

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

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

---

**IN THE MATTER OF THE PLAN OF  
ARRANGEMENT WITH RESPECT TO:**

**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**

---

**NINETEENTH REPORT OF THE MONITOR  
ON THE STATE OF PETITIONER'S FINANCIAL AFFAIRS  
APRIL 14, 2014**

---

**INTRODUCTION**

1. On June 8, 2011, Kitco Metals Inc. (the "Petitioner" or "Kitco") filed a Notice of Intention to Make a Proposal 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 ("Order") by the Honourable Martin Castonguay, J.S.C., Richter was further appointed Interim Receiver to Kitco.
2. On July 5, 2011, Kitco filed with the Quebec Superior Court 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. issued an initial order (the "Initial Order"), which *inter alia* appointed Richter as Monitor (the "Monitor") with certain

duties including duties similar to those that were originally provided for in the Interim Receiver Order.

3. On July 26, 2011, the Petitioner filed a motion requesting an extension of the stay of proceedings until February 29, 2012, in order to allow the Petitioner additional time to litigate and/or negotiate with Agence du Revenu du Québec (“ARQ”) regarding its dispute. The Monitor filed its First Report on July 25, 2011 in support of the motion for an extension. On July 27, 2011, the Court granted an order extending the stay of proceedings until October 18, 2011.
4. On September 1, 2011, the Monitor filed its Second Report providing an update to the Court and creditors with respect to the operations of the Petitioner and the activities of the Monitor.
5. On October 3, 2011, the Monitor filed its Third Report providing an update to the Court and creditors with respect to the operations of the Petitioner and the activities of the Monitor.
6. On October 14, 2011, the Petitioner filed a motion requesting an extension of the stay of proceedings until April 18, 2012, in order to allow the Petitioner additional time to litigate and/or negotiate with ARQ regarding its dispute. The Monitor filed its Fourth Report on October 14, 2011, in support of the motion for an extension. On October 18, 2011, the Court granted the requested extension.
7. On November 16, 2011, the Monitor filed its Fifth Report providing an update to the Court and creditors with respect to the operations of the Petitioner and the activities of the Monitor.
8. On December 21, 2011, the Monitor filed its Sixth Report providing an update to the Court and creditors with respect to the operations of the Petitioner and the activities of the Monitor.
9. On January 21, 2012, the Monitor filed its Seventh Report providing an update to the Court and creditors with respect to the operations of the Petitioner and the activities of the Monitor.
10. On March 8, 2012, the Monitor filed its Eighth Report providing an update to the Court and creditors with respect to the operations of the Petitioner and the activities of the Monitor.
11. On April 16, 2012, the Petitioner filed a motion requesting an extension of the stay of proceedings until October 17, 2012, in order to allow the Petitioner additional time to litigate and/or negotiate with ARQ regarding its dispute. In addition, the Petitioner requested various modifications to Paragraph 30 of the Initial Order, including that the Monitor only be required to monitor the Petitioner’s cash flow on a monthly (vs. weekly) basis and file a report in Court on a quarterly (vs. monthly) basis to report on various matters, the whole as more fully set out in the Initial Order. The Monitor filed its Ninth Report on April 16, 2012, in support of the motion for an extension and the

modifications to the terms of the Initial Order. On April 18, 2012, the Court granted the requested extension and modifications to the terms of the Initial Order.

12. On April 16, 2012, the Petitioner filed a motion requesting the establishment of a process to solicit creditors' proof of claims with a claims bar date of June 22, 2012, at 5:00 p.m. Montreal time. On April 18, 2012, the Court granted that motion.
13. On September 7, 2012, the Monitor filed its Tenth Report providing an update to the Court and creditors with respect to the operations of the Petitioner and the activities of the Monitor.
14. On October 15, 2012, the Petitioner filed a motion requesting an extension of the stay of proceedings until October 17, 2013, in order to allow the Petitioner additional time to litigate and/or negotiate with ARQ regarding its dispute. In addition, the motion contained a request to confirm the Petitioner's right to solicit offers of financing, lease or sale with respect to the commercial and residential condo units which Kitco is committed to purchase in the real estate project known as Altitude as well as to authorize the payment of certain expenditures in relation thereto. The Monitor filed its Eleventh Report on October 12, 2012, in support of the motion for an extension. On October 15, 2012, the Court granted an order extending the stay of proceedings until June 26, 2013, and approved the various additional aforementioned requests.
15. On February 27, 2013, the Monitor filed its Twelfth Report providing an update to the Court and creditors with respect to the operations of the Petitioner and the activities of the Monitor.
16. On May 10, 2013, the Monitor filed its Thirteenth Report providing an update to the Court and creditors with respect to the operations of the Petitioner and the activities of the Monitor.
17. On June 19, 2013, the Petitioner filed a motion requesting an extension of the stay of proceedings until June 26, 2014, in order to allow the Petitioner additional time to litigate and/or negotiate with ARQ regarding its dispute. The Monitor filed its Fourteenth Report on June 19, 2013, in support of the motion for an extension. On June 25, 2013, the Court granted an order extending the stay of proceedings until March 14, 2014.
18. On June 20, 2013, the Petitioner filed a motion requesting the authorization to sell and the approval of the sale of its Industrial Division to 8547335 Canada Inc. (the "Sale"), the whole as more fully set out in the "*Asset Purchase Agreement*" (the "APA"), as well as in certain other related Transaction Agreements. In addition, the motion requested the issuance of a vesting order in connection with the transactions contemplated in the APA. The Monitor filed its Fifteenth Report on June 20, 2013, in support of the motion for the Sale. On June 28, 2013, the Court granted a vesting order authorizing and approving the execution of the Sale and of the Transaction Agreements, which

included various other conditions, notably the obligation for the sale proceeds to be remitted to the attorney for the Monitor, Woods LLP, and held in trust.

19. On June 20, 2013, the Petitioner filed a “Motion to enforce the initial order, to declare illegal certain rights of set-off exercised by the Agence du Revenu du Québec and the Attorney General of Canada, to declare inapplicable, invalid, inoperative, unconstitutional or of no force and effect certain provisions of certain tax statutes of the province of Quebec and of Canada and to condemn L’Agence du Revenu du Québec and the Attorney General of Canada to pay to the Petitioner the input tax credits and the input tax refunds to which it is entitled” (“Set-off Motion”). This Set-off Motion has not yet been heard.
20. On October 22, 2013, the Monitor filed its Sixteenth Report providing an update to the Court and creditors with respect to the operations of the Petitioner and the activities of the Monitor for the quarter ended August 31, 2013.
21. On February 4, 2014, the Monitor filed its Seventeenth Report providing an update to the Court and creditors with respect to the operations of the Petitioner and the activities of the Monitor for the quarter ended November 30, 2013.
22. On March 11, 2014, the Petitioner filed a motion requesting an extension of the stay of proceedings until April 30, 2015, in order to allow the Petitioner additional time to litigate and/or negotiate with ARQ regarding its dispute (“Extension Motion”). In accordance with instructions from the Court, the Extension Motion and this Eighteenth Report were served on all creditors who have filed a proof of claim with the Monitor by e-mail or fax. On March 13, 2014, the Court granted an order extending the stay of proceedings until August 21, 2014.
23. The Extension Motion, also requested the authorization i) to complete the purchase of various condominium units in respect of the Altitude project and ii) to pay an interim distribution to its creditors, as more fully described below. On March 13, 2014, the Court authorized the Petitioner to complete the purchase of the various condominium units subject to various terms and conditions and the hearing with respect to an interim distribution was postponed to April 16, 2014.
24. All amounts reflected in this report are stated in Canadian currency unless otherwise noted.
25. The purpose of this Nineteenth Report of the Monitor is to inform the Court of the following:
  - Payment to Trade Creditors;
  - Update Regarding the Altitude Real Estate Transactions;
  - Request for the Payment of a Partial Dividend.

26. We inform the Court that the Monitor 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.

## PAYMENT TO TRADE CREDITORS

27. In conjunction with the filing of the Extension Motion, the Petitioner requested the approval of the Court for the payment of a partial dividend to all of its trade creditors to the exclusion to any claims that are the subject of a dispute with the Agence du Revenu du Quebec ("ARQ") and the Canada Revenue Agency ("CRA") (jointly "Agencies").

28. The proposed dividend payment approximates \$2.2 million based on the following payment schedule:

<b>Kitco Metals Inc. Proposed Dividend Payment</b>				
Proven Claim Amount	# Claims	Claims Amount	Proposed Payment	Proposed Dividend
Lesser than \$20,000	31	\$180,000	100%	\$180,000
Between \$20,000 and \$100,000	5	191,000	50%	96,000
Greater than \$100,000	2	5,471,000	35%	1,915,000
	<u>38</u>	<u>\$5,842,000</u>		<u>\$2,191,000</u>
Related Party claims	3	<u>\$10,446,000</u>	0%	-
ARQ and CRA claims	3	<u>\$286,382,000</u>	0%	-

29. The proposed payments of 50% and 35% to creditors with claims over \$20,000 and \$100,000 respectively represent partial dividends only.

30. The Agencies' agreement and consent to the proposed partial dividend payment is conditional on various matters to be acknowledged in the order to be issued, including:

- The consent does not constitute a renunciation by either ARQ or CRA as to the presumed validity of their assessments under articles 299(3) and (4) of the *Loi sur la taxe d'accise* and article 95 of the *Loi sur l'administration fiscale*;

- The consent does not constitute an undertaking by the Agencies to not contest any future partial dividend or any other related request by Petitioner;
- The order to be issued will not constitute a plan of arrangement that could bind the Agencies regarding the settlement of their claims and does not constitute a novation of the Agencies debts.

31. In order to preserve liquidity, Kitco will only proceed with the partial dividend payment of \$2.2 million if it is permitted to use the \$1.7 million which is currently held in trust by Woods LLP, counsel to the Monitor. These funds arose from the sale of the Petitioner's Platinum division in July 2013.

#### **UPDATE REGARDING THE ALTITUDE REAL ESTATE TRANSACTIONS**

32. Further to the Order for a Sixth Extension of the Initial Order and the other Orders issued by this Court on March 13, 2014, a closing was held on March 26, 2014 ("Closing") between Petitioner and Altitude Montreal Inc. ("Altitude"), pursuant to which Petitioner completed the transaction for the purchase of various condominium units, as more fully discussed in the Monitor's 18<sup>th</sup> Report to Court.

33. As noted in the Extension Motion and in the Monitor's Eighteenth Report, in order to preserve liquidity, Kitco proposed to partially fund the \$4.8 million it had to pay on closing with a \$3 million reimbursement from its parent company, 3609979 Canada Inc. ("360") on account of an intercompany loan owed to Kitco by 360.

34. As the Monitor informed the Court, 360 was able to provide this funding as it was winding up an investment it had in a Chinese subsidiary and was repatriating all available cash. While the Monitor had understood that this cash would be available at closing, the Monitor has been informed following the Closing that those funds had not yet been repatriated to Canada and accordingly, the entire \$4.8 million was funded from cash on hand. Subsequent to the Closing, 360 received and transferred US\$1.8 million (approximately CDN\$2 million) to Kitco. Kitco has advised the Monitor that it expects the remaining CDN\$1 million to be received by the end of May, 2014.

35. The larger than expected use of cash on hand to fund the transaction has not had any impact on day to day operations.

#### **REQUEST FOR THE PAYMENT OF A PARTIAL DIVIDEND**

36. The Monitor supports the payment of a partial dividend which will have the impact of paying the majority (in number) of Kitco's trade creditors in full and paying other trade creditors a substantial dividend in the context of a restructuring that has been underway for close to three years. Further,

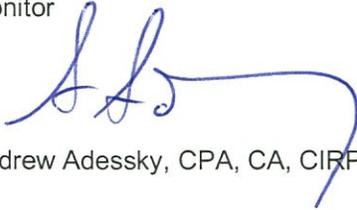
this payment is being done with the consent of both the ARQ and the CRA, the only non-related creditors who are not receiving a dividend at this time.

37. At Kitco's request, the Monitor has agreed that the dividend cheques will be prepared by Kitco and remitted to the Monitor for mailing.

Respectfully submitted at Montreal, this 14<sup>th</sup> day of April, 2014.

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

Monitor



Andrew Adessky, CPA, CA, CIRP