

**RICHTER**

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Court File No.: \_\_\_\_\_

**IMERYS TALC AMERICA, INC., IMERYS TALC VERMONT, INC.  
AND IMERYS TALC CANADA INC.**

**REPORT OF RICHTER ADVISORY GROUP INC.,  
IN ITS CAPACITY AS PROPOSED INFORMATION OFFICER**

**February 15, 2019**

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Court File No. \_\_\_\_\_

**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 IMERYS TALC AMERICA, INC., IMERYS TALC VERMONT, INC. AND  
IMERYS TALC CANADA INC.**

**APPLICATION OF IMERYS TALC CANADA INC., UNDER SECTION 46 OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**REPORT OF THE PROPOSED INFORMATION OFFICER  
RICHTER ADVISORY GROUP INC.**

**FEBRUARY 15, 2019**

## I. INTRODUCTION

1. On February 13, 2019 (the “**Petition Date**”), Imerys Talc America, Inc. (“**ITA**”), Imerys Talc Vermont, Inc. (“**ITV**”) and Imerys Talc Canada Inc. (“**ITC**” and together with ITA and ITV, the “**Debtors**”), commenced voluntary reorganization proceedings (the “**Chapter 11 Proceedings**”) in the United States Bankruptcy Court for the District of Delaware (the “**US Court**”) by each filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. 101-1532 (the “**Bankruptcy Code**”).
2. Also on the Petition Date, the Debtors filed various motions for interim and/or final orders (the “**First Day Motions**”) and the orders granted by the US Court in respect thereof, the “**First Day Orders**”) in the Chapter 11 Proceedings to permit the Debtors to advance their reorganization. The First Day Orders included an order authorizing ITC to act as the foreign representative (in such capacity, the “**Foreign Representative**”) of the Debtors for the within proceedings (the “**Foreign Representative Order**”).
3. On February 14, 2019, the US Court granted the Foreign Representative Order and other First Day Orders (as described below).
4. On February 15, 2019, ITC, in its capacity as Foreign Representative, commenced an application before the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”) pursuant to Part IV of the *Companies’ Creditors Arrangement Act* (R.S.C. 1985, c. C-36, as amended) (the “**CCAA**”) for:
  - (a) an initial recognition order (the “**Initial Recognition Order**”), *inter alia*: (i) declaring that ITC is a “foreign representative” as defined in section 45 of the CCAA; (ii) declaring that the Chapter 11 Proceedings are recognized as a “foreign main proceeding” under the CCAA; and (iii) granting a stay of proceedings against the Debtors in Canada; and
  - (b) a supplemental order (the “**Supplemental Order**”), pursuant to section 49 of the CCAA, *inter alia*: (i) recognizing and giving full force and effect in Canada to certain of the First Day Orders; (ii) appointing Richter Advisory Group Inc. (“**Richter**” or the “**Proposed Information Officer**”) as the information officer (the “**Information Officer**”) in respect of these proceedings; (iii) staying any proceeding, rights or remedies against or in respect of the Debtors, the business and property of the Imerys, the directors and officers of the Debtors in Canada, and the Information Officer; (iv) restraining the right of any person or entity to, among other things, discontinue or terminate any supply of products or services required by the Debtors in Canada; and (v) granting a super-priority charge over the Debtors’ property in Canada in favour of the Proposed Information Officer and its counsel, as security for their professional fees and

disbursements incurred in respect of these proceedings, up to a maximum amount of \$200,000 (the “**Administration Charge**”).

5. Other than these proceedings (the “**CCAA Recognition Proceedings**”) and the Chapter 11 Proceedings, there are currently no other foreign proceedings in respect of the Debtors of which the Proposed Information Officer is aware.
6. The primary purpose of the Chapter 11 Proceedings is to confirm a plan of reorganization pursuant to the Bankruptcy Code that channels all present and future Talc Claims (as hereinafter defined) against the Debtors to a trust so that the Debtors can emerge from these restructuring proceedings free of historic talc-related liabilities.

## **II. PURPOSE OF REPORT**

7. The purpose of this report of the Proposed Information Officer (the “**Pre-Filing Report**”) is to assist the Canadian Court in considering the Foreign Representative’s request for the Initial Recognition Order and the Supplemental Order, and to provide the Canadian Court with certain background information concerning the Debtors, including:
  - (a) Richter’s qualifications to act as Information Officer;
  - (b) the Debtors’ business and operations, including its organizational structure;
  - (c) ITC, the sole Canadian incorporated member of the Debtors;
  - (d) the events leading up to the Chapter 11 Proceedings and the CCAA Recognition Proceedings;
  - (e) the Debtors’ centre of main interest;
  - (f) the First Day Orders of the US Court that the Debtors are seeking to have recognized pursuant to section 49 of the CCAA;
  - (g) the proposed Administration Charge; and
  - (h) the proposed initial activities of the Information Officer.

## **III. TERMS OF REFERENCE**

8. In preparing this Pre-Filing Report, the Proposed Information Officer has relied solely on information and documents provided by the Debtors and their advisors, including unaudited financial information, declarations and affidavits of the Debtors’ executives and other information provided in the Chapter 11 Proceedings (collectively, the “**Information**”). In accordance with industry practice, except as otherwise described in the Pre-

Filing Report, Richter has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided. However, Richter has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Auditing Standards (“GAAS”) pursuant to the *Chartered Professional Accountant of Canada Handbook* and, as such, Richter expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

9. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.
10. Capitalized terms not otherwise defined herein are as defined in the application materials, including the affidavit of Alexandra Picard, Chief Financial Officer of the Debtors, sworn on February 14, 2019 (the “**Picard Affidavit**”) and filed in support of the Foreign Representative’s application. This Pre-Filing Report should be read in conjunction with the Picard Affidavit, as certain information contained in the Picard Affidavit has not been included herein in order to avoid unnecessary duplication.

#### **IV. RICHTER’S QUALIFICATION TO ACT AS INFORMATION OFFICER**

11. Richter has significant experience in connection with proceedings under the CCAA, including acting as a Monitor or information officer in various cases.
12. Paul van Eyk and Pritesh Patel, the individuals at Richter with primary carriage of this matter, are certified Chartered Insolvency and Restructuring Professionals and Licensed Insolvency Trustees. Further, Messrs. van Eyk and Patel have acted in cross-border restructurings and CCAA matters of a similar nature in Canada.
13. Richter has consented to act as Information Officer should this Canadian Court approve the requested Supplemental Order.

#### **V. BACKGROUND**

##### **Corporate Overview and Organizational Structure**

14. The Debtors are part of a global group of over 360 affiliated entities (collectively, the “**Imerys Group**”) that are directly and indirectly owned by Imerys S.A. (the “**Parent**”). The Parent, which was founded in 1880, is a French multinational corporation which specializes in the production and processing of industrial minerals. It is headquartered in Paris, France and is a publicly-traded company listed on the Euronext Paris exchange under the ticker symbol “NK”. The Proposed Information Officer understands that other than the Debtors, none of the other entities in the Imerys Group are seeking protection under any insolvency law.

15. The Imerys Group is active in 50 countries and owns an extensive range of mineral resources, which secures a large proportion of its supplies and production costs. As noted in its 2017 Annual Report, the Imerys Group operates over 100 mines throughout the world and extracts and processes over 30 different minerals or families of minerals. Further, the Imerys Group reported consolidated revenue of approximately €4.6 billion and operating income of €648 million in fiscal 2017.
16. On November 26, 2018, the Imerys Group announced it would reorganize its organization around the following two key business segments:
- (a) **Performance Minerals** – this segment is comprised of three geographic business areas, including the Europe Middle East Africa (EMEA) area, the Americas area, and the Asia Pacific (APAC) area, which serve the plastics, paints & coatings, filtration, ceramics, renewable energy, and paper & board markets.
  - (b) **High Temperature Materials & Solutions** – this segment serves the refractory solutions, foundry, metal flow, refractory materials, abrasives and building chemistry markets across all geographies.
17. The Debtors are part of the Performance Minerals segment, and are engaged in the mining, processing and distribution of talc, or talcum, a naturally occurring mineral that is comprised of the elements magnesium, silicon, and oxygen. Talc, the softest known mineral in the world, is mined from talc deposits, which result from the transformation of metamorphic rocks under the effect of heated waters carrying one or several of the components needed to form the mineral. Talc is used in many industries, including paper making, plastic, paint and coatings, rubber, food, electric cable, pharmaceuticals, cosmetics, and ceramics.
18. The Debtors' talc operations in the United States are operated by ITA and ITV and include talc mines and plants located in Montana, Vermont, and Texas. In Canada, the Debtors' talc business is operated by ITC, which has a registered office in Montreal, Quebec (registered office is that of its counsel in Canada), and mines and plants located in Timmins and Penhorwood, Ontario. Details of the Debtors, their incorporating jurisdictions and the location of their registered head offices are as follows:

Debtor	Jurisdiction of Organization	Registered Head Office
Imerys Talc Americas, Inc.	Delaware	San Jose, California
Imerys Talc Vermont, Inc.	Vermont	San Jose, California
Imerys Talc Canada Inc.	Canada (CBCA)	Montreal, Quebec

19. The Parent acquired the Debtors and their talc mining operations in 2011. The Debtors' talc operations were previously owned by various entities, including Johnson & Johnson ("J&J").
20. The Debtors are the market leader with respect to talc production in North America, representing nearly 50% of the market. In 2018, the Debtors' North American talc sales were to the following sectors: polymers (31%); paper (18%); paints and coatings (16%); specialties (16%); rubber (7%); personal care/cosmetics (5%); building materials (4%); and others (3%). The Debtors' top customers in the personal care sector are manufacturers of baby powder (50% of personal care/cosmetics sales), makeup (30% of personal care/cosmetics sales), and soap (20% of personal care/cosmetics sales). The Debtors are the primary supplier of cosmetic talc to J&J in the United States.

### **Capital Structure – Debt Obligations**

21. The Debtors are not party to any secured financing arrangements or any third party credit facilities. The Debtors' primary source of cash is revenue generated from the mining, production, and sale of their talc products.
22. The Debtors are also obligated to post bonds to cover the costs of reclamation of the land on which their mines are located, as well as certain performance and customs bonds. As of the Petition Date, the Debtors had 7 bonds posted on behalf of ITA, 1 bond posted on behalf of ITV, and 2 bonds posted on behalf of ITC. The premiums for each of the ITC bonds are paid by ITC.

### **Overview of ITC's Business**

23. ITC is an indirect wholly-owned subsidiary of the Parent incorporated under the Canadian Business Corporations Act and continued from Quebec's Business Corporations Act on September 13, 2011. Although ITC's registered office is located in Montreal, Quebec, the Proposed Information Officer understands that all material decisions regarding ITC and its business operations are made by employees of ITA or Imerys USA, Inc. ("**Imerys USA**"), an affiliate of the Debtors not subject to the Chapter 11 Proceedings, located in the United States.
24. ITC mines talc in Ontario and exports it directly to its customers in the United States. In 2018, ITC distributed approximately 81,400 metric tons (MT) of talc into the United States.
25. As noted, ITC's operations are located in Ontario and include a talc mine and micronizing mill in Timmins, a mine and beneficiation plant in Penhorwood, and a distribution center in Foleyet. At the Timmins location, ITC owns a small parcel of land where the mill and an office building is located, but the City of Timmins owns the majority of the surface rights to this land. At the Penhorwood location, ITC has a land lease, an aggregate permit and a

patent mine holding. ITC also leases a fourth site in Mississauga, which is the warehouse used for storing finished products.

26. ITC also maintains responsibility of the closed Broughton talc mine located in the Sherbrooke region of Quebec. Another inactive mine, Marcoux talc mine, is located in Mansonville, Quebec. The Marcoux mine has been closed since 2010, but ITC continues to own surface rights to the land and buildings on the property.

### **Financial Position of ITC**

27. The Proposed Information Officer understands that the Debtors, including ITC, do not independently report their financial results. The Debtors financial reporting is included as part of consolidated reporting for the Imerys Group.
28. As at December 31, 2018 (the date of the most recent internal unaudited financial information for ITC), ITC had assets with a book value of approximately \$40.3 million and total liabilities of approximately \$16.2 million.
29. As at the Petition Date, the Proposed Information Officer understands ITC had unsecured trade payables of approximately USD\$4.7 million (or CAD\$6.2 million), the majority of which relate to amounts accrued for goods or services rendered but not invoiced as at the Petition Date.
30. As noted, ITC is not party to any secured financing arrangements or any third party credit facilities, and funds its operations through revenue generated from operations. Further, ITC has had access to unsecured funding on an as-needed basis from the Parent on account of ITC's intercompany receivable with the Parent, which as at the Petition Date was approximately USD\$3.0 million.
31. As at the Petition Date, the Proposed Information Officer understands that ITC had approximately USD\$3.4 million (or CAD\$4.5 million) of cash on hand.

### **Employees of ITC**

32. As at the Petition Date, ITC had 67 employees, all of whom are located at its operations in Ontario. At the Timmins facility, 23 of the employees are organized under the United Steel Workers of America and its Local 7580-01, whose collective labour agreement expires on June 30, 2021. At the Penhorwood/Foley facilities, 26 of the employees are organized under the United Steel Workers of America and its Local 7580-02, whose collective labour agreement expires on June 30, 2020. ITC also has 18 non-unionized employees.
33. ITC maintains separate defined benefit pension plans for its salaried personnel (the "**Salaried Plan**") and its union personnel (the "**Union Plan**"). According to an actuarial valuation prepared as of December 31, 2017, the Union

Plan had assets of approximately \$4.4 million and liabilities on a wind-up basis of \$5.0 million, and the Salaried Plan had assets of \$9.8 million and liabilities on a wind-up basis of \$10.5 million. Neither plan has been wound up and the actuarial valuation report indicates that no special payments are currently required to be paid to either plan. ITC is the administrator of the Union Plan and the Salaried Plan.

34. ITC also maintains compensation and benefits programs for its employees. As noted in the Picard Affidavit, ITC intends to make all payments related to employee obligations, including required pension payments to the Union Plan and the Salaried Plan, in the ordinary course during these proceedings. The Wages Order (as hereinafter defined) provides for the ongoing payment of wages and benefits to all employees of ITC.

### **ITC's Cash Management System**

35. ITC uses a separate cash management system from the other Debtors to collect, transfer and disburse funds generated by ITC. ITC maintains 2 bank accounts in Canada (Royal Bank of Canada), one denominated in Canadian dollars and one denominated in U.S. dollars (together, the "**Canadian Operations Accounts**").
36. Notwithstanding that the Canadian Operations Accounts largely operate as a self-contained system, the cash management system of ITC, including control of the Canadian Operations Accounts, is managed by ITA personnel located in the United States. The Debtors have initiated plans to transfer the cheque issuing process to each Debtor, including ITC, which will allow each Debtor to have greater control over its cash and disbursements during these proceedings. While ITC will have the ability to print and issue cheques, Imerys USA and ITA employees in the United States will still have approval on payments.
37. ITC operates under a separate cash management system from the other Debtors. Cash generated from operations is deposited into the Canadian Operations Accounts. Historically, excess cash generated by ITC's operations was periodically swept to the Parent at the discretion of ITC or at the request of Parent (with ITC's approval). On rare occasions, when there was a cash deficit at ITC, the Parent would deposit funds directly to ITC.
38. All transfers of cash to and from the Parent were recorded as intercompany transfers in ITC's books and records on a monthly basis. As noted, ITC was owed a receivable from the Parent in the amount of USD\$3.0 million as at the Petition Date on account of intercompany transfers.
39. Prior to the commencement of the Chapter 11 Proceedings, the Proposed Information Officer understands that the Parent ceased the practice of sweeping excess cash from the Canadian Operations Accounts such that all funds generated from ITC's operations throughout these proceedings will remain available to ITC.

## Environmental Claims against ITC

40. The Proposed Information Officer understands both the Timmins and the Penhorwood facilities are considered low risk from an environmental liability point of view based on the most recent environmental site assessment. Regular environmental monitoring is in place and these mines satisfy all the conditions for permits and approvals for their operation.
41. For the Broughton and Marcoux inactive mines, ITC has also conducted reclamation activities. The Marcoux mine was reclaimed and subsequently closed in 2010 and the reclamation for the Broughton mine is set to begin in February 2019 for a period of 10 months.
42. As noted above, the Debtors have posted 2 bonds on behalf of ITC to cover the costs of obligations related to the reclamation of the land on which their mines are located, as well as certain performance, license/permit, and customs and border protection obligations. The Proposed Information Officer understands the Debtors intend to continue to comply with all of their environmental obligations through the course of these proceedings.

## VI. EVENTS LEADING TO THE CHAPTER 11 PROCEEDINGS AND CCAA RECOGNITION PROCEEDINGS

43. The Proposed Information Officer understands that thousands of legal actions have been commenced in the United States against J&J for alleged possible hazards related to the use of J&J's baby powder products, which contain cosmetic talc. As the Debtors are J&J's primary supplier of cosmetic talc, the Debtors have routinely been named as co-defendants in these lawsuits (the "**Talc Claims**"). Plaintiffs have asserted two types of Talc Claims: (i) claims alleging ovarian cancer or other gynecological diseases arising as a result of talc exposure; and (ii) claims alleging respiratory cancers or other asbestos-related diseases arising as a result of talc exposure.
44. As noted above and in the Picard Affidavit, ITA or ITV is named as a defendant in over 14,000 lawsuits as at the Petition Date. While no claims have been asserted against ITC in Canada or the United States, the Debtors believe it is only a matter of time as the majority of the talc produced by ITC is sold to customers in the United States.
45. The Debtors believe the Talc Claims are without merit and have mounted vigorous defenses against the Talc Claims. To date, the Debtors have relied on proceeds from various insurance policies to fund their defense and any settlement costs. Further, one or more of the Debtors assert certain indemnity rights against, as well as seek proceeds from various insurance policies issued to, J&J or one of its affiliates for the Talc Claims. However, the Debtors have determined that it is no longer feasible for them to continue to litigate the Talc Claims. The Debtors, in consultation with their insurance coverage counsel and upon analyzing their various insurance policies,

determined that currently available insurance coverage for certain cosmetic talc-related litigation may be exhausted in the first half of 2019.

46. In June 2018, the Debtors retained Latham & Watkins LLP to assist the Debtors in evaluating their strategic options with respect to the Talc Claims. The Debtors, in consultation with their advisors, ultimately determined that continued litigation of the Talc Claims was not a viable option due in part to:
  - (a) the significant increase in settlement demands with respect to the Talc Claims in the wake of a multi-billion dollar verdict rendered against J&J and the ensuing media focus on talc;
  - (b) the increased unwillingness of the Debtors' insurers and third-party contractual indemnitors to provide coverage for the Debtors' mounting defense costs and potential liability exposure; and,
  - (c) recent constructive discussions with a proposed future claims representative, as discussed further below.
47. While the Debtors dispute all liability with respect to the Talc Claims, the Debtors concluded that the Chapter 11 Proceedings would be the optimal path for resolving these issues and shifted their focus to preparing for the filing.
48. As noted above, the Debtors' primary goal of the Chapter 11 Proceedings and the CCAA Recognition Proceedings is to confirm a plan of reorganization pursuant to the Bankruptcy Code that channels all present and future Talc Claims against the Debtors to a funded trust that will pay the Talc Claims, and allow the Debtors to emerge from these restructuring proceedings free of historic talc-related liabilities.
49. In this regard, the Debtors retained James L. Patton of Young, Conaway, Stargatt & Taylor, LLP on September 25, 2018 to serve as a proposed future claims representative (the "**Proposed FCR**") to represent the interests of individuals who may in the future assert Talc Claims against the Debtors. As part of these proceedings, the Debtors intend to negotiate an agreement with the Proposed FCR and representatives of the plaintiffs for the current Talc Claims, which agreement will serve as the basis for a court- approved plan of reorganization in the first half of 2020.
50. Further details on the Talc Claims, the Debtors insurance coverage and the Proposed FCR can be found in the Declaration of Alexandra Picard filed with the US Court in support of the First Day Motions, and attached as Exhibit "A" to the Picard Affidavit.

## VII. CENTRE OF MAIN INTEREST

51. Although ITC's registered office is in Montreal, Quebec, the Proposed Information Officer understands:

- (a) all of ITC's treasury and financial decisions are made by ITA and Imerys USA personnel located in the United States;
- (b) ITC relies upon ITA personnel and resources located in the United States for both its strategic business and day-to-day operations, including decisions regarding capital expenditures. The division manager of North American talc operations is an employee of ITA and is located in the United States;
- (c) ITC does not have any human resources personnel. Human resource matters for ITC are managed by non-Debtor personnel located in the United States;
- (d) ITC, along with the other Debtors, receives certain shared services, including corporate and administrative functions, from a non-Debtor affiliate located in the United States, resulting in efficiencies and reduced costs to ITC;
- (e) material decisions regarding ITC's business and its operations are made or approved by senior leadership assigned to offices in Paris, France or in the United States. In particular, decisions regarding pricing and business development are made and approved by personnel in the United States or Paris, France.
- (f) all of ITC's accounts payable and accounts receivable are managed by the Imerys Group personnel located in the United States; and
- (g) three out of four of ITC's directors are residents of the United States.

52. Based on the foregoing, the Proposed Information Officer believes it is reasonable to conclude that the Debtors' (including ITC) "centre of main interest" is in the United States.

## VIII. FIRST DAY ORDERS OF THE US COURT FOR WHICH RECOGNITION IS SOUGHT

53. The Foreign Representative is seeking recognition of the following First Day Orders that were entered by the US Court in the Chapter 11 Proceedings on February 14, 2019, each of which is attached as an Exhibit to the Picard Affidavit:

- (a) an order directing the joint administration of the Chapter 11 cases of the Debtors in the Chapter 11 Proceedings (the "**Joint Administration Order**");

- (b) an order recognizing ITC as the foreign representative of the Debtors in Canada (the “**Foreign Representative Order**”);
- (c) an order appointing Prime Clerk LLC (“**Prime Clerk**”) as claims and noticing agent in the Chapter 11 Proceedings (the “**Claims and Noticing Agent Order**”). Pursuant to the Claims Agent Order, Prime Clerk is responsible for the distribution of notices and the maintenance, processing and docketing of proofs of claim, if any, filed in the Chapter 11 Proceedings. However, Prime Clerk does not supplant or replace the proposed role of Richter as Information Officer in these CCAA Recognition Proceedings;
- (d) an order confirming the enforcement and applicability of the protections pursuant to sections 362, 365, 525 and 541(c) of the Bankruptcy Code (the “**Automatic Stay Order**”). The Automatic Stay Order enforced and restated the automatic stay provisions of the US Code and is appropriate and necessary for the Debtors to continue operations while it pursues its restructuring efforts;
- (e) an interim order (i) authorizing, but not directing, the Debtors to pay prepetition obligations owed to (a) shippers, up to USD\$1.9 million, on an interim basis, (b) lien claimants, up to USD\$1.0 million, on an interim basis, (c) royalty interest owners, up to USD\$0.2 million, on an interim basis, and (d) claimants with claims arising under Section 503(b)(9) of the US code, up to USD\$0.3 million, on an interim basis; and (ii) confirming the administrative expense priority status of outstanding orders for goods not delivered until on or after the filing date and authorizing, but not directing, the Debtors to pay prepetition amounts related to such outstanding orders (the “**Lien Claimants Order**”);
- (f) an interim order (i) authorizing, but not directing, the Debtors to pay prepetition obligations owed to certain critical vendors, up to USD\$0.5 million, on an interim basis; and (ii) authorizing financial institutions to honour and process related cheques and transfers (the “**Critical Vendors Order**”);
- (g) an interim order (i) authorizing, but not directing, the Debtors to pay prepetition obligations owed to foreign vendors, up to USD\$0.9 million, on an interim basis; and (ii) authorizing financial institutions to honour and process related cheques and transfers (the “**Foreign Vendors Order**”);
- (h) an interim order (i) authorizing, but not directing, the Debtors, in its sole discretion, to pay Taxes and Fees, whether arising prior to, on or after the commencement of the Chapter 11 Proceedings, up to USD\$0.715 million, on an interim basis; and (ii) authorizing financial institutions to honour and process related cheques and transfers (the “**Taxes Order**”);
- (i) an interim order (i) authorizing, but not directing, the Debtors to (a) pay prepetition insurance and bonding obligations, up to an aggregate amount of USD\$0.7 million, on an interim basis, (b) maintain

their postpetition insurance coverage, and (c) maintain their bonding program; and (ii) authorizing financial institutions to honour and process related cheques and transfers (the “**Insurance and Bonding Order**”);

- (j) an interim order (i) authorizing the Debtors to pay certain prepetition workforce obligations, including compensation, expense reimbursements, benefits, and related obligations, up to USD\$1.914 million, on an interim basis; (ii) confirming the right to continue workforce programs on a postpetition basis; (iii) authorizing payment of withholding and payroll-related taxes; (iv) authorizing payment of prepetition claims owing to administrators of, or third party providers under, workforce programs; and (v) authorizing financial institutions to honour and process related cheques and transfers (the “**Workplace Obligations Order**”);
- (k) an interim order (i) prohibiting the Debtors’ utility service providers from altering or discontinuing service; (ii) approving an adequate assurance deposit as adequate assurance of postpetition payment to the utilities; and (iii) establishing procedures for resolving any subsequent requests by the utilities for additional adequate assurance of payment (the “**Utilities Order**”);
- (l) an interim order (i) authorizing the Debtors to honour prepetition obligations owed to customers and to otherwise continue customer programs, up to USD\$0.6 million, on an interim basis; and (ii) authorizing financial institutions to honour and process related cheques and transfers (the “**Customer Programs Order**”);
- (m) an interim order (i) authorizing, but not directing, the Debtors to maintain their existing cash management system (the “**Cash Management System**”), including maintenance of existing bank accounts, cheques and business forms; (ii) authorizing continuation of existing deposit practices; (iii) approving the continuation of certain ordinary course intercompany transactions, up to USD\$1.35 million, on an interim basis; and (iv) granting superpriority administrative expense status to certain postpetition intercompany claims (the “**Cash Management Order**”); and
- (n) an interim order (i) authorizing the filing of (a) a consolidated master list of creditors, (b) a consolidated list of the top thirty law firms representing claimants in the Talc Claims, and (c) a consolidated list of the Debtors’ thirty creditors holding the largest unsecured claims (other than claimants in the Talc Claims); and (ii) approving certain notice procedures for claimants in the Talc Claims (the “**Limit Notice and Approve Notice Order**”).

54. The Proposed Information Officer understands that Canadian parties/creditors were provided for in the various First Day Orders (critical suppliers, taxing authorities, utilities providers, employees, etc) and the corresponding ITC budgets/cashflows.
55. Further information on the First Day Orders can be found in the Picard Affidavit. Certain of the First Day Orders that may be relevant to Canadian stakeholders are addressed further below.

### **Foreign Representative Order**

56. The Foreign Representative Order authorizes ITC to act as the Foreign Representative of the Debtors to, among other things, seek recognition of the Chapter 11 Proceedings in Canada. Pursuant to the Foreign Representative Order, the US Court requested the aid and assistance of the Canadian Court to recognize the Chapter 11 Proceedings as a “foreign main proceeding” and ITC as a “foreign representative” under the CCAA.

### **Taxes Order**

57. The Taxes Order authorizes the Debtors to pay certain taxes whether arising prior to, on or after the Petition Date. In the ordinary course of the Debtors’ operations it collects, withholds and incurs various taxes, including income taxes, sales and use taxes, employment and wage-related taxes, business taxes, property taxes and other taxes.
58. The Taxes Order applies to Canadian taxation authorities, including with respect to sales taxes. The Taxes Order was made on an interim basis and will be subject to a further hearing and final order.

### **Workforce Obligations Order**

59. The Workforce Obligations Order authorizes the Debtors to, among other things, pay prepetition wages, pension contributions and other amounts owed to its employees, continue all employee benefit programs and to pay all withholding obligations as such obligations are due.
60. The Workforce Obligations Order authorized Debtors to continue to pay ITC’s employees in the ordinary course. Pursuant to the Workforce Obligations Order, any amounts owed to ITC’s employees, including amounts for vacation pay, expenses, and benefits are expected to be paid in the ordinary course. The Workforce Obligations Order was made on an interim basis and will be subject to a further hearing and final order.

## **Utilities Order**

61. The Utilities Order approved adequate protection assurance for certain utilities providers, established procedures for resolving claims by utility providers and prohibited utility providers from terminating service solely on the basis the Debtors commenced the Chapter 11 Proceedings.
62. The Utilities Order includes certain Canadian utility providers. The Utilities Order was made on an interim basis and will be subject to a further hearing and final order.

## **Cash Management Order**

63. The Cash Management Order authorizes the Debtors to continue to operate its existing Cash Management System.
64. Subsequent to the Petition Date, ITC will continue the historical practice of transferring funds to the Parent and other affiliates in the Imerys Group on account of (i) fees and expenses arising from intercompany transactions for goods and/or services provided by the Parent or other affiliates; and (ii) post-petition back office services provided by certain non-Debtor affiliates, as necessary for ITC's ongoing operations (the "**Permitted Intercompany Transactions**").
65. Other than the Permitted Intercompany Transactions, ITC will not transfer excess funds to the Parent or to other affiliates in the Imerys Group on account of any prepetition intercompany transactions, unless otherwise ordered by the US Court.

## **IX. PROPOSED CHARGES**

66. The draft Supplemental Order contemplates an Administration Charge in respect of the fees and disbursements of the Information Officer and its counsel in an amount not to exceed \$200,000. The Administration Charge is required to protect the Information Officer and its counsel in the event that their reasonable fees and expenses are unpaid. The Proposed Information Officer considers the amount of the proposed Administration Charge to be reasonable and appropriate in the circumstances. The Administration Charge would rank in priority to any other security interests, trust, liens, charges and encumbrances on the Debtors' property in Canada.

## **X. PROPOSED INITIAL ACTIVITIES OF THE INFORMATION OFFICER**

67. The draft Supplemental Order provides that following its appointment, the initial activities of the Information Officer will include, *inter alia*:

- (a) publishing a notice of the Chapter 11 Proceedings and the CCAA Recognition Proceedings in the Globe and Mail, National Edition, as soon as practical following date of the Supplemental Order, if granted, once a week for two consecutive weeks (as required by the Foreign Representative pursuant to subsection 53(b) of the CCAA);
- (b) providing such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;
- (c) reporting to the Canadian Court with respect to the status of these proceedings and the Chapter 11 Proceedings at least once every three months (or other such times and intervals as the Information Officer deems appropriate), which reporting may include information relating to the property and the business of the Debtors or such other matters as may be relevant to these proceedings; and
- (d) establishing a website at <https://www.richter.ca/insolvencycase/imerys-talc-canada-inc/> to make available copies of the Orders granted in the CCAA Recognition Proceedings, reports of the Information Officer, motion materials, and other materials as the Canadian Court may order or the Information Officer deems appropriate.

## **XI. PROPOSED INFORMATION OFFICER'S RECOMMENDATIONS**

68. The Proposed Information Officer is satisfied that the terms of the Initial Recognition Order relating to its proposed role as Information Officer are fair and reasonable, and consistent with the terms of appointments of information officers in other recognition proceedings under the CCAA.

69. Accordingly, the Proposed Information Officer respectfully recommends that the Canadian Court grant the relief requested by the Debtors in the Initial Recognition Order and the Supplemental Order.

All of which is respectfully submitted on this 15<sup>th</sup> day of February, 2019.

**Richter Advisory Group Inc.**  
**in its capacity as Proposed Information Officer of**  
**Imerys Talc America, Inc., Imerys Talc Vermont, Inc. and Imerys Talc Canada Inc.**  
**and not in its personal capacity**

Per:



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**Paul van Eyk,**  
**CPA, CA-IFA, CIRP, LIT, Fellow of INSOL**  
Senior Vice President



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**Pritesh Patel,**  
**MBA, CFA, CIRP, LIT**  
Senior Vice President