

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**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 OR ARRANGEMENT OF  
TACORA RESOURCES INC.**

**(Applicant)**

**AIDE MEMOIRE OF TACORA RESOURCES INC.**

February 5, 2024

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Counsel for the Applicant

**TO: SERVICE LIST**

1. Tacora Resources Inc. (“**Tacora**” or the “**Applicant**”) respectfully requests that Tacora’s motion (the “**Sale Approval Motion**”) seeking, among other things, approval of the subscription agreement entered into between Tacora, as issuer, and a consortium consisting of the Ad Hoc Group, Resource Capital Fund VII L.P. (“**RCF**”), and Javelin Global Commodities (SG) Pte Ltd. (“**Javelin**”), as investors (collectively, the “**Investors**”) dated January 29, 2024 (the “**Subscription Agreement**”) and approval of the transactions (the “**Transactions**”) contemplated in the Subscription Agreement, be heard on the schedule set out at **Schedule “A”** of this Aide Memoire.

2. As set forth below, Tacora received three Phase 2 Bids following the Solicitation Process (as defined below). Only one Bid – the Investors’ Bid – was actionable and constituted a Phase 2 Qualified Bid (as defined in the Solicitation Process).

3. Cargill has been a counterparty to several key agreements with Tacora since 2017, including the Offtake Agreement and the Stockpile Agreement. Cargill also submitted a Phase 2 Bid in connection with the Solicitation Process, but the Bid was conditional upon Cargill raising additional financing from an unidentified third party. With \$177 billion in revenues and more than 40 years of experience in the ferrous industry, Cargill acknowledges that it has the financial ability to finance and complete the transaction contemplated by Cargill’s Phase 2 Bid. However, despite knowing since October 2023 that the Solicitation Process expressly required that Phase 2 Bids must not be “subject to the outcome of... contingency financing”, Cargill submitted its conditional and unactionable Phase 2 Bid.

4. After failing to submit an actionable Bid, Cargill now attempts to establish a long, drawn-out litigation schedule in what appears to be an attempt to disrupt or thwart the closing of the Investors’ Bid to the detriment of Tacora and its other stakeholders. As set out below, time is of the essence for Tacora to emerge from the CCAA proceedings and the schedule proposed by Tacora is fair and reasonable in the circumstances.

## I. **Background**

5. On October 30, 2023, this Court granted an order which, among other things: (a) approved a process (the “**Solicitation Process**”) to solicit proposals for various transactions in respect of Tacora or its assets and business operations; and (b) authorized and directed Tacora, Greenhill & Co. Canada Ltd. (“**Greenhill**”) and FTI Consulting Canada Inc., in its

capacity as monitor of the Applicant (the “**Monitor**”) to immediately commence the Solicitation Process.

6. On January 19, 2024, being the Phase 2 Bid Deadline, three Bids were received: (a) the Bid from the Investors; (b) a Bid from Cargill; and (c) a Bid from a third party. The Investors’ Bid was the only Phase 2 Bid that met all the requirements necessary to be a Phase 2 Qualified Bid. On January 29, 2024, Tacora, with the benefit of advice and recommendations from Greenhill and its counsel, and in consultation with the Monitor, exercised their good faith business judgement and determined that the Investors’ Bid should be declared as the Successful Bid under the Solicitation Process. The Investors’ Bid excludes the Offtake Agreement, and in connection with the Transactions, Tacora will enter into a new marketing agreement with Javelin. Cargill has indicated they intend to oppose the Sale Approval Motion.

7. Counsel for Tacora, the Monitor, the Investors and Cargill have attempted to agree upon a litigation timetable but have been unable to agree. The parties various positions on the timetable are set out in **Schedule “A”** to this Aide Memoire.

## **II. There is Urgency to Determine the Sale Approval Motion**

8. Tacora’s proposed timetable contemplates the Sale Approval Motion will be heard in eight weeks. As set out below, the timetable is necessary in the circumstances and provides a fair and reasonable amount of time for any issues raised by Cargill to be addressed.

### **A. Tacora needs to emerge from these CCAA proceedings**

9. The purpose of extending the timetable was to ensure that the parties had a fair and reasonable amount of time to prepare for the motion, while reflecting the reality of the situation facing Tacora. Significant damage may result to Tacora and its stakeholders if Tacora cannot emerge from these CCAA proceedings as a going concern in a timely manner. Tacora and its stakeholders face material risks and prejudice if the Sale Approval Motion is delayed beyond the proposed timetable, which are explained in the Affidavit of Joe Broking (the Chief Executive Officer of Tacora) sworn February 2, 2024 (the “**Broking Affidavit**”):

- a. Liquidity: The volatile nature of the iron ore market can have a rapid and significant negative impact on Tacora’s already limited liquidity. Iron ore

prices have already fallen from approximately \$144/tonne on January 3, 2024, to \$132/tonne on January 31, 2024. If iron ore prices fell by a similar amount over the next several weeks, Tacora could run out of excess liquidity (inclusive of availability under the DIP facility) by the start of April 2024, and would require additional financing to continue operating in the normal course.<sup>1</sup> A copy of the most recent cash flow forecast filed with the Monitor's Second Report is attached hereto as **Schedule "B"**.

- b. **Imminent Need for Critical Capital Investments**: Even on the assumption that Tacora can access additional liquidity through additional DIP financing to maintain operations beyond April 2024 (as Cargill proposes), Tacora and its stakeholders will be prejudiced if the Transactions cannot close quickly. Tacora's contemplated capital expenditure plan to ramp up production at the Scully Mine requires such capital investments to be made as soon as possible. The Investors' Bid provides significant new capital to partially fund Tacora's contemplated capital expenditure plan—but such necessary capital investments cannot be made until the Transactions close. Further, any additional debt incurred by Tacora under the DIP Facility will result in less available capital for these capital investments, which are critical for the sustainability and stability of Tacora's operations moving forward.<sup>2</sup>
- c. **Uncertainty to Trade Creditors**: Tacora's numerous trade creditors, many of which are small businesses, have not been paid amounts owing prior to the commencement of these CCAA proceedings. Expedited closing of the Transactions will alleviate the concerns of and provide certainty to Tacora's trade creditors, as these creditors will be addressed in accordance with the Subscription Agreement, while having the benefit of continuing to supply on a long-term basis to a much stronger and well-capitalized Tacora.<sup>3</sup>
- d. **Uncertainty to Employees**: Tacora is the second largest employer in the Labrador West Region and employs approximately 460 employees. Multiple employees have resigned during these CCAA proceedings, many of which have communicated that the uncertainty relating to Tacora being in CCAA

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<sup>1</sup> Broking Affidavit at [para. 71](#).

<sup>2</sup> *Ibid* at [para. 72](#).

<sup>3</sup> *Ibid* at [para. 73](#).

proceedings was a key reason for their resignation. The Transactions provide for the ongoing employment of all of Tacora's employees—expedited closing of same will have a positive impact on this significant stakeholder group.<sup>4</sup>

## **B. Delay jeopardizes the Subscription Agreement and Transactions**

10. The Subscription Agreement establishes a series of milestones, which could result in termination of the Subscription Agreement if they are not met. The milestones reflect the commercial concerns set out above. The key milestones in the Subscription Agreement related to the Approval and Reverse Vesting Order are as follows:

- a. April 1, 2024: Deadline to receive the Approval and Reverse Vesting Order from this Court.
- b. April 26, 2024: Outside Date to satisfy and/or waive all conditions in the Subscription Agreement.

11. One of the customary conditions in the Subscription Agreement is that the Approval and Reverse Vesting Order be a final order with no appeal or request for leave to appeal outstanding. Accordingly, the timeline established by this Court must provide for sufficient time to address a motion for leave to appeal the Approval and Reverse Vesting Order (if granted by this Court) by April 26, 2024 – the Outside Date.

12. In addition to the milestones, the Subscription Agreement contains a condition that “Net Debt” be no more than \$140 million following completion of the Transactions. “Net Debt” means (a) specified indebtedness; *minus* (b) cash on hand. The condition in favour of the Investors was included to ensure Tacora has sufficient cash on hand following closing to complete necessary capital expenditures and operate in the ordinary course. The specified indebtedness is expected to be approximately \$206 million on closing and therefore, Tacora must have at least \$66 million of cash on hand following closing to satisfy the conditions. Tacora is expected to continue to operate at a deficit and incur additional debt that will need to be repaid in connection with closing of the Transactions. With a drawn-out litigation schedule, this results in less cash on hand at closing and jeopardizes Tacora's ability to fulfill the condition.

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<sup>4</sup> *Ibid* at [para. 74](#).

### **III. Cargill's Proposed Motion Schedule is Not Reasonable**

13. In addition to the reasons set out above with respect to the urgency of having the Sale Approval Motion determined on the requested schedule, there are a number of issues in Cargill's proposed motion schedule.

14. Cargill's proposed motion schedule contemplates a "preliminary motion" but does not identify what the motion relates to. This hypothetical "preliminary motion" was referred to in discussions with the Monitor on January 29, 2024 (before Tacora selected the Successful Bid). Counsel to the Monitor requested again that counsel for Cargill disclose the relief sought on the "preliminary motion" on February 3, 2024, and counsel to Tacora asked on February 4, 2024. Counsel to Cargill would not disclose the purpose of this motion on each occasion pending further instructions from its client on February 5, 2024.

15. Allowing for a "preliminary motion" by Cargill (a motion which is unknown and has not been served), while the Sale Approval Motion is outstanding, is unnecessary and inappropriate in the circumstances. Any relief sought by Cargill can be heard at the Sale Approval Motion. The "preliminary motion" appears to be a tactic to delay the time in which the Sale Approval Motion can be heard.

16. Cargill's proposed motion schedule also includes almost three weeks for dealing with undertakings and refusals (including factums and a separate motion) following the completion of cross examinations – which is unnecessary. Undertakings are exceptional on (non-discovery) cross-examinations and refusals are typically addressed in urgent Commercial List matters between the parties and with a brief case conference attendance, if required.

17. Further, as outlined above, Cargill was provided with: (a) draft materials in support of the Sale Approval Motion in the evening of January 31, 2024, and the morning of February 1, 2024; and (b) Tacora's draft expert's report on February 2, 2024. Cargill's proposed motion schedule provides for all parties to serve Notices of Examination on February 21, 2024—nearly three weeks after delivery of Tacora's Motion Record, which is well beyond a reasonable amount of time, particularly when Cargill has already identified to Tacora and the Investors, which witnesses it is interested in examining.<sup>5</sup>

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<sup>5</sup> See Cargill's Proposed Schedule dated February 3, 2024, which has identified a list of 8 witnesses that Cargill

#### IV. The Sale Approval Motion Can Be Addressed in an Efficient Manner

18. The three main issues to be decided on the Sale Approval Motion are whether:

- a. the sale of Tacora to the Investors is appropriate in the circumstances;
- b. a “reverse vesting” structure to implement the Transactions is appropriate in the circumstances; and
- c. the Offtake Agreement can be excluded under the Subscription Agreement.

19. The first two issues are frequently addressed in CCAA proceedings with “real time” litigation. Eight weeks is much longer than the vast majority of sale approval motions.

20. The issue of whether the Offtake Agreement can be excluded under the Transactions has been known to the parties since the commencement of the CCAA proceedings and raised in open court by counsel to Cargill at the comeback hearing. The issue was also recognized in the Endorsement of Justice Kimmel approving the DIP facility<sup>6</sup> with the Endorsement acknowledging that the Solicitation Process “expressly contemplate[d] that the company shall solicit “Alternative Offtake or Services Agreements” as part of the Solicitation Process and ... contemplates soliciting interest in the “Offtake Opportunity” as part of binding Bids”, but left the issue of whether it can be excluded for another day.<sup>7</sup>

21. Cargill has had ample time to prepare to support their legal position as stated in open court and should have been ready to address these matters in an efficient timeframe that will not jeopardize Tacora or the Successful Bid selected in the Solicitation Process.

#### V. The Schedule Proposed by Tacora

22. Tacora submits the proposed schedule set out at **Schedule “A”** permits a reasonable adjudication of the Sale Approval Motion.

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expects to cross-examine or examine.

<sup>6</sup> *Tacora Resources Inc. (Re)*, 2023 ONSC 6126 at [paras. 112-119](#) and [131-135](#).

<sup>7</sup> *Ibid* at [para. 116](#).

**Schedule "A"**  
**Proposed Schedule for the Sale Approval Motion**

<b>Description</b>	<b>Original Tacora Schedule (February 1, 2024)</b>	<b>Cargill Schedule (February 3, 2024)</b>	<b>Tacora Revised Schedule (February 4, 2024)</b>
<b>Phase 2 Bid Deadline</b>	January 19	N/A	January 19
<b>Successful Bid declared</b>	January 29	N/A	January 29
<b>Initial Case Conference</b>	January 30	N/A	January 30
<b>Draft Motion Record delivered to DIP Lender</b>	January 31	N/A	January 31
<b>Motion Record served on Service List</b>	February 2	N/A	February 2
<b>Scheduling Case Conference</b>	February 6	February 6	February 6
<b>Notices of Examination</b>	N/A	February 21	February 9
<b>Cargill Responding Motion Record and evidence of any other party opposing Motion</b>	February 12	March 1	February 21
<b>Production in response to Notices of Examination</b>	N/A	March 8	February 21
<b>Tacora (and any other supporting parties) to issue any additional Notices of</b>	N/A	March 4	February 23



<b>Description</b>	<b>Original Tacora Schedule (February 1, 2024)</b>	<b>Cargill Schedule (February 3, 2024)</b>	<b>Tacora Revised Schedule (February 4, 2024)</b>
<b>Examination</b>			
<b>Reply material</b>	February 19	March 7	February 28
<b>Third Report of the Monitor</b>	March 4	February 20	March 1
<b>Cross-examinations</b>	February 27-28	March 18 to March 22 (seven witnesses)	Week of March 4 (three days)
<b>Tacora (and any supporting parties) Factum(s)</b>	March 8	April 15	March 12
<b>Cargill (and any other opposing parties) Responding Factum(s)</b>	March 13	April 24	March 18
<b>Deliver answers to undertakings</b>	N/A	March 27	N/A. If an issue arises, the parties may come back to a case conference for the Court to provide directions.
<b>Any party to serve refusals motions arising from cross-examinations (if necessary)</b>	N/A	April 3	
<b>Responding materials to refusals motion (if necessary)</b>	N/A	April 4	
<b>Court hearing of refusals</b>	N/A	April 5	

Description	Original Tacora Schedule (February 1, 2024)	Cargill Schedule (February 3, 2024)	Tacora Revised Schedule (February 4, 2024)
motion (if necessary)			
Answers provided further to rulings on refusals	N/A	April 9	
Re-attendances for examinations arising from any answers to undertakings provided or ordered	N/A	April 10 and 11	
Reply Factum(s)	March 18	April 29	March 22
Court Hearing	March 21, 21, or 22	May 1 to May 3	March 25

**Schedule "B"**  
**Most Recent Cash Flow Forecast**  
**[See Attached]**

**Tacora Resources Inc.**

## Consolidated Cash Flow Projections

(\$USD in thousands)

Forecast Week Ending	21-Jan-24	28-Jan-24	04-Feb-24	11-Feb-24	18-Feb-24	25-Feb-24	03-Mar-24	10-Mar-24	17-Mar-24	Total	
Forecast Week	[1]	1	2	3	4	5	6	7	8	9	Total
<b>Total Receipts</b>	[2]	<b>7,310</b>	<b>7,199</b>	<b>4,768</b>	<b>6,698</b>	<b>7,578</b>	<b>9,358</b>	<b>1,517</b>	<b>7,925</b>	<b>7,497</b>	<b>59,850</b>
<b>Operating Disbursements</b>	[3]										
Employees		(2,104)	(356)	(2,112)	(306)	(2,007)	(206)	(2,240)	(207)	(2,085)	(11,624)
Mine, Mill and Site Costs		(5,498)	(9,505)	(1,537)	(1,258)	(1,647)	(2,387)	(3,841)	(1,038)	(1,428)	(28,139)
Plant Repairs and Maintenance		(2,882)	(2,897)	(2,846)	(2,774)	(2,574)	(2,174)	(2,177)	(2,104)	(2,104)	(22,530)
Logistics		(1,712)	(1,676)	(4,512)	(1,506)	(1,425)	(2,020)	(4,876)	(1,709)	(1,583)	(21,019)
Capital Expenditures		(703)	(1,400)	(1,203)	(1,000)	(1,000)	(1,000)	(1,203)	(900)	(900)	(9,309)
Other		(870)	(1,030)	(581)	(418)	(418)	(473)	(1,229)	(418)	(418)	(5,854)
<b>Total Operating Disbursements</b>		<b>(13,768)</b>	<b>(16,865)</b>	<b>(12,789)</b>	<b>(7,262)</b>	<b>(9,070)</b>	<b>(8,260)</b>	<b>(15,566)</b>	<b>(6,376)</b>	<b>(8,517)</b>	<b>(98,473)</b>
<b>Net Cash from Operations</b>		<b>(6,459)</b>	<b>(9,665)</b>	<b>(8,021)</b>	<b>(564)</b>	<b>(1,492)</b>	<b>1,098</b>	<b>(14,049)</b>	<b>1,549</b>	<b>(1,020)</b>	<b>(38,623)</b>
Restructuring Legal and Professional Costs	[4]	(773)	(720)	(1,115)	(673)	(498)	(498)	(715)	(448)	(448)	(5,888)
KERP	[5]	-	-	-	-	-	-	-	-	-	-
<b>NET CASH FLOWS</b>		<b>(7,232)</b>	<b>(10,385)</b>	<b>(9,137)</b>	<b>(1,237)</b>	<b>(1,990)</b>	<b>600</b>	<b>(14,764)</b>	<b>1,102</b>	<b>(1,468)</b>	<b>(44,511)</b>
<b>Cash</b>											
Beginning Cash Balance		41,988	34,756	23,945	14,808	13,572	11,582	12,182	10,885	11,987	41,988
Net Receipts/ (Disbursements)		(7,232)	(10,385)	(9,137)	(1,237)	(1,990)	600	(14,764)	1,102	(1,468)	(44,511)
DIP Advances/ (Repayments)	[6]	-	-	-	-	-	-	14,000	-	-	14,000
DIP Fees & Interest Payment	[7]	-	(426)	-	-	-	-	(532)	-	-	(958)
<b>Ending Cash Balance</b>		<b>34,756</b>	<b>23,945</b>	<b>14,808</b>	<b>13,572</b>	<b>11,582</b>	<b>12,182</b>	<b>10,885</b>	<b>11,987</b>	<b>10,519</b>	<b>10,519</b>
<b>DIP Facility Opening Balance</b>		<b>55,500</b>	<b>55,500</b>	<b>55,500</b>	<b>55,500</b>	<b>55,500</b>	<b>55,500</b>	<b>55,500</b>	<b>69,500</b>	<b>69,500</b>	<b>55,500</b>
DIP Advances		-	-	-	-	-	-	14,000	-	-	14,000
<b>DIP Facility Ending Balance</b>		<b>55,500</b>	<b>55,500</b>	<b>55,500</b>	<b>55,500</b>	<b>55,500</b>	<b>55,500</b>	<b>69,500</b>	<b>69,500</b>	<b>69,500</b>	<b>69,500</b>
<b>Post-Filing Margin Advances</b>	[8]	<b>10,100</b>	<b>10,100</b>	<b>10,100</b>	<b>10,100</b>	<b>10,100</b>	<b>10,100</b>	<b>10,100</b>	<b>10,100</b>	<b>10,100</b>	<b>10,100</b>
<b>Total DIP Facility and Post-Filing Margin Advances</b>		<b>65,600</b>	<b>65,600</b>	<b>65,600</b>	<b>65,600</b>	<b>65,600</b>	<b>65,600</b>	<b>79,600</b>	<b>79,600</b>	<b>79,600</b>	<b>79,600</b>

## **Tacora Resources Inc.**

### Consolidated Cash Flow Projections

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#### **Notes to the Consolidated Cash Flow Projections:**

[1] The purpose of the Cashflow Projections is to estimate the liquidity requirements of Tacora Resources Inc. ("Tacora", or the "Company") during the forecast period. The forecast above is presented in US Dollars. Any estimates in Canadian dollars have been translated at an fx rate of 1.34.

[2] Forecast Total Receipts are based on management's current expectations regarding productions and vessel shipments of iron ore concentrate (total tonnage) and price indices net of mark to market adjustments. Receipts from operations have been forecast based on current payment terms, historical trends in collections and expected vessel shipment schedules.

[3] Operating disbursements include the following key categories:

Forecast Employee Costs are based on historic payroll amounts and future forecast payments.

Forecast Mine, Mill and Site Costs primarily include site costs based on forecast activity levels and known commitments including, utilities, fuel, and supplies and consumables.

Forecast Plant Repairs and Maintenance costs relate to Scully Mine. Plant repairs and maintenance also includes contract labour at the Scully Mine.

Forecast Logistics costs primarily include rail transportation costs as well as port-related payments.

Forecast Capital Expenditures include costs related to mine, milling, and other logistics / infrastructure improvements.

Forecast Other costs include environmental costs, security and other costs at the Scully Mine and corporate.

[4] Forecast Restructuring Legal and Professional Costs include legal and financial advisors associated with the CCAA proceedings and are based on estimates.

[5] Forecast Key Employee Retention Plan (KERP) consistent with the Initial Affidavit.

[6] Forecast DIP Advances/Repayments are consistent with the DIP term sheet. Forecast DIP Advances/Repayments are based on funding requirements and maintaining a minimum cash

[7] DIP Fees and Interest are calculated based on total draws.

[8] Consistent with s.5 of the DIP Agreement, Post-Filing Margin Advances made under the pre-existing Advance Payment Facility Agreement are secured by the DIP Charge.

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Applicant

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Proceeding commenced at Toronto

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