

CANADA

SUPERIOR COURT  
COMMERCIAL DIVISION

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N°: 500-11-040900-116

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

KITCO METALS INC.

Petitioner

and

RICHTER ADVISORY GROUP INC.

Monitor

and

HERAEUS METALS NEW YORK LLC

Respondent

APPLICATION FOR AN ORDER FORCING HERAEUS METALS NEW YORK LLC TO  
RETURN CERTAIN ASSETS OF PETITIONER'S POOL ACCOUNT CUSTOMERS  
(Sections 9 and 11 of the *Companies' Creditors Arrangement Act, R.S.C. 1985,*  
*c. C-36 ("CCAA")*)

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

**INTRODUCTION**

1. On June 8, 2011, the Petitioner filed a Notice of Intention to make a proposal under the Bankruptcy and Insolvency Act (the "**Filing**");
2. On July 7, 2011, this Court issued an initial order (the "**Initial Order**") pursuant to section 11.02 of the CCAA in respect of Kitco and Richter Advisory Group Inc. was appointed Monitor (the "**Monitor**");
3. On July 20, 2012, the Respondent, Heraeus Metals New York LLC ("**Heraeus**"), entered an unsecured claim for an amount of CA \$4,968,326, the whole as more fully appears from a copy of Heraeus' proof of claim (the "**Heraeus POC**") filed in support hereof as **Exhibit R-1**;

4. As appears from the documents attached in support of the Heraeus POC (R-1), Heraeus' claim stems from the following:
  - a. US \$375,600 for alleged losses resulting from Kitco's failure to honour a forward contract for the purchase of 4,000 toz of rhodium<sup>1</sup> (see Heraeus' letter of August 31, 2011 filed with the Heraeus POC (R-1));
  - b. US \$4,704,489 following an Assignment of Claim by Kitco International Limited ("**KIL**") to Heraeus on July 20, 2012 (see the Assignment of Claim filed with the Heraeus POC (R-1));
5. While Heraeus' claim was filed as unsecured, it has nevertheless purported to hold 908.41 toz of rhodium (the "**Rhodium**") as collateral or security to guarantee Kitco's obligations toward it;
6. This Rhodium is the sole property of Kitco's pool account customers. It was not, and could not, be provided to Heraeus as collateral or security. As such, and for the reasons more fully set out below, Kitco hereby seeks an order declaring that Heraeus has no right or interest in the Rhodium. Kitco also seeks an order forcing Heraeus to return the Rhodium to Kitco for the benefit of its pool account customers;

#### **BACKGROUND AND REASONS**

7. On December 8, 2010, Kitco wrote to Heraeus to ensure that its pool and physical holding accounts were properly identified as belonging to Kitco's clients. That letter, which is filed in support hereof as **Exhibit R-2**, reads as follows:
 

"In order to properly identify our pool and physical holding accounts, which represent the metals owned by our clients, please change the account holder name to "Kitco for the benefit of its Customer Pool"."
8. Heraeus acknowledged the name change and, hence, admitted the fact that the metals it held belonged to Kitco's customers and not to Kitco itself, the whole as appears from a letter from Heraeus to "Kitco In-Trust for Customer Po (*sic*)" dated April 1, 2011 and filed in support hereof as **Exhibit R-3**. As appears from page 2 of that letter, specific reference is made to the 908.41 toz of Rhodium in question;
9. Heraeus sent another similar letter on August 1, 2011, once again addressed to "Kitco In-Trust for Customer Po (*sic*)";
10. On August 8, 2011, Kitco responded to that letter to clarify an issue with respect to its rhodium holdings. As part of its response, Kitco stated that "We are in agreement with the 908.410 oz balance of rhodium mentioned in your request for confirmation, which represents the Rhodium owned by our clients ("Kitco in trust for customer pool").", the whole as more fully appears from Heraeus' letter of August 1, 2011 and Kitco's response of August 8, 2011 filed *en liasse* in support hereof as **Exhibit R-4**;

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

11. Heraeus stopped issuing inventory reconciliation letters such as those filed as Exhibits R-3 and R-4 after the Filing;
12. Prior to the Filing, Heraeus gave no indication that the Rhodium held in favour of Kitco's customers was considered to form some sort of security to guarantee Kitco's own obligations toward Heraeus;
13. In fact, Heraeus first claimed to be holding the Rhodium as "collateral" in a letter dated June 27, 2011, which is attached to the Heraeus POC (R-1);
14. Kitco promptly responded the following day to address this issue, amongst others. Kitco's letter of July 28, 2011 is also attached to the Heraeus POC (R-1) and states as follows with respect to the Rhodium:  

"Finally, Kitco strongly denies and contest (*sic*) that the 908.41 TOZ of Rhodium that Heraeus is presently holding constitutes collateral or other form of security of Kitco's obligations under the above-mentioned forward contract. Heraeus is holding this rhodium pursuant to storage arrangements entered into with Kitco in trust for its customer pools. Kitco never agreed to the use of the said rhodium by Heraeus as collateral in connection with its forward contract or in connection with the forward contracts entered into between Heraeus and Kitco International Limited."
15. In addition to Heraeus' own admissions and the other facts stated above, Kitco's accounting of the Rhodium has remained consistent with the fact that it belongs to its pool account customers, the whole as appears from print-outs from Kitco's accounting system both before (June 8, 2011) and after (June 9, 2011) the Filing, which are filed *en l'annexe* in support hereof as **Exhibit R-5**;
16. On a separate note, and as stated in the Introduction section of this Application, the vast majority of Heraeus' claim stems from an assignment of claim made to Heraeus by KIL. KIL clearly did not benefit from any form of security interest in Kitco's assets, let alone in the Rhodium owned by Kitco's customers;
17. As a result of the partial dividends approved by the Court and paid to Heraeus to date, the balance of Heraeus' claim is currently \$1,318,326, the whole as more fully appears from a table prepared by Kitco to summarize the evolution of Heraeus' claim, which is filed in support hereof as **Exhibit R-6**;
18. As appears from the table (R-6), only \$97,494 of the current total claim stems from Heraeus' original claim against Kitco. Even before the partial dividends, that portion of the claim was limited to \$367,337 (or US \$375,600);
19. The Rhodium, on the other hand, was valued at approximately US \$1,861.97 / toz in or around the time of the Filing, which brought the value of the Rhodium to US \$1,691,432.167. These values are based on the average sale price described by Heraeus in its letter of August 31, 2011 attached to the Heraeus POC (R-1);

20. Today, that same Rhodium has a value of approximately US \$710 / toz, for a total of US \$644,971.10;
21. Heraeus' claim to a security interest in the Rhodium is thus incongruous in that the value of the Rhodium always far outweighed the balance of Heraeus' direct claim against Kitco;
22. In light of the foregoing, Kitco respectfully submits that Heraeus does not have, nor has it ever had, any form of security interest in the Rhodium. Heraeus should thus be ordered to return the Rhodium to Kitco so that Kitco may continue to hold it in trust for customers of its pool accounts;
23. Kitco has served the present application upon all interested parties;
24. Kitco submits that the notice given of the presentation of this application is adequate and sufficient;
25. The present application is well founded in fact and in law;

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

- [1] **GRANT** the present application;
- [2] **DECLARE** that Heraeus Metals New York LLC ("**Heraeus**") is an unsecured creditor with no right or security interest in the 908.41 toz of rhodium that it is presently holding in the account bearing the name "Kitco In-Trust for Customer Pool" (the "**Rhodium**");
- [3] **ORDER** Heraeus to return the Rhodium, or an equivalent quantity of rhodium of equal or superior quality, to Kitco Metals Inc. ("**Kitco**") in trust for its customer pool c/o Johnson Matthey, 435 Devon Park Drive, Suite 600, Wayne, Pennsylvania 19087-1998, trust account number 27960 (the "**Customer Trust Account**"), the whole within 15 days of the judgment to be rendered hereon;
- [4] **DECLARE** that the notices given of the presentation of this application are adequate and sufficient;
- [5] **THE WHOLE** with costs against Heraeus;
- [6] On a subsidiary basis, should the Court determine that Heraeus does benefit from a security interest in the Rhodium:
  - a) **ORDER** Heraeus to deliver the Rhodium to the Customer Trust Account within five (5) days of the receipt of a written notice from Kitco stating its intention to pay the full remaining balance of Heraeus' claim, which balance shall be determined pending the outcome of Kitco's *Application for a Declaratory Judgment Regarding the Currency Conversion Rate Applicable to Heraeus Metals New York LLC* (the "**Heraeus Claim Balance**");

- b) **ORDER** Kitco to pay the Heraeus Claim Balance within two (2) days of the delivery of the Rhodium to the Customer Trust Account.

MONTREAL, December 2, 2016

Gowling WLG (Canada) LLP

**GOWLING WLG (CANADA) LLP**

Lawyers for Petitioner

CANADA

SUPERIOR COURT  
COMMERCIAL DIVISION

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N°: 500-11-040900-116

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

**KITCO METALS INC.**

Petitioner

and

**RICHTER ADVISORY GROUP INC.**

Monitor

and

**HERAEUS METALS NEW YORK LLC**


Respondent

**AFFIDAVIT OF DENIS MAJEAU**

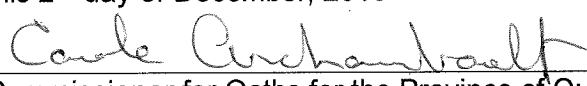
I, the undersigned, Denis Majeau, Chief Financial Officer, doing business at 620 Cathcart, Suite 900, City of Montreal, Province of Quebec, H3B 1M1, solemnly declare as follows:

1. I am the Chief Financial Officer of Petitioner, Kitco Metals Inc.;
2. All the facts alleged in the present *Application for an Order Forcing Heraeus Metals New York LLC to Return Certain Assets of Petitioner's Pool Account Customers* are true.

AND I HAVE SIGNED:

  
DENIS MAJEAU

SWORN TO before me in Montreal  
this 2<sup>nd</sup> day of December, 2016

  
Commissioner for Oaths for the Province of Quebec



CANADA

SUPERIOR COURT  
COMMERCIAL DIVISION

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N°: 500-11-040900-116

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

**KITCO METALS INC.**

Petitioner

and

**RICHTER ADVISORY GROUP INC.**

Monitor

and

**HERAEUS METALS NEW YORK LLC**

Respondent

**NOTICE OF PRESENTATION**

TO: The Service List

and

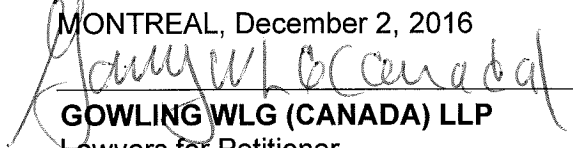
Me Sylvain Vaclair  
WOODS S.E.N.C.R.L.  
2000 avenue McGill College  
Bureau 1700  
Montréal QC H3A 3H3

*Lawyers for Richter Advisory Group Inc.*

**TAKE NOTICE** that the present *Application for an Order Forcing Heraeus Metals New York LLC to Return Certain Assets of Petitioner's Pool Account Customers* will be presented for adjudication before the Honourable Marie-Anne Paquette of the Superior Court of Quebec, sitting in practice division, at **9:00 a.m. on February 14, 2017** in room 16.12 of the Courthouse located at 1 Notre-Dame St. East, Montreal, or so soon as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, December 2, 2016

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

CANADA

SUPERIOR COURT  
COMMERCIAL DIVISION

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N°: 500-11-040900-116

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

**KITCO METALS INC.**

Petitioner

and

**RICHTER ADVISORY GROUP INC.**

Monitor

and

**HERAEUS METALS NEW YORK LLC**

Respondent

**LIST OF EXHIBITS**  
**(Rhodium)**

**EXHIBIT R-1:** Heraeus' proof of claim

**EXHIBIT R-2:** Letter dated December 8, 2010 from Kitco to Heraeus

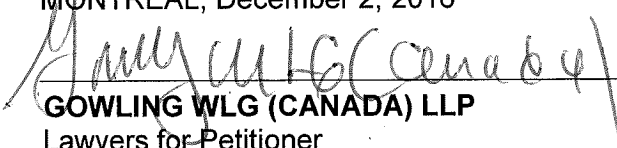
**EXHIBIT R-3:** Letter dated April 1, 2011 from Heraeus to « Kitco In-Trust for Customer Po  
(sic) »

**EXHIBIT R-4:** En liasse, copy of a letter dated August 1, 2011 from Heraeus to Kitco and copy  
of a letter dated August 8, 2011 from Kitco to Heraeus

**EXHIBIT R-5:** En liasse, print-outs from Kitco's accounting system

**EXHIBIT R-6:** Table prepared by Kitco to summarize the evolution of Heraeus' claim

MONTREAL, December 2, 2016

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



# **EXHIBIT R-1**

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

ichter Inc.

RSM Richter Inc.

2 Place Alexis Nihon, Suite 1820  
Montréal, Québec H3Z 3C2  
Telephone: 514.934.3400  
Facsimile: 514.934.8503  
E-mail: kitco@rsmrichter.com

D. C  
QUÉBEC  
MONTREAL  
00-11-040900-116  
ESTATE NO.: 0000068-2011-QC

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

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

KITCO METALS INC.

Petitioner

- and -

RSM RICHTER INC.

Monitor

PROOF OF CLAIM

1) PARTICULARS OF THE CREDITOR

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

2) DECLARATION

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

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

3) CLAIM

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

(Note: All claims that are denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada noon spot rate of exchange for exchanging currency to Canadian dollars on June 8, 2011. Exchange rates for the American dollar and the Euro, at that date, were the following: US \$1 = CA \$0.978; 1 EURO = CA \$1.4266)



(check and complete appropriate box)

☒ UNSECURED CLAIM OF CA\$ 4,968,326

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

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

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

☐ SECURED CLAIM OF CA\$ \_\_\_\_\_

*or* That in respect of this debt, the Creditor holds assets of the Petitioner valued at CA\$ \_\_\_\_\_ as security, particulars of which are as follows.

(Give full particulars of the security, including the date on which the security was given and attach a copy of the security documents)

\_\_\_\_\_  
\_\_\_\_\_

#### 4) PARTICULARS OF CLAIM

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

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

#### 5) FILING OF CLAIM

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

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

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

*[Signature]*  
(Signature of witness)

*C. J. Fontaine*  
(Signature of the Creditor or of its authorized representative)

(Please print name)

C. JEAN FONTAINE  
(Please print name)

# Heraeus

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

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

August 31, 2011

Via e-mail

## INVOICE

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

Attn: Bart Kitner, Tim O'Dwyer

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

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

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

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

**NET DUE to Heraeus**

**375,600.00**

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

Remit to:

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

# Heraeus

July 27, 2011

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

Attn: Bart Kltner  
E-Mail [bkltner@kitco.com](mailto:bkltner@kitco.com)

Re: Rhodium Forward Contract

Dear Mr. Kltner,

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

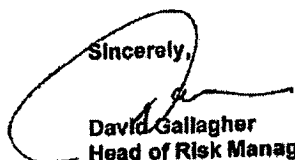
Reference is made to the Forward Contract between HPMN and Kitco Metals Inc. for 4000 toz. Rhodium at a forward price of \$2,330.87/toz. and a maturity date of July 25, 2011. As you know, the maturity date of July 25 has come and gone without your performing.

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

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

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

Sincerely,



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



Kitco Metals Inc.

620 Cathcart #900  
Montréal, QC, H3B 1M1

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

BY E-MAIL

(david.galagher@heraeus.com)

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

Attention: David Gallagher, Head of risk management

Re: Rhodium Forward Contract

Dear Mr. Gallagher:

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

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

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

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

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



Kitco Metals Inc.

620 Cathcart #900

Montréal, QC, H3B 1M1

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

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

Sincerely,

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

Bart Kitner, President

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

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

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

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

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

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

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

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

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

**1. Acknowledgements**

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



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

**2. Assignment**

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

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

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

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

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

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

**5. General Provisions**

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



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

KITCO INTERNATIONAL LIMITED

Per: 

HERAEUS METALS NEW YORK LLC

Per: 

KITCO METALS INC.

Per: 

---

# **EXHIBIT R-2**



**Kitco Metals Inc.**

620 Cathcart #900  
Montréal, QC, H3B 1M1

December 08, 2010

Heraeus Precious Metals Management LLC  
540 Madison Ave.,  
New York, New York 10022

Attention: Gerry Dawson

**RE: Changing Account Name**

Dear Mr. Dawson

In order to properly identify our pool and physical holding accounts, which represent the metals owned by our clients, please change the account holder name to "Kitco for the benefit of its Customer Pool".

Sincerely,

**KITCO METALS INC.**

  
Bart Kitner,  
President

AGREED & ACCEPTED:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

# **EXHIBIT R-3**

Movements metal account  
03/2011

# Heraeus

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

Person in charge...: Ms. Lisa Lin  
Telephone.....: (212) 7522705 - 240  
Telefax.....: (212) 752-7141  
Email.....: Lisa.Lin@heraeus.com

Date: 04/01/2011

Page: 1 / 2

KITCO IN-TRUST FOR CUSTOMER PO  
620 Cathcart Suite # 900  
MONTREAL QC H3B 1M1  
CANADA

Customer code: 320847

Dear Valued Customer:

We are in the process of verifying our Metal Account Balances as of March 31, 2011. As a part of this process we are asking you to please review the enclosed analysis of your account activity. Indicate below whether or not you are in agreement with the balances and return one copy. If you are not in agreement please indicate why. Please send your response via email to Lisa.Lin@heraeus.com.

Please sign and return this document within 7 days of receipt. If we do not hear from you within 30 days, you will forfeit your right to dispute any differences.

Thank you in advance for your cooperation.

Sincerely,  
Heraeus Precious Metals Management, LLC

( ) I am in agreement with the below balances.

( ) I am not in agreement with the below balances (Please provide a detailed explanation)

DATE:

\_\_\_\_\_

PRINT NAME:

\_\_\_\_\_

AUTHORIZED SIGNATURE:

\_\_\_\_\_

Heraeus Precious Metals Management LLC  
JP Morgan Chase Bank, NY, NY  
ABA# 021 000 021 A/C# 400 470 144  
Swift code CHASUS33 CHIPS ABA 002

## HPM

Movements metal account  
03/2011

# Heraeus

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

Person in charge...: Ms. Lisa Lin  
Telephone.....: (212) 7522705 - 240  
Telefax.....: (212) 752-7141  
Email.....: Lisa.Lin@heraeus.com

Date: 04/01/2011

Page: 2 / 2

Att.: "-" = in your favour.

Date	Document	Type S	Your reference	Quantity	Unit
87870020	Gold				
Balance				0.000	OZ
New balance				0.000	OZ
87870030	Silver				
Balance				0.000	OZ
New balance				0.000	OZ
87870050	Rhodium				
Balance				908.410-	OZ
New balance				908.410-	OZ

# **EXHIBIT R-4**



Movements metal account  
07/2011

Person in charge...: Ms. Lisa Lin  
Telephone.....: (212) 7522705 - 240  
Telefax.....: (212) 752-7141  
Email.....: Lisa.Lin@heraeus.com

# Heraeus

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

Date: 08/01/2011

Page: 1 / 2

KITCO IN-TRUST FOR CUSTOMER PO  
620 Cathcart Suite # 900  
MONTREAL QC H3B 1M1  
CANADA

Customer code: 320847

Dear Valued Customer:

We are in the process of verifying our Metal Account Balances as of July 31, 2011. As a part of this process we are asking you to please review the enclosed analysis of your account activity. Indicate below whether or not you are in agreement with the balances and return one copy. If you are not in agreement please indicate why. Please send your response via email to Lisa.Lin@heraeus.com.

Please sign and return this document within 7 days of receipt. If we do not hear from you within 30 days, you will forfeit your right to dispute any differences.

Thank you in advance for your cooperation.

Sincerely,  
Heraeus Precious Metals Management, LLC

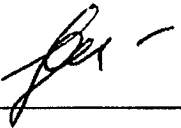
DATE:

August 8<sup>th</sup>, 2011

PRINT NAME:

Alina Osintseva

AUTHORIZED SIGNATURE:



Att.: "-" = in your favour.

Not in agreement with the balance

Date \_\_\_\_\_ Document \_\_\_\_\_ Type S Your reference \_\_\_\_\_ Quantity \_\_\_\_\_ Unit \_\_\_\_\_

Heraeus Precious Metals Management LLC  
JP Morgan Chase Bank, NY, NY  
ABA# 021 000 021 A/C# 400 470 144  
Swift code CHASUS33 CHIPS ABA 002

Please see the email  
for explanation.

**HPM**

Movements metal account  
07/2011

Person in charge...: Ms. Lisa Lin  
Telephone.....: (212) 7522705 - 240  
Telefax.....: (212) 752-7141  
Email.....: Lisa.Lin@heraeus.com

# Heraeus

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

Date: 08/01/2011

Page: 2 / 2

87870020	Gold		
Balance		0.000	OZ
New balance		0.000	OZ
87870030	Silver		
Balance		0.000	OZ
New balance		0.000	OZ
87870050	Rhodium		
Balance		908.410-	OZ
07/25/2011	7210151155	ZGVK	4,000.000- OZ
07/25/2011	7210151215	ZGVK S	4,000.000 OZ
07/25/2011	7210151216	ZGVK	4,000.000- OZ
New balance		4,908.410-	OZ

## Ouellette, Yves

---

**De:** Denis Majeau <dmajeau@kitco.com>  
**Envoyé:** 23 novembre 2016 14:26  
**À:** Ouellette, Yves  
**Objet:** FW: Current Metal Account/0000320847/20110801/141741  
**Pièces jointes:** July Heraeus Mouvement Metal Account.pdf

-----Original Message-----

From: Alina Osintseva  
Sent: August-08-11 9:59 AM  
To: Gallagher, Dave <david.gallagher@heraeus.com>  
Cc: Lisa.Lin@heraeus.com; Denis Majeau <dmajeau@kitco.com>  
Subject: RE: Current Metal Account/0000320847/20110801/141741

Dear Dave:

We refer you to your attached request for confirmation dated August 1st, 2011.

We are in agreement with the 908.410 oz balance of rhodium mentioned in your request for confirmation, which represents the Rhodium owned by our clients ("Kitco in trust for customer pool").

The 4,000 oz balance of rhodium also mentioned in your request for confirmation is in connection with a forward contract entered into between Heraeus and Kitco Metals Inc. which expired on July 25, 2011. On said date, Kitco Metals Inc. did not purchase this 4,000 oz of rhodium and it is our understanding that Heraeus was not willing to extend the delay under the forward contract.

Please do not hesitate to contact us should you have any questions.

Regards,

Alina Osintseva  
Accounting & Finance Manager  
Accounting

Kitco Metals Inc.  
Cell: (514) 654-4823  
Direct line: (514) 670-1396  
Tel: (514) 875-4820 ext. 1396  
Fax: (514) 227-3168  
aosintseva@kitco.com  
www.kitco.com

NOTE: This electronic transmission contains confidential information, intended only for the person named above, and is privileged. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or

any other use of this email is strictly prohibited. If you have received this transmission by error, please notify us immediately by return email and destroy the original transmission immediately and all copies thereof.

Dear Valued Customer:

Attached you will find your metal account balances held with Heraeus Precious Metals Management LLC.

Please sign and return this document upon receipt either by email or fax to 212-752-7141. If we do not hear from you within 30 days, you will forfeit your right to dispute any differences.

In case you have any questions, please contact:

Dave Gallagher: David.Gallagher@heraeus.com Lisa Lin: Lisa.Lin@heraeus.com

Thank you in advance for your cooperation.

Sincerely,

Heraeus Precious Metals Management, LLC

# **EXHIBIT R-5**

Metal	Category	Product Group	Location Code	In Trust	Oz
RHODIUM	Physical	Scrap			47,670
RHODIUM	Physical	Mill Products			1,350
RHODIUM	Physical	Industrial			0,426
RHODIUM	Physical	Refinery	APS-AU	Y	0,283
RHODIUM	Physical	Bullion	BRINKS-NY	Y	199,000
RHODIUM	Physical	Bullion	CATHCART	Y	45,000
RHODIUM	Physical	Bullion	G4S_IBI	Y	291,000
RHODIUM	Physical	Bullion	KMI-1	Y	1,064
RHODIUM	Physical	Bullion	MARKETING		3,989
RHODIUM	Pool		APS-AU	Y	-0,283
RHODIUM	Pool		HERAEBRA	Y	4,181
RHODIUM	Pool		HERAEGER	Y	2,136
RHODIUM	Pool		HERAEUS	Y	908,410
RHODIUM	Pool		HERAEUS-SANTA FE	Y	2,613
RHODIUM	Pool		JM VALLEY	Y	2 366,899
RHODIUM	Pool		JM WEST	Y	13,128
RHODIUM	Pool		JMVF_KAMP	Y	2 000,000
RHODIUM	Pool		JMVFKMI		31,541
RHODIUM	Pool		SIGMUND	Y	0,856
RHODIUM	Pool		TRADESHOW		-0,002
RHODIUM	Customer Pool				-5 872,980
RHODIUM	We Sell - Booked				-101,222
RHODIUM	We Buy - Booked				5 200,000
<b>RHODIUM</b>	<b>Total</b>				<b>5 145,059</b>

Metal Positions - Kitco Metals  
 Jun-08-2011 2:24:28 AM GMT+4 - EDT  
 Generated by OFFLINE\_NAS

Total Processed	46,281
Total Commitments	5 098,778
<b>Total Rhodium</b>	<b>5 145,059</b>

Metal	Category	Product Group	Location Code	In Trust	Oz
RHODIUM	Physical	Scrap			47,670
RHODIUM	Physical	Mill Products			1,350
RHODIUM	Physical	Industrial			0,426
RHODIUM	Physical	Refinery	APS-AU	Y	0,283
RHODIUM	Physical	Bullion	BRINKS-NY	Y	199,000
RHODIUM	Physical	Bullion	CATHCART	Y	45,000
RHODIUM	Physical	Bullion	G4S_IBI	Y	291,000
RHODIUM	Physical	Bullion	KMI-1	Y	1,064
RHODIUM	Physical	Bullion	MARKETING		3,989
RHODIUM	Pool		APS-AU	Y	-0,283
RHODIUM	Pool		HERAEBRA	Y	3,545
RHODIUM	Pool		HERAEGER	Y	2,136
RHODIUM	Pool		HERAEUS	Y	908,410
RHODIUM	Pool		HERAEUS-SANTA FE	Y	2,613
RHODIUM	Pool		JM VALLEY	Y	2 366,899
RHODIUM	Pool		JM WEST	Y	13,128
RHODIUM	Pool		JMVF_KAMP	Y	2 000,000
RHODIUM	Pool		JMVFKMI		31,541
RHODIUM	Pool		SIGMUND	Y	0,856
RHODIUM	Pool		TRADESHOW		-0,002
RHODIUM	Customer Pool				-5 891,980
RHODIUM	We Sell - Booked				-96,222
RHODIUM	We Buy - Booked				5 200,000
<b>RHODIUM</b>	<b>Total</b>				<b>5 130,423</b>

Total Processed	26,645
Total Commitments	5 103,778
<b>Total Rhodium</b>	<b>5 130,423</b>

Metal Positions - Kitco Metals  
 Jun-09-2011 2:29:51 AM GMT+4 - EDT  
 Generated by OFFLINE\_NAS


# **EXHIBIT R-6**



# HEREAUS DEBT EVOLUTION

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

2/10/17

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