

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
No.: 500-11-040900-116

SUPERIOR COURT  
(Commercial Division)  
*The Companies' Creditors Arrangement Act*

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IN THE MATTER OF THE PLAN OF  
ARRANGEMENT OF:

**KITCO METALS INC.**, a legal person duly  
incorporated under the laws of Canada, having its  
principal place of business at 620 Cathcart, 9<sup>th</sup>  
Floor, suite 900, Montreal, Quebec, H3B 1M1

**Petitioner**

-and-

**RICHTER ADVISORY GROUP INC. (formerly  
RSM RICHTER INC.)**, a duly incorporated legal  
person having its principal place of business at  
1981 McGill College, 12<sup>th</sup> Floor, in the city and  
district of Montreal, Quebec, H3A 0G6

**Monitor**

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THIRTY-FOURTH REPORT OF THE MONITOR  
ON THE PETITIONER'S PLAN OF ARRANGEMENT  
April 11, 2018

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**INTRODUCTION**

1. On June 8, 2011, Kitco Metals Inc. (the "**Petitioner**" or "**Kitco**") filed a Notice of Intention to Make a Proposal ("**NOI**") and Richter Advisory Group Inc. (formerly known as RSM Richter Inc. ("**Richter**")) was named Trustee. Pursuant to a motion filed by Kitco and the resulting Order issued on June 10, 2011 by the Honourable Martin Castonguay, J.S.C., Richter was further appointed Interim Receiver to Kitco.
2. On July 5, 2011, Kitco filed a Motion for the Issuance of an Initial Order pursuant to Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36, as amended (the "**CCAA**"). On July 6, 2011, the Honourable Mark Schrager, J.S.C. (as he then was) issued an initial order (the "**Initial Order**"), which *inter alia* appointed Richter as Monitor (the "**Monitor**").

3. The Stay Period was extended by the Court eleven (11) times with the most recent extension to May 31, 2018 having been granted by the Court on May 24, 2017.
4. On April 3, 2018, Kitco filed an Application for the Issuance of an Order Sanctioning the Plan of Compromise and Arrangement and Other Relief (the “**Sanction Motion**”).
5. We refer to the Monitor’s prior reports for an overview of the CCAA proceedings and a summary of all motions issued and orders granted to date.
6. Capitalized terms not defined in this Report have the meaning ascribed thereto in the Monitor’s previous reports and all amounts reflected in this report are stated in Canadian currency, unless otherwise noted.
7. The purpose of this Thirty-Fourth Report of the Monitor is to inform the Court of the following:
  - Background and Overview of Restructuring Proceedings;
  - Kitco’s CCAA Plan of Compromise and Arrangement filed with the Sanction Motion (the “**Plan**”);
  - Monitor’s recommendations on the Plan.
8. The Monitor informs the Court that Richter has not conducted an audit or investigation of the information it was provided by the Petitioner and that accordingly no opinion is expressed regarding the accuracy, reliability or completeness of the information contained within this Report. The information contained herein is based on a review of unaudited financial information provided to the Monitor by the Petitioner’s management as well as discussions with the Petitioner’s management and employees.

## **BACKGROUND AND OVERVIEW OF RESTRUCTURING PROCEEDINGS**

9. Kitco is a privately owned company operating in the precious metals industry that sells and purchases a variety of precious metals including gold, silver, platinum and palladium.
10. In addition, Kitco operates a scrap metals department that purchases scrap gold and other precious metals from third parties. These metals are then sent to various refineries including the Royal Canadian Mint where they are processed and refined.
11. Kitco filed the NOI and subsequently filed its proceedings under the CCAA in response to notices of assessment issued by the Agence du Revenu du Quebec (“**ARQ**”) on its own behalf as well as on behalf of the Canada Revenue Agency (“**CRA**”) (together the “Agencies”) for approximately \$313 million in connection with what the Agencies have alleged were improperly claimed input tax credits for the period of January 2006 to August 2010 (the “**Notices**”).

12. Since then, the ARQ has also filed penal charges against both Kitco and its president.
13. Both Kitco and its president have always contested the assessments and penal charges.
14. Kitco has continued to operate its business since the NOI while it litigated the Agencies' assessments and the penal charges.
15. During these present CCAA proceedings, Kitco, with the approval of this Court and the consent of the Agencies, has paid or settled 100% of the claims filed with the Monitor pursuant to the Corrected Order Approving a Process to Solicit Claims and for the Establishment of a Claims Bar Date (the "**Claims Procedure Order**") dated April 20, 2012, with the exception of claims owed to parties related to Kitco (defined in the Plan as the "**Related Party Claims**") and the claims filed by the Agencies.
16. Consequently, as of the date of the Plan, there are no pre-filing debts which have been the subject of a Proof of claim that remain unpaid (excluding the claims of the Agencies and the Related Party Claims).

#### **CCAA PLAN OF COMPROMISE AND ARRANGEMENT**

17. The purpose of the Plan is to:
  - a) Acknowledge settlement agreements which have been entered into between Kitco, the Agencies and Mr. Kitner with respect to the Notices and other matters (the "**Settlement Agreements**");
  - b) Effect a full, final and irrevocable compromise, release, discharge, cancellation and bar of all Affected Claims which are essentially the claims of the Agencies and any claim which should have been the subject of a Proof of claim in accordance with the terms of the Claims Procedure Order but was not, and which is therefore barred under the terms of that Order;
  - c) Provide for the payment of the Related Party Claims; and
  - d) Effect the distributions and considerations to the Creditors as set forth in paragraph 4.1 of the Plan.

All defined terms in this paragraph 17 have the meaning ascribed thereto in the Plan.

18. The Monitor has been provided with a copy of the Settlement Agreements and has no comment with respect thereto as it affects only the Agencies which are parties to those agreements.

19. Furthermore, and as appears from the Sanction Motion, the Agencies have agreed to the terms of the Plan.
20. In respect of the meeting and vote process which is proposed by Kitco in the Sanction Motion, the Monitor believes that it is tailored to this unique and complex case and more importantly, that it complies with the CCAA. Furthermore, the only creditors that could vote on the Plan are the Agencies and the holders of the Related Party Claims and, as alleged in the Sanction Motion, they have all agreed to this meeting and voting process.

#### **MONITOR'S RECOMMENDATION ON THE PLAN**

21. The Monitor supports the Plan and recommends its sanction by the Court as i) it provides for a conclusion to these CCAA proceedings and the underlying litigation between Kitco and the Agencies and ii) the only creditors entitled to vote on the Plan are the Agencies and the Related Parties and, as alleged in the Sanction Motion, they have confirmed that they will be voting in favor of the Plan (or, in the case of the Related Parties, that they will abstain from voting on the Plan).

Respectfully submitted at Montreal, this 11<sup>th</sup> day of April, 2018.

**Richter Advisory Group Inc.**  
**(formerly RSM Richter Inc.)**  
Monitor



Andrew Adessky, CPA, CA, CIRP, LIT