



Affidavit of Hein Frey #2
affirmed: December 21, 2023

No: S238572
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 THE PLAN OF COMPROMISE AND ARRANGEMENT OF
MYRA FALLS MINE LTD.

AFFIDAVIT

I, **HEIN FREY**, of the City of Campbell River, British Columbia, **AFFIRM THAT:**

1. I am the general manager of Myra Falls Mine Ltd. (referred to in this affidavit as the "**Company**" or "**MFM**"). I have been involved in the financial and operational management of the Company since May of this year. As a result, I have personal knowledge of the matters to which I hereinafter depose save and except where I refer to matters based on information and belief, in which case I verily believe that information to be true. Where the information set out in this affidavit is based upon information that I have received from others, I have stated the source of that information and believe it to be true.
2. Capitalized terms used in this affidavit and not otherwise defined have the meaning given to them in my first affidavit filed in these proceedings sworn December 17, 2023 (the "**First Frey Affidavit**"). For ease of reference, a true copy of the First Frey Affidavit without exhibits is attached as **Exhibit A**.
3. On December 18, 2023, the Supreme Court of British Columbia, granted MFM an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"), which provided for, among other things, a limited stay of proceedings until December 28, 2023 (the "**Stay of Proceedings**").

4. This affidavit is sworn in support of an application by the Company pursuant to the CCAA for an amended and restated Initial Order (the "**Amended and Restated Initial Order**") in the form to be filed with the Court, seeking, among other things:

- (a) extending the Stay of Proceedings until February 29, 2024;
- (b) authorizing the Company to borrow up to \$21,000,000 from the DIP Lender, being the full principal amount available under the DIP Term Sheet (the "**Maximum Amount**"), together with a corresponding increase in the amount of the DIP Lender's Charge;
- (c) increasing the amount of the Administration Charge to \$800,000;
- (d) increasing the amount of the D&O Charge to \$1,200,000;
- (e) granting the DIP Lender's Charge, the Administration Charge and the D&O Charge priority ahead of secured creditors pursuant to ss. 11.2(2), 11.51(2) and 11.52(2) of the CCAA; and
- (f) authorizing the Company to make the Supplemental Hardship Payment to terminated or temporarily laid off employees (as defined and described below).

Extension of Stay of Proceedings

5. It is my belief that to date, the Company has been acting in good faith and with due diligence in these CCAA proceedings for reasons that include those described in this affidavit.

6. As noted in the First Frey Affidavit, in parallel with the commencement of these CCAA proceedings, the Company's intention was to begin to transition the Mine into care and maintenance. That transition has begun. In this respect, the Company has terminated or temporary laid off 176 employees. Critical tasks have been completed in the underground mine, process plant, and surface to ensure immediate risks are eliminated and detailed schedules are now in place to transfer into full care and maintenance. These tasks included as follows:

- (a) all mobile equipment was removed from the underground mine and winterized;

- (b) all explosives were detonated to comply with mine safety regulations;
- (c) the process plant was drained;
- (d) chemicals and explosives underground are beginning to be removed from the Mine Site; and
- (e) security has been placed in strategic areas.

7. In addition, following the issuance of the Initial Order, MFM has:

- (a) held a town hall for its employees to advise them of the commencement of the CCAA proceedings, the immediate transition of the Mine into care and maintenance, the resulting anticipated short-term and long-term staffing needs, and the termination or temporary lay-off of existing employees;
- (b) met with representatives of the Union;
- (c) liaised with representatives of the provincial government, including representatives of the Ministry of Energy, Mines and Low Carbon Innovation, to discuss the Company's care and maintenance plan;
- (d) had phone conversations with the Chiefs of the Wei Wai Kum First Nation and the We Wai Kai First Nation (the Company and the Chiefs plan to meet in person following the Comeback Hearing);
- (e) responded to inquiries from Suppliers regarding pre-filing payables and dealt with Suppliers' requests to remove equipment from the Mine Site;
- (f) distributed a press release announcing the commencement of these CCAA proceedings and the issuance of the Initial Order;
- (g) consulted with the Monitor concerning the preparation of a revised cash flow-forecast for the Company, to be filed, as part of the Monitor's First Report (the "**Amended Cash Flow Forecast**"); and
- (h) met with the Monitor to discuss various operational matters, including steps taken to transition the Mine into care and maintenance.

8. As noted above, under the Amended and Restated Initial Order, MFM is seeking an extension of the Stay of Proceedings to February 29, 2024.

9. The Company believes that an extension of the Stay of Proceedings is necessary and appropriate in the circumstances. Should the extension of the Stay of Proceedings be granted, the Company intends to, among other matters:

- (a) continue to transition the Mine into care and maintenance in an organized manner that prioritizes safety and the management of potential environmental issues; and
- (b) use this period of time, to develop, in consultation with the Monitor, a formal sales and investment solicitation process for the Company and its assets (the "SISP").

10. At this time, the Company is hopeful that it will be in a position to seek approval of the SISP prior to February 29, 2024 and to seek a further extension of the stay in order to permit the SISP to run its course.

DIP Facility

11. As previously noted in the First Frey Affidavit, MFM has limited liquidity, and requires DIP financing in order to pay its operational expenses as well as cover its professional costs during these CCAA proceedings.

12. As part of the Initial Order, the Court approved an initial advance under the DIP Facility limited to the principal amount of \$4,000,000 (the "**Initial Advance**").

13. At the Comeback Hearing, MFM is seeking to increase its borrowing authority to the Maximum Amount (\$21,000,000) with a corresponding increase in the amount secured by the DIP Lender's Charge. The Company believes this amount should be sufficient to allow it to carry out a SISP, should one be approved by this Court.

14. I understand that the Monitor is of the view that the terms of the DIP Term Sheet are reasonable. The advances that will actually be available under the DIP Facility will be limited to those amounts that are supported by the Amended Cash Flow Forecast to be filed.

Administration Charge

15. It is contemplated under the form of Amended and Restated Initial Order that the Administration Charge securing the fees and disbursements of the Monitor, counsel to the Monitor, and counsel to the Company will be increased from \$350,000 to \$800,000 (the "**Revised Administration Charge**").

16. I believe that the amount of the Revised Administration Charge is appropriate and necessary given the size and complexity of MFM's business and operations, the expected work to be undertaken during these CCAA proceedings and to ensure the continued participation of the proposed beneficiaries of the Administration Charge, whose expertise, knowledge and assistance will be critical to the success of these CCAA proceedings.

17. I understand the DIP Lender and the Monitor support the amount of the Revised Administration Charge.

D&O Charge

18. It is further contemplated under the form of Amended and Restated Initial Order that the D&O Charge will be increased from \$650,000 to \$1,200,000 (the "**Revised D&O Charge**"). The amount of the Revised D&O Charge is intended to cover employee wages, earned salary and benefits for two payroll cycles (one month) (excluding the Hardship Payment (as defined below)).

19. As with the Revised Administration Charge, I believe the amount of the Revised D&O Charge, which is supported by the Monitor and the DIP Lender, is reasonable and appropriate in the circumstances.

20. As noted in my first affidavit in these proceedings, MFM's sole director and the Company's officers have invaluable experience pertaining to aspects of MFM's operations, suppliers, employees, and other stakeholders, that cannot be replicated or easily replaced. Their continued participation will be essential to any successful outcome for these CCAA proceedings.

Supplemental Hardship Payment

21. MFM has begun the care and maintenance transition process, which includes significantly reducing its workforce. Thus far, the Company has terminated or temporary laid off 176 employees. Barring any unforeseen issues, I believe the transition to care and maintenance will be complete mid to end of January 2024. Once the Mine is in care and maintenance, MFM will require only approximately 37 employees.

22. MFM appreciates that the commencement of the CCAA proceedings and the transition to care and maintenance shortly before the holiday period may cause significant hardship for its employees. The majority of MFM's employees reside in the Campbell River and Courtenay-Comox region, where there may not be readily available re-employment opportunities. Re-employment may also be more challenging at this time of the year.

23. As part of the Initial Order, the Court authorized the Company to pay 2 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**").

24. As part of the Amended and Restated Initial Order, the Company is seeking an Order from the Court authorizing the Company, in its discretion, to supplement the Initial Hardship Payment, by paying terminated and temporarily laid off employees, a further six weeks of wages or salaries (the "**Supplemental Hardship Payment**", and together with the Initial Hardship Payment, the "**Hardship Payment**"). The Hardship Payment will be applied by the Company and the Monitor against (a) any claim made by employees in any claims process or otherwise in these CCAA proceedings; or (b) payments to be received by such employees in these CCAA proceedings.

25. The Company believes that, in the current circumstances, the Supplemental Hardship Payment is appropriate. The Company believes that such payment will:

- (a) contribute to the preservation of the Company's assets and their go-forward value by supporting the workforce that may be required at later date as part of any potential restart of the Mine (including by a purchaser as part of the SISP); and

- (b) further incentivize temporarily retained employees who will be required over the coming weeks to assist with the transition to care and maintenance process, notwithstanding that there will be no certainty of their continued employment past February of 2024.

26. The payment of the Supplemental Hardship Payment by the Company is conditioned on the following:

- (a) a safe and orderly transition of the Mine to long term care and maintenance is completed ("**Completed C&M**") in accordance with the timeline that the Company established (i.e., Completed C&M mid to end of January);
- (b) in respect of the Hardship Payment for unionized employees, reaching agreement with the Union on terms relating to the Hardship Payment;
- (c) the payment would occur on the later of (1) the next pay cycle following Completed C&M, or (2) the next pay cycle following an employee's termination or layoff;
- (d) as set out above, any Hardship Payment will be applied by the Company and the Monitor against (a) any claim made by employees in any claims process or otherwise in these CCAA proceedings; or (b) payments to be received by such employees in these CCAA proceedings; and
- (e) an employee who resigns prior to his or her scheduled termination or temporary lay-off date will forfeit their entitlement to any Supplemental Hardship Payment.

27. It is estimated that the Supplemental Hardship Payment if made, will be in the aggregate of \$4 million.

28. The DIP Lender and members of the Trafigura Group who are the largest unsecured creditors of the Company support the Supplemental Hardship Payment.

AFFIRMED BEFORE ME at Vancouver, BC,
on December 21, 2023.



A Commissioner for taking Affidavits within
British Columbia.



HEIN FREY

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This is Exhibit "A" referred to in the Affidavit #2
of **HEIN FREY**, affirmed before me at Vancouver, BC, this
21 day of December, 2023.



A Commissioner for taking Affidavits in British Columbia



Affidavit of Hein Frey #1
affirmed: December 17, 2023
5-238572
No:
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
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- AND -

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AFFIDAVIT

I, **HEIN FREY**, of the City of Campbell River, British Columbia, AFFIRM THAT:

1. I am the general manager of Myra Falls Mine Ltd. (referred to in this affidavit as the "Company" or "MFM"). I have been involved in the financial and operational management of the Company since May of this year. As a result, I have personal knowledge of the matters to which I hereinafter depose save and except where I refer to matters based on information and belief, in which case I verily believe that information to be true. Where the information set out in this affidavit is based upon information that I have received from others, I have stated the source of that information and believe it to be true.

2. This affidavit is sworn in support of an application by the Company pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") seeking an order (the "Initial Order") substantially in the form of the draft order to be filed with the Court, granting relief that is reasonably necessary for the continued operations of the Company within an initial 10 day stay period, including:

- (a) declaring that the Company is a party to which the CCAA applies;

- (b) appointing FTI Consulting Canada Inc. ("FTI" or the "Proposed Monitor") as an officer of the Court to monitor the assets, business, and affairs of the Company (once appointed in such capacity, the "Monitor");
- (c) staying, until December 28, 2023, all proceedings and remedies taken or that might be taken in respect of the Company, the Monitor, the Company's sole director and officers, or affecting the Company's business or current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (collectively, the "Property"), except as otherwise set forth in the Initial Order or as otherwise permitted by law;
- (d) approving the Company's ability to borrow under a debtor-in-possession credit facility (the "DIP Facility") pursuant to the DIP Term Sheet established by the DIP Lender (each as defined below);
- (e) granting the following limited priority charges (collectively, the "Charges") against the Company's Property:
 - (i) the Administration Charge (as defined below) in favour of the Monitor, counsel to the Monitor, and counsel to the Company;
 - (ii) the D&O Charge (as defined below) in favour of the Company's sole director and the Company's officers; and
 - (iii) the DIP Lender's Charge in favour of the DIP Lender (each as defined below).

3. Should the Initial Order be granted, the Company intends to bring an application, returnable on December 28, 2023 (the "**Comeback Hearing**"), seeking, among other things: an extension of the stay of proceedings in respect of the Company until February 29, 2024, an increase in the quantum and priority of the Charges in order to facilitate these CCAA proceedings, and authorization to make the Supplemental Hardship Payment (as defined below).

I. OVERVIEW AND INTRODUCTION

4. MFM's principal asset is the Myra Falls Mine (the "**Mine**"), an operating mine located in Strathcona Provincial Park approximately 90 kilometres southwest of Campbell River on Vancouver Island, British Columbia ("**Strathcona Park**"). The Mine is primarily a zinc mine but also produces copper concentrate, lead concentrate, and a minimal amount of gold concentrate. It employs approximately 105 full time salaried employees and 265 hourly employees. In addition to these employees, approximately 104 full time equivalent workers are provided by independent contractors at the Mine.

5. In the face of continuously declining zinc prices and significant rising operating costs, the Company has reached an unprecedented level of unprofitability.

6. The Company's sole source of financing since 2019 has been through the Trafigura group of companies (the "**Trafigura Group**"), which has provided shareholder loans in excess of \$100 million to the Company, when Trafigura Pte Ltd. ("**TPTE**") became an indirect majority shareholder in MFM.

7. Despite the Company's and the Trafigura Group's constant efforts to reach profitability, market circumstances now make it completely uneconomical for the Trafigura Group to

continue funding losses in the manner in, and at the rate at, which it has been supporting the Company for the last 4 years.

8. The Company has determined that the best course of action at this time is to commence these proceedings and place the Mine in a state of care and maintenance while the Company explores restructuring options for the benefit of its stakeholders.

9. As further described below, Trafigura US Inc. (the "DIP Lender"), a member of the Trafigura Group, has agreed to provide interim financing pursuant to the DIP Facility to help facilitate these CCAA proceedings and the transition of the Mine into a state of care and maintenance.

II. BACKGROUND REGARDING MFM

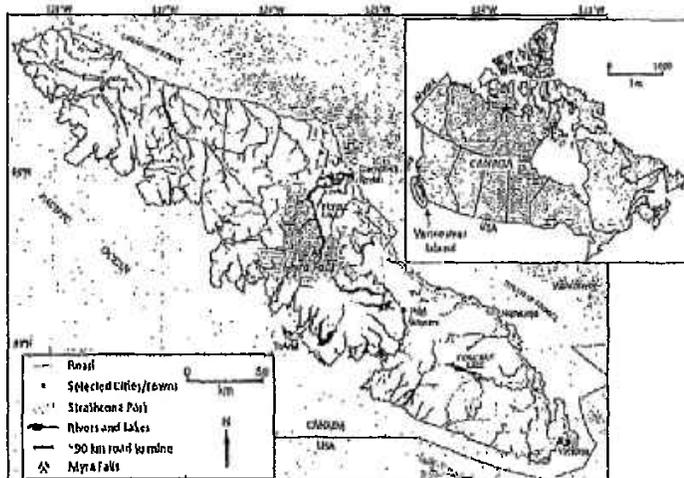
A. Corporate Structure and Description of the Company

10. MFM was originally incorporated federally under the *Canada Business Corporations Act* (the "CBCA"). In 2013, it was continued from the CBCA to the *Business Corporations Act* (British Columbia) under the name "Nyrstar Myra Falls Ltd." ("Nyrstar"). In 2021, the Company changed its name to "Myra Falls Mine Ltd". A true copy of a British Columbia Company Summary for MFM dated November 24, 2023, and issued by British Columbia Registry Services is attached as Exhibit "A".

11. MFM is a subsidiary of Breakwater Resources Limited ("Breakwater"), which is a subsidiary of TPTE. Breakwater and TPTE are part of the Trafigura Group, a global supplier of commodities and a global commodity trader.

B. Description of the Mine

12. As noted above, the Mine is located within Strathcona Park. The Mine occupies approximately 3901 hectares of land in Strathcona Park (the "Mine Site") and is located approximately 90 kilometres by road southwest of the City of Campbell River. The physical location of the Mine is depicted below:



13. MFM is the recorded holder of 6 mineral leases and 23 Crown grants in connection with the Mine. These leases and Crown grants have been duly issued by the Province of British Columbia (the "Province"), and are registered pursuant to the *Mineral Tenure Act* (British Columbia). MFM also holds park use permits ("PUPs") that are required to provide surface access in Strathcona Park. MFM's mineral leases, Crown grants and PUPs are currently in good standing, and the Company's Free Miner Certificate was recently renewed.

14. Infrastructure used as part of the Mine include an administration building, a surface crusher, a concentrator circuit, a flotation circuit, a processing plant, a building for the surface operations team, a concentrate storage facility, a tailings storage facility, 2 hydro-electric power

plants, a complimentary back-up diesel powerhouse, an accommodations camp, a changing facility, and a port facility at Campbell River (defined below as the Discovery Terminal).

15. Due to the Mine's location, the Company self-generates power and transmits it for distribution to its underground operations and surface facilities.

16. The Mine produces concentrates of zinc, and to a lesser extent lead, copper, and gold. Approximately 78% of the Mine's concentrate production by weight is zinc concentrate.

17. Mining at the Mine Site is predominately done through underground longhole open stoping. This is a process by which ore is extracted through a series of horizontal or sub-horizontal levels known as "stopes." Underground mines are accessed by a decline ramp and a vertical shaft equipped to move personnel and materials. Mined ore is transported via internal roads to a processing plant at the Mine Site where concentrates are produced. The concentrates (other than gold) are then transported by truck in bulk to Campbell River for storage and subsequent loading onto bulk carrier ships at a wharf and terminal facility operated by the Company (the "Discovery Terminal") located on lands leased from the Wei Wai Kum First Nation.

18. In addition to containing the infrastructure necessary for ship-loading, the Discovery Terminal has a concentrate storage facility (for storing concentrate before shipment). From the Discovery Terminal, concentrate is shipped internationally, typically (although not exclusively) to smelters in South Korea (in the case of zinc), China (in the case of lead), or Mexico (in the case of copper).

C. History of the Mine

19. The Mine has been in operation since approximately 1966, with intermittent periods where the Mine has been closed or placed in care and maintenance. Mining began at the Mine Site in open pit form and shortly thereafter moved to underground mining.

20. TPTE became an indirect majority shareholder of Nyrstar, the then owner of the mine, in 2019.

21. At or around when TPTE became a majority shareholder, the Mine was coming out of an extended period of care and maintenance that had begun in June 2015 (the "**2015 Suspension of Operations**"). I understand the 2015 Suspension of Operations was the result of a combination of a prolonged period of low commodity prices and site infrastructure issues. As part of the 2015 Suspension of Operations, the Mine's workforce was significantly reduced.

22. Efforts were made by the then owner to restart operations in 2017, with a series of repairs and upgrades to the Mine Site's infrastructure. Production ultimately restarted at the Mine Site around the third quarter of 2018 and has continued since then, albeit at a financial loss.

23. Since 2019, the Company with the support of the Trafigura Group has made significant efforts to attempt to bring economic stability to the Mine and make it profitable. During this period, among other things, MFM:

- (a) Oversaw the construction of a tailings dam wall raise designed to fully comply with Canadian regulations and completed in-house using labour from the local community which resulted in a significant reduction in capital costs;

- (b) Implemented capital improvements to on-site hydro facilities to reduce reliance on diesel power generation;
- (c) Improved copper concentrate production, through increases designed around mill reliability, and mineralogical and metallurgical surveys resulting in consistent particle sizes, and stabilization of floatation circuits;
- (d) Strengthened operational discipline by focussing on efficiency and productivity through the implementation of a formal management operating system framework (MOS); and
- (e) Executed a historic impact and benefit agreement with the Wel Wai Kum First Nation and the We Wai Kal First Nation (as further described below).

24. To support these improvements and to cover operating expenses, over a period of 4 years, the Trafigura Group have made unsecured shareholder loans to the Company pursuant to which over \$100 million was outstanding as of November 30, 2023.

25. Despite the Trafigura Group's efforts, the Mine has not been able to achieve long-term economic stability and the Company is currently facing severe liquidity issues.

III. MFM'S FINANCIAL STATUS

A. Financial Issues of MFM

Declining Zinc Prices / Rising Costs

26. Profitability for the Mine in any given year is driven primarily by commodity prices and in particular the price of zinc.

27. Prices for zinc in 2023 have steeply declined and are down approximately 22% on a year over year basis. Against this backdrop, the Mine's operational costs have significantly increased by over 20% from 2020 to 2023.

28. The current decline in zinc prices globally is largely driven by weak demand from the construction sector, which accounts for a substantial portion of zinc demand (one of the primary uses of zinc is for galvanizing steel and iron).

29. In 2023, a number of mines have suspended production, including: (a) the Islay Mine in Peru; (b) the Tara Mine in Ireland (formerly the largest zinc mine in Europe); (c) the King Vol Mine in Australia; and (d) the Mungana Mine also in Australia.

30. Although the Mine produces a number of types of concentrates its overall ability to achieve profitability is driven by zinc. Given the Mine's current ore-body, the Company is not in a position, absent further exploration, to counter-balance weak zinc prices through increases in the volume of production of zinc-concentrate or other minerals that can be produced from the Mine. Any further exploration would require a significant financial investment.

31. With future zinc prices uncertain at this time it is unclear when the Mine might return to profitability.

Dependence on Shareholder Loans

32. MFM's operations to-date have been completely dependent on unsecured shareholder loans from the Trafigura Group.

33. In the face of the current difficult zinc price environment, in November 2023, the Trafigura Group advised the Company that it was not willing to continue to fund operations at the Mine in their current form.

34. The Trafigura Group has demanded repayment of all loans it provided to the Company.

35. Without further shareholder loans, the Company does not expect to have sufficient liquidity to meet its ongoing obligations.

36. The Company has determined that in light of its liquidity constraints, the best course of action at this time is to commence these proceedings and place the Mine in a state of care and maintenance while it explores restructuring and operational options.

37. As will be described below, a member of the Trafigura Group has agreed to provide DIP financing to provide the Company with the liquidity required to cover the administrative costs associated with these proceedings, the Company's restructuring activities, and the costs that will be necessary to transition the Mine into care and maintenance.

B. Financial Statements

38. In advance of these proceedings, the Company has prepared unaudited annual financial statements for the fiscal year ending September 30, 2023 (the "FY 2023 Financial Statements"). A true copy of the FY 2023 Financial Statements is attached as Exhibit "B".

39. As set out in the FY 2023 Financial Statements, as at September 30, 2023 MFM had total assets with a net book value of approximately \$214 million. This includes current assets of approximately \$29 million (comprised predominately of inventory) and non current assets of approximately \$185 million.

40. As at September 30, 2023 MFM had total liabilities of approximately \$326 million. This included current liabilities of approximately \$224 million and non-current liabilities of approximately \$102 million.

41. It is my belief, that the Company is currently insolvent.

IV. STAKEHOLDERS OF MFWM

A. The Trafigura Group

42. Members of the Trafigura Group are parties to various agreements involving the Company, including:

43. TPTE CAD Loans: Pursuant to a facility agreement dated as of November 10, 2020, as amended by an amendment dated May 5, 2021 (collectively, the "TPTE CAD Loan Agreement") between TPTE, as lender, and the Company, as borrower, TPTE established a demand loan facility in favour of the Company in the principal amount of \$60,000,000 CAD. As of November 30, 2023, the Company was indebted to TPTE under the TPTE CAD Loan Agreement in the amount of approximately \$61,648,265. Interest on funds advanced under the TPTE CAD Loan Agreement accrues at a per annum rate equal to the aggregate of the CORRA rate and the short term weighted average cost of debt of the lender. A true copy of the TPTE CAD Loan Agreement is attached as Exhibit "C".

44. TPTE USD Loans: Pursuant to a facility agreement dated as of November 10, 2020, as amended by an amendment dated May 5, 2021 (collectively, the "TPTE USD Loan Agreement") between TPTE, as lender, and the Company, as borrower, TPTE established a demand loan facility in favour of the Company in the principal amount of \$30,000,000 USD. As of November 30, 2023 the Company was indebted to TPTE under the TPTE USD Loan Agreement in the amount of approximately \$36,720,020 USD. Interest on funds advanced under the TPTE USD Loan Agreement accrues at a per annum rate equal to the aggregate of the LIBOR rate and the short term weighted average cost of debt of the lender. A true copy of the TPTE USD Loan Agreement is attached as Exhibit "D".

45. Breakwater CAD Loans: Breakwater, as lender, and MFM, as borrower, are party to a loan agreement dated as of August 31, 2012, as amended by an amendment dated September 30, 2021 (collectively, the "Breakwater Loan Agreement"). As of November 30, 2023 approximately \$76,579,371.27 was owing by MFM to Breakwater under the Breakwater Loan Agreement. Interest accrues on this loan at the 12 month CDOR rate plus a margin specified in the Breakwater Loan Agreement. In addition to those amounts advanced under the Breakwater Loan Agreement, from time to time, Breakwater has advanced further unsecured interest-free loans to the Company, on an as needed basis (the "Additional Breakwater Loans"). As of December 1, 2023, \$4,232,000 was owing in respect of the Additional Breakwater Loans. A true copy of the Breakwater Loan Agreement is attached as Exhibit "E".

46. Historically, as part of intercompany tax optimization planning, MFM has acted as a conduit for members of the Trafigura Group to fund one of its Canadian subsidiaries. No assets of MFM were used to fund that subsidiary. These arrangements have now been discontinued.

47. TCL Offtake Arrangements. Trafigura Canada Limited ("TCL") is party to off-take arrangements with the Company, pursuant to purchase contracts dated as of January 1, 2022, as amended, under which TCL purchases all of the zinc concentrate, all of the lead concentrate, and certain of the copper concentrate produced by the Company. As part of these off-take arrangements, on an annual basis, TCL is required to notify MFM of a proposed shipping schedule for the following year. The Company is required to arrange transportation of purchased concentrates to the Discovery Terminal at the cost of TCL. 95% of the provisional value of any shipment of concentrate is paid upfront within 3 days of certain documents being delivered by the Company to TCL, including a holding certificate and provisional invoice. At the time of the receipt of this first provisional payment title passes to TCL. The purchase price for concentrates produced by the Mine is based on market rates that vary depending on,

among other things, the pricing for the applicable concentrate on the London Metal Exchange, then in effect.

B. Employees

Union and Non-Unionized Labour

48. MFM currently employs approximately 265 employees on an hourly basis (the "Unionized Employees") and 105 salaried employees.

49. The Company's employees include underground production crews, mill and mobile equipment operators, mechanics, electricians, millwrights, mineral resource management employees, administrative staff, and management.

50. The majority of the Company's employees reside in the Campbell River or the Courtenay-Comox region and travel to the Mine Site via a company daily chartered bus or personal transportation. A limited number of employees live further afield and stay at the accommodation camp on-site when working at the Mine.

51. The Unionized Employees are represented by Unifor Local 3019 (the "Union").

52. In respect of the Unionized Employees, MFM and Unifor Local 3019, are party to a collective agreement, a copy of which is attached as **Exhibit "F"** (the "**Collective Bargaining Agreement**").

53. The terms of the Collective Bargaining Agreement expired in September 2023. The Company and the Union have begun negotiations to renew the Collective Bargaining Agreement but have not reached an agreement to date.

Pension Plans

54. Myra Falls is the sole participating employer and the legal administrator with respect to 2 registered pension plans:

- (a) The Nyrstar Myra Falls Ltd., Myra Falls Operations Hourly-paid Employees Pension Plan (the "DB Plan") for unionized employees hired before August 1, 2017; and
- (b) The Pension Plan for the Employees of Myra Falls Mine Ltd. (the "DC Plan" and together with the DB Plan, the "Plans"), for unionized employees hired on or after August 1, 2017, and non-unionized employees.

55. The Plans are registered with the British Columbia Financial Services Authority ("BC FSA") pursuant to the *British Columbia Pension Benefits Standards Act*. The Plans are also registered under the *Income Tax Act* (Canada).

56. The DB Plan is closed to new members since August 1, 2017. Based on the most recent actuarial valuation report as of December 31, 2022 prepared by Aon (the "Valuation Report"), and filed in September 2023, the DB Plan is in an actuarial excess position from a funding standpoint. As a result, the Company is not required to make contributions to the DB Plan with respect to any solvency deficiency or going concern deficiency, and this year elected to take a contribution holiday with respect to current service contributions to the DB Plan. The Company has recently taken steps to reduce the risk that the DB Plan's assets, including the actuarial excess, are adversely impacted by market volatility. A copy of the Valuation Report is attached as Exhibit "G".

57. During the course of a targeted review of the Plan's contributions to the DC Plan, it was determined that there had been certain contribution issues. These issues relate primarily to Company contributions and to unionized employee contributions and are comprised of a mix

of over and under contribution errors for both the Company and employees. The Company has been working with outside advisors to develop a strategy for correcting these issues and has advised both BC FSA, which is supportive of the Company's proposed approach, and the Union. The Company determined that the best course of action involved the use of proposed new tax rules for correcting contribution errors in defined contribution errors, and the relevant amendments to the *Income Tax Act* (Canada) have recently been passed. Discussions with the Union regarding the errors and subsequent collective bargaining have contributed to delaying the corrections. The Company still needs to consider certain final issues regarding former DC Plan members. However, the Company is preparing to materially rectify the over and under contribution issues during the first and second quarters of 2024.

58. Each of the employees who are members of the DC Plan and the Company make bi-weekly contributions to the DC Plan. At this time, the Company is not seeking authority to discontinue these contributions. For clarity, at this time, the Company is not seeking to change any of its obligations under the DB or DC Plan.

59. In addition, non-union employees have the option to participate in employer matching programs for Group RRSP and an Employee Savings Plan. The Company is not proposing to continue making these payments as part of the CCAA proceedings.

C. First Nations

Wei Wai Kum First Nation and the We Wal Kai First Nation

60. The Mine is located on the traditional territory of the Wei Wai Kum First Nation and the We Wal Kai First Nation and the Company is party to an impact and benefit agreement dated as of February 27, 2023 with these first nations (the "IBA").

61. In addition to the IBA, the Wei Wai Kum First Nation and MFM are party to a lease agreement dated as of January 1, 2022, in connection with the Discovery Terminal, which is located on reserve lands (the "Discovery Terminal Lease"). Under the Discovery Terminal Lease, MFM has certain obligations relating to environmental matters. During these CCAA proceedings, the Company intends to make regularly scheduled post-filing payments under the Discovery Terminal Lease while it explores its strategic options.

Other First Nations Groups

62. In addition to the Wei Wai Kum First Nation and the We Wai Kal First Nation, both the K'ómoks First Nation and the Mowachaht/Muchalaht First Nation have asserted rights over parts of the Mine Site. As of the date hereof, MFM is not party to any formal agreements with either of these nations.

D. The Crown

Leases, Licenses and Grants

63. As outlined above, MFM maintains 6 mineral leases and 23 crown grants that are registered with, and administered by, the Province. MFM also holds various PUPs required to provide surface access to Strathcona Park, among other licenses and permits used in connection with the Mine and the Discovery Terminal.

Crown Reclamation Obligations

64. As a condition of obtaining the requisite provincial approvals for its mining operations, the Company was required to post a bond in the amount of \$132,424,500 (the "Bond") with the Province to secure performance of any conditions, obligations, or requirements that are imposed under the laws of British Columbia relating to mines that, in the opinion of the

Province, are related to reclamation or protection of, and mitigation or damage to, the land, watercourses or cultural heritage resources effected by the Mine. The Bond has been issued by Trisura Guarantee Insurance Company. MFM, among others, is party to a general agreement of indemnity in favour of Trisura Guarantee Insurance Company, among others, in connection with the Bond.

65. The Company intends for the Bond to remain in place for the benefit of the Province.

Water Lot Lease

66. In addition to its licenses, leases, and grants with the Province, MFM leases from the Province, the water lot (the foreshore and seabed) contiguous with the Discovery Terminal pursuant to a lease agreement dated July 5, 2018.

E. Secured Indebtedness

67. The Company does not have a traditional bank or senior secured lender, and no party maintains a blanket security interest against all of the assets, property, and undertakings of the Company. As outlined above, the Trafigura Group finances the Company's operations on an unsecured basis.

68. The Company has a limited number of creditors with registered financing statements under the *Personal Property Security Act* (British Columbia) that relate to the leasing or financing of equipment and motor vehicles. These creditors are as follows:

- (a) Versatile Leasing Incorporated;
- (b) Toyota Credit Canada Inc.;
- (c) Travelers Leasing Ltd.;

- (d) Sandvik Canada Inc. / Sandvik Financial Services Canada;
- (e) Vallant Financial Services Inc.;
- (f) Amalgamated Mining & Tunnelling Inc.;
- (g) Epiroc Canada Inc.;
- (h) Linde Canada Inc.; and
- (i) Xerox Canada Ltd.

69. A summary of PPSA searches recently obtained against the Company current as of November 24, 2023, is attached hereto as Exhibit "H".

F. Alberta Legacy Well Obligations

70. The Company's assets include 11 legacy oil wells in the province of Alberta (the "Wells"). MFM is in the process of undertaking reclamation work in respect of the Wells under the oversight of the Alberta Energy Regulator. The Company intends to continue such work during these CCAA Proceedings, the cost of which is contemplated under the Cash Flow Forecast (as defined below).

G. Trade Payables

71. MFM contracts with a number of suppliers in order to operate and service the Mine and ancillary mine assets and infrastructure (the "Suppliers"). Many, although not all, of MFM's Suppliers are based in the Campbell River or the Courtenay-Comox region. MFM has struggled to stay current on its trade payables with some Suppliers currently operating on extended payment terms. As of November 30, 2023, MFM owes its suppliers approximately \$37,556,708.

72. Certain suppliers who are required to operate the Mine (including, when the Mine is in care and maintenance) have advised the Company that they will not continue to provide goods and services absent outstanding Invoices being addressed. Some suppliers have recently suspended supplying goods and services, and others have removed equipment from the Mine Site in light of outstanding payables. I expect that further suppliers may seek to exercise remedies against the Company in the coming days absent a stay of proceeding being granted.

V. CCAA PROCEEDINGS

A. Stay of Proceedings

73. The Company produces on average 3700 tons of zinc concentrate every month. It takes approximately 3 months for the Company to aggregate a full shipment of zinc concentrate.

74. Every month that the Mine operates, the Company's financial position deteriorates.

75. The Company completed its last full load of zinc concentrate on December 15, 2023.

76. MFM has limited liquidity, is insolvent and requires a stay of proceedings, in order to provide it with the "breathing room" required to consider its restructuring options and implement a restructuring plan.

77. These restructuring options may include a court-supervised sales and investment solicitation process and / or filing a plan of arrangement or compromise.

78. Concurrently with the commencement of these CCAA proceedings, the Company intends to place the Mine into a state of care and maintenance while it develops a restructuring plan.

79. As part of placing the Mine into care and maintenance, only essential operations at the Mine will continue, including actions intended to maintain environmental compliance, actions intended to secure the Mine Site, and preservation of key Mine infrastructure.

80. A stay of proceedings together with the DIP financing being proposed are essential to transitioning the Mine into care and maintenance and maintaining environmental compliance. In the absence of a stay of proceedings being granted, actions taken by Suppliers (in particular ceasing to supply goods and services to MFM and / or taking enforcement action), will impact the Company's ability to transition the Mine into care and maintenance in an orderly manner. Such an outcome will not only have an adverse effect on the Mine's go-forward value but also may have long-term negative environmental implications.

B. Appointment of Monitor

81. MFM is seeking the appointment of FTI to serve as the proposed Monitor in these proceedings. A copy of the consent of FTI to act as Monitor is attached as Exhibit "I" of this my affidavit.

82. I have been advised by Tom Powell, a senior managing director at FTI with carriage of this matter, that FTI is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act* and is not subject to any of the restrictions set out in Section 11.7(2) of the CCAA.

83. I understand that FTI has experience with mandates of this nature, and has previously served as monitor in CCAA proceedings involving mines across Canada. I believe FTI is qualified and competent to act as MFM's Monitor in these CCAA proceedings.

C. DIP Facility

84. In light of the Company's liquidity issues, the Company will require interim financing to cover its go-forward costs including the costs associated with transitioning the Mine into care and maintenance, undertaking restructuring activities, and the payment of professional fees during these CCAA proceedings.

85. Under a DIP term sheet dated December 17, 2023 (the "**DIP Term Sheet**"), the DIP Lender has agreed to establish the DIP Facility in the maximum principal amount of \$21 million for use during these CCAA proceedings. A copy of the DIP Term Sheet is attached hereto as **Exhibit "J"**.

86. During the initial 10 day stay period, availability under the DIP Facility will be limited to the principal amount of \$4 million which is the amount reasonably necessary for the Company's operations until the Comeback Hearing.

87. The DIP Term Sheet contains among other things, the following terms:

- (a) Principal Amount of DIP: \$4 million of initial availability (the "**Initial Maximum Amount**"), and, subject to the satisfaction of certain conditions precedent, an aggregate maximum amount of \$21 million (the "**Maximum Amount**").
- (b) DIP Facility Fee: \$210,000 (representing one 1% of the Maximum Amount).
- (c) Use of Proceeds: (i) to fund the Company's operating expenses and general corporate and working capital requirements during the CCAA proceedings, including the costs associated with transitioning the Mine into care and maintenance, and (ii) to fund the administrative expenses of the CCAA proceedings.

- (d) Interest: an annual rate equal to 11%.
- (e) DIP Charge: The DIP Facility requires a super-priority ranking charge (the "DIP Lender's Charge") against all of the current and future assets, undertakings and property of the Company in favour of the DIP Lender. The DIP Lender's Charge will not secure any amount owed to the Trafigura Group as of the date of commencement of these proceedings.

D. Cash Flow Forecast

88. The Company, with the assistance of the Proposed Monitor, has prepared a 13-week cash flow forecast (the "Cash Flow Forecast"). The Cash Flow Forecast assumes that the Mine will transition into care and maintenance immediately. The transition is expected to take approximately 2 months.

E. Post-Filing Payments to Employees

89. Transitioning the Mine to care and maintenance will not require the full complement of MFM's existing workforce, and only a limited number of employees will be needed for this process (collectively the "Remaining Employees").

90. The Company will require the services of no more than 17 salaried employees and 20 unionized employees to transition the Mine to care and maintenance. Starting at or around February 16, 2024, the services of most of the Remaining Employees will not be required. The Company will continue to pay the Remaining Employees until the date their services are no longer required.

91. The current circumstances of the Company do not allow the Company to provide full working notice to its employees. Given the unique circumstances and timing of the transition,

and in recognition of the hardship that terminated or temporarily laid off employees will experience, the Company currently intends, even if it is not required to do so, to pay 2 additional weeks of wages or salaries to these terminated / or temporarily laid off employees, on the next pay cycle following their termination or temporary layoff (the "Initial Hardship Payment").

92. As part of the Comeback Hearing, in order to ensure a smooth and safe transition of the Mine into care and maintenance, the Company intends to seek an Order from the Court authorizing the Company to supplement the Initial Hardship Payment, by paying terminated / or temporarily laid off employees, with a further 6 weeks of wages or salaries (the "Supplemental Hardship Payment").

93. The Company intends to maintain health and welfare insurance benefits for its unionized employees in accordance with the CBA, and for its salaried employees for a period of 2 weeks following their effective date of termination or temporary layoff.

F. Charges

Administration Charge

94. It is contemplated under the form of Initial Order being sought by the Company that the Proposed Monitor, along with its counsel, and counsel to the Company will be granted a Court-ordered charge in the amount of \$350,000 (the "Administration Charge") during the initial 10 day stay period, as security for their fees and disbursements incurred at their standard rates and charges.

95. I believe that the amount of the proposed Administration Charge is the amount reasonably necessary for the initial 10 day stay period to ensure the continued participation of the proposed beneficiaries of the Administration Charge, whose expertise, knowledge and assistance will be critical to the success of these CCAA proceedings.

96. The Company has worked with the Monitor to develop the proposed amount of the Administration Charge, which I believe is fair and reasonable in the circumstances.

97. I do not believe that there is any unwarranted duplication of roles between the proposed beneficiaries of the Administration Charge.

98. MFM intends to seek an increase in the maximum amount of the Administration Charge to \$800,000 at the Comeback Hearing.

D&O Charge

99. MFM's sole director and the Company's officers have invaluable experience pertaining to aspects of MFM's operations, suppliers, employees, and other stakeholders. That experience cannot be replicated or easily replaced, and will be, in my view, critical to helping (i) place the Mine into care and maintenance (ii) determine a way forward as part of these proceedings.

100. The proposed Initial Order provides for a \$650,000 Court-ordered charge over the assets, property and undertaking of the Company (the "D&O Charge") to indemnify the Company's sole director and the Company's officers in respect of liabilities they may incur during the CCAA proceedings in their capacities as directors and officers in the initial 10 day period.

101. The amount of the proposed D&O Charge has been determined by the Company, with the assistance of the Proposed Monitor, is supported by the DIP Lender, and reflects the quantum of the Company's directors' and officers' potential statutory liabilities for a 10 day period.

102. I understand that the Company's sole director and officers benefit from director and officer insurance pursuant to a Trafigura Group level insurance policy that covers directors and officers of multiple companies (the "Group D&O Policy"). The Company's officers and sole director have requested the protection of the D&O Charge in respect of post-filing obligations of MFM for which they could be personally liable, should the Group D&O Policy not be sufficient to protect against such liabilities.

103. The Company intends to seek an increase in the maximum amount of the D&O Charge at the Comeback Hearing to \$1,200,000.

DIP Lender's Charge

104. The DIP Facility is conditional upon an order of this Court, among other things, approving the amount and priority of the DIP Lender's Charge.

105. As outlined above, during the initial 10 day stay period availability under the DIP Facility will be limited to the Initial Maximum Amount. The form of Initial Order being sought by MFM contemplates a DIP Lender's Charge in this amount.

106. I am of the belief that the amount of the proposed DIP Lender's Charge is reasonably necessary for the initial 10 day stay period and is supported by the Cash Flow Forecast prepared with the assistance and review of the Proposed Monitor.

107. At the Comeback Hearing, MFM intend to seek an increase in the amount and the priority of the DIP Lender's Charge to the Maximum Amount.

Priorities of Charges

108. It is contemplated by the Company that the Charges will be against all of the Company's current and future assets, undertakings and property, and will have the following priorities as between them:

- (a) First – the Administration Charge;
- (b) Second – the D&O Charge; and
- (c) Third – the DIP Lender's Charge.

vi. CONCLUSION

109. The relief requested in the proposed Initial Order is limited to relief that is reasonably necessary for the operations of MFM during the initial 10-day stay period.

AFFIRMED BEFORE ME at Vancouver, BC,
on December 17, 2023.



 A Commissioner for taking Affidavits within
 British Columbia.



 HEIN FREY

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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 THE PLAN OF COMPROMISE AND
ARRANGEMENT OF MYRA FALLS MINE LTD

AFFIDAVIT OF HEIN FREY #2

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MD/msh