

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*  
R.S.C. 1985, c. C-36, as amended

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,  
R.S.C. 1985 c. C-44, as amended

AND

IN THE MATTER OF NORTH AMERICAN TUNGSTEN CORPORATION LTD.

PETITIONER

**NOTICE OF APPLICATION**

**Name of applicant:** Alvarez & Marsal Canada Inc. (the “Monitor”) in its capacity as  
Court-appointed Monitor of North American Tungsten Corporation  
Ltd. (“NATC” or the “Petitioner”)

**To:** The Service List

TAKE NOTICE that an application will be made by the Applicant to the Honourable Mr. Justice Grauer at the courthouse at 800 Smithe Street, Vancouver, B.C. on December 5, 2018 at 9:00 a.m. for the orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. An order substantially in the form attached hereto as **Schedule “A”**:
  - (a) extending the Stay Period, as defined in the Amended and Restated Initial Order made July 9, 2015 (the “ARIO”), to 11:59 p.m. on April 30, 2020;
  - (b) directing the Department of Indian Affairs and Northern Development (“DIAND”) to fund the Company’s expenses as set out the Eleventh Cash Flow

Statement, as that term is defined in the Monitor's Nineteenth Report to the Court dated November 30, 2018 (the "**Nineteenth Report**");

- (c) approving the security release and discharge agreement (the "**Security Release Agreement**") between the Petitioner and Callidus Capital Corporation ("**Callidus**") and authorizing and directing the Petitioner to enter into and complete the transactions contemplated by the Security Release Agreement, including the payment of the Funds (as defined therein) to Callidus; and
- (d) declaring that the DIAND Charge (as defined in the November 16, 2015 order of this Court) attaches to any of the Petitioner's assets secured under any security interests in favour of Callidus (prior to the implementation of the Security Release Agreement) as security for the repayment of the amount funded by DIAND to enable the Petitioner to pay the Funds to Callidus.

## **Part 2: FACTUAL BASIS**

### **BACKGROUND**

1. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the ARIO.
2. On June 9, 2015, Mr. Justice Butler granted the Initial Order providing for a stay of proceedings to July 8, 2015.
3. On July 9, 2015, Mr. Justice Butler granted the ARIO, pursuant to which (among other things) the Stay Period was extended to 11:59 p.m. on July 17, 2015. The Stay Period has since been extended on a number of occasions, most recently to March 31, 2019 pursuant to the September 11, 2017 order of Mr. Justice Butler made herein.

### **CARE AND MAINTENANCE**

4. Since June 15, 2018 (the date of the Monitor's Eighteenth Report to the Court), the Company, under the Monitor's oversight, has continued its care and maintenance program at the Cantung mine. This includes monitoring and reporting in respect of environmental obligations, meeting obligations arising in respect of the Company's water

licence, maintaining equipment, the underground mine and the mine site, including roads, and meeting with various stakeholder groups, including First Nations.

5. A detailed summary of the Company's care and maintenance activities since June 15, 2018 are set out in section 4 in each of the Nineteenth Report.
6. The Company continues to work with Tetra Tech Canada Inc. ("**Tetra Tech**"), which is performing a Phase III Environmental Site Assessment (the "**Phase III ESA**") which is anticipated to be completed by mid-2019. The Company is also intending to expand the scope of Tetra Tech's engagement to include additional work which, generally, concerns the assessment and cost of various remediation options relating to the mine and mine site. Tetra Tech's work will assist with the determination and calculation of the Company's reclamation liabilities and enhance its prospects of effecting a successful restructuring transaction, remediation of the mine site and/or sale of the Cantung mine.

#### **EXTENSION OF THE STAY PERIOD AND NEXT STEPS**

7. The Company seeks to extend the Stay Period until April 30, 2020. The Monitor supports the application, including for the following reasons:
  - (a) the extension will enable the Company to continue undertaking regulatory initiatives in order to position the Cantung assets for a potential future transaction including completion of the Phase III ESA and carrying out studies to investigate the potential for reducing reclamation liabilities;
  - (b) the Company and DIAND require additional time to assess alternative commercialization or transactional strategies with respect to the Cantung mine site and related assets;
  - (c) the extension provides for the ongoing care and maintenance of the Cantung mine site to preserve the asset and continued compliance with the Company's environmental obligations and the terms of the Company's water licence;
  - (d) DIAND has committed to fund care and maintenance expenses of the Company through to the proposed extension date, and the Eleventh Cash Flow Statement indicates that the Company will have sufficient liquidity during that period;

- (e) the Monitor does not believe that there will be any material prejudice to any of NATC's creditors, employees, suppliers or other stakeholders, including affected First Nations, as a result of an extension of the Stay Period; and
- (f) the Company's prospects of affecting a viable restructuring and/or transaction involving the Cantung mine would be enhanced by an extension of the Stay Period.

## SECURITY RELEASE AGREEMENT

8. On September 29, 2017, Mr. Justice Butler granted an order herein which, among other things, approved an auction services agreement (the "ASA") between the Company and a joint venture comprised of Hilco Industrial Acquisitions Canada ULC, Gordon Brothers Canada ULC and A. M. King Industries, Inc. (collectively, the "Auctioneer") to sell certain assets subject to Callidus' security interests and authorizing the Company to distribute the net sales proceeds to Callidus.
9. During the period September 2017 to September 2018, the Company completed the sale of certain mining equipment and related assets pursuant to the ASA. The majority of the net sales proceeds were distributed directly to Callidus on account of its secured claim, with a portion being remitted to the Company to cover costs incurred by NATC in respect of Callidus' collateral. The ASA has since terminated, and the Auctioneers are no longer engaged to sell equipment at the Cantung mine site.
10. The Company has continued to safeguard the remaining mobile equipment and perform regular preventative maintenance on equipment being used for care and maintenance activities in accordance with a support agreement (the "Support Agreement") between Callidus and the Company. The Support Agreement was recently extended until January 31, 2019.
11. Not all of the Company's assets subject to Callidus' security were sold pursuant to the sale process initiated in connection with the ASA. That equipment remains at the Cantung mine site. Moreover, there continues to be a dispute between Callidus and DIAND as to whether certain of the Company's assets are fixtures, and therefore subject to the DIAND Charge in priority to Callidus' security interest in such assets.

12. In order to deal with the remaining assets and resolve the dispute between Callidus and DIAND, as well as to ensure that the Company has access to the equipment it needs to continue its care and maintenance program, the parties entered into discussions concerning an overall resolution. Those discussions resulted in the Security Release Agreement.
13. The key commercial terms of the Security Release Agreement are as follows:
  - (a) NATC will make a payment to Callidus of \$800,000 (the “**Funds**”) in consideration for which Callidus will release any interest it has in any and all assets of NATC;
  - (b) NATC and Callidus will execute a mutual release of all claims relating to the parties’ involvement in the CCAA Proceedings and matters relating thereto;
  - (c) DIAND will provide a release to Callidus in respect of any claims it may have against Callidus for environmental remediation costs;
  - (d) the Funds shall be applied by Callidus on account of the indebtedness owing from NATC to Callidus;
  - (e) the Support Agreement will be terminated upon completion of the Security Release Agreement;
  - (f) Callidus will not oppose any application which may be brought by NATC for Court approval of a sale of all or any part of its assets; and
  - (g) the Security Release Agreement is conditional upon Court approval, which is to be obtained no later than December 5, 2018.
14. The Monitor’s comments with respect to its application for approval of the Security Release Agreement are as follows:
  - (a) the Security Release Agreement will enable the Company to continue to use the equipment needed for the Company’s care and maintenance program and to advance its environmental and regulatory initiatives without requiring the negotiation of additional extensions to the Support Agreement or the procurement of replacement equipment;
  - (b) DIAND has advanced the Funds to the Company to redeem Callidus’ security interest;

- (c) the disbursement to Callidus is contemplated by and accounted for in the Eleventh Cash Flow Statement;
  - (d) the Monitor's legal counsel, Fasken Martineau DuMoulin LLP, has conducted a review of the security interest held by Callidus against the subject assets and concluded that the security is valid and enforceable, subject to standard qualifications;
  - (e) based on the potential replacement cost of the subject assets, the results of the ASA, the sales and investment solicitation process undertaken by the Company earlier in the proceeding and other indications of value, the Monitor is of the view that the amount to be paid to Callidus and the delivery of the releases are fair and commercially reasonable in the circumstances; and
  - (f) Callidus and DIAND have each advised the Monitor that they are supportive of the Company's application for an order approving the Security Release Agreement.
15. For the foregoing reasons, the Monitor has recommended that the Court approve the Security Release Agreement.

### **Part 3: LEGAL BASIS**

1. Sections 11 and 11.02, of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, (the "CCAA") and the inherent jurisdiction and statutory discretion of this Honourable Court.
2. The extension of the Stay Period will enable the Company to continue the care and maintenance program for the Cantung mine and mine site as well as to continue the environmental assessment work undertaken by Tetra Tech, all of which enhances the Company's prospects of affecting a viable restructuring and/or transaction involving the Cantung mine.
3. The Security Release Agreement was negotiated among the Company, DIAND and Callidus and, in the Monitor's view, is a commercially reasonable agreement which: (i) resolves the dispute between Callidus and DIAND; (ii) results in the release of Callidus' security interest in the Company's assets; and (iii) ensures the Company has the use of its assets free of Callidus' secured claim.

4. The approval of the Security Release Agreement and the related relief sought by the Company is appropriate in the circumstances.
5. The Petitioner has been, and is, acting in good faith and with due diligence.

**Part 4: MATERIAL TO BE RELIED ON**

1. Monitor's Nineteenth Report to the Court dated November 30, 2018; and
2. Such further and other materials as counsel may advise and as this Court deems admissible.

The applicant estimates that the application will take 30 minutes.

This matter is not within the jurisdiction of a master. Mr. Justice Grauer is seized of these proceedings and this application has been scheduled to be heard before Mr. Justice Grauer by Trial Scheduling.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed Application Response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: November 30, 2018

*K. Jackson*

Signature of lawyer for filing party  
Kibben Jackson

***To be completed by the court only:***

Order made

☐ in the terms requested in paragraphs ..... of Part 1 of this Notice of Application

☐ with the following variations and additional terms:

.....  
.....  
.....

Date:

.....  
Signature of ☐ Judge ☐ Master

The Solicitors for the Monitor are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: Kibben Jackson/285937.00007)



**APPENDIX****THIS APPLICATION INVOLVES THE FOLLOWING:**

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts

SCHEDULE “A”

No. S-154746  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN THE MATTER OF THE *COMPANIES’ CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND

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AND

IN THE MATTER OF NORTH AMERICAN TUNGSTEN CORPORATION LTD.

PETITIONER

**ORDER MADE AFTER APPLICATION**

BEFORE THE HONOURABLE	)	
	)	
MR. JUSTICE GRAUER	)	DECEMBER 5, 2018
	)	

THE APPLICATION of Alvarez & Marsal Canada Inc. in its capacity as court-appointed monitor of the Petitioner (the “**Monitor**”) coming on for hearing at Vancouver, British Columbia on this day, and ON HEARING Kibben Jackson, counsel for the Monitor, and those other counsel listed on Schedule “A” hereto; AND UPON READING the material filed, including the Monitor’s Nineteenth Report to the Court dated November 30, 2018 (the “**Nineteenth Report**”);

THIS COURT ORDERS AND DECLARES THAT:

Extension of Relief

1. The relief granted in the Initial Order made herein on June 9, 2015, as amended and restated by the Amended and Restated Initial order made herein on July 9, 2015, and as

extended by Orders of this Court made herein on July 17, October 14, November 16, 2015, February 26, 2016, September 12, 2016 and September 11, 2017 is hereby continued and extended to 11:59 p.m. on April 30, 2020.

2. Her Majesty In Right of Canada as represented by the Department of Indian Affairs and Northern Development Canada (“**DIAND**”) shall fund the Petitioner’s expenditures as set out in the cashflow statement attached as Appendix “B” to the Nineteenth Report (the “**Updated Budget**”) for the period November 24, 2018 to April 30, 2020 (the “**Budget Period**”), including any Budget Adjustment (as defined herein) consented to by DIAND in accordance with paragraph 4 hereof.
3. If the Monitor anticipates any material increase in the cumulative amount to be spent by the Petitioner during the Budget Period, including without limitation with respect to the operating costs and environmental costs of the Petitioner and the fees and disbursements of the Petitioner, the Monitor and their respective counsel incurred during the Budget Period (a “**Budget Adjustment**”), the Monitor shall notify DIAND of such Budget Adjustment and DIAND shall notify the Monitor within three business days of such notice whether DIAND consents to an amendment to the Updated Budget to include the Budget Adjustment.

#### Callidus Security Discharge and Release Agreement

4. The security discharge and release agreement dated November 30, 2018 (the “**Security Release Agreement**”) between the Petitioner and Callidus Capital Corporation (“**Callidus**”), a copy of which is attached as Appendix “A” to the Nineteenth Report, is hereby approved, and the Security Release Agreement is commercially reasonable. The Petitioner is hereby authorized and directed to enter into and complete the transactions contemplated by the Security Release Agreement, including the payment of the Funds (as defined therein) and the delivery of a release to Callidus in accordance with the terms of the Security Release Agreement.
5. Notwithstanding:
  - (a) these proceedings;

(b) any applications for a bankruptcy order in respect of the Petitioner now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made by or in respect of the Petitioner,

the payment of the Funds to Callidus pursuant to the Security Release Agreement and this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Petitioner and shall not be void or voidable by creditors of the Petitioner, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

6. The funding to be provided to the Petitioner by DIAND in accordance with the Updated Budget includes funding payment of the Funds in accordance with the Security Release Agreement, and the DIAND Charge (as defined in the November 20, 2015 order of this Court) shall attach to any of the Petitioner's assets secured under any security interests in favour of Callidus (prior to the implementation of the Security Release Agreement) as security for the repayment of the amount so funded by DIAND.
7. The need for endorsement of this Order by counsel appearing on this application, other than counsel for the Monitor, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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Signature of Kibben Jackson  
Lawyer for the Monitor, Alvarez & Marsal Canada Inc.

BY THE COURT

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REGISTRAR

**Schedule "A"**

(List of Counsel)

<b>COUNSEL</b>	<b>APPEARING FOR:</b>
William Skelly	Callidus Capital Corporation