



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

**ORDER MADE AFTER APPLICATION**

**(Approval of Sale and Investment Solicitation Process  
and Engagement of Financial Advisor)**

BEFORE THE HONOURABLE )  
JUSTICE FITZPATRICK ) 27/02/2024  
)

THE APPLICATION of the Petitioner, coming on for hearing before me at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on the 27<sup>th</sup> day of February, 2024; AND ON HEARING Jonathan B. Ross, counsel for the Petitioner and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the materials filed, including the Affidavit #3 of Hein Frey, affirmed February 21, 2024 (the "**Third Frey Affidavit**") and the Second Report of FTI Consulting Canada Inc. (in its capacity as court-appointed monitor of the Petitioner, the "**Monitor**"); AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the *British Columbia Supreme Court Civil Rules*, BC Reg 168/2009 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

## DEFINITIONS

1. Unless otherwise indicated, capitalized terms used in this Order that are not otherwise defined have the same meaning given to them in the SISP (as defined below).

## APPROVAL OF SISP

2. The sale and investment solicitation process substantially in the form set out in the attached **Schedule "B"** to this Order (the "**SISP**") is hereby approved and the Petitioner, the Monitor, FTI Capital Advisors-Canada ULC (the "**Financial Advisor**") and their respective advisors (if applicable) are hereby authorized and directed to carry out the SISP in accordance with its terms and the terms of this Order, and to take such steps and execute such documentation as they consider to be necessary or desirable in carrying out each of their obligations thereunder.

## FINANCIAL ADVISOR

3. The engagement letter dated as of February 2, 2024 (the "**Financial Advisor Agreement**") between the Financial Advisor and the Petitioner, attached as **Exhibit "B"** to the Third Frey Affidavit is hereby approved, including, without limitation, the payment of the fees and expenses set out therein (the "**Financial Advisor Compensation**") and the Petitioner is authorized to enter into, and perform its obligations under the Financial Advisor Agreement.

4. The Financial Advisor shall be entitled to the benefit of the Administration Charge on the Property (as those terms are defined in the Amended and Restated Initial Order dated December 28, 2023 (the "**ARIO**")), as security for the Financial Advisor Compensation.

5. ~~Each of the Petitioner, the Monitor and the Financial Advisor 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 liabilities of any nature or kind to any person in connection with or as a result of the SISP or the conduct thereof, except to the extent of such losses, claims, damages or liabilities result from their respective gross negligence or willful misconduct in performing their obligations under the SISP, as determined by this Court.~~

6. Pursuant to Section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under the authority of either Act, the Petitioner, the Financial Advisor and the Monitor may disclose to Potential Bidders and their advisors, in connection with the SISP, personal information of identifiable individuals, records pertaining to the Petitioner's past and current employees, and information on specific customers, but only to the extent desirable or required to carry out the SISP. Each Potential Bidder and their respective advisors to whom any such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information solely to its evaluation of a transaction in respect of the Petitioner and the Property, and if it does not complete such a transaction, shall return all such information to the Petitioner, or in the alternative destroy all such information. The Successful Bidder shall be entitled to continue to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the Petitioner, and shall return all other personal information to the Petitioner, or ensure that all other personal information is destroyed.

#### **STAY EXTENSION**

7. The Stay Period (as defined in paragraph 15 of the ARIO) is hereby continued and extended to and including June 30, 2024.

#### **GENERAL**

8. The Petitioner, the Monitor, or the Financial Advisor, may from time to time apply for such further or other directions as may be necessary or desirable to give effect to this Order, including, without limitation, advice and directions regarding the SISP, the discharge of their respective powers and duties under the SIPS, or any matter in connection therewith.

9. Endorsement of this Order by counsel appearing on this application other than counsel for the Petitioner is hereby dispensed with.

10. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the date this Order is made.

THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioner and the Monitor and their respective agents in carrying out the terms of this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



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Signature of Jonathan B. Ross  
Lawyer for the Petitioner

BY THE COURT



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REGISTRAR



Schedule "A"

COUNSEL NAME	PARTY REPRESENTED
Peter Rubin <del>Claire Hildbrand</del>	Monitor – FTI Consulting Canada Inc.
Manuel Dominguez + Virginie Gauthier	Petitioner
Lauren Nykolaychuk	Langley Freight Lines ('90) Ltd.
E. Murphy Fries	Unifor Local 3019
Ashley Bowron Andrea Glen	Wei Wai Kum + We Wai kai First Nation Province of BC

**Schedule "B"**

## 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 Supreme Court of British Columbia 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
<b>Phase 1</b>	
<p><b>1. Notice</b></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><b>2. Phase 1 -Access to VDR</b></p> <p>Phase 1 Bidders provided access to the VDR, subject to execution of appropriate NDAs</p>	<p>Commencing March 4, 2024</p>
<p><b>3. Phase 1 Bid Deadline</b></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><b>4. Notification of Phase 1 Qualified Bid</b></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>
<b>Phase 2</b>	
<p><b>5. Phase 2 Bid Deadline</b></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><b>6. Definitive Documentation</b></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><b>7. Approval Motion</b></p> <p>Hearing of Approval Motion in respect of Successful Bid (subject to Court availability)</p>	<p>Week of June 17, 2024</p>

<p><b>8. Outside Date – Closing</b></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.

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

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**ORDER**  
**(Approval of Sale and Investment Solicitation Process and**  
**Engagement of Financial Advisor)**

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**GOWLING WLG (CANADA) LLP**  
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File No. A172589

MD/SPK