks an extension of the Stay Period to May 31, 2017 as well as authorisation to pay a partial dividend to its trade creditors, as set out below;

### **STATUS OF THE BUSINESS SINCE THE PREVIOUS EXTENSION**

6. Kitco's operations and its relationship with its clients have remained generally stable;
7. The quantity of precious metals held in Kitco's customer pool accounts is consistent with the levels at the commencement of this restructuring;
8. Moreover, as appears from the cash flow projections reproduced in the Monitor's Twenty-Eighth Report, Kitco's cash flow situation is stable and, in spite of the cost of restructuring, Kitco's operations would be cash flow positive for the extension period sought herein were it not for the Upstream Loan issue described below, and Kitco's intention to pay an additional partial dividend, also as described below;
9. Kitco's stakeholders will not suffer any real prejudice as a result of an extension of the Initial Order to May 31, 2017;

### **ALTITUDE TRANSACTIONS**

10. Kitco, as well as the Monitor through its reports, has regularly kept the Court informed of developments surrounding its efforts to sell approximately 20,000 square feet of commercial condo space that it owns in the Montreal real estate project known as Altitude; more specifically, floors 4 to 7;
11. On December 12, 2014, Kitco changed real estate brokers and mandated Royal LePage Heritage, the whole as appears from previous reports of the Monitor;
12. That mandate expires on June 30, 2016 but will be extended;
13. Kitco is in compliance with all the terms of its mortgage in respect of the commercial condo;

### **DISPUTE WITH ARQ**

#### **Settlement Discussions**

14. Kitco, the Agence du Revenu du Québec ("**ARQ**") and the Attorney General of Canada ("**AGC**") have continued the serious settlement discussions previously underway in hopes of coming to a global resolution of this matter;
15. The nature and content of these discussions still remains highly confidential and protected by settlement privilege but Kitco can report that progress has been made;
16. If an agreement can be reached in a timely manner, Kitco believes it may be in a position to file a plan of arrangement before the expiry of the extension sought herein;
17. In any event, it is clear that no settlement can be reached prior to the expiry of the current Stay Period on May 31, 2016;

### Proceedings

18. Despite the ongoing settlement discussions, Kitco has been working diligently to advance the proceedings with respect to its dispute with the ARQ;
19. As appears from the letter from Kitco's tax counsel to the Monitor dated as of May 16, 2016 and filed as an exhibit to the Monitor's Twenty-Eighth Report (the "**Tax Letter**"), unless an agreement is reached, the dispute between Kitco and the ARQ will not be resolved by May 31, 2017, despite Kitco's efforts;
20. Kitco's *Motion to Institute Proceedings in Damages and to Obtain Remedies Pursuant to the Canadian Charter of Rights and Freedoms and Charter of Human Rights and Freedoms* has been suspended, by consent of the parties involved, until the earlier of (1) March 31, 2017, or (2) final judgment on the disclosure of evidence in the files currently pending before the Criminal and Penal Division of the Court of Québec. The reasons for same are more fully set out in paragraphs 44.2 and following of the Tax Letter;
21. As appears from paragraphs 45 and following of the Tax Letter, the debate of the validity of the Notices of Assessment cannot be held while Kitco and Mr. Bart Kitner, President of Kitco, remain subject to penal proceedings;
22. While the penal proceedings are advancing, the ARQ has refused to communicate a number of important documents that it claims are privileged. The privilege issue will be debated before the Court of Québec on June 27, 2016 and Kitco filed its arguments in this regard on April 30, 2016. The ARQ must do the same by the end of May;

### The Set-off Motion

23. On October 23, 2013, Kitco filed its *Motion to enforce the initial order, to declare illegal certain rights of set-off exercised by the Agence du revenu du Québec and the Attorney General of Canada, to declare inapplicable, invalid, inoperative, unconstitutional or of no force and effect certain provisions of certain tax statutes of the province of Quebec and of Canada and to condemn l'Agence du Revenu du Québec and the Attorney General of Canada to pay to the petitioner the input tax credits and the input tax refunds to which it is entitled* (the "**Set-off Motion**");
24. The Set-off Motion was heard on December 8, 9 and 10, 2015 and judgment was rendered in Kitco's favour on February 1, 2016 (the "**Set-Off Judgment**");
25. On March 15, 2016, the Court of Appeal granted the ARQ and the AGC leave to appeal the Set-off Judgment and the appeal is scheduled to be heard on November 8, 2016;
26. On May 11, 2016, the Canadian Association of Insolvency and Restructuring Professionals was granted intervener status by the Court of Appeal;

### PAYMENT OF PARTIAL DIVIDEND TO TRADE CREDITORS

27. On April 17, 2014, this Honourable Court granted Kitco permission to issue a partial dividend to its trade creditors as follows:

- a. Payment of 100% of proven claims under \$20,000, for a total of approximately thirty (30) claims and \$180,000;
  - b. Payment of 50% of proven claims between \$20,000 and \$100,000, for a total of approximately five (5) and \$191,000; thus resulting in a partial dividend of approximately \$96,000;
  - c. Payment of 35% of proven claims over \$100,000, which include the claims of G4S International Logistics (USA), Inc. ("**G4S**") and Heraeus Metals New York LLC ("**Heraeus**") totalling approximately \$5.471 million; thus resulting in a partial dividend of approximately \$1.914 million;
28. Since the onset of these CCAA proceedings, Kitco has made it clear that it would not have required protection from its creditors were it not for the dispute with the ARQ;
29. As mentioned above and below, and as more fully appears from the Tax Letter, unless a settlement can be reached, that dispute will be ongoing for a significant period of time;
30. As a result, Kitco seeks authorization to pay the following partial dividend on or prior to August 15, 2016:
- a. 100% of all remaining proven claims under \$100,000 for a total of approximately \$85,000;
  - b. \$126,940 to G4S, which would reduce this creditor's claim to \$200,000;
  - c. \$1,229,412 to Heraeus, which would reduce this creditor's claim to \$2 million;
31. The total cost of the intended partial dividend would be approximately \$1,441,352 and has already been factored into the cash flow projections reproduced in the Monitor's Twenty-Eighth Report;
32. Should the Set-Off Judgment be upheld by the Court of Appeal, Kitco intends to seek authorization to pay the balance of the claims of G4S and Heraeus using the approximately \$2 million that would be remitted to the Monitor by the ARQ and AGC;
33. Kitco does not seek authorization to pay a dividend to related parties, the ARQ and AGC;

#### **KITCO'S INTENTIONS FOR THE EXTENSION PERIOD SOUGHT**

##### **Re-opening of the Refining Business**

34. As more fully set out in the Set-Off Motion, Kitco had essentially shut down its metal refining operations as a result of the set-off being carried out by the ARQ and AGC;
35. As a result of the Set-Off Judgment, this set-off has ceased, at least pending the outcome of the appeal. Paragraph 12 of the Court of Appeal decision granting leave to appeal the Set-Off Judgment confirms the undertaking by the ARQ and AGC to stop setting off;

36. Kitco intends to seize this opportunity to resume its refining operations, which it believes will increase revenue and improve the cash flow situation for the benefit all stakeholders;
37. In view of resuming its refining operations, Kitco has submitted documents to the ARQ regarding those operations and intends to await the ARQ's instructions prior to resuming, the whole in order to ensure that the ARQ will refund all input tax credits and input tax refunds;
38. Kitco believes it will be in a position to resume its refining operations within two (2) weeks following receipt of the required instructions;

#### Upstream Loan

39. Kitco and Kitco International Limited ("KIL") are both wholly owned subsidiaries of 3609979 Canada Inc. ("360");
40. Kitco and 360 were incorporated in Canada, while KIL was incorporated in Barbados and is considered a resident of that country for tax purposes;
41. Between February 2010 and the filing of Kitco's NOI in June 2011, KIL loaned an amount of nearly \$8.4 million to Kitco (the "**Upstream Loan**"), the whole in an effort to improve Kitco's cash flow situation (...);
42. Pursuant to subsection 90(6) of Canada's *Income Tax Act* ("ITA"), 360 must include in computing income the amount of the Upstream Loan;
43. That said, pursuant to paragraph 90(8)(a), subsection 90(6) does not apply if the indebtedness is repaid within two (2) years of the day the loan is made;
44. As a result of changes made to the ITA in 2014, for purposes of the application of the exemption rule at paragraph 90(8)(a) ITA, the Upstream Loan is deemed to have been made on August 20, 2014 and therefore, if such loan is repaid before August 19, 2016, section 90(6) will not apply. The relevant provisions of the ITA are filed in support hereof as **Exhibit R-1**;
45. While the issue remains under review, the practical implications appear to be as follows:
  - a. If Kitco does not reimburse the Upstream Loan, 360 would face an income tax assessment in the range of approximately \$4 million that it would be unable to pay, possibly rendering 360 insolvent and forcing it to seek creditor protection;
  - b. If Kitco does reimburse the Upstream Loan, it appears the funds could flow through KIL and into 360, which would allow 360 to pay income taxes in the amount of approximately \$2.4 million that it cannot otherwise pay. 360 could then remit the balance to Kitco;
46. In short, Kitco, KIL and 360 are presently analyzing the viability of a transaction whereby Kitco's cash flow would suffer an impact in the amount of about \$2.625 million, while tax authorities would be allowed to recover approximately \$2.4 million from 360 that they would not otherwise recover if Kitco did not reimburse the Upstream Loan. The potential

impact on Kitco's cash flow is reflected in the cash flow projections attached to the Monitor's Twenty-Eighth Report;

47. Kitco has discussed the Upstream Loan situation with the ARQ and hopes to reach an agreement with stakeholders on how best to address it;
48. It is possible that Kitco may address this issue with the Court over the course of the Summer so that a decision can be made prior to the August 19<sup>th</sup> deadline for reimbursement of the Upstream Loan;

#### **GENERAL**

49. The Monitor, as indicated in its Twenty-Eighth Report, supports the extension of the Stay Period sought in the present motion;
50. Kitco has discussed the partial dividend payment with the ARQ and the ARQ has confirmed its consent to same;
51. Since the issuance of the Initial Order, Kitco has acted and continues to act in good faith, with due diligence and towards the resolution of its dispute with the ARQ, which is at the basis of this restructuring process;
52. In light of the nature of the dispute with the ARQ, additional time is required in order to negotiate and, if necessary, litigate;
53. If an agreement can be reached, it is likely that a plan of arrangement may be filed before the expiry of the extension sought herein;
54. If no agreement is reached in the short term and litigation with the ARQ continues, it is clear that the dispute will not be resolved by the end of the extension sought herein;
55. Kitco has served the present motion upon all interested parties;
56. Kitco submits that the notice given of the presentation of this motion is adequate and sufficient;
57. The extension sought herein will not cause any prejudice to Kitco's stakeholders;
58. A lengthier extension will reduce the costs associated with regular motions for extension of delays and is even more appropriate in the circumstances, namely in light of the stability demonstrated by Kitco since the Initial Order;
59. The present motion is well founded in fact and in law;

**FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:**

**GRANT** the present motion;

**DECLARE** that the notices given of the presentation of the present motion are adequate and sufficient;

**ORDER** that the Stay Period as defined in the Initial Order be extended by this Court up to and including May 31, 2017;

**DECLARE** that the Initial Order shall remain otherwise unchanged;

**AUTHORIZE and ORDER** Kitco Metals Inc. to pay the following partial dividend on or prior to August 15, 2016:

- a. 100% of all remaining proven claims under \$100,000 for a total of approximately \$85,000;
- b. \$126,940 to G4S International Logistics (USA), Inc.;
- c. \$1,229,412 to Heraeus Metals New York LLC;

**ORDER** the provisional execution of the Order notwithstanding any appeal without the need to furnish any security;

**THE WHOLE** without costs except if contested.

MONTREAL, May 25, 2016

(S) GOWLING WLG (CANADA) LLP

**GOWLING WLG (CANADA) LLP**

Lawyers for Petitioner

No. 500-11-040900-116

SUPERIOR COURT  
(COMMERCIAL DIVISION)  
DISTRICT OF MONTRÉAL

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

Petitioner

and

RICHTER ADVISORY GROUP INC.

Monitor

AMENDED MOTION FOR A TENTH EXTENSION  
OF THE INITIAL ORDER AND FOR  
AUTHORIZATION TO PAY A PARTIAL DIVIDEND  
(SECTION 11.02 OF THE COMPANIES'  
CREDITORS ARRANGEMENT ACT, R.S.C. 1985,  
C. C-36 ("CCAA"))

COPY

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File No.: L121970003

INIT.: AB/nh

c/o 4127

# **EXHIBIT R-5**

# HEREAUS DEBT EVOLUTION

Summary of Heraeus account		Kitco Metals Inc books	In Kitco International Ltd books	Total
Original amounts	USD	375 600	4 704 489	5 080 089
Amount converted and included in proof of claim.	CAD	367 337	4 600 989	4 968 326
Payment of dividend made on May 7, 2014	CAD	(128 568)	(1 610 396)	(1 738 964)
Balance		238 769	2 990 593	3 229 362
Payment of dividend August 2016	CAD	(90 875)	(1 138 487)	(1 229 362)
Remaining balance	CAD	147 894	1 852 106	2 000 000
Payment of dividend November 16, 2016	CAD	(50 400)	(631 274)	(681 674)
Remaining balance		97 494	1 220 832	1 318 326
Expected payment of dividend March 2017		(36 968)	(463 032)	(500 000)
Balance		60 525	757 801	818 326

1990

# **EXHIBIT R-6**

# About Heraeus

Heraeus, the technology group headquartered in Hanau, Germany, is a leading international family-owned company formed in 1851. With expertise, a focus on innovations, operational excellence and an entrepreneurial leadership, we strive to continuously improve the businesses of our customers around the world.

We create high-quality solutions for our customers and strengthen their long-term competitiveness by combining material expertise with technological know-how. Our ideas are focused on important issues such as the environment, energy, health, mobility and industrial applications. Our portfolio ranges from components to coordinated material systems which are used in a wide variety of industries, including the steel, electronics, chemical, automotive and telecommunications industries.

In the 2015 financial year, Heraeus generated revenues without precious metals of €1.9 bn and a total revenue of €12.9 bn. With approximately 12,500 employees worldwide in more than 100 subsidiaries in 38 countries, Heraeus holds a leading position in its global markets.

In 2016, the Foundation for Family Businesses named Heraeus as one of the "Top 10 Family Businesses" in Germany.

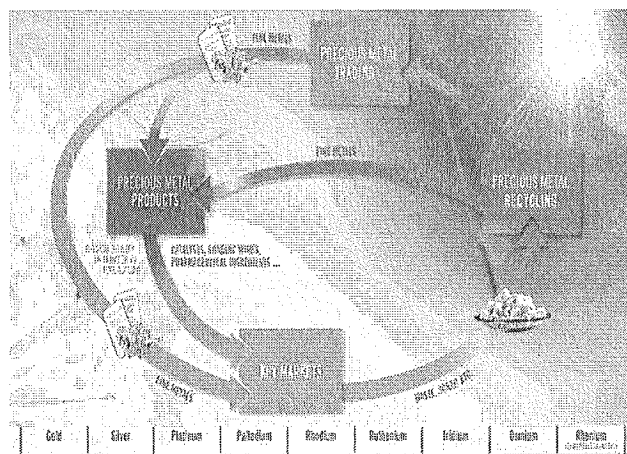
**More on Heraeus at the Heraeus Corporate Website**

## About Heraeus Metal Management

**Heraeus Metal Management – Your unique partner for precious metal solutions**

Heraeus Metal Management combines Heraeus's many years of expertise in the areas of precious metal recycling, trading, and services.

Your precious metal management is our priority. You can rely on our experts, who are standing by for you at our 10 locations in the major time zones.



We offer integrated solutions, combining precious metals products from Heraeus with our comprehensive services in precious metals management. We respond quickly and stand out with the highest quality standards.

Trust and reliability, strict adherence to leading compliance standards, transparency and our financial stability have formed the foundation of our business for more than 160 years.

### **Additional information**

**More about conflict minerals**

**About trust**

**Brochure Heraeus Metal  
Management**

### **Certifications**

**LBMA**

**RJC**

### **Memberships**

Links

## **Certificates**

Germany	America	China	Hong Kong	South Africa	India
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### **TÜV Süd**

**ISO 9001:2008**

**PDF - 231 kB**

**ISO 14001:2004**

**PDF - 215 kB**

### **The London Bullion Market Association (LBMA)**

**Acceptable Refiner Gold**

**PDF - 237 kB**

**Acceptable Refiner Silver**

**PDF - 223 kB**

**Responsible Gold**

**PDF - 60 kB**

### **The London Platinum and Palladium Market (LPPM)**

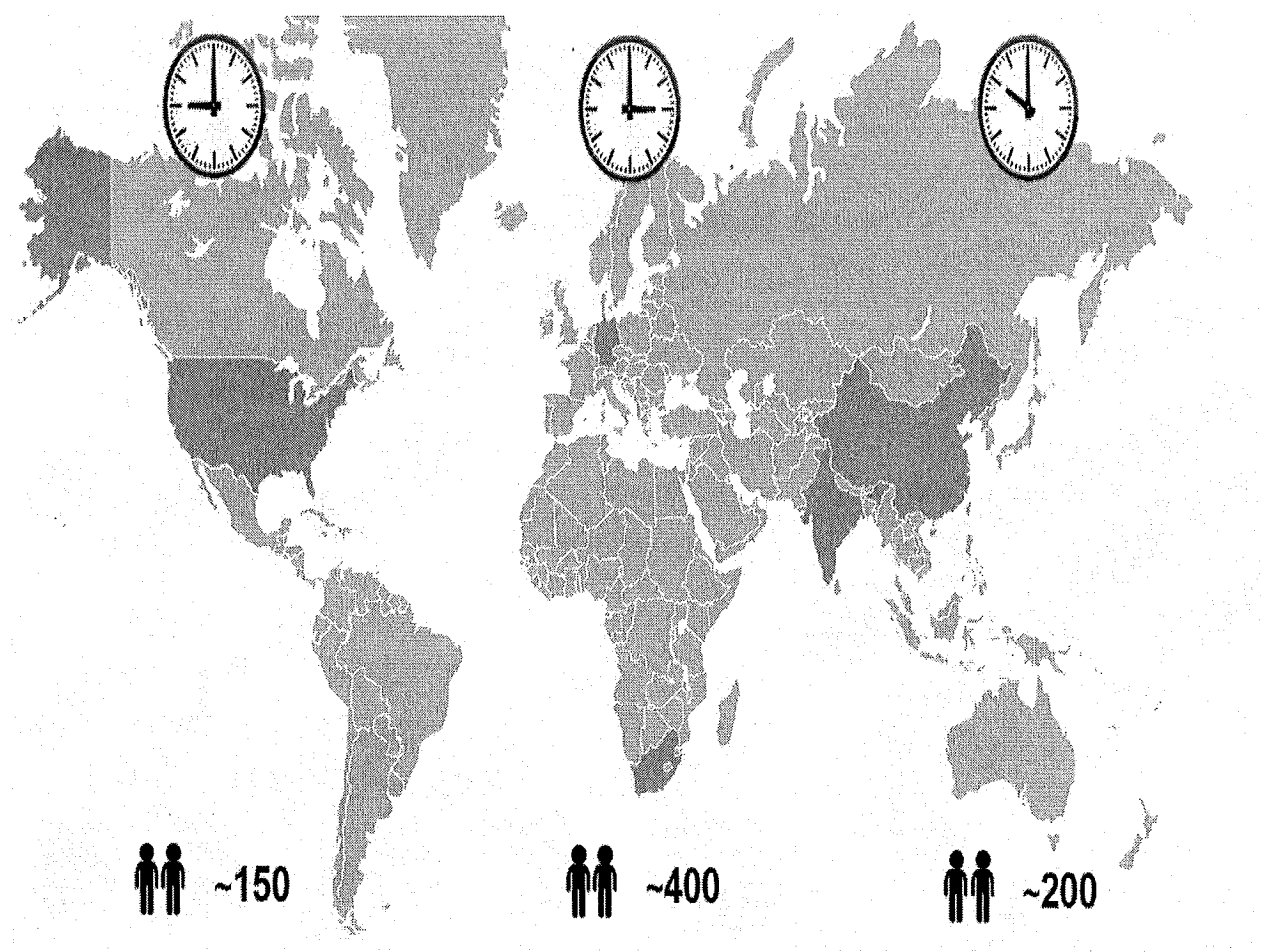
**Palladium Good Delivery**

**PDF - 344 kB**

**Platinum Good Delivery**

**PDF - 344 kB**

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# **EXHIBIT R-7**

Kitco Metals Inc  
 Liste des créanciers restants avant le paiement en Août 2016

**Créanciers entre \$ 20,000 et \$ 100,000**

	Proof of claim	Payments	Unpaid balance	Montant original en USD
GROUPE G E NATIONALES	22 068,80	11 034,40	11 034,40	
1135196 ONTARIO INC (HOWARD'S PAWN SHOP)	21 779,29	10 889,65	10 889,65	
R3D CONSEIL INC.	14 536,83	7 268,42	7 268,42	
XRF LABWARE PTY LTD. **	27 720,59	13 860,30	13 860,30	X
DELL CANADA INC.	33 103,31	16 551,66	16 551,66	
COINS 'N THINGS INC.	60 771,45	30 385,73	30 385,73	X

**179 980,27**

**89 990,14**

**89 990,14**

**Créanciers de plus de \$ 100,000**

G4S INTERNATIONAL LOGISTICS (USA), INC. \*  
 HERAEUS METALS NEW YORK, LLC

496 664,17  
 4 968 326,00

173 832,46  
 1 738 914,10

322 831,71  
 3 229 411,90

X  
 X


**5 464 990,17**

**1 912 746,56**

**3 552 243,61**

**Total amount to be paid**

**3 642 233,75**

No. 500-11-040900-116
SUPERIOR COURT (COMMERCIAL DIVISION) DISTRICT OF MONTRÉAL
IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, c C-36, AS AMENDED  KITCO METALS INC.  Petitioner  and  RICHTER ADVISORY GROUP INC.  Monitor  and  HERAEUS METALS NEW YORK LLC  Respondent
APPLICATION FOR A DECLARATORY JUDGMENT REGARDING THE CURRENCY CONVERSION RATE APPLICABLE TO THE CLAIM OF HERAEUS METALS NEW YORK LLC (Sections 9 and 11 of the <i>Companies' Creditors Arrangement Act</i> , R.S.C. 1985, c. C-36 ("CCAA"))
ORIGINAL
Me Yves Ouellette / Me Alexander Bayus yves.ouellette@gowlingwlg.com BL0052 alexander.bayus@gowlingwlg.com  GOWLING WLG Gowling WLG (Canada) LLP 1 Place Ville Marie, 37 <sup>th</sup> Floor Montreal, Québec Canada H3B 3P4 Tel.: 514-392-9426 / Fax: 514-876-9026 File No.: L121970003 INIT.: AB/ c/o 4127