

## **SALE AND INVESTMENT SOLICITATION PROCESS**

1. On August 23, 2023, Whyte's Foods Inc. (the "**Company**") filed a Notice of Intention to Make a Proposal ("**NOI**") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3 (the "**BIA**") and Alvarez & Marsal Canada Inc. ("**A&M**") was appointed as Proposal Trustee of the Company (the "**Proposal Trustee**").
2. Prior to the initiation of the NOI, the Company with the assistance of Kroll Corporate Finance Canada Limited ("**Kroll**") in its capacity as Sell-Side M&A advisor to the Company, conducted a strategic sales and investment solicitation process (the "**Prior Sales Process**").
3. The Company, together with the assistance of Kroll and under the supervision of the Proposal Trustee, will conduct a further sale and investment solicitation process (the "**SISP**") as further described herein.
4. All steps taken by the Proposal Trustee and Kroll to conduct and implement the SISP shall be made in consultation with the Company. Where primary responsibility for a task herein is outlined to be undertaken by Kroll, such actions will be undertaken under the supervision and oversight of the Proposal Trustee.

### **Opportunity**

5. The purpose of the SISP is to solicit interest in the opportunity (the "**Opportunity**") for a sale or investment of the Company's right, title and interest in and to all assets, undertakings and properties acquired or used for and otherwise related to its operations and business (the "**Business**"), or any portion thereof (collectively, the "**Property**"), as a going concern or otherwise, and to complete one or more sale transactions as contemplated herein. The procedures governing the SISP, and any transaction(s) consummated thereunder, are described below.
6. Except to the extent otherwise set forth in a definitive sale or investment agreement with the Successful Bidder (as defined below), any sale of the Property or investment in the Business will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Proposal Trustee, the Company, Kroll, or any of their respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Company in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, financial and monetary claims charges, options and interests therein and thereon pursuant to Court order(s), to the extent that the Court deems it appropriate to grant such relief and except as otherwise provided in such Court order(s).

### **Role of Proposal Trustee and Kroll**

7. The Proposal Trustee and Kroll's responsibilities pursuant to the SISP include:
  - (a) administering the SISP;

- (b) consulting with the Company, and Wells Fargo Capital Finance Corporation Canada and Farm Credit Canada (collectively the “**Lenders**”) connection with the bidding procedures included in this SISP and the closing of the transaction(s) contemplated in the Successful Bid(s) (as defined below);
- (c) assisting the Company to facilitate information requests, including assisting the Company in preparing or modifying financial information to assist with the bidding procedures described in this SISP;
- (d) reporting to the Court in connection with the SISP, including the bidding process described in this SISP, and the closing of the transaction(s) contemplated in the Successful Bid(s);
- (e) assisting the Company with the closing of the transaction(s) contemplated in the Successful Bid(s).

### **Milestones**

8. The following table sets out the key milestones under the SISP:

<b>Milestone</b>	<b>Deadline</b>
Company to obtain initial order (the “ <b>Initial Order</b> ”), including approval of (i) Kroll’s engagement; and (ii) SISP	August 31, 2023
Publish notice of SISP on the Proposal Trustee’s website	Two (2) business days following the date of the Initial Order
Deliver Teaser Letter and NDA to Known Potential Bidders, and set up the virtual data room (“ <b>VDR</b> ”)	Two (2) business days following date of the Initial Order
Template Purchase and Sale agreement to be posted in the VDR	Seven (7) calendar days following date of the Initial Order
Bid Deadline	5:00 p.m. (EST) on September 21, 2023
Company/Proposal Trustee/Kroll to (i) review submitted Bids; (ii) seek clarification of Bids; (iii) select Successful Bid(s); and (iv) negotiate final agreements	On or before 12:00 p.m. (noon) (EST) on September 25, 2023
Hearing of the Sale Approval Motion	October 2, 2023
Target closing date for sale and/or investment transactions	October 6, 2023

Outside closing date for sale and/or investment transactions (the “ <b>Outside Date</b> ”)	October 10, 2023
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### **Notice**

9. As soon as reasonably practicable, but, in any event, by no later than two (2) business days after the date of the Initial Order:
  - (a) The Proposal Trustee and Kroll will prepare a list of potential bidders, including, (i) parties that have approached the Company, Proposal Trustee or Kroll indicating an interest in the Opportunity, or in one or more of the Company’s assets; (ii) parties that submitted an indication of interest or letter of intent in the Prior Sales Process; (iii) parties that did not submit any indication of interest, but actively participated in the Prior Sales Process, including conducting due diligence; and (iv) select competitors; (collectively, the “**Known Potential Bidders**”);
  - (b) the Proposal Trustee and Kroll will prepare: (i) a process summary (the “**Teaser Letter**”) describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Proposal Trustee and the Company, and their respective counsel, which shall inure to the benefit of any purchaser of the Business or Property or any part thereof (an “**NDA**”).
10. The Proposal Trustee and Kroll will send the Teaser Letter and NDA to each Known Potential Bidder by no later than two (2) business days from the date of the Initial Order and to any other party who requests a copy of the Teaser Letter and NDA or who is identified to the Proposal Trustee as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.
11. The Proposal Trustee / Kroll may accept an NDA executed by a Potential Bidder in the Prior Sales Process, in satisfaction of this requirement as set out herein in this SISP.

### **Potential Bidders and Due Diligence**

12. Any party seeking to participate in the SISP (a “**Potential Bidder**”) must provide the Proposal Trustee and Kroll with, (i) an executed NDA; (ii) a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder; and (iii) any other information that the Proposal Trustee or Kroll may reasonably request.
13. Kroll, subject to competitive and other business considerations, shall afford each Potential Bidder who has provided an NDA such access to due diligence material and information relating to the Company, the Property and the Business as the Proposal Trustee and Kroll deem appropriate. Due diligence may include access to a VDR

containing information about the Company, the Property and the Business, and may also include management presentations, site visits and other matters which a Potential Bidder may reasonably request and as to which the Proposal Trustee and Kroll may agree.

14. Kroll will designate a representative or representatives to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders and the manner in which such requests must be communicated. Neither the Proposal Trustee, Kroll, nor the Company will be obligated to furnish any information relating to the Company, the Property or Business to any person other than as is expressly provided for in the SISP. Furthermore, selected due diligence materials may be withheld from certain Potential Bidders if the Proposal Trustee, Kroll or the Company, determine such information to represent proprietary or sensitive competitive information / disclosure could impair the Company or the Business or the integrity of the SISP.
15. Without limiting the generality of any term or condition of any NDA between the Company, on the one hand, and any Potential Bidder or Bidder (as defined below), on the other, unless otherwise agreed by the Proposal Trustee and the Company or ordered by the Court, no Potential Bidder or Bidder shall be permitted to have any discussions with, (a) any counterparty to any contract with the Company, any secured creditor of the Company, any director, manager, officer or employee of the Company, other than in the normal course of business and wholly unrelated to the Company, the potential transaction(s), the confidential information, the SISP or the NOI proceedings; and (b) any other Potential Bidder or Bidder regarding the SISP or any bids submitted or contemplated to be submitted pursuant thereto. Notwithstanding the foregoing, where any such communications are agreed to with the Proposal Trustee's consent, such discussions shall be made in the presence of the Proposal Trustee or Kroll.
16. Lenders: Discussions are permitted with the Lenders, in order for a Potential Bidder to assess potential support of the Lenders to a proposed Bid, and where the Lenders agree to participate in such discussions. The Proposal Trustee or Kroll shall participate in all discussions described in this paragraph. Information shared with the Lenders in respect of the SISP, generally and in respect of any discussions with potential bidders, shall remain confidential and not be shared by the Lenders.
17. Potential Bidders and Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and any transaction(s) they enter into with the Company.

#### **Formal Binding Offers**

18. Potential Bidders that wish to make a formal offer to purchase, or make an investment in, the Company or the Property or Business, or any part thereof (a "**Bidder**") shall submit a binding offer (a "**Bid**") that complies with all of the following requirements to the Proposal Trustee at the address specified in Schedule "1" hereto (including by e-mail), which Bid shall be delivered by such Bidder by no later than **5:00 p.m. (Toronto Time)**

on **September 21, 2023** or such later date as may be communicated by the Proposal Trustee to Potential Bidders via a Bid Deadline Letter (as defined below) (the “**Bid Deadline**”):

- (a) the Bid must be a binding offer to:
  - (i) acquire all, substantially all or a portion of the Property of the Company (a “**Sale Proposal**”); and/or
  - (ii) make an investment in, restructure, reorganize or refinance the Business or the Company (an “**Investment Proposal**”);
- (b) the Bid must include a duly authorized and executed definitive agreement of purchase and sale using the template agreement in the VDR, against which Bids will be compared;
- (c) the definitive transaction document in respect of a Sale Proposal or Investment Proposal shall include, among other things:
  - (i) that the Bid is not conditioned upon (A) the outcome of unperformed due diligence by the Bidder, or (B) obtaining financing. Where the Bid requires the support and approval of the Lenders, such support and approval shall have been confirmed prior to submitting the Bid;
  - (ii) any and all conditions and approvals required to complete the closing of the transaction; and
  - (iii) is accompanied by a non-refundable deposit representing 10% of the purchase price (including the value of any secured debt that is to be assumed).
- (d) the Bid (either individually or in combination with other bids that make up one Bid) shall be an offer to purchase or make an investment in some or all of the Company’s Property or Business and shall be consistent with the necessary terms and conditions established by the Proposal Trustee and Kroll and communicated to Bidders;
- (e) the Bid must include a letter stating that the Bidder’s offer is irrevocable until approval of the Successful Bid(s) by the Court, provided that if such Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the closing of the transaction contemplated by such Bid;
- (f) the Bid must include written evidence of a firm, irrevocable commitment for financing or other evidence of the Bidder’s ability to consummate the proposed transaction that will allow the Proposal Trustee/Kroll/Company to make a determination as to the Bidder’s financial and other capabilities to consummate the proposed transaction;

- (g) the Bid must include written evidence, in form and substance satisfactory to the Proposal Trustee/Kroll/Company, of authorization and approval from the Bidder's board of directors (or comparable governing body) with respect to the submission, execution and delivery of such Bid, and identification of any anticipated shareholder, regulatory or other approvals outstanding, and the anticipated process and time frame and any anticipated impediments for obtaining such approvals;
- (h) the Bid must not include any request for or entitlement to any break or termination fee, expense reimbursement or similar type of payment;
- (i) without limiting the foregoing, a Sale Proposal Bid must include:
  - (i) the total consideration to be paid, including the purchase price in Canadian dollars, clarifying cash component, support confirmed with the Lenders; a description of any non-cash consideration and details of any liabilities to be assumed by the Bidder and assumptions supporting the Bid;
  - (ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;
  - (iii) a description of those liabilities and obligations (including operating liabilities) which the Bidder intends to assume and which such liabilities and obligations it does not intend to assume; and
  - (iv) a description of the manner in which existing employees shall be addressed in the transactions;
- (j) without limiting the foregoing, an Investment Proposal Bid must include:
  - (i) a description of how the Bidder proposes to structure the proposed investment, restructuring, recapitalization, refinancing or reorganization, and a description of any non-cash consideration;
  - (ii) the aggregate amount of the equity and/or debt investment to be made in the Business or the Company in Canadian dollars;
  - (iii) a specific indication of the sources of capital for the Bidder and the structure and financing of the transaction;
  - (iv) a description of those liabilities and obligations (including operating liabilities) which the Bidder intends to assume and which liabilities and obligations it does not intend to assume; and
  - (v) a description of the manner in which existing employees shall be addressed in the transactions;

- (k) the Bid must include acknowledgements and representations of the Bidder that the Bidder:
  - (i) has, to its satisfaction, had an opportunity to conduct any and all due diligence regarding the Property, the Business and the Company prior to making its Bid;
  - (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its Bid; and
  - (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, the Property, or the Company, or the completeness of any information provided in connection therewith, except as may be expressly stated in the definitive transaction agreement(s) signed by the Company;
- (l) the Bid must contain such other information as may be reasonably requested by the Proposal Trustee and Kroll;
- (m) the Bid must be received by the Bid Deadline;
- (n) the Bid must contemplate closing the transaction set out therein on or before the Outside Date.

### **Evaluation of Competing Bids**

- 19. Following the Bid Deadline, the Proposal Trustee/Kroll/Company will assess the Bids received to determine the Bids comply with the requirements set out herein ("**Qualified Bids**"). The Proposal Trustee shall promptly provide the Lenders with copies of all Qualified Bids following the Bid Deadline.
- 20. The Proposal Trustee and Kroll, in consultation with the Lenders, may waive strict compliance with any one or more of the requirements set out herein and deem such non-compliant Bids to be a Qualified Bid.
- 21. The Proposal Trustee and Kroll, in consultation with the Lenders, may aggregate separate Bids from unaffiliated Bidders to create one Qualified Bid.
- 22. The Proposal Trustee/Kroll/Company, in consultation with the Lenders, shall be entitled to discuss and negotiate the Bid and form of any Sale Proposal or Investment Proposal prior to or after the Bid Deadline for purposes of amending or clarifying the terms and form thereof.
- 23. Bids shall be evaluated based upon several factors including, without limitation: (i) the purchase price and the net value of the total consideration provided by such Bid (with the value of any non-cash consideration being determined by the Company in its business judgment, in consultation with the Proposal Trustee and Kroll); (ii) the identity,

circumstances and ability of the Bidder to successfully complete such transactions; (iii) the proposed transaction documents; (iv) factors affecting the speed, certainty and value of the transaction; (v) the assets and liabilities included or excluded from the Bid; (vi) any related restructuring costs; and (vii) the likelihood and timing of consummating such transaction, each as determined by the Proposal Trustee/Kroll/Company in their business judgment.

24. The Proposal Trustee, in consultation with the Company and the Lenders, may ascribe monetary values to non-monetary terms in any Bid for the purposes of assessing and/or valuing such bids, including without limitation, the value to be ascribed to any liabilities or contracts to be assumed or not assumed.

### **Selection of Successful Bid(s) and Sale Approval**

25. The Proposal Trustee/Kroll/Company in consultation with the Lenders may: select one or more of such Qualified Bids as the successful bid (the “**Successful Bid(s)**”, subject to the approval of the Lenders, and the Qualified Bidder(s) making such bid, the “**Successful Bidder(s)**”), with or without negotiation of Qualified Bids with Qualified Bidders.
26. The Proposal Trustee/Kroll/Company shall be under no obligation to designate the highest and otherwise best Bid, or any Bid, as a Successful Bid.
27. The Successful Bidder(s) shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid(s) was made within two (2) business days of the Successful Bid(s) being selected as such.
28. Thereafter, Kroll shall advise the other Bids that there were not selected as the Successful Bid.
29. The Company shall seek Court approval to consummate the Successful Bid(s) at the motion on or before October 2, 2023 (the “**Sale Approval Motion**”).

### **Deposits**

30. Any deposits submitted by potential Bidders pursuant to this SISP shall be held by the Proposal Trustee in a single account designated solely for such purpose and such deposit shall be dealt with in accordance with the definitive documents for the transaction(s) contemplated by the Successful Bid(s).
31. The Proposal Trustee shall return any deposit submitted by another bidder that is not selected as a Successful Bid, following the Sale Approval Motion.

### **Confidentiality and Access to Information**

32. Unless expressly provided for herein, participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Bidders, Qualified Bidders, or Successful Bidder(s), or the details of any bids submitted or the details of any confidential discussions or correspondence between the Company,



Kroll and /or the Proposal Trustee and such other Potential Bidders, Bidders, Qualified Bidders, or Successful Bidder(s) in connection with the SISP, except to the extent that the Proposal Trustee/Kroll/Company (and with the consent of the applicable bidders), are seeking to combine separate Bids to form a Qualified Bid.

33. All discussions regarding Bids should be directed through the Proposal Trustee/Kroll. Under no circumstances should the management of the Company be contacted directly without the prior consent of the Proposal Trustee.

### **Supervision of the SISP / General / Protections**

34. The Proposal Trustee and Kroll shall oversee and conduct the SISP, in all respects, and, without limitation to that supervisory role, the Proposal Trustee and Kroll will participate in the SISP in the manner set out in this SISP, the Initial Order and further orders of the Court, and is entitled to receive all information in relation to the SISP. If there is disagreement as to the interpretation or application of the SISP, the Court will have the jurisdiction to hear and resolve such dispute.
35. This SISP does not and will not be interpreted to create any contractual or other legal relationship between the Company. Kroll or the Proposal Trustee, and any Potential Bidder, Bidder, Successful Bidder or any other party, other than as specifically set forth in a definitive agreement that may be entered into with the Company.
36. Without limiting the generality of preceding paragraph, the Proposal Trustee and Kroll shall not have any liability whatsoever to any person or party, including, without limitation, any Potential Bidder, Bidder, Successful Bidder, the Company, or any other creditor or other stakeholder of the Company, for any information obtained by any party or any act or omission related to the process contemplated by this SISP.
37. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.
38. The Proposal Trustee, in consultation with the Company and the Lenders, shall have the right to modify the SISP (including, without limitation, dates and milestones described herein and pursuant to any Bid Deadline Letter) if, in its reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP, provided, however, that the Service List in these BIA Proceedings shall be advised of any substantive modification to the procedures set forth herein.
39. Notwithstanding anything to the contrary in this SISP, the Company, in consultation with, and with the approval of, the Proposal Trustee and Kroll, may attempt to negotiate a stalking horse bid (a **"Stalking Horse Bid"**) prior to the Bid Deadline to provide certainty for the Company during the SISP. If the Company, in consultation with, and with the approval of, the Proposal Trustee/Kroll, and the Lenders, accept a Stalking Horse Bid, such Stalking Horse Bid shall be subject to approval by the Court and the Company shall bring a motion before the Court on notice to the Service List in these BIA Proceedings seeking the approval of the Stalking Horse Bid, together with approval of necessary amendments to the SISP. All Potential Bidders shall be promptly informed of any Court approval of a Stalking Horse Bid and any related amendments to the SISP.

40. Interested parties seeking further information about the SISP should contact the Proposal Trustee at the email address specified in Schedule "1" hereto.

**Schedule “1”**

**Address of Proposal Trustee**

**To the Proposal Trustee:**

Alvarez & Marsal Canada Inc.  
200 Bay Street, Suite 2900 (South Tower)  
Toronto, ON M5J 2J1

Attention: Stephen Ferguson / Esther Mann

Email: [sferguson@alvarezandmarsal.com](mailto:sferguson@alvarezandmarsal.com) / [esther.mann@alvarezandmarsal.com](mailto:esther.mann@alvarezandmarsal.com)