



No. S-238572
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

**IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF
MYRA FALLS MINE LTD.**

PETITIONER

SECOND REPORT OF THE MONITOR

February 23, 2024

SECOND REPORT OF THE MONITOR

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INTRODUCTION

1. On December 18, 2023, Myra Falls Mine Ltd. (“**MFM**” or the “**Petitioner**”) was granted an initial order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) in the Supreme Court of British Columbia Action No. S-238572, Vancouver Registry (the “**CCAA Proceedings**”).
2. The Initial Order provides for, among other things:
 - a. a stay of proceedings against the Petitioner (the “**Stay of Proceedings**”) until December 28, 2023;
 - b. the appointment of FTI Consulting Canada Inc. as Monitor of the Petitioner (the “**Monitor**”);
 - c. the approval of an interim financing facility to be advanced by Trafigura US Inc. (the “**Interim Lender**”) in an amount not to exceed \$4.0 million as an initial advance;
 - d. certain priority charges against the property of the Petitioner (the “**Court-Ordered Charges**”); and
 - e. the authorization for MFM to pay two additional weeks of wages or salaries to terminated or temporarily laid off employees on the pay cycle following their termination or temporary layoff (the “**Initial Hardship Payment**”).
3. On December 28, 2023, the Petitioner was granted an amended and restated initial order (the “**ARIO**”), which, among other things:
 - a. extended the Stay of Proceedings to February 29, 2024;
 - b. increased the amounts of the Court-Ordered Charges;

- c. granted the Court-Ordered Charges priority ahead of secured creditors pursuant to ss. 11.2(2), 11.51(2) and 11.52(2) of the CCAA;
 - d. authorized the Petitioner to borrow up to \$21.0 million from the Interim Lender, being the full principal amount available under the interim financing facility (the “**DIP Facility**”), together with a corresponding increase in the amount of the charge securing the DIP Facility; and
 - e. authorized the Petitioner to make certain payments, at its discretion, to terminated or temporarily laid off employees of a further six weeks of salary or wages (the “**Supplemental Hardship Payment**” and, together with the Initial Hardship Payment, the “**Hardship Payment**”).
4. On February 22, 2024, the Petitioner filed a notice of application returnable February 27, 2024 seeking the following:
- a. an order (the “**SISP Order**”), among other things:
 - i. approving the engagement of FTI Capital Advisors – Canada ULC (the “**Financial Advisor**”) as MFM’s financial advisor in connection with the SISP;
 - ii. approving a sale and investment solicitation process (the “**SISP**”) attached as Appendix “**A**” hereto;
 - iii. declaring that the Monitor, Financial Advisor and the Petitioner and their respective affiliates, partners, directors, employees, advisors, agents, shareholders and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability in connection with or as a result of the SISP except to the extent such losses, claims, damages or liabilities result from their gross negligence or willful misconduct;

- iv. amending the ARIO to make the Financial Advisor a beneficiary of the Administration Charge; and
 - v. extending the Stay to June 30, 2024 (the “**Stay Extension**”);
- b. an order (the “**Approval and Vesting Order**”) approving an agreement (the “**Breakwater Agreement**”) for the sale of MFM’s right, title and interest in an equipment lease between MFM, as lessee, and Epiroc Canada Inc. (“**Epiroc**”), as lessor, dated February 26, 2022 (the “**Epiroc Lease**”) to Breakwater Resources Ltd. (“**Breakwater**”), a related party to MFM, and vesting the purchased interest in Breakwater, free and clear of any encumbrances.

PURPOSE

5. The purpose of this report is to provide this Honourable Court and the Petitioner’s stakeholders with information with respect to the following:
- a. the planned retention of the Financial Advisor in respect of the SISP;
 - b. the components and timelines of the proposed SISP;
 - c. the assignment of the Epiroc Lease to Breakwater;
 - d. an update with respect to the Hardship Payment;
 - e. the Petitioner’s actual cash receipts and disbursements for the 8-week period ended February 9, 2024 (the “**Reporting Period**”) as compared to the cash flow forecast filed with the First Report of the Monitor (the “**Second Cash Flow Statement**”);
 - f. a summary of an updated cash flow statement (the “**Third Cash Flow Statement**”) prepared by the Petitioner for the 29-weeks ending July 5, 2024 (the

“**Forecast Period**”), including the key assumptions on which the Third Cash Flow Statement is based;

- g. MFM’s application for the Stay Extension; and
- h. the Monitor’s conclusions and recommendations.

TERMS OF REFERENCE

6. In preparing this report, the Monitor has relied upon certain information (the “**Information**”) including the Petitioner’s unaudited financial information, books and records and discussions with senior management of MFM (collectively, “**Management**”).
7. Except as described in this report, the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
8. The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
9. Future-oriented financial information reported to be relied on in preparing this report is based on Management’s assumptions regarding future events. Actual results may vary from forecast and such variations may be material.
10. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

ENGAGEMENT OF A FINANCIAL ADVISOR

11. The Petitioner has engaged the Financial Advisor to provide MFM with investment banking advice and assistance in connection with the SISP. A copy of the fee arrangement and terms (the “**Financial Advisor Agreement**”) is attached as Exhibit “B” to the Third Affidavit of H. Frey dated February 21, 2024 (the “**Third Frey Affidavit**”).
12. The Financial Advisor’s team includes senior professionals who have extensive experience in the sale of assets of a similar nature and scale. The Financial Advisor is an affiliate of the Monitor and will coordinate its approach to avoid duplication of roles with the Monitor and/or Management.
13. The Financial Advisor Agreement provides for the Financial Advisor to be compensated based upon time incurred by its professionals, at the standard hourly rate of its professionals, subject to a cap in the amount of US\$135,000 per month. The Financial Advisor Agreement does not entitle the Financial Advisor to any success-based or other contingency-based fee.
14. The Monitor has reviewed the fees in comparable formal restructuring proceedings of a similar scale and is of the view that the fees and terms provided for in the Financial Advisor Agreement are reasonable in the circumstances.
15. The Petitioner is seeking to have the ARIO amended to make the Financial Advisor an additional beneficiary of the Administration Charge. The Monitor is of the view that the Financial Advisor will be integral to the SISP and the ultimate restructuring of the Petitioner in these CCAA Proceedings and that it is appropriate and necessary for the Financial Advisor to be afforded the benefit of the Administration Charge.
16. The Monitor has reviewed the monthly forecasted professional fees, in consultation with MFM, and is of the view that the current Administration Charge is sufficient and does not need to be increased in consideration of the projected Financial Advisor’s fees.

SALE AND INVESTMENT SOLICITATION PROCESS

17. One of the primary objectives of the CCAA Proceedings is to undertake the SISP in order to identify potential purchasers of, or investors in, the Petitioner's interests in the Myra Falls Mine. Accordingly, the Petitioner is seeking the SISP Order to approve the SISP and authorize MFM, with the assistance of the Financial Advisor and under the supervision of the Monitor, to carry out the SISP procedures described therein.

18. The key components of the SISP are as follows:

- a. the SISP is intended to solicit interest in all or substantially all the Property and/or the Business (each as defined in the Initial Order), or an investment in MFM;
- b. the SISP will be implemented by MFM with the assistance of the Financial Advisor;
- c. the Monitor, as described in the SISP and outlined below, will be involved throughout the SISP and is granted certain consent and consultation rights under the SISP;
- d. the Financial Advisor, in consultation with MFM, will prepare a list of potential bidders (the "**Potential Bidders**") who may have an interest in a transaction involving the Myra Falls Mine;
- e. the Financial Advisor, in consultation with MFM and the Monitor, will prepare a process summary (the "**Teaser Letter**") outlining the opportunity to potential bidders;
- f. MFM will prepare a draft form of non-disclosure agreement (an "**NDA**") in form and substance satisfactory to the Financial Advisor and Monitor;

- g. MFM will prepare a confidential virtual data room (the “**VDR**”) and make the information available to Potential Bidders who have executed an NDA;
- h. Phase 1 of the SISP requires the Potential Bidder to submit a bid by delivering a non-binding letter of intent (“**LOI**”) to MFM, the Financial Advisor and the Monitor by no later than 12:00 p.m. PST on April 12, 2024 (the “**Phase 1 Bid Deadline**”);
- i. following the Phase 1 Bid Deadline, the Petitioner, in consultation with the Financial Advisor, Interim Lender and the Monitor, shall determine which LOIs satisfy the SISP criteria (a “**Phase 1 Qualified Bid**”) and the applicable Potential Bidders shall be deemed a “**Phase 2 Bidder**” and invited to participate in Phase 2 of the SISP;
- j. a LOI submitted by a Phase 1 Bidder will only be considered a Phase 1 Qualified Bid if the LOI includes, among other things:
 - i. an offer to: (a) acquire all or substantially all of the Property or Business, whether through an asset purchase, a share purchase, a share subscription, or a combination thereof; or (b) to make an investment in, recapitalize, restructure or refinance MFM and/or its Business (an “**Investment Proposal**”);
 - ii. the purchase price or price range and the anticipated amount of cash payable on closing;
 - iii. a description of the liabilities and obligations which the Phase 1 Bidder intends to assume and those it does not intend to assume, and specifically whether the Phase 1 Bidder intends to assume or maintain the existing Trafigura offtake agreements on their existing terms or any proposed amendments thereto;

- iv. an indication of (a) the structure and means by which the applicable governmental reclamation security obligations (“**Existing Reclamation Security**”) are fully and finally released and MFM and any other Trafigura entity that posted a bond or provided a guarantee in connection with such Existing Reclamation Security no longer have any reclamation obligation under the Existing Reclamation Security; or (b) how the Existing Reclamation Security, and all remaining reclamation obligations under or in connection with the Existing Reclamation Security will be addressed in a manner satisfactory to MFM and any guaranteeing entities in their sole discretion; and
- v. a description of the structure of any transaction in respect of an Investment Proposal, including, among other things, the aggregate amount of the equity and debt investment and the consideration to be allocated to the stakeholders of MFM;
- k. the SISP may be terminated following the Phase 1 Bid Deadline if MFM, in consultation with the Interim Lender and the Financial Advisor, and with the consent of the Monitor, determine that it has received no Phase 1 Qualified Bids;
- l. Phase 2 Bidders will be permitted to perform additional due diligence including meetings with Management and on-site inspections;
- m. to the extent any parties interested in making a bid under the SISP wish to engage, discuss or communicate with any party with an existing contractual relationship with MFM in relation to the SISP, or the business or the assets of MFM, such parties may only do so after advising MFM and the Monitor and obtaining their consent;
- n. Phase 2 Bidders may submit a “**Phase 2 Bid**” to MFM and the Financial Advisor, with a copy to the Monitor, by no later than 12:00 p.m. PST on May 24, 2024 (the

“**Phase 2 Bid Deadline**”). Such final bids that satisfy the SISP criteria will be deemed “**Phase 2 Qualified Bids**”;

- o. the Petitioner, in consultation with the Interim Lender, Financial Advisor and the Monitor, will review all Phase 2 Qualified Bids to determine the highest and best Phase 2 Qualified Bid (the “**Successful Bid**”), considering, among other things, the purchase price and net value (including the structure and means for the release of the Existing Reclamation Security and identifying any other obligations to be assumed by the Phase 2 Bidder), levels of conditionality and timeline to closing of any bid;
- p. all Phase 2 Bids must be accompanied by a non-refundable, good-faith cash deposit equal to the greater of (i) 10% of the total cash component of the purchase price contemplated by such a Phase 2 Bid, or (ii) \$5.0 million to be paid to the Monitor in trust until the earlier of (a) the closing of the Successful Bid and (b) rejection of the Phase 2 Bid;
- q. following the Phase 2 Bid Deadline, MFM, in consultation with the Financial Advisor and with the consent of the Monitor, will have the option to:
 - i. continue negotiations with the Phase 2 Bidders to improve their bid terms;
 - ii. declare a bid as the Successful Bid;
 - iii. schedule an auction; or
 - iv. terminate the SISP;
- r. the SISP includes certain consultation requirements with respect to the Interim Lender;

- s. the SISP Procedures (as defined in the SISP Order) may be modified, amended, varied or supplemented by the Petitioner, in consultation with the Interim Lender and Financial Advisor, with the consent of the Monitor;
- t. the SISP does not prohibit a creditor of MFM from participating in the SISP, including through a credit bid of part or all of its outstanding indebtedness or prevent MFM or any of its affiliates from filing a plan of compromise or arrangement to its creditors, whether as part of the SISP, or following the termination of the SISP, in accordance with its terms; and
- u. the target transaction closing is to occur no later than July 5, 2024.

19. For ease of reference, the key dates under the SISP are summarized as follows:

Event	Date
Notice of SISP	No later than five (5) days following issuance of the SISP Order
Access to VDR	Commencing March 4, 2024
Phase 1 Bid Deadline	April 12, 2024 at 12:00 p.m. (Pacific Time)
Phase 2 Bid Deadline	May 24, 2024 at 12:00 p.m. (Pacific Time)
Definitive Documentation Deadline	June 7, 2024
Approval Motion	Week of June 17, 2024
Outside Closing Date	July 5, 2024

20. The Monitor's comments on the SISP are as follows:

- a. the SISP procedures were developed with input from the proposed Financial Advisor, which has considerable experience in marketing assets of similar size and nature as the Myra Falls Mine;

- b. certain key stakeholders including the Interim Lender have been consulted in respect of the SISP;
- c. the timeframes to solicit purchasers or investors in the business are reasonable and appropriate in the circumstances including the funding requirements of the operations of the mine. It is the view of the Monitor that the SISP provides adequate time for any party that may wish to submit a bid to perform appropriate due diligence;
- d. the Monitor understands that the Financial Advisor is prepared to begin working on the SISP immediately, subject to having the Financial Advisor Agreement approved by the Court and being afforded the benefit of the Administration Charge to ensure payment of its fees;
- e. the consultation rights conferred upon the Interim Lender were developed in consultation with the Monitor, preserve the confidentiality of such information where applicable and strike a reasonable balance between the interests of the Interim Lender as an important stakeholder in the CCAA Proceedings and the need to maintain the integrity of the SISP; and
- f. the SISP is a fair and transparent marketing process designed to identify the highest and best offers for MFM's assets and to maximize recoveries for the stakeholders of MFM.

21. Overall, it is the Monitor's view that the SISP terms and timelines are reasonable in the circumstances and afford the Petitioner with an opportunity to achieve successful restructuring transactions with respect to the Myra Falls Mine.

BREAKWATER AGREEMENT

22. The Petitioner is seeking authorization to enter into the Breakwater Agreement to sell and assign its right, title and interest in the Epiroc Lease in respect of a Simba M6C long-hole

production drill rig (the “**Simba Equipment**”) to Breakwater for a purchase price of \$295,211.44 inclusive of GST/HST (the “**Purchase Price**”). A copy of the proposed sale and assignment agreement is attached to Third Frey Affidavit.

23. The Purchase Price corresponds to MFM’s equity in the Simba Equipment, calculated as:

- a. the fair market value of the Simba Equipment pursuant to an appraisal dated February 16, 2024 prepared by Rouse Services Canada Ltd., an affiliate of Ritchie Bros. Auctioneers (Canada) Ltd. (the “**RB Appraisal**”); less
- b. the payout amount owing by MFM to Epiroc under the Epiroc Lease.

24. The Monitor’s comments with respect to the Breakwater Agreement are as follows:

- a. the Purchase Price was determined based on the appraised fair market value of the Simba Equipment;
- b. the Petitioner has advised the Monitor that the Simba Equipment is not required for the care and maintenance of the Mine;
- c. Epiroc has consented to the Breakwater Agreement;
- d. the Interim Lender is supportive of the Breakwater Agreement. The Petitioner has advised the Monitor that Trafigura Pte Ltd. has provided certain guarantees to Epiroc in respect of the Petitioner’s obligations under the Epiroc Lease and therefore a timely assignment of the Epiroc Lease may allow the Interim Lender or its affiliates to avoid exposure under the guarantee;
- e. the Monitor’s counsel, Blake, Cassels & Graydon LLP, has reviewed the lease and registrations under the Personal Property Security Act and based on its review, is not aware of any deficiencies in the registered security of Epiroc;

- f. concluding the Breakwater Agreement will provide for cash consideration that may be used to fund care and maintenance operations and these CCAA Proceedings; and
- g. overall, concluding the transaction contemplated by the Breakwater Agreement is in the best interests of the creditors of MFM.

HARDSHIP PAYMENT

- 25. As discussed in the First Report of the Monitor, the ARIO authorized the Petitioner to pay the Supplemental Hardship Payment to unionized employees but was conditional upon reaching an agreement with Unifor Local 3019 (the “**Union**”) on the terms of the payment.
- 26. The Monitor is advised by MFM that it has provided a memorandum of agreement and release document to the Union outlining the terms it was prepared to offer in respect of the Supplemental Hardship Payment. Further discussions were held between the two parties but the Monitor understands, from discussions with each of MFM and the Union, that an agreement as to the terms of the Supplemental Hardship Payment to unionized employees has not been reached.
- 27. With respect to the non-unionized employees, MFM has made Supplemental Hardship Payments to date of approximately \$304,000 and withheld payments to approximately half of the applicable employees pending return of certain MFM property as a condition of the payments. MFM anticipates disbursing the remaining Supplemental Hardship Payment to the affected non-unionized employees, following collection of the property, in the coming weeks.

CASH FLOW VARIANCE ANALYSIS

- 28. MFM’s actual cash receipts and disbursements as compared to the Second Cash Flow Statement for the period of December 18, 2023 to February 9, 2024, are summarized below:

Cash Flow Variance Analysis					
Eight Week Period Ended February 9, 2024					
(CAD\$ thousands)					
	Actual	Forecast	Variance		
Operating Receipts					
Sales	\$ 3,383	\$ 812	\$ 2,571		317%
Other receipts	2,359	550	1,809		329%
Total Operating Receipts	5,743	1,362	4,381		322%
Operating Disbursements					
Payroll and Benefits	(7,292)	(11,151)	3,859		35%
Consultants and Contractors	(1,583)	(2,558)	974		38%
Pension Fund Contributions	-	(272)	272		100%
Fuel	(592)	(420)	(173)		(41)%
Materials and Supplies	(208)	(881)	673		76%
Leases	(646)	(511)	(135)		(26)%
Reclamation	-	(328)	328		100%
Other operating disbursements	(576)	(508)	(68)		(13)%
Total Operating Disbursements	(10,898)	(16,628)	5,730		34%
Net Change in Cash from Operations	(5,155)	(15,265)	10,110		66%
Non-Operating Items					
Capital Expenditures	(35)	-	(35)		-
Impact Benefit Agreement	-	-	-		-
Restructuring Professional Fees	(1,344)	(1,348)	4		0%
Net Change in Cash from Non-Operating Items	(1,379)	(1,348)	(31)		(2)%
Financing					
Interim Financing	11,500	14,500	(3,000)		(21)%
Net Change in Cash from Financing	11,500	14,500	(3,000)		(21)%
Effect of Foreign Exchange Translation	11	-	11		-
Net Change in Cash	4,976	(2,113)	7,089		336%
Opening Cash	2,047	2,866	(819)		(29)%
Ending Cash	\$ 7,024	\$ 753	\$ 6,270		832%

29. Overall, MFM realized a favourable net cash flow variance of approximately \$6.3 million. The key components of the variance are as follows:

- a. sales were higher than forecast due to a payment for the final copper shipment arriving after the commencement of the proceedings due to delays with the vessel, and movement in the final assays resulting in increased recoveries to MFM;

- b. other receipts were higher than forecast primarily as a result of the receipt of \$1.2 million in interest payments from Trafigura Canada Limited as part of a back-to-back loan structure amongst Trafigura Pte Ltd., MFM and Trafigura Canada Ltd.;
- c. payroll and benefits were lower than forecast as a result of unsuccessful negotiations with the Union resulting in the Supplemental Hardship Payment to unionized employees not being made, and a timing variance as a result of the delay in the planned Supplemental Hardship Payment to the non-unionized employees pending those employees returning certain MFM property;
- d. payments to consultants and contractors as well as in respect of materials and supplies were less than forecast due to certain timing differences and Management's efforts to reduce costs as the mine transitioned to care and maintenance;
- e. reclamation amounts were lower than forecast due to timing differences and certain expenses relating to reclamation being reported under the consultants and contractors line item; and
- f. restructuring professional fees were as forecast.

THIRD CASH FLOW STATEMENT

- 30. The Petitioner has prepared the Third Cash Flow Statement to set out the liquidity requirements of MFM during the 29 weeks ending July 5, 2024. A copy of the Third Cash Flow Statement is attached as Appendix "B".
- 31. The Third Cash Flow Statement is summarized in the following table:

Third Cash Flow Statement			
Twenty-Nine Week Period Ending July 5, 2024 <i>(CAD\$ thousands)</i>	Weeks 1-8 Actual	Weeks 9-29 Forecast	Total
Operating Receipts			
Sales	\$ 3,383	\$ 675	\$ 4,059
Other receipts	2,359	1,295	3,655
Total Operating Receipts	5,743	1,971	7,714
Operating Disbursements			
Payroll and Benefits	(7,292)	(3,288)	(10,581)
Consultants and Contractors	(1,583)	(3,136)	(4,720)
Pension Fund Contributions	-	(272)	(272)
Fuel	(592)	(466)	(1,058)
Materials and Supplies	(208)	(688)	(896)
Leases	(646)	(422)	(1,068)
Reclamation	-	(701)	(701)
Other operating disbursements	(576)	(997)	(1,573)
Total Operating Disbursements	(10,898)	(9,970)	(20,868)
Net Change in Cash from Operations	(5,155)	(7,999)	(13,155)
Non-Operating Items			
Capital Expenditures	(35)	(259)	(294)
Impact Benefit Agreement	-	(204)	(204)
Restructuring Professional Fees	(1,344)	(3,183)	(4,527)
Net Change in Cash from Non-Operating Items	(1,379)	(3,647)	(5,025)
Financing			
Interim Financing	11,500	5,500	17,000
Net Change in Cash from Financing	11,500	5,500	17,000
Effect of Foreign Exchange Translation	11	-	11
Net Change in Cash	4,976	(6,146)	(1,169)
Opening Cash	2,047	7,024	2,047
Ending Cash	\$ 7,024	\$ 878	\$ 878

32. The Third Cash Flow Statement is based on the following key assumptions:

- a. the projected operating receipts are assumed to be collected under normal course trade settlement terms and represent the final collection of amounts due in respect of copper and zinc sales from August and September 2023. Following receipt of outstanding collections relating to mining activities from the pre-filing period, sales receipts are assumed to be nil;

- b. Other receipts relate primarily to the collection of GST receivables as well as the amounts to be collected pursuant to the Breakwater Agreement;
- c. Payroll and benefits reflect the reduced work force following the transition to care and maintenance. It is assumed that the Supplemental Hardship Payment to unionized employees will not be made due to the lack of agreement between the Union and MFM as to the terms of such a payment. However, it assumed that Supplemental Hardship Payments will be made to the remaining non-unionized employees upon the return of any MFM property;
- d. Consultants and contractors include supporting safety and environmental services as well as asset maintenance contractors;
- e. MFM has forecast certain costs to fulfill its regulatory requirements while in care and maintenance including the completion of the enhancements to the tailings disposal facility and other regulatory maintenance;
- f. MFM leases certain machinery and equipment and anticipates maintaining those payments for the equipment it continues to use;
- g. the remaining operating disbursements relate primarily to ordinary course payments for fuel and other supplies needed for care and maintenance activities;
- h. Other operating disbursements includes a \$75,000 disbursement in the week ending February 16, 2024, relating to a payment in respect of certain pre-filing invoices to a service provider on the basis that, among other things, MFM views as critical to MFM's relationship with its employees and will play an important role in the ongoing CCAA Proceedings. The Monitor has consented to this payment following consultations with MFM on this point;

- i. payments to the Wei Wai Kum and We Wai Kai First Nations in respect of the Impact & Benefit Agreement and Discovery Terminal lease are forecast under the Other operating disbursements, Impact Benefit Agreement and lease line items;
- j. Restructuring professional fees include fees and disbursements for the Petitioner's legal counsel, the Financial Advisor, the Monitor and the Monitor's legal counsel;
- k. it assumed that the Petitioner will draw an additional \$5.5 million under the DIP during the period of the proposed extension; and
- l. all interest and fees pertaining to the DIP are forecast to be paid in kind.

STAY EXTENSION

33. MFM is seeking the Stay Extension in these CCAA Proceedings, extending the Stay of Proceedings until and including June 30, 2024.

34. Since the granting of the ARIO, MFM has, among other things, worked to transfer the mine to care and maintenance, developed the SISP and communicated with its stakeholders, including the Wei Wai Kum and We Wai Kai First Nations and the Union, as well as creditors, suppliers and government agencies. MFM has kept the Monitor apprised or involved in such discussions.

35. The Monitor has considered MFM's application for the Stay Extension and has the following comments:

- a. the Petitioner requires the Stay Extension to continue their restructuring efforts and undertake the SISP;
- b. the Third Cash Flow Statement forecasts that the Petitioner will have available liquidity during the term of the proposed Stay Extension;

- c. there will be no material prejudice to the Petitioner’s creditors and other stakeholders as a result of the Stay Extension;
- d. MFM’s overall prospect of effecting a viable restructuring will be enhanced by the Stay Extension; and
- e. the Petitioner is acting in good faith and with due diligence.

CONCLUSIONS AND RECOMMENDATIONS

36. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court grant the SISP Order and the Approval and Vesting Order.

All of which is respectfully submitted this February 23, 2024.

FTI Consulting Canada Inc.
in its capacity as Monitor of MFM

For: 
Paul Bishop
Senior Managing Director


Tom Powell
Senior Managing Director

Appendix A

Procedures for the Sale and Investment Solicitation Process

Schedule "A"

Procedures for the Sale and Investment Solicitation Process

Preamble

Myra Falls Mine Ltd. ("**MFM**") is a private company that owns and operates the Myra Falls Mine (the "**Mine**") in Strathcona Provincial Park, approximately 90 kilometers southwest of Campbell River, British Columbia. The Mine is primarily a zinc mine but also produces copper concentrate, lead concentrate and a minimal amount of gold concentrate. The Mine is currently in care and maintenance. When the Mine was fully operational, MFM shipped most of its concentrate production to Trafigura Canada Limited ("**TCL**", and together with companies in the Trafigura group of companies (other than MFM), "**Trafigura**") pursuant to offtake arrangements between MFM and TCL (collectively, the "**TCL Offtake Agreements**").

On December 18, 2023, MFM commenced proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") before the British Columbia Superior Court of Justice (Commercial List) in the City of Vancouver (the "**Court**") pursuant to an order granted by the Court on the same day (as amended and restated by an order of the Court made December 28, 2023, and as may be further amended or amended and restated from time to time, the "**Initial Order**").

Pursuant to the Initial Order, FTI Consulting Canada Inc., a licensed insolvency trustee, was appointed as monitor in the CCAA Proceedings (in such capacity, the "**Monitor**"). Pursuant to an order made on February 27, 2024 (the "**SISP Order**"), the Court appointed FTI Capital Advisors-Canada ULC (the "**Financial Advisor**") as MFM's financial advisor in connection with the SISP (as defined below).

The SISP Order authorizes MFM to undertake a sale and investment solicitation process (the "**SISP**") to solicit offers or proposals for a sale in respect of the Property and/or the Business (each as defined in the Initial Order), or investment in MFM (whether by way of share subscription or otherwise). MFM will conduct the SISP with the assistance of the Financial Advisor, under the supervision of the Monitor, in the manner set forth in these procedures (the "**SISP Procedures**").

Defined Terms

1. Capitalized terms used in these SISP Procedures and not otherwise defined herein have the meanings given to them in **Appendix "A"** hereto.

SISP Procedures

Opportunity

2. The SISP is intended to solicit interest in, and opportunities for, a sale of all or substantially all of the Property or the Business, or an investment in MFM or the Business, or a combination thereof (collectively, the "**Opportunity**").

General

3. The SISP Procedures describe:
 - (a) the manner in which prospective bidders may (i) gain access to due diligence materials concerning MFM, the Business and the Property, and (ii) participate in the SISP;
 - (b) the requirements, receipt and negotiation, of Bids received; and

- (c) the ultimate selection of a Successful Bidder and the requisite approvals to be sought from the Court in connection therewith.
4. MFM, in consultation with the Interim Lender and the Financial Advisor, and with the consent of the Monitor, may modify, amend, vary or supplement the SISP Procedures, without the need to obtain a further order of the Court or providing notice to any bidder. Prior to providing its consent, the Monitor shall have determined that such modification, amendment, variation or supplement is expressly limited to: (a) changes in the date of any Milestones (as defined below), or (b) changes that do not materially alter, amend or prejudice the rights of such bidders and, in each case, that are necessary or useful in order to give effect to the substance of the SISP, the SISP Procedures and the SISP Order.
5. Nothing in this SISP shall:
- (a) prohibit a creditor of MFM from participating as a bidder in the SISP, including through a credit bid of part or all of its outstanding indebtedness (inclusive of interest and other amounts payable in connection therewith to and including the date of closing of a definitive transaction) provided any and all priority and *pari passu* claims are addressed in connection with such bid in form and substance satisfactory to MFM in consultation with the Monitor and the Financial Advisor; or
- (b) prevent MFM or any of its affiliates from filing a plan of compromise or arrangement to its creditors, whether as part of this SISP, or following the termination of the SISP in accordance with its terms.
6. MFM, in consultation with the Financial Advisor and the Monitor, shall have complete discretion with respect to the provision of any information to any party or any consultation rights in connection with the SISP.
7. To the extent that any parties interested in making a bid under the SISP wish to engage, discuss, or communicate with any party with an existing contractual relationship with MFM in relation to this SISP or the Business or assets of MFM, such parties may only do so after advising MFM and the Monitor and obtaining MFM and the Monitor's consent. In considering any specific request, MFM and the Monitor shall impose such restrictions, if any, or participation by MFM or the Monitor, as they deem appropriate.

Timeline

8. The following table sets out the key milestones (the "**Milestones**") under this SISP:

Event	Timing
Phase 1	
<p>1. Notice</p> <p>Monitor to publish a notice of the SISP on the Monitor's Website</p> <p>Financial Advisor to publish notice of the SISP in industry trade or other publications, as determined appropriate</p> <p>Financial Advisor to distribute Teaser Letter and NDA to potentially interested parties</p>	<p>No later than five (5) days following issuance of the SISP Order</p>
<p>2. Phase 1 -Access to VDR</p> <p>Phase 1 Bidders provided access to the VDR, subject to execution of appropriate NDAs</p>	<p>Commencing March 4, 2024</p>
<p>3. Phase 1 Bid Deadline</p> <p>Deadline for Phase 1 Bidders to submit non-binding LOIs in accordance with the requirements of Section 15</p>	<p>By no later than April 12, 2024 at 12:00 p.m. (Pacific Time)</p>
<p>4. Notification of Phase 1 Qualified Bid</p> <p>Deadline to notify a Phase 1 Bidder whether it has been designated as a Phase 2 Bidder invited to participate in Phase 2</p>	<p>By no later than April 17, 2024, at 12:00 p.m. (Pacific Time)</p>
Phase 2	
<p>5. Phase 2 Bid Deadline</p> <p>Phase 2 Bid Deadline (for delivery of definitive offers by Phase 2 Bidders in accordance with the requirements of Section 26)</p>	<p>By no later than May 24 , 2024, at 12:00 p.m. (Pacific Time)</p>
<p>6. Definitive Documentation</p> <p>Deadline for completion of definitive documentation in respect of a Successful Bid and filing of the Approval Motion</p>	<p>By no later than June 7, 2024</p>
<p>7. Approval Motion</p> <p>Hearing of Approval Motion in respect of Successful Bid (subject to Court availability)</p>	<p>Week of June 17, 2024</p>

<p>8. Outside Date – Closing</p> <p>Outside Date by which the Successful Bid must close</p>	<p>July 5, 2024 (subject to customary conditions related to necessary and required regulatory approvals acceptable to MFM in consultation with the Financial Advisor, and the Monitor)</p>
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Solicitation of Interest

9. As soon as reasonably practicable, but, in any event, by no later than five (5) days after the granting of the SISP Order:
- (a) the Financial Advisor, in consultation with MFM, will prepare a list of potential bidders, including (i) parties that have approached MFM, the Financial Advisor, or the Monitor indicating an interest in the Opportunity, (ii) parties suggested by MFM's creditors or their advisors, (iii) local and international strategic and financial parties, including offtakers and streamers, who the Financial Advisor believes may be interested in the Opportunity; and (iv) parties that showed an interest in MFM and/or its Property or Business prior to the date of the SISP Order (collectively, the "**Potential Bidders**");
 - (b) a notice of the SISP and any other relevant information that the Monitor, in consultation with MFM and the Financial Advisor, considers appropriate, will be published by the Monitor on the Monitor's Website;
 - (c) a notice of the SISP and any other relevant information that the Financial Advisor, in consultation with MFM and the Monitor, considers appropriate, will be published by the Financial Advisor in one or more trade industry or other publications as may be considered appropriate by the Financial Advisor; and
 - (d) the Financial Advisor, in consultation with MFM and the Monitor, will prepare a process summary (the "**Teaser Letter**") describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP;
 - (e) MFM will prepare a form of non-disclosure agreement, in form and substance satisfactory to the Financial Advisor and the Monitor (an "**NDA**"). MFM will provide a copy of the NDA to any Potential Bidder that requests a copy of it; and
 - (f) the Financial Advisor will cause the Teaser Letter to be sent to each Potential Bidder. In addition, the Financial Advisor will cause the Teaser Letter to be sent to any other party who requests a copy of the Teaser Letter, or who is identified to the Financial Advisor or the Monitor as a potential bidder, as soon as reasonably practicable after such request or identification, as applicable.

Phase 1: Non-Binding LOIs

Phase 1 Due Diligence

10. In order to participate in the SISP, and prior to the distribution of any confidential information, a Potential Bidder (a "**Phase 1 Bidder**") must deliver to the Financial Advisor and MFM (with a copy to the Monitor) an executed NDA. An executed NDA, may contain such amendments requested by a Potential Bidder as may be consented to by MFM in its sole discretion, after consultation with the Financial Advisor and the Monitor.

11. Notwithstanding any other provision of this SISP, prior to MFM executing an NDA with any Potential Bidder, MFM, in consultation with the Financial Advisor and the Monitor, may require a Potential Bidder to disclose details of its ownership and/or investors.
12. MFM will make a confidential virtual data room (the "**VDR**") in relation to the Opportunity available to Phase 1 Bidders that have executed an NDA in accordance with Section 10, as soon as practicable following such execution. Additional information may be added to the VDR to enable Phase 2 Bidders to complete any confirmatory due diligence in respect of MFM and the Opportunity. MFM, in consultation with the Financial Advisor and the Monitor, may establish separate VDRs (including "clean rooms"), if MFM reasonably determines that doing so would: (a) further MFM's and any Phase 1 Bidder's compliance with applicable antitrust and competition laws, (b) prevent the distribution of commercially sensitive competitive information, or (c) protect the integrity of the SISP and MFM's restructuring process generally. MFM may also, in consultation with the Financial Advisor and the Monitor, limit the access of any Phase 1 Bidder to any confidential information in the VDR where MFM, in consultation with the Financial Advisor and the Monitor, reasonably determines that such access could negatively impact the SISP, the ability to maintain the confidentiality of the information, the Property, the Business or their respective value.
13. The Financial Advisor, MFM, the Monitor, and their respective employees, officers, directors, agents, legal counsel other representatives and their respective advisors make no representation, warranty, condition or guarantee of any kind, nature or description as to the information contained in the VDR or made available in connection with the SISP. All Phase 1 Bidders must rely solely on their own independent review, investigation and/or inspection of all information, the Property and Business in connection with their participation in the SISP.

Communication Protocol

14. Each Phase 1 Bidder is prohibited from communicating with any Potential Bidder or another Phase 1 Bidder and their respective affiliates, legal and financial advisors regarding the Opportunity during the term of the SISP, without the written consent of MFM in consultation with the Financial Advisor, and the Monitor. Notwithstanding the terms of any NDA entered into by a Phase 1 Bidder, all Phase 1 Bidders shall comply with these SISP Procedures.

Phase 1 Bids

15. If a Phase 1 Bidder wishes to submit a bid in respect of the Opportunity (a "**Bid**"), it must deliver a non-binding letter of intent by email (a "**LOI**", and each such LOI, in accordance with Section 16 below, a "**Phase 1 Qualified Bid**") to MFM, the Financial Advisor and the Monitor so as to be received by them not later than 12:00 p.m. (Pacific Time) on April 12, 2024, or such other date or time as may be determined in accordance with Section 3 hereof (the "**Phase 1 Bid Deadline**").
16. An LOI submitted by a Phase 1 Bidder will only be considered a Phase 1 Qualified Bid if the LOI complies at a minimum with the following:
 - (a) it has been duly executed by all required parties;
 - (b) it is received by the Phase 1 Bid Deadline;
 - (c) it is an offer to: (i) acquire all or substantially all of the Property or Business, whether through an asset purchase, a share purchase, a share subscription, or a combination

thereof (any of these, a "**Sale Proposal**"); or (ii) to make an investment in, recapitalize, restructure or refinance MFM and/or its Business (an "**Investment Proposal**");

- (d) the Bid includes:
- (i) the purchase price or price range and key assumptions supporting the valuation and the anticipated amount of cash payable on closing of the proposed transaction;
 - (ii) details regarding any consideration that is not cash;
 - (iii) any contemplated purchase price adjustment;
 - (iv) a specific indication of the expected structure and financing of the transaction (including, but not limited to the sources of financing);
 - (v) a description of the Property that is subject to the transaction and any of the Property expected to be excluded;
 - (vi) a description of those liabilities and obligations (including operating liabilities and obligations to employees) which the Phase 1 Bidder intends to assume and those liabilities and obligations it does not intend to assume and are to be excluded as part of the transaction, and shall specifically identify whether the Phase 1 Bidder intends to assume or maintain the existing TCL Offtake Agreements on their existing terms or any proposed amendments thereto;
 - (vii) a specific indication of the structure and means by which the Phase 1 Bidder intends to satisfy applicable governmental reclamation security obligations in respect of the Mine, reclamation of the Discovery Terminal and the Business such that (a) the Existing Reclamation Security is fully and finally released, and MFM and any other Trafigura entity who posted a bond or provided a guarantee in connection with such Existing Reclamation Security no longer have any remaining reclamation obligation under the Existing Reclamation Security, at law or otherwise; or (b) the Existing Reclamation Security, and all remaining reclamation obligations under or in connection with the Existing Reclamation Security at law or otherwise will be addressed in a manner satisfactory to MFM and the relevant Trafigura entity, in their sole discretion;
 - (viii) information sufficient for MFM, in consultation with the Financial Advisor and the Monitor, to determine that the Phase 1 Bidder has sufficient financial ability to complete the transaction contemplated by the Sale Proposal or Investment Proposal;
 - (ix) a description of the Phase 1 Bidder's intentions for the Business, including any plans or conditions related to MFM's management and employees;
 - (x) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer;
 - (xi) any other terms or conditions of the Sale Proposal or Investment Proposal that the Phase 1 Bidder believes are material to the transaction; and
 - (xii) in addition, in the case of Investment Proposals only:

- (A) an outline of the type of transaction or structure of the bid including with respect to any proposed restructuring, recapitalization, or other form of reorganization of the business, property, or affairs of MFM;
- (B) the aggregate amount of the equity and debt investment, including liabilities to be assumed;
- (C) the underlying assumptions regarding the pro forma capital structure (including the form and amount of anticipated equity and/or debt levels, debt service fees, interest or dividend rates, amortization, voting rights, or other protective provisions (as applicable), redemption, prepayment or repayment attributes and any other material attributes of the investment);
- (D) anticipated tax planning, if any; and
- (E) the consideration to be allocated to the stakeholders including claims of any secured or unsecured creditors of MFM.

Assessment of Phase 1 Bids

17. Following the Phase 1 Bid Deadline, MFM, in consultation with the Interim Lender, the Financial Advisor and the Monitor, will assess the LOIs received by the Phase 1 Bid Deadline and determine whether such LOIs constitute Phase 1 Qualified Bids.
18. MFM, in consultation with the Financial Advisor and the Monitor may, following the receipt of any LOI, seek clarification with respect to any of the terms or conditions of such LOI and/or request and negotiate one or more amendments to such LOI prior to determining if the LOI should be considered a Phase 1 Qualified Bid.
19. MFM, in consultation with the Interim Lender and the Financial Advisor, and with the consent of the Monitor, may: (a) waive compliance with any one or more of the requirements specified in Section 18 above and deem such non-compliant bid to be a Phase 1 Qualified Bid; or (b) reject any LOI if it is determined that such LOI does not constitute a Phase 1 Qualified Bid, is otherwise inadequate or insufficient, or is otherwise contrary to the best interests of the Interim Lender or MFM and its creditors and other stakeholders. Notwithstanding anything else herein, any such rejected LOI will be deemed not to be a Phase 1 Qualified Bid

Selection of Phase 2 Bidders

20. MFM or the Financial Advisor shall notify each Phase 1 Bidder, in writing, as to whether such Phase 1 Bidder has been determined to be permitted to proceed to Phase 2 (each a "**Phase 2 Bidder**") by no later than April 17, 2024, at 12:00 p.m. (Pacific Time).
21. If by no later than April 17, 2024 at 12:00 p.m. (Pacific Time), MFM, in consultation with the Interim Lender and the Financial Advisor, and with the consent of the Monitor, has determined

that it has received no Phase 1 Qualified Bids, MFM may immediately terminate the SISP without consummating a transaction.

Phase 2 - Formal Binding Offers

Phase 2 Due Diligence

22. Each Phase 2 Bidder shall be invited to participate in on-site tours and inspections at the Mine (within reason and at the sole cost and expense of such bidder).
23. MFM, in consultation with the Financial Advisor and Monitor, shall allow each Phase 2 Bidder such further access to due diligence materials and information relating to MFM, the Property and Business, as it deems appropriate in its reasonable business judgment, and subject to competitive and other business considerations.
24. Phase 2 Bidders shall have the opportunity (if requested by such party) to meet with management of MFM. Any communications or meetings between Phase 2 Bidders and management of MFM shall be supervised by representatives of the Financial Advisor (and the Monitor, if requested by the Monitor) provided that the discussions shall remain confidential and shall not be disclosed without the consent of the parties to the discussion. In connection with the foregoing, the Monitor shall continue to have duties to the Court to ensure that the SISP proceeds in a manner that complies with the CCAA and the terms of these SISP Procedures.
25. Each Phase 2 Bidder will be prohibited from communicating with any other Phase 2 Bidder and their respective affiliates and legal and financial advisors regarding the Opportunity during the term of the SISP, without the consent of MFM (after consultation with the Financial Advisor) and the Monitor. Such communications shall only occur on such terms as MFM (after consultation with the Financial Advisor) and the Monitor may determine.

Phase 2 Bids

26. A Phase 2 Bidder that wishes to make a definitive transaction proposal (a "**Phase 2 Bid**") shall submit a binding offer that complies with all of the following requirements to MFM and the Financial Advisor (including by email) with a copy to the Monitor (including by email) so as to be received by MFM, the Financial Advisor and the Monitor not later than 12:00 p.m. (Pacific Time) on May 24, 2024 (the "**Phase 2 Bid Deadline**"). Such Phase 2 Bid shall be a "**Phase 2 Qualified Bid**" if it meets all of the following criteria:
 - (a) it is received by the Phase 2 Bid Deadline;
 - (b) the Bid complies with all of the requirements set forth in respect of Phase 1 Qualified Bids other than the requirements set out in Section 16(b) herein;
 - (c) the Bid is binding and includes a letter confirming that the Phase 2 Bid is irrevocable until the selection of the Successful Bidder and the Back-Up Bidder, if any, provided that if such Phase 2 Bidder is selected as the Successful Bidder or the Back-Up Bidder, its offer shall remain irrevocable until the earlier of (i) completion of the transaction with the Successful Bidder, and (ii) July 30, 2024, subject to further extensions as may be agreed to under the applicable transaction agreement(s), with the consent of the Monitor;
 - (d) the Bid is in the form of duly authorized and executed transaction agreements, and if the Bid is a Sale Transaction, it includes an executed share or asset purchase agreement, including all exhibits and schedules contemplated thereby (other than exhibits and

schedules that by their nature must be prepared by MFM), together with a blackline to any model documents provided by MFM during the SISP;

- (e) the Bid includes written evidence of a firm commitment for financing or other evidence of ability to consummate the proposed transaction satisfactory to MFM, in consultation with the Financial Advisor and the Monitor;
- (f) the Bid is not subject to the outcome of unperformed due diligence, internal approval(s) or contingency financing;
- (g) any conditions to closing or required approvals, including any agreements or approvals with unions, regulators or other stakeholders, the anticipated time frame and any anticipated impediments for obtaining such approvals are set forth in detail, such that MFM, the Financial Advisor and the Monitor, can assess the risk to closing associated with any such conditions or approvals;
- (h) the Bid fully discloses the identity of each entity that will be entering into the transaction or the financing (including through the issuance of equity and/or debt in connection with such Bid) or that is sponsoring, participating or benefiting from such Bid, and such disclosure shall include, without limitation (i) in the case of a Phase 2 Bidder formed for the purposes of entering into the proposed transaction, the identity of each of the actual or proposed direct or indirect equity holders of such Phase 2 Bidder and the terms and participation percentage of such equity holder's interest in such Bid; and (ii) the identity of each entity that has or will receive a benefit from such Bid from or through the Phase 2 Bidder or any of its equity holders and the terms of such benefit;
- (i) the Bid provides a detailed timeline to closing with critical milestones;
- (j) the Bid is accompanied by a non-refundable good faith cash deposit (the "**Deposit**"), equal to the greater of (a) 10% of the total cash component of the purchase price contemplated under the Phase 2 Bid; and (b) \$5,000,000; which shall be paid to the Monitor and held in trust pursuant to Section 36 hereof until the earlier of (i) closing of the Successful Bid or Back-Up Bid, as applicable; and (ii) rejection of the Phase 2 Bid pursuant to Section 30; and
- (k) The Bid includes acknowledgements and representations of the Phase 2 Bidder that: (i) it had an opportunity to conduct any and all due diligence desired regarding the Property, Business and MFM prior to making its Bid; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, Property or MFM or the completeness of any information provided in connection therewith, except to the extent otherwise provided under any definitive transaction agreement executed by MFM.

Assessment of Phase 2 Bids

27. Following the Phase 2 Bid Deadline, MFM in consultation with the Interim Lender, the Financial Advisor and the Monitor, will assess the Phase 2 Bids received by the Phase 2 Bid Deadline and determine whether such Bids constitute Phase 2 Qualified Bids.

28. MFM, in consultation with the Interim Lender, the Financial Advisor, and with the consent of the Monitor, may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant Bid to be a Phase 2 Qualified Bid.
29. Phase 2 Bids may not be modified, amended, or withdrawn after the Phase 2 Bid Deadline without the written consent of MFM and the consent of the Monitor, except for proposed amendments to increase the purchase price or otherwise improve the terms of the Phase 2 Bid for MFM, its creditors and other stakeholders.
30. MFM, in consultation with the Interim Lender and the Financial Advisor, and with the consent of the Monitor, may reject any Phase 2 Bid if it is determined that such Bid does not constitute a Phase 2 Qualified Bid, is otherwise inadequate or insufficient, or is otherwise contrary to the best interest of the Interim Lender or MFM and its creditors and other stakeholders. Notwithstanding anything else herein, any such rejected Bid will be deemed not to be a Phase 2 Qualified Bid.

Evaluation of Qualified Bids and Subsequent Actions

31. Following the Phase 2 Bid Deadline, MFM, the Financial Advisor and the Monitor, in consultation with the Interim Lender, will review the Phase 2 Qualified Bids. In performing such review and assessment, MFM, the Financial Advisor and the Monitor may evaluate the following non-exhaustive list of considerations: (a) the purchase price and net value (including assumed liabilities and other obligations to be performed by the Phase 2 Bidder); (b) the firm, irrevocable commitment for financing of the transaction; (c) the claims likely to be created by such Bid in relation to other Bids; (d) the counterparties to the transaction; (e) the terms of transaction documents; (f) the closing conditions and other factors affecting the speed, certainty and value of the transaction; (g) planned treatment of stakeholders, including employees and First Nations; (h) the assets included or excluded from the Bid; (i) any restructuring costs that would arise from the Bid; (j) the likelihood and timing of consummating the transaction; (k) the capital sufficient to implement post-closing measures and transactions; (l) whether the Interim Lender consents to the Phase 2 Qualified Bid; and (m) any other factors that MFM, the Financial Advisor, and Monitor may deem relevant in their sole discretion.
32. Following evaluation of the Phase 2 Qualified Bids, MFM may, in consultation with the Financial Advisor, and with the consent of the Interim Lender and the Monitor, undertake one or more of the following steps:
 - (a) accept one of the Phase 2 Qualified Bids (the "**Successful Bid**", and the offeror making such Successful Bid, the "**Successful Bidder**") and take such steps as may be necessary to finalize definitive transaction documents for the Successful Bid with the Successful Bidder;
 - (b) continue negotiations with Phase 2 Bidders who have submitted Phase 2 Qualified Bids with a view to finalizing acceptable terms with one or more Phase 2 Bidders that submitted Phase 2 Qualified Bids;
 - (c) terminate the SISF without consummating a transaction; or
 - (d) schedule an auction with all Phase 2 Bidders that submitted Phase 2 Qualified Bids to determine the Successful Bid in accordance with auction procedures determined by the Financial Advisor and the Monitor, which procedures shall be provided to all Phase 2 Bidders that submitted Phase 2 Qualified Bids at least four (4) Business Days prior to an auction.

33. MFM, in consultation with the Financial Advisor and the Monitor, may select the next highest or otherwise best Phase 2 Qualified Bid to be a back-up bid (the "**Back-Up Bid**", and such bidder, the "**Back-Up Bidder**"). For greater certainty, MFM shall not be required to select a Back-Up Bid.
34. If a Successful Bidder fails to consummate the Successful Bid for any reason, then the Back-Up Bid will be deemed to be the Successful Bid and MFM will proceed with the transaction pursuant to the terms of the Back-Up Transaction Bid. Any Back-Up Bid shall remain open for acceptance until the completion of the transaction with the Successful Bidder.
35. All Phase 2 Qualified Bids (other than the Successful Bid and the Back-Up Bid, if applicable) shall be deemed rejected by MFM on and as of the date of the execution of the definitive documents contemplated by the Successful Bid by MFM.
36. All Deposits will be retained by the Monitor and deposited in an interest bearing trust account. The Deposit paid by the Successful Bidder and Back-Up Bidder whose bid(s) is/are approved at the Approval Motion will be applied to the purchase price to be paid by the Successful Bidder and/or Back-Up Bidder, as applicable, upon closing of the approved transaction and will be non-refundable, other than in the circumstances set out in the Successful Bid or the Back-Up Bid, as applicable. The Deposits of Qualified Bidders not selected as the Successful Bidder or Back-Up Bidder will be returned to such bidders within five (5) Business Days after the selection of the Successful Bidder and Back-Up Bidder, or any earlier date as may be determined by the Monitor, in consultation with the Financial Advisor and MFM, The Deposit of the Back-Up Bidder, if any, shall be returned to such Back-Up Bidder no later than five (5) Business Days after closing of the transaction contemplated by the Successful Bid.
37. If a Successful Bidder or Back-Up Bidder breaches its obligations under the terms of the SISP, its Deposit shall be forfeited as liquidated damages and not as a penalty, without limiting any other claims or actions that MFM may have against such Successful Bidder or Back-Up Bidder and/or their affiliates.
38. If no Phase 2 Qualified Bids are received by the Phase 2 Bid Deadline, MFM in consultation with the Interim Lender and the Monitor may terminate the SISP.

Approval Motion

39. Prior to the Approval Motion, the Monitor shall provide a report to the Court providing information on the process and including its recommendation in connection with the relief sought at the Approval Motion. At the Approval Motion, MFM shall seek the Approval Order.
40. The consummation of the transaction contemplated by the Successful Bid, or the Back-Up Bid if the Successful Bid does not close, will not occur unless and until the Approval Order is granted.

"As Is, Where Is"

41. Any sale of, or investment in, the Business and/or Property will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Financial Advisor, MFM, the Interim Lender or the Monitor, or their respective advisors or agents, except to the extent otherwise provided under any definitive sale agreement with the Successful Bidder executed by MFM. None of the Financial Advisor, MFM, the Interim Lender or the Monitor, or their advisors or agents, make any representation or warranty as to the information contained in the Teaser Letter, any management presentation or the VDR, except to the extent otherwise provided under any definitive sale agreement with the Successful Bidder executed by MFM.

Each Phase 2 Bidder is deemed to acknowledge and represent that: (a) it has had an opportunity to conduct any and all due diligence regarding MFM, the Business and Property prior to making its Phase 2 Bid; (b) it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or MFM, the Business and Property in making its Bid; and (c) it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding MFM, the Business and Property, or the completeness of any information provided in connection therewith, except to the extent otherwise provided under any definitive sale agreement executed by MFM.

No Entitlement to Expense Reimbursement or Other Amounts

42. Phase 1 Bidders and Phase 2 Bidders shall not be entitled to any breakup fee, termination fee, expense reimbursement, or similar type of payment or reimbursement.

Jurisdiction

43. Upon submitting an LOI or a Phase 2 Bid, the Phase 1 Bidder or the Phase 2 Bidder, as applicable, shall be deemed to have submitted to the exclusive jurisdiction of the Court with respect to all matters relating to the SISP and the terms and conditions of these SISP Procedures, any Sale Proposal or Investment Proposal.
44. For the avoidance of doubt, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required or any other statute or as otherwise required at law in order to implement a Successful Bid.
45. Neither MFM, the Interim Lender, the Financial Advisor nor the Monitor shall be liable for any claim for a brokerage commission, finder's fee or like payment in respect of the consummation of any of the transactions contemplated under the SISP arising out of any agreement or arrangement entered into by the parties that submitted the Successful Bid and Back-Up Bid.
46. The Monitor shall supervise the SISP as outlined herein. In the event that there is disagreement, or clarification is required, as to the interpretation or application of this SISP, the responsibilities of the Monitor, the Financial Advisor or MFM hereunder, the Court will have jurisdiction to hear such matter and provide advice and directions, upon application of the Monitor or MFM or any other interested party with a hearing which shall be scheduled on not less than three (3) Business Days' notice.

APPENDIX A

DEFINED TERMS

- (a) **"Approval Motion"** means the motion seeking approval by the Court of the Successful Bid with the Successful Bidder, and if applicable, any Back-Up Bid if the Successful Bid is not consummated.
- (b) **"Approval Order"** means an order of the Court approving, among other things, if applicable the Successful Bid and the consummation thereof, and if applicable, any Back-Up Bid if the Successful Bid is not consummated;
- (c) **"Back-Up Bid"** shall have the meaning attributed to it in Section 33;
- (d) **"Back-Up Bidder"** shall have the meaning attributed to it in Section 33;
- (e) **"Bid"** shall have the meaning attributed to it in Section 15;
- (f) **"Business"** shall have the meaning attributed to it in the preamble;
- (g) **"Business Day"** means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Vancouver, British Columbia;
- (h) **"CCAA"** shall have the meaning attributed to it in the preamble;
- (i) **"Court"** shall have the meaning attributed to it in the preamble;
- (j) **"Deposit"** shall have the meaning attributed to it in Section 26(j);
- (k) **"Existing Reclamation Security"** means the reclamation surety bond between Nyrstar Myra Falls Ltd. and Trisura Guarantee Insurance Company dated July 31, 2020, as amended;
- (l) **"Financial Advisor"** shall have the meaning attributed to it in the preamble;
- (m) **"Initial Order"** shall have the meaning attributed to it in the preamble;
- (n) **"Interim Lender"** shall have the meaning given to it in the Initial Order;
- (o) **"Investment Proposal"** shall have the meaning given to it in Section 16(c);
- (p) **"LOI"** shall have the meaning attributed to it in Section 15;
- (q) **"Monitor"** shall have the meaning attributed to it in the preamble;
- (r) **"Monitor's Website"** means <http://cfcanada.fticonsulting.com/myrafalls>;
- (s) **"MFM"** shall have the meaning attributed to it in the preamble;
- (t) **"Mine"** shall have the meaning attributed to it in the preamble;
- (u) **"NDA"** shall have the meaning attributed to it in Section 9(e);
- (v) **"Opportunity"** shall have the meaning attributed to it in Section 2;

- (w) **"Phase 1 Bid Deadline"** shall have the meaning attributed to it in Section 15;
- (x) **"Phase 1 Bidder"** shall have the meaning attributed to it in Section 10;
- (y) **"Phase 1 Qualified Bid"** shall have the meaning attributed to it in Section 15;
- (z) **"Phase 2 Bid"** shall have the meaning attributed to it in Section 26;
- (aa) **"Phase 2 Bid Deadline"** shall have the meaning attributed to it in Section 26;
- (bb) **"Phase 2 Bidder"** shall have the meaning attributed to it in Section 20;
- (cc) **"Phase 2 Qualified Bid"** shall have the meaning attributed to it in Section 26;
- (dd) **"Potential Bidder"** shall have the meaning attributed to it in Section 9(a);
- (ee) **"Property"** shall have the meaning attributed to it in the preamble;
- (ff) **"Sale Proposal"** shall have the meaning attributed to it in Section 16(c);
- (gg) **"SISP Order"** shall have the meaning attributed to it in the preamble;
- (hh) **"SISP"** shall have the meaning attributed to it in the preamble;
- (ii) **"SISP Procedures"** shall have the meaning attributed to it in the preamble;
- (jj) **"Successful Bid"** shall have the meaning attributed to it in Section 32(a);
- (kk) **"Successful Bidder"** shall have the meaning attributed to it in Section 32(a);
- (ll) **"Teaser Letter"** shall have the meaning attributed to it in Section 9(d);
- (mm) **"TCL Offtake Agreements"** shall have the meaning attributed to it in the preamble;
- (nn) **"Trafigura"** shall have the meaning attributed to it in the preamble;
- (oo) **"VDR"** shall have the meaning attributed to it in Section 12.

Appendix B

Third Cash Flow Statement for the 29-week period ending
July 5, 2024

