

**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 NEVADA COPPER, INC., NEVADA COPPER CORP.,
0607792 B.C. LTD., LION IRON CORP., NC FARMS LLC AND NC DITCH COMPANY
LLC**

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

**SECOND REPORT OF THE INFORMATION OFFICER
ALVAREZ & MARSAL CANADA INC.**

August 27, 2024

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1.0 INTRODUCTION

- 1.1 On June 10, 2024 (the “**Petition Date**”), Nevada Copper, Inc. (“**NCI**”) and its affiliates (collectively, the “**Debtors**” or the “**Company**”)¹ commenced cases (the “**Chapter 11 Cases**”) in the United States Bankruptcy Court for the District of Nevada (the “**U.S. Bankruptcy Court**”) by filing voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”).
- 1.2 As a result of the Debtors’ strained liquidity caused by operational issues at their mining project in Nevada, the absence of a sale agreement on a viable timeline, and diminishing financial support from their lenders, the Debtors determined it was necessary to file the Chapter 11 Cases to provide the Debtors with access to debtor-in-possession financing and additional time to continue pursuing a sale process under the protections provided by the Bankruptcy Code.
- 1.3 The primary purpose of the Chapter 11 Cases is to provide the Debtors with the necessary relief to continue the sale process that began prior to the Petition Date and find a long-term solution to their operational and financial challenges in a manner that maximizes value. The Debtors include NCI’s Canadian parent, Nevada Copper Corp., (“**NCU**”) and its Canadian subsidiary, 0607792 B.C. Ltd. (“**0607 BC**”, together with NCU, the “**Canadian Debtors**”). Each Canadian Debtor is also a Chapter 11 Debtor in the Chapter 11 Cases.

¹ The Debtors are Nevada Copper, Inc., Nevada Copper Corp., 0607792 B.C. Ltd., Lion Iron Corp., NC Farms LLC and NC Ditch Company LLC.

- 1.4 On the Petition Date, the Debtors filed motions for interim and/or final orders (the “**First Day Motions**”) in the Chapter 11 Cases to permit the Debtors to continue to operate their business in the ordinary course and to continue to advance the sale process. Following a hearing in respect of the First Day Motions, the U.S. Bankruptcy Court granted certain orders (the “**First Day Orders**”), including an order (the “**Foreign Representative Order**”) authorizing NCI to act as foreign representative on behalf of the Debtors’ estates.²
- 1.5 On June 19, 2024, NCI, in its capacity as the foreign representative of the Debtors (in such capacity, the “**Foreign Representative**”), served materials in respect of an application before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for recognition of the Chapter 11 Cases as foreign main proceedings pursuant to Part IV of the *Companies’ Creditors Arrangement Act* (“**CCAA**”) and related relief (the “**Recognition Proceedings**”, and together with the Chapter 11 Cases, the “**Restructuring Proceedings**”).
- 1.6 On June 21, 2024, this Court made two orders:
- (a) an order (the “**Initial Recognition Order**”), among other things: (i) recognizing the Chapter 11 Cases as “foreign main proceedings” in respect of the Debtors; and (ii) granting a stay of proceedings in Canada in respect of the Debtors; and
 - (b) an order (the “**Supplemental Order**”), among other things: (i) recognizing and enforcing in Canada certain of the First Day Orders entered in the Chapter 11 Cases,

² Copies of the each of the Chapter 11 Orders and other documents related to the Chapter 11 Cases are available at the website maintained by Epiq Corporate Restructuring, LLC (“**Epiq**”): <https://dm.epiq11.com/case/nevadacopper/dockets>.

including the Foreign Representative Order; (ii) appointing Alvarez & Marsal Canada Inc. (“**A&M Canada**”) as information officer in respect of the Recognition Proceedings (in such capacity, the “**Information Officer**”); and (iii) granting the Administration Charge and the DIP Lender’s Charge (each as defined in the Supplemental Order).

- 1.7 On July 24, 2024, this Court granted an Order (the “**Recognition of Final Orders and Bidding Procedures Order**”) that, among other things, recognized certain orders granted by the U.S. Bankruptcy Court, including: (a) final versions of certain of the First Day Orders (interim versions of which had been recognized on June 21, 2024, in the Supplemental Order); and (b) the Bidding Procedures Order.
- 1.8 A&M, in its capacity as Information Officer, filed with this Court a report dated July 22, 2024 (the “**First Report**”). A&M, in its capacity as Proposed Information Officer, also filed with this Court a report dated June 20, 2024, (the “**Pre-Filing Report**”, together with the First Report, the “**Prior Reports**”), which provided this Court with, among other things, background and other information with respect to the Canadian Debtors and the Chapter 11 Cases. A copy of each of the Pre-Filing Report and the First Report, without appendices, are attached hereto as **Appendices “A” and “B”**, respectively.
- 1.9 The Prior Reports and other materials filed with this Court are available on the Information Officer’s case website at: <https://www.alvarezandmarsal.com/NevadaCopper> (the “**Case Website**”).

2.0 TERMS OF REFERENCE AND DISCLAIMER

2.1 In preparing this report (the “**Second Report**”), A&M Canada has relied solely on information and documents provided by the Foreign Representative and other Debtors, their Canadian legal counsel, the Debtors’ financial advisor in the Chapter 11 Cases, and publicly available documents filed with the U.S. Bankruptcy Court (collectively the “**Information**”). Except as otherwise described in this Second Report:

- (a) the Information Officer has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Information Officer has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CASs**”) pursuant to the *Chartered Professional Accountants of Canada Handbook* (the “**Handbook**”) and accordingly, the Information Officer expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and
- (b) some of the information referred to in this Second Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the Handbook, has not been performed.

2.2 Future-oriented financial information referred to in this Second Report was prepared based on estimates and assumptions made by the Debtors’ management and financial advisor. Readers are cautioned that, since projections are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the projections, and the variations could be significant.

2.3 This Second Report should be read in conjunction with the Affidavit of Melissa Losco sworn August 23, 2024 (the “**Third Losco Affidavit**”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Third Losco Affidavit or the Prior Reports, as applicable.

2.4 Unless otherwise stated, all monetary amounts contained herein are expressed in United States dollars.

3.0 PURPOSE OF THIS REPORT

3.1 The purpose of this Second Report is to provide this Court with information regarding the Foreign Representative’s motion for an order (the “**Recognition Order**”), among other things, recognizing and giving effect in Canada by this Court under Part IV of the CCAA, to the Stalking Horse Order, the KEIP Order, and the KERP Order, each as granted by the U.S. Bankruptcy Court and as defined below.

4.0 BIDDING PROCEDURES ORDER AND SALES PROCESS

Bidding Procedures Order

4.1 As noted above, on July 24, 2024, this Court granted the Recognition of Final Orders and Bidding Procedures Order that, among other things, recognized the Bidding Procedures Order granted by the U.S. Bankruptcy Court.

4.2 As described in the First Report, the Bidding Procedures Order, among other things: (a) approves the Auction and Bidding Procedures; (b) establishes certain dates and deadlines and scheduling of an auction or auctions, if necessary; (c) approves the manner of notice

of the auction and sale hearing; (d) approves procedures for the assumption and assignment of certain Executory Contracts and Unexpired Leases in connection with the sale transaction, if any; and (e) approves a process for entry into a stalking horse purchase agreement including any applicable bid protections not to exceed three percent of the proposed purchase price.

- 4.3 The Bidding Procedures Order permits the Debtors, in consultation with the Consultation Parties and with the consent of the DIP Lenders, to select one or more stalking horse bidders with respect to some or all of the Debtors' assets and enter into a stalking horse purchase agreement that would provide such stalking horse bidder(s) with bid protections. Where a DIP Lender, or any affiliate of a DIP Lender, expressly indicates to the Debtors that it is considering submitting or has actually submitted a bid for any of the Debtors' assets, it shall not have consent rights with respect to the selection of a stalking horse bidder or bid protections.
- 4.4 The Bidding Procedures Order also establishes a process for U.S. Bankruptcy Court approval of any stalking horse agreement with August 17, 2024 as the deadline to enter into such a stalking horse agreement, following which the Debtors would file a notice attaching a copy of such agreement and certain related documents with the U.S. Bankruptcy Court within two business days. The Bidding Procedures Order further specifies that if no objections are received within five business days of that notice, the U.S. Bankruptcy Court may enter an order approving the stalking horse agreement without a hearing.
- 4.5 The timeline and key processes for the Bidding Procedures were summarized in the First Report as follows:

Date	Deadline³
<u>Monday, July 29, 2024</u> , or as soon as reasonably practicable after entry of the Bidding Procedures Order	Service of Sale Notice; Publication of Sale Notice
<u>Tuesday, July 30, 2024</u> , or as soon as reasonably practicable thereafter	Serve notice of potential assumption and assignment to contract counterparties
<u>Tuesday, August 20, 2024</u> (or 21 days after service of an applicable notice of assumption and assignment)	Deadline to object to proposed cure amounts and assumption and assignment
<u>Friday, September 6, 2024</u> , at 5:00 p.m. (prevailing Pacific Time)	Bid Deadline
<u>Monday, September 9, 2024</u> , at 9:00 a.m. (prevailing Pacific Time)	Qualified Bid Designation Date
<u>Tuesday, September 10, 2024</u> , at 12:00 p.m. (prevailing Eastern Time)	Auction (if necessary) to be held at the New York offices of A&O Shearman, or such other location announced to the bidders and Consultation Parties
<u>Thursday September 12, 2024</u>	Serve Notice of Successful Bidder on Contract Counterparties
<u>Friday, September 19, 2024</u> , at 12:00 p.m. (prevailing Pacific Time)	Deadline to object to the proposed Sale; deadline to object to adequate assurance.
<u>Tuesday, September 24, 2024</u> , at 12:00 p.m. (prevailing Pacific Time)	Deadline for responses to objections.
<u>Wednesday, September 25, 2024</u> , at 10:00 a.m. (prevailing Pacific Time) (subject to the Bankruptcy Court's availability)	Sale Hearing
<u>Thursday, September 26, 2024</u>	Entry of Sale Order
On or before <u>Monday, October 8, 2024</u>	Closing

³ Capitalized terms not otherwise defined herein have the meaning ascribed thereto in the Bidding Procedures Order.

Sale Process

- 4.6 At the commencement of the Chapter 11 Cases, the Debtors, with the assistance of Moelis & Company LLC (“**Moelis**”), launched a marketing process for the sale of their assets (the “**Sale Process**”). As part of the Sale Process, Moelis contacted at least 90 potential strategic and financial investors, which resulted in at least 24 parties executing non-disclosure agreements to further explore a potential transaction.
- 4.7 Following the initial stage of the Sale Process that involved the submission of preliminary bid documents by potential bidders, the Debtors concluded that there were multiple Acceptable Bidders (as defined in the Bidding Procedures) that would be able to progress to the next phase of the Sale Process. Kinterra Capital Corp. (“**Kinterra**”) and its affiliates were determined by the Debtors to be Acceptable Bidders.

5.0 STALKING HORSE AGREEMENT

- 5.1 On August 9, 2024, following extensive discussions and negotiations between the Debtors, Moelis and their other professionals, and Kinterra and its professionals, along with consultations with the Consultation Parties, which included the Debtors’ major secured creditors, the Sellers (as defined below) entered into a binding stalking horse asset purchase agreement (the “**Stalking Horse Agreement**”) with Southwest Critical Materials LLC (the “**Stalking Horse Bidder**”), an affiliate of Kinterra, for substantially all of the Debtors’ Assets (the “**Stalking Horse Bid**”). The Stalking Horse Agreement will establish a floor for further bidding within the Sale Process in accordance with the Bidding Procedures and Bidding Procedures Order.

- 5.2 As noted, the Bidding Procedures Order required the Debtors to file a public notice within two business days of entering into a stalking horse agreement that, among other things, attached the stalking horse agreement and the proposed form of stalking horse order. On August 9, 2024, the Debtors filed such notice with the U.S. Bankruptcy Court.⁴
- 5.3 Additional information regarding the selection of the Stalking Horse Bid is set out in the *Declaration of Zul Jamal in Support of Debtors' Notice of Designation of Stalking Horse Bidder*, as filed with the U.S. Bankruptcy Court and attached hereto as **Appendix "C"**.
- 5.4 Before the expiry of the five-business day deadline for stakeholders to comment on, or object to, the stalking horse arrangements, the Debtors received comments from the Official Committee of Unsecured Creditors, which were incorporated into the proposed form of stalking horse order and resolved the Committee's concerns. The Debtors did not otherwise receive any objections before the objection deadline.
- 5.5 On August 21, 2024, following the expiry of the five-business day objection deadline under the Bidding Procedures Order, the U.S. Bankruptcy Court approved the Stalking Horse Agreement and related bid protections pursuant to the *Order Approving (I) the Designation of the Stalking Horse Bidder and (II) the Proposed Bid Protections* (the "**Stalking Horse Order**"). The Stalking Horse Order was entered on an unopposed basis. A copy of the Stalking Horse Order is attached as Exhibit "D" to the Third Losco Affidavit.
- 5.6 Key terms of the Stalking Horse Agreement are summarized below:

⁴ The notice is found at Docket No. 510 on the website maintained by Epiq.

Term (Agreement Citation)	Detail⁵
Sellers	Nevada Copper, Inc., a Nevada corporation, and Nevada Copper Corp., a corporation organized in British Columbia
Purchaser	Southwest Critical Minerals LLC, a Delaware limited liability company
Purchase Price (Section 2.1 and 2.6)	<p>\$128,000,000 (the “Purchase Price”), subject to the adjustments described in the Stalking Horse Agreement, and the assumption of the Assumed Liabilities.</p> <p>In connection with the Closing, the Buyer shall pay to the Sellers, (i) the Purchase Price, minus (ii) the Deposit, minus (iii) the amount of the KERP/KEIP Obligations.</p>
Deposit (Section 2.2)	\$12,800,000 (together with any interest accrued thereon, the “ Deposit ”). ⁶
Purchased Assets (Section 1.1)	Substantially all properties, assets and rights of the Sellers and their respective Affiliates owned, held, used or held for use in the conduct of the Business (except as such assets constitute Excluded Assets).
Excluded Assets (Section 1.1 as modified by the Stalking Horse Order)	<p>Excluded Assets include, among others:</p> <ul style="list-style-type: none"> (a) all cash and cash equivalents; (b) all Excluded Contracts; (c) all Accounts Receivable (whether billed or unbilled), rebates, notes, chattel paper, and negotiable instruments of the Sellers; (d) all intercompany accounts or notes receivable that are owing from any Seller or any of its Affiliates; (e) all cash collateral, cash proceeds from letters of credit, bonds, and other collateral posted by or on behalf of the Sellers; (f) except as otherwise provided, rights under insurance policies, indemnities, letters of credit or guarantees; (g) any shares of capital stock or other equity interest of any Seller or any of its subsidiaries; (h) the Purchase Price and all proceeds of excluded assets; and (i) certain litigation including litigation against current and former insiders, equityholders, directors and officers.
Assumed Liabilities	Assumed Liabilities include, among others:

⁵ Capitalized terms not otherwise defined herein have the meaning ascribed thereto in the Stalking Horse Agreement. This summary is for the convenience of the parties only and is subject to the further details set out in the Stalking Horse Agreement. To the extent that there is any conflict between the summary herein and the Stalking Horse Agreement, the Stalking Horse Agreement shall control.

⁶ The Information Officer understands that the Deposit has been paid.

Term (Agreement Citation)	Detail ⁵
(Section 1.1)	<p>(a) all Liabilities of any kind or character to the extent arising out of, relating to or resulting from the use, operation, possession or ownership of or interest in the Purchased Assets and the Business from and after the Closing Date;</p> <p>(b) any Cure Costs that are required to be paid by the Buyer;</p> <p>(c) all Liabilities of the Sellers to the extent arising out of, relating to or resulting from the Assigned Contracts from and after the Closing Date;</p> <p>(d) all Liabilities that arise from and after the Closing Date with respect to the Transferred Employees, which, exclude any and all liability with respect to the WARN Act that arises before the Closing Date;</p> <p>(e) all KERP/KEIP Obligations;</p> <p>(f) Liabilities arising after the Closing Date; and</p> <p>(g) royalties and other obligations that run with the Purchased Real Property and arise after the Closing Date under the Contracts.</p>
Excluded Liabilities (Section 1.1)	<p>Excluded Liabilities include, among others:</p> <p>(a) all Liabilities arising from the Transactions;</p> <p>(b) all Liabilities arising from any Excluded Contracts;</p> <p>(c) all Liabilities arising from any Excluded Assets;</p> <p>(d) all Liabilities relating to Taxes except as set out in the Stalking Horse Agreement;</p> <p>(e) all Trade Payables relating to any Excluded Contracts;</p> <p>(f) all Liabilities, other than KERP/KEIP Obligations, that are (i) related to employees of the Sellers who are not Transferred Employees, (ii) related to Transferred Employees arising on or before the Closing Date, or (iii) related to any Employee Plan that is not an Assumed Plan;</p> <p>(g) all Liabilities in respect of indebtedness;</p> <p>(h) any Liabilities under (i) any Contract that is not an Assigned Contract or (ii) any Assigned Contract to the extent arising or in existence on or prior to the Closing Date;</p> <p>(i) Liabilities related to Environmental Laws, MSHA or United States Department of Labor's Mine Safety and Health Administration arising or related to pre-Closing operations;</p> <p>(j) mechanics liens as identified in the schedules; and</p> <p>(K) WARN Act Liabilities.</p>
Assigned Contracts; Cure Costs (Section 5.8)	<p>At the Closing, the Buyer shall pay, pursuant to Section 365 of the Bankruptcy Code and the Sale Order, any and all costs or expenses that are required to be paid under the Bankruptcy Code, as applicable, to cure any defaults in connection with the assumption and assignment of the Assigned Contracts.</p>

Term (Agreement Citation)	Detail ⁵
Employees (Section 6)	<p>The Buyer may make offers of employment to any employees of the Business to commence on the Closing Date, on an “at will” basis (the “Offered Employees”). Offers will be made: (i) on terms and conditions consistent with applicable Law for a position having a title and duties that the Offered Employee had with the Sellers as of the Petition Date; (ii) at the same salary that the Offered Employee had on the Petition Date; (iii) to provide similar benefits for the Offered Employee as provided to similarly situated employees of the Stalking Horse Bidder; and (iv) not later than 10 Business Days prior to the Closing Date.</p> <p>On the Closing Date, the Buyer shall remit to the Sellers for further payment by the Sellers to each eligible Business Employee who is not a Transferred Employee, the amount due to employee under the KERP or the KEIP, as applicable.</p>
Certain Key Closing Conditions Precedents (Articles 7 and 8)	<ul style="list-style-type: none"> • The Buyer shall have obtained required bonding for the transfer of certain permits; • The Bankruptcy Court shall have entered the Stalking Horse Order, and the Sale Order; • the Canadian Court shall have issued the Canadian Stalking Horse Order and issued the Canadian Recognition Sale Order; and • the validity, operation and effect of the Stalking Horse Order, Sale Order, the Canadian Stalking Horse Order and the Canadian Recognition Sale Order shall not have been stayed, amended, modified, reversed, waived, dismissed or appealed, and no notices of the foregoing shall have been filed prior to Closing.
Termination Rights (Article 12)	<p>The Stalking Horse Agreement may be terminated under certain circumstances including:</p> <ul style="list-style-type: none"> • by mutual written consent of the Sellers and the Buyer; • by the Buyer or the Sellers, if either of the Sellers or the Buyer has materially breached the Stalking Horse Agreement. In the case of a breach that is capable of being cured, the Sellers or the Buyers shall have a period of ten (10) days following receipt of such notice, to attempt to cure the breach; • by the Sellers or the Buyer if the Closing has occurred on or before (i) if the Buyer is not the Backup Bidder, October 9, 2024, and (ii) if the Buyer is the Backup Bidder, forty-five (45) days after completion of the Auction (either date described in the immediately preceding clause (i) or clause (ii), as applicable, the “Outside Termination Date”); • by the Buyer or the Seller if the Sellers entered into a definitive agreement regarding an Other Successful Bid; and • by the Buyer if certain deadlines in the Stalking Horse Agreement are not met including if the Canadian Stalking Horse Order is not granted within 10 Business Days after entry of the Stalking Horse Order.

Term (Agreement Citation)	Detail ⁵
Bid Protections (Article 12)	Bid Protections include a Break-Up Fee equal to three percent (3%) of the Purchase Price, or \$3,840,000, which is inclusive of the Expense Reimbursement. The Buyer will be entitled to the Break-Up Fee if the Buyer is not the Successful Bidder or Backup Bidder for the Purchased Assets at the Auction; <i>provided</i> , that the payment of the Break-Up Fee in such a circumstance would be paid upon the consummation of another Successful Bid. Upon the occurrence of certain other Termination Events, the Buyer would be entitled to the payment of an Expense Reimbursement. In no event would the Buyer be entitled to any amount in excess of the Break-Up Fee.

5.7 The Information Officer has reviewed the Stalking Horse Agreement and the Stalking Horse Order and has the following comments:

- (a) the Debtors followed the procedures set forth in the Bidding Procedures Order for providing their stakeholders with notice of their selection of the Stalking Horse Bidder, the Stalking Horse Agreement and the form of Stalking Horse Order. Those procedures were previously recognized by this Court through its recognition of the Bidding Procedures Order and were otherwise fair and reasonable;
- (b) the Bid Protections in the Stalking Horse Agreement conform to the bid protections authorized by the Bidding Procedures Order and which were previously recognized by this Court;
- (c) the Debtors' major secured creditors are Consultation Parties under the Bidding Procedures Order and were consulted in advance of the Debtors' entry into the Stalking Horse Agreement. Those major secured creditors did not raise any objections following the Debtors' entry into the Stalking Horse Agreement; and

- (d) the Stalking Horse Agreement will set a floor price for the Debtors' business and provides certainty and stability in their restructuring proceedings.

5.8 Accordingly, the Information Officer believes that Canadian recognition of the Stalking Horse Order is reasonable and appropriate in the circumstances.

6.0 KEIP ORDER AND KERP ORDER

6.1 On July 31, 2024, the U.S. Bankruptcy Court entered two orders related to employees: (a) an order authorizing the Debtors' key employee incentive program (the "**KEIP Order**"); and (b) an order authorizing the Debtors' key employee retention program (the "**KERP Order**").

6.2 Both the KEIP and KERP were designed with the assistance of JB Dempsey & Company, a compensation advisory services firm. Comprehensive declarations were filed by John Dempsey in the Chapter 11 Cases in support of the Debtors' motions for each of the KEIP Order and the KERP Order.⁷

6.3 The KEIP was designed to incentivize senior employees that were previously compensated through a combination of cash incentive payments and stock awards, taking into consideration that the Debtors were unable to pay such incentives in 2023 due to their financial circumstances. The KERP was designed to assist in retaining hourly and salaried employees that are considered necessary to maintain care and maintenance at the mine site

⁷ The Declarations of John Dempsey are available on the Epiq website at Docket Nos. 255 and 252. Declarations of Gregory J. Martin were also filed in support of the Debtors' motions for each of the KEIP Order and the KERP Order and are available on the Epic website at Docket Nos. 251, 254, and 456.

and/or to assist in aspects of the Sale Process. With respect to hourly employees, a portion of the KERP is intended as a substitute for a pre-existing bonus program.

- 6.4 Three of the Debtors' employees, who provide management and accounting functions jointly for all of the Debtors, are based in Canada and are paid in Canadian dollars under either the KEIP Order or the KERP Order.

KEIP

- 6.5 As noted above, the KEIP was designed to incentivize certain senior employees that were previously compensated through a combination of cash incentive payments and stock awards and who have knowledge and skills that are essential to the Debtors' efforts to maximize value in the Chapter 11 Cases. As such, the KEIP was designed with the goals of: (a) ensuring the preservation of the going-concern value of the Debtors' business; (b) incentivizing the KEIP participants to create maximum value through the Sale Process for the benefit of all of the Debtors' stakeholders; (c) ensuring the Debtors' ability to consummate the sale agreements; and (d) compensating the KEIP participants at a conservative market level.
- 6.6 There are nine employee participants in the KEIP, including one employee of NCU, a Canadian Debtor. Payments under the KEIP are based on the outcomes of the Sale Process, starting with an aggregate payout amount of \$546,000 if a Transaction Value (as defined in the KEIP) of \$60 million is achieved (the "**Minimum Transaction Threshold**"). If a Transaction Value in excess of the Minimum Transaction Threshold, but less than \$100 million (the "**Base Transaction Level**") is achieved, the: (i) the KEIP participants (other than the corporate secretary) would receive a cash amount equal to 0.855% of the

Transaction Value (the “**Base Transaction Amount**”) and (ii) the corporate secretary would receive a cash amount equal to 0.055% of the Transaction Value up to a maximum payment of \$55,000. If a Transaction Value is achieved over the Base Transaction Level, the KEIP provides for incremental incentives up to a maximum aggregate KEIP payout of \$3.475 million. To be eligible for the KEIP, employees must sign a release of claims against the Debtors.

KERP

- 6.7 As noted above, the KERP was designed to assist in retaining hourly and salaried employees that are considered necessary to maintain care and maintenance at the mine site and/or to assist in aspects of the Sale Process. There are approximately 70 employee participants in the KERP. For salaried employees that are KERP participants, the KERP payments represent between 25% and 35% of each salaried KERP participant’s annual salary. For hourly employees that are KERP Participants (as defined in the KERP Order), the KERP provides for: (i) upon the approval of the KERP and execution of a release (described below) a \$25 per hour incentive payment for all hours worked since the Petition Date (and not previously compensated in an equivalent amount through the Debtors’ pre-existing hourly bonus program) (the “**General Hourly KERP Incentive**”); and (ii) upon the first occurrence of any KERP Milestone (as defined in the KERP), an additional \$10 per hour incentive payment for each hour worked since the Petition Date. For hourly KERP participants, the General Hourly KERP Incentive is essentially the same amount that those employees would have been entitled to receive upon achievement of the targets for the pre-

existing hourly bonus program. Two employees located in Canada are expected to participate in the KERP.

- 6.8 For the salaried KERP Participants, twenty percent (20%) of the award is payable upon approval of the KERP (subject to release described below) with the remainder paid upon the first occurrence of any of any of the following milestones (the “**KERP Milestones**”): (i) consummation of a plan of reorganization or liquidation for the Debtors, (ii) the consummation of a Sale Transaction (as defined in the Bidding Procedures Motion), (iii) involuntary termination without cause, (iv) death or permanent and total disability, or (v) December 31, 2024. To be eligible for the KERP, employees must sign a release of claims against the Debtors.
- 6.9 The Information Officer understands that certain of the amounts payable under the KERP have already been paid in accordance with the KERP Order and the DIP Order (as previously recognized by this Court).
- 6.10 The Information Officer understands that the Foreign Representative is seeking recognition of the KERP Order and KEIP Order in part to provide comfort to the Canadian employees that the KERP and KEIP authorized by those orders, and the Debtors’ obligations to their employees thereunder, will be honored in Canada.
- 6.11 The Information Officer has reviewed the KERP Order and the KEIP Order, as well as the related supporting declarations filed in the Chapter 11 Cases and the modifications to the programs following stakeholder comments. The Information Officer supports the recognition of those orders by this Court (noting that only three of the KEIP/KERP participants are Canadian employees, being employees of NCU). Importantly, the

Information Officer understands that no major secured creditors raised any objections to the KEIP Order or the KERP Order. Additionally, because employees can choose to opt in or to opt out of participating in the KEIP and KERP, the Information Officer is of the view that neither the KEIP nor the KERP prejudices any employees.

7.0 RECOMMENDATIONS

- 7.1 The Information Officer and its legal counsel have reviewed the Stalking Horse Order, the KEIP Order and the KERP Order and believe that the recognition of those orders is reasonable and appropriate in the circumstances.
- 7.2 Based on the foregoing, the Information Officer respectfully recommends that this Court grant the relief requested by the Foreign Representative.

All of which is respectfully submitted to the Court this 27th day of August, 2024.

**ALVAREZ & MARSAL CANADA INC.,
Information Officer of the Debtors
and not in its personal or corporate capacity**

Per: 
Alan J. Hutchens
Senior Vice-President

Appendix “A”

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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**APPLICATION OF NEVADA COPPER, 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
ALVAREZ & MARSAL CANADA INC.**

June 20, 2024

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1.0 INTRODUCTION

- 1.1 On June 10, 2024 (the “**Petition Date**”), Nevada Copper, Inc. (“**NCI**”) and its affiliates (collectively, the “**Debtors**” or the “**Company**”) commenced cases in the United States Bankruptcy Court for the District of Nevada (the “**U.S. Bankruptcy Court**”) by filing voluntary petitions for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code (the “**Chapter 11 Cases**”).
- 1.2 The primary purpose of the Chapter 11 Cases is to provide the Debtors with the necessary relief to continue the Sale Process (as defined below) that began prior to the Petition Date and find a long-term solution to their operational and financial challenges in a manner that maximizes value. The Debtors include NCI’s Canadian parent, Nevada Copper Corp., (“**NCU**”) and its Canadian subsidiary, 0607792 B.C. Ltd. (“**0607 BC**”) (collectively, the “**Canadian Debtors**”).
- 1.3 On the Petition Date, the Debtors filed a number of motions for interim and/or final orders (the “**First Day Motions**”) in the Chapter 11 Cases to permit the Debtors to continue to operate their business in the ordinary course and to continue to advance the Sale Process. Following a hearing in respect of the First Day Motions (the “**First Day Hearing**”), the U.S. Bankruptcy Court granted certain orders (the “**First Day Orders**”), including an order (the “**Foreign Representative Order**”) authorizing NCI to act as foreign representative on behalf of the Debtors’ estates.¹
- 1.4 Alvarez & Marsal Canada Inc. (“**A&M**” or the “**Proposed Information Officer**”) understands that NCI, in its capacity as the foreign representative of the Debtors in respect of the Chapter 11 Cases

¹ Copies of the each of the Chapter 11 Orders and other documents related to the Chapter 11 Cases are available at the website maintained by Epiq Corporate Restructuring, LLC: <https://dm.epiq11.com/case/nevadacopper/dockets>.

(in such capacity, the “**Foreign Representative**”), has commenced an application before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for recognition of the Chapter 11 Cases as foreign main proceedings pursuant to Part IV of the *Companies’ Creditors Arrangement Act* (“**CCAA**”) (the “**Recognition Proceedings**”, and together with the Chapter 11 Cases, the “**Restructuring Proceedings**”). Other than the Chapter 11 Cases and the Recognition Proceedings, the Proposed Information Officer understands that there are currently no other foreign proceedings (as defined in section 45 of the CCAA) in respect of the Debtors.

1.5 The purpose of this Report of the Proposed Information Officer (this “**Pre-Filing Report**”) is to provide this Court with background information with respect to the Debtors and the Restructuring Proceedings, and to assist the Court in considering the Foreign Representative’s request for the following relief:

- (a) an order, among other things: (i) recognizing the Chapter 11 Cases as “foreign main proceedings” in respect of the Debtors; and (ii) granting a stay of proceedings in Canada in respect of the Debtors and their property and business, and in respect of their respective directors and officers (the “**Initial Recognition Order**”); and
- (b) an order, among other things: (i) recognizing and enforcing in Canada certain of the First Day Orders entered in the Chapter 11 Cases, including the Foreign Representative Order; (ii) appointing A&M as information officer in respect of the Recognition Proceedings (in such capacity, the “**Information Officer**”); and (iii) granting the Administration Charge and the DIP Lender’s Charge (each as defined below) (the “**Supplemental Order**”).

2.0 TERMS OF REFERENCE AND DISCLAIMER

2.1 In preparing this Pre-Filing Report, A&M has relied solely on information and documents provided by the Foreign Representative and other Debtors and their Canadian legal counsel, and publicly available documents filed with the U.S. Bankruptcy Court (collectively the “**Information**”). Except as otherwise described in this Pre-Filing Report:

- (a) the Proposed Information Officer has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Proposed Information Officer has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CASs**”) pursuant to the *Chartered Professional Accountants of Canada Handbook* (the “**Handbook**”) and accordingly, the Proposed Information Officer expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and
- (b) some of the information referred to in this Pre-Filing Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the Handbook, has not been performed.

2.2 Future-oriented financial information referred to in this Pre-Filing Report was prepared based on estimates and assumptions made by the Company’s management. Readers are cautioned that, since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, and the variations could be significant.

2.3 This Pre-Filing Report should be read in conjunction with the Affidavit of Gregory J. Martin, sworn on June 19, 2024 (the “**Martin Affidavit**”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Martin Affidavit.

2.4 Unless otherwise stated, all monetary amounts contained herein are expressed in United States dollars.

3.0 A&M’S QUALIFICATIONS TO ACT AS INFORMATION OFFICER

3.1 A&M was engaged by the Debtors effective May 10, 2024, for the purpose of preparing for the Recognition Proceedings and to act as the Information Officer. As such, A&M is familiar with the business and operations of NCI and the Debtors, and the key issues and stakeholders in the proposed Recognition Proceedings.

3.2 A&M is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and has significant experience in connection with proceedings under the CCAA, including acting as Information Officer in the recognition proceedings of Coach USA, WeWork Canada, Yellow Corporation, Sungard Availability Services, Knotel Canada, Brooks Brothers Canada, Pier 1 Imports, Jack Cooper Ventures, Payless Shoes, Modular Space Holdings, LightSquared, Durabla Canada and others.

3.3 The senior A&M professional personnel with carriage of this matter include experienced insolvency and restructuring practitioners who are Chartered Professional Accountants, Chartered Insolvency and Restructuring Professionals and Licensed Insolvency Trustees, who have acted in cross-border restructurings and CCAA matters of a similar nature in Canada.

3.4 The Proposed Information Officer has retained Cassels Brock & Blackwell LLP (“**Cassels**”) to act as its independent legal counsel.

3.5 A&M has consented to act as Information Officer should this Court approve the requested Initial Recognition Order and the Supplemental Order.

4.0 BACKGROUND

Company Overview

4.1 The Company, through NCI, is in the business of mining copper and other minerals and operates a processing plant that refines copper ore into copper concentrate. The bulk of the Company’s operations have been focused on the development of the Pumpkin Hollow project (the “**Project**”), which is located near Yerington, Nevada in the United States. The Project, which contains substantial mineral reserves and resources, including not only copper, but gold, silver and iron magnetite, consists of primarily two development projects: (i) an underground mine and processing facility (the “**Underground Mine**”); and (ii) an open-pit project (the “**Open Pit Development**”), that is in pre-feasibility stage of development. The Company generated approximately \$4.5 million in operating revenue for the year ended December 31, 2023. A comprehensive overview of the Debtors’ business is provided in the Martin Affidavit. A summary balance sheet for the Debtors is also provided in the Martin Affidavit.

4.2 As of the Petition Date, the Company employed approximately 197 people, approximately 136 of which are paid on an hourly basis (the “**Hourly Employees**”) and 61 of which are paid an annual salary (the “**Salaried Employees**”). Of the Debtors’ 197 full-time employees, 3 are employed by NCU and are usually based in Canada (the “**Canadian Employees**”), with the remainder employed by NCI and located in the United States.

- 4.3 The Company maintains employee savings plans for eligible employees in both the United States and Canada (the “**Employee Savings Plan**”), which require that employer and employee contributions be made in respect of participating employees.
- 4.4 NCU is the ultimate parent of each of the other Debtors, including the Foreign Representative. NCU is a public company traded on the Toronto Stock Exchange under the symbol “NCU”. As of the Petition Date, NCU’s largest shareholder is Pala Investments Limited (“**Pala**”), which holds approximately 61.66% of NCU’s shares. Mercuria Energy Trading S.A (“**Mercuria**”) is believed to own approximately 17.24% of NCU’s shares, while management and directors own approximately 0.18%. The remainder of NCU’s common shares are held by other investors.
- 4.5 NCU has limited business operations in Canada (through services of three employees), and substantially all its Canadian assets are in the form of its wholly-owned equity interest in, and intercompany loan repayable from, NCI. The other Canadian Debtor, 0607 BC, is a dormant shell company with no material assets or business in Canada or elsewhere. The Canadian Debtors are a small part of the broader integrated corporate group. As of the Petition Date, the Canadian Debtors represented approximately 1.5% of the Company’s workforce and generate no operating revenue on a standalone basis.
- 4.6 The Debtors have no physical office or other place of business in Canada. The Debtors, through NCU, have a Canadian registered office, which is the office of their British Columbia lawyers.
- 4.7 As of the Petition Date, approximately \$115,000 was payable to unsecured trade creditors of NCU, comprised of amounts owing to IT vendors, professional/consultants and investor relation firms. NCI has additional stakeholders located in Canada.

- 4.8 A detailed discussion of the Debtors’ business, including the events leading up to the Restructuring Proceedings, is provided in the Martin Affidavit.

Prepetition Capital Structure and Debt

- 4.9 As of the Petition Date, the Debtors had secured debt of approximately \$279.2 million in aggregate principal amount of outstanding (including capitalized interest) as set out below:

Prepetition Credit Facilities	Approximate Amount Outstanding²
Second A&R Credit Agreement	\$188.0 million
Stream Agreement Deposits	\$78.2 million
Third A&R Loan Facility	\$10.0 million
Advance Payment Facility	\$3.0 million
Total	\$279.2 million

- 4.10 Each of these credit facilities (the “**Prepetition Credit Facilities**”) is described in detail in the Martin Affidavit. Key terms and components of the Prepetition Credit Facilities include:

Prepetition Credit Facilities	
Second A&R Credit Agreement	
Borrower	• NCI

² The approximate total amount in this chart consists of the aggregate principal amount as of the Petition Date (including capitalized interest, where applicable).

Lender/Agent	<ul style="list-style-type: none"> • KfW IPEX-Bank GmbH (“KfW”), as administrative agent, sole lead arranger • Initial Senior Lenders (as defined in the Martin Affidavit) • Pala Investments Limited, as Tranche A-2 lender • Triple Flag International Ltd. (“Triple Flag”), as Tranche A-2 lender • TF R&S Canada Ltd (“TF Canada”), as Tranche A-2 lender • Mercuria Investments US, Inc (“Mercuria US”), as Tranche A-2 lender
Principal Amount Outstanding	<ul style="list-style-type: none"> • \$188.0 million
Security & Guarantors	<ul style="list-style-type: none"> • First-priority liens in substantially all of the property and assets of the Debtors (except for the APA Collateral), and all present and after-acquired property of all the Debtors (the “Project Collateral”) • Second-priority lien in all marketable metal-bearing material that is extracted or otherwise recovered from the Project (“APA Collateral”) • All Debtors are guarantors of and have granted security in respect of the obligations under the Second A&R Credit Agreement • Tranche B Loans are guaranteed by Pala under a separate guarantee agreement
Stream Agreement	
Obligor	<ul style="list-style-type: none"> • NCI
Purchaser	<ul style="list-style-type: none"> • Triple Flag
Principal Amount Outstanding	<ul style="list-style-type: none"> • \$78.2 million
Security & Guarantors	<ul style="list-style-type: none"> • Second-priority lien in the Project Collateral • Third-priority lien in the APA Collateral • All Debtors are guarantors of and have granted security in respect of the Stream Agreement
Third A&R Loan Agreement	
Borrowers	<ul style="list-style-type: none"> • NCU
Lender	<ul style="list-style-type: none"> • Pala Investments Ltd. As lender
Principal Amount Outstanding	<ul style="list-style-type: none"> • \$10.0 million

Security & Guarantors	<ul style="list-style-type: none"> • Fourth-priority lien on substantially all of the Debtors' assets • All Debtors are guarantors of and have granted security in respect of the Third A&R Loan Agreement
Advance Payment Facility	
Obligor	<ul style="list-style-type: none"> • NCI
Purchaser	<ul style="list-style-type: none"> • Concord Resources Limited
Principal Amount Outstanding	<ul style="list-style-type: none"> • \$3.0 million
Security & Guarantors	<ul style="list-style-type: none"> • First-priority lien in the APA Collateral and a third-priority lien in the Project Collateral

4.11 The Second A&R Credit Agreement provided the Debtors with, among other things: (i) \$115 million funded by KfW (the “**Initial Senior Lenders**”) (the “**Tranche A Loans**”); (ii) an additional \$15 million funded by the Initial Senior Lenders (the “**Tranche B Loans**”); (iii) \$15 million funded by Pala, Triple Flag and Mercuria US; and (iv) additional advances of \$18.8 million funded by Pala, Triple Flag, Mercuria US and TF Canada (the amounts in (iii) and (iv) being the “**Tranche A-2 Loans**”). In total, \$163.8 million in aggregate principal was funded through the Senior Secured Credit Agreement (excluding capitalized interest).

4.12 The relationship between Triple Flag, KfW, Pala Investments Ltd., Concord Resources Limited and the Debtors is governed by each respective intercreditor agreement (collectively, the “**Intercreditor Agreements**”). A summary of the individual intercreditor agreements is provided in the Martin Affidavit.

4.13 Although not funded indebtedness, NCU has granted a lien on its assets to secure potential reimbursement obligations that may arise in favour of Trisura Insurance Company (“**Trisura**”),

with respect to surety bonds securing certain obligations of NCI. The Debtors have two outstanding surety bonds (the “**Surety Bonds**”) which are renewed on an annual basis for a total of \$321,000 in the aggregate.

- 4.14 In addition, the Debtors have approximately \$226.6 million in amounts outstanding in unsecured funded debt obligations consisting of: (i) \$78.3 million owing in Unsecured Loans (as defined in the Martin Affidavit); and (ii) \$148.3 million owing to NCU from NCI under documented intercompany loans from NCU to NCI (the “**Intercompany Loans**”). Further details on the Intercompany Loans are provided in the Martin Affidavit.

Security Review

- 4.15 Should this Court grant the Initial Recognition Order and the Supplemental Order, the Proposed Information Officer (in its capacity as Information Officer) intends to arrange for its counsel, Cassels, to complete a customary security review in respect of the pre-petition security delivered by the Canadian Debtors and corresponding lien filings. The Proposed Information Officer did not request Cassels to complete a security review prior to the commencement of the Recognition Proceedings because the relief requested in connection with the DIP Facility (as defined below) does not include a roll up or pay down of any obligations under the Prepetition Credit Facilities.

Cash Management Systems

- 4.16 As described in the Martin Affidavit, the Debtors maintain an integrated, centralized cash management system (the “**Cash Management System**”) to collect, transfer and disburse funds generated by their operations to satisfy financial obligations. As described below, the Cash

Management System of the Debtors is highly integrated, with the majority of the assets located in the United States.

- 4.17 The Cash Management System serves numerous functions including, among other things: (i) providing the ability to track and control corporate funds; (ii) ensuring cash availability; (iii) prompting payment of corporate, employee and vendor-related expenses; and (iv) reducing administrative costs by facilitating the efficient movement of funds.
- 4.18 According to the motion material filed in the Chapter 11 Cases, the Cash Management System is comprised of eleven (11) bank accounts that handle the primary collection and disbursement of funds, four (4) of which are located in Canada held at Bank of Montreal (“**BMO**”) (collectively, the “**Canadian Bank Accounts**”). The Canadian Bank Accounts are managed on a day-to-day basis by the Debtors’ financial personnel and are overseen by the Debtors’ financial personnel located in the United States and the limited personnel in Canada.
- 4.19 As at the Petition Date, the Canadian Bank Accounts held approximately CAD\$47,874 and USD\$7,007.
- 4.20 The “Proceeds Account” as defined in the Omnibus Declaration of Gregory J. Martin dated June 10, 2024 (the “**Martin Declaration**”) receives deposits of certain revenues, capital contributions, loan proceeds, and other amounts payable to or received by NCI. Transfers from the Proceeds Account to the NCI Disbursement Account (Operating Account) (as defined in the Martin Declaration) are made in order for the Debtors, among other things, to be able to pay for operating and construction costs. Transfers from the Proceeds Account to the NCU Concentration Account

and Disbursement Accounts (each as defined in the Martin Declaration) are made in order for the Debtors, among other things, to be able to pay for costs disbursed from NCU.

- 4.21 The NCU Concentration Account holds funds for NCU, from which NCU disburses funds directly to vendors or through to NCU's disbursement accounts for operating costs (the "**NCU Disbursement Accounts**"). The two NCU Disbursement Accounts are used for respective payments on account of: (i) Canadian payroll and related flexible spending and health saving accounts; and (ii) operational costs. NCU also has an inactive account at BMO.
- 4.22 In the ordinary course of business, the Debtors enter into intercompany transactions with each other through the operation of their Cash Management System in order to manage their resources in the most efficient manner (the "**Intercompany Transactions**").
- 4.23 NCI partly relies on NCU for raising funds through the issuance of equity capital in the Canadian capital markets or through private raises of capital and loans, including loans and equity raised from NCU's largest shareholder, Pala. These funds, less a small holdback that NCU uses to fund its expenses (such as payroll, taxes, miscellaneous fees, and other operating costs in Canada), typically are transferred in turn to NCI in the form of equity or debt contributions. Currently, NCU relies on NCI for funding of day to day operations. When funds are transferred from NCI to NCU, they are either advanced as new loans or as repayment of the existing intercompany loans.

Sale Process

- 4.24 The Proposed Information Officer understands that, prior to the Petition Date, the Company explored various strategic alternatives, including refinancings, recapitalizations, and asset sales.

Among other things, the Company engaged Citigroup Global Markets and launched a marketing process for the sale of substantially all of the Company's assets (the "**Sale Process**").

4.25 As part of the Sale Process, the Debtors contacted over 30 parties, and ultimately received four proposals from potential purchasers interested in acquiring substantially all or a portion of the Debtors' business. After considering the proposals received, the Debtors entered into two separate exclusivity agreements with the Primary Prospective Purchasers (as defined in the Martin Affidavit) regarding a proposal for additional financing and/or a potential sale of the Debtors' business. Ultimately, the Debtors could not agree to terms with either of the Primary Prospective Purchasers that would allow the Debtors to consummate a sale that would close on the timeline required for the Debtors to meet their funding needs.

4.26 In the absence of a sale agreement on a viable timeline, and diminishing financial support from its lenders, the Debtors determined it was necessary to file the Chapter 11 Cases to provide additional time to continue pursuing the Sale Process under the protections provided by the Bankruptcy Code.

5.0 CENTRE OF MAIN INTEREST

5.1 The Debtors, including the Canadian Debtors, are managed as an integrated group from a corporate, strategic and management perspective.

5.2 The Martin Affidavit describes the Debtors' integrated business. The Canadian Debtors are wholly dependent on NCI, located in the United States, for key leadership and managerial, accounting, finance and other critical functions typically performed by a corporate head office.

- 5.3 The Debtors other than NCU have no business operations or material assets in Canada. NCU, the Canadian parent company, has no independent business operations or material assets other than its wholly-owned interest in NCI, a Nevada-based company, and intercompany loans payable by NCI.
- 5.4 The Canadian Debtors have only three employees, and only one member of the Debtors' key management resides in Canada. Other than accounting and finance, the Canadian Debtors do not employ personnel for any key management function that it would require if they were to operate on a standalone basis.
- 5.5 Substantially all of the creditors of the Debtors are located in the United States and interact with the Debtors in connection with the Debtors' U.S. based operations. The Martin Affidavit confirms that substantially all of the Debtors' assets have been pledged to support the obligations under the the Prepetition Credit Facilities.
- 5.6 Based on the foregoing, the Proposed Information Officer is of the view that it would be appropriate to recognize the Chapter 11 Cases as "foreign main proceedings" pursuant to the CCAA.

6.0 DIP FACILITY

- 6.1 As set out in the Martin Affidavit, the Company lacks the funding required to maintain its operations or administer the Chapter 11 Cases and the Recognition Proceedings. Without access to debtor-in-possession financing and the ability to use cash collateral, the Company would be unable to, among other things, meet employee payroll obligations, maintain business relationships with vendors, suppliers, marketing partners and satisfy working capital and operational needs.

- 6.2 In advance of the Petition Date, the Debtors entered into a debtor-in-possession financing agreement (the “**DIP Credit Agreement**”) extended by two affiliates of Elliott Investment Management L.P. (“**Elliott**”) (together, the “**DIP Lenders**”).
- 6.3 The Proposed Information Officer understands that before entering into the DIP Facility, the Debtors’ investment advisor, Moelis & Company LLC (“**Moelis**”) assisted the Debtors with the strategic evaluation of postpetition financing alternatives. The Debtors have been unsuccessful in identifying any party willing to provide debtor-in-possession financing on a junior basis to the prepetition secured lenders.
- 6.4 Further, the Debtors’ capital structure contains significant amounts of multi-tiered secured indebtedness, governed by certain Intercreditor Agreements described in the Martin Affidavit. As such, obtaining any postpetition financing would require consent, or a priming fight at the outset of the case, which would be value destructive to the estate. For this reason, the initial focus on the part of the Debtors, with the assistance of Moelis, was to obtain financing from parties for whom consent has been obtained, primarily from existing lenders or their affiliates.
- 6.5 Ultimately, the Debtors identified Elliott, an affiliate of Triple Flag and TF Canada, as the best source of DIP financing. Following several rounds of negotiations between the Debtors, their advisors and the DIP Lenders, the principal terms and conditions of the DIP Credit Agreement were agreed upon. With Elliott already having the consent of Triple Flag, Concord, and Pala, pursuant to the Intercreditor Agreements, the remaining required consent was provided by KfW, on the condition that KfW receive adequate protection as outlined in the Interim DIP Order, attached as an exhibit to the Martin Affidavit.

- 6.6 The Debtors, with the assistance of Moelis, contacted 13 third parties to explore alternative postpetition financing options on similar or better terms than the DIP Lenders, but have not yet received any actionable proposals to date.
- 6.7 The DIP Lenders agreed on the principle terms and conditions of a senior secured superpriority debtor-in-possession term loan that provides the Company with up to \$60.0 million of new money financing (the “**DIP Facility**”) comprised of: (i) an initial new money term loan in the aggregate principal amount of \$20 million; and (ii) a new money delayed draw term loan, subject to entry of a final order approving the DIP Facility, in the aggregate principal amount of \$40 million.
- 6.8 The DIP Facility is secured by all of the Debtors’ assets except for the APA Collateral, provided that upon the repayment of all obligations under the Advance Payment Agreement, the DIP Facility shall automatically include a first-priority lien on all collateral that currently constitutes APA Collateral.
- 6.9 The DIP Credit Agreement is described in further detail in the Martin Affidavit, and certain key terms and components are summarized and attached hereto in **Appendix “A”**. The DIP Credit Agreement requires that the Foreign Representative obtain an order of this Court recognizing the Interim DIP Order on or before June 28, 2024.
- 6.10 The Proposed Information Officer has compared the pricing and other financial terms of the DIP Facility to other similar DIP facilities (i.e. working capital revolving facilities) approved by the Canadian courts in previous CCAA proceedings. Based on the Proposed Information Officer’s review, the cost of the proposed DIP Facility is consistent with other similar recently approved DIP facilities.

DIP Lender's Charge

- 6.11 The proposed Supplemental Order contemplates the granting of a court-ordered charge (the “**DIP Lender's Charge**”) in favour of the DIP Lenders on the present and future assets, property and undertakings of the Canadian Debtors, subject to the initial exception regarding the APA Collateral as discussed in paragraph 6.8 above (the “**Canadian Collateral**”) to secure the obligations outstanding from time to time under the DIP Facility.
- 6.12 In connection with Prepetition Credit Facilities, the Canadian Debtors have previously granted security over substantially all of the Canadian Collateral to secure the obligations to the Prepetition Secured Parties (as defined in the Interim DIP Order), who have consented to the DIP Facility on the terms set out in the Interim DIP Order.
- 6.13 Accordingly, the Foreign Representative, requests that the Court grant the DIP Lender's Charge over the Canadian Collateral, which would be subordinate to the proposed Administration Charge, and rank in priority to all other encumbrances, except to the extent the Interim DIP Order provides that any such encumbrance ranks in priority to or *pari passu* with the liens granted in favour of the DIP Lenders pursuant to the Interim DIP Order.
- 6.14 Based on the foregoing, the Proposed Information Officer believes that the Court's recognition of the Interim DIP Order and granting the DIP Lender's Charge is reasonable and appropriate in the circumstances.

7.0 ADDITIONAL ORDERS FOR WHICH RECOGNITION IS BEING SOUGHT

- 7.1 In addition to the Interim DIP Order, the Foreign Representative is seeking recognition of several of the other First Day Orders, each of which are customary in Chapter 11 proceedings.
- 7.2 The Proposed Information Officer, together with its legal counsel, have reviewed the terms of each of the First Day Orders that the Foreign Representative is seeking recognition of, and supports the recognition of such First Day Orders by this Court.
- 7.3 Each of the orders for which recognition is being sought in the Recognition Proceedings is defined and further described in the Martin Affidavit and copies are attached as Exhibits thereto.

8.0 COURT ORDERED CHARGES SOUGHT IN THE SUPPLEMENTAL ORDER

- 8.1 In addition to the DIP Lender's Charge discussed above, pursuant to the proposed Supplemental Order, the Debtors are also seeking to establish the Administration Charge.
- 8.2 The priorities of the Administration Charge and the DIP Lender's Charge, as among them, is proposed to be as follows:
- (a) First – Administration Charge (to the maximum amount of C\$500,000); and
 - (b) Second – DIP Lender's Charge.

Administration Charge

- 8.3 The proposed Supplemental Order provides for an administration charge on the Canadian Collateral in the maximum amount of C\$500,000 (the “**Administration Charge**”), securing the professional

fees of Debtors' Canadian counsel, the Information Officer and legal counsel to the Information Officer.

- 8.4 The Administration Charge is a customary protection provided to professionals assisting with insolvency proceedings. The Proposed Information Officer has reviewed the quantum of the proposed Administration Charge in this case and believes it is reasonable and appropriate in the circumstances having considered the complexity of the Recognition Proceedings, the work that has been completed to date, the engagement terms and anticipated work levels of the Proposed Information Officer, the Proposed Information Officer's counsel, and the Debtors' Canadian counsel, and the size of court-ordered administration charges approved in comparable insolvency proceedings.

9.0 PROPOSED INITIAL ACTIVITIES OF THE INFORMATION OFFICER

- 9.1 The Supplemental Order proposes that following its appointment, the initial activities of the Information Officer will include:

- (a) establishing a website at <https://www.alvarezandmarsal.com/nevadacopper/> to make available copies of the Orders granted in the Recognition Proceedings, as well as other relevant motion materials, reports and information;
- (b) responding to creditor inquiries regarding the Restructuring Proceedings;
- (c) providing such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;


- (d) providing the Court with periodic reports on the status of the Chapter 11 Cases and the Debtors' Part IV proceedings, which reports 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
- (e) engaging with Cassels in respect of the exercise of its powers and the performance of its obligations.

10.0 RECOMMENDATIONS

- 10.1 The Proposed Information Officer has reviewed the terms of the proposed Initial Recognition Order and the Supplemental Order, and believe that the relief sought by the Foreign Representative, as set out in the form of orders submitted to the Court for approval, are fair and reasonable in the circumstances, having regard to the current status of the Debtors. The Proposed Information Officer believes that the terms of the Supplemental Order relating to its 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.
- 10.2 Based on the foregoing, the Proposed Information Officer respectfully recommends that this Court grant the relief requested by the Foreign Representative in the Initial Recognition Order and the Supplemental Order.

All of which is respectfully submitted to the Court this ____20th__ day of June, 2024.

**ALVAREZ & MARSAL CANADA INC.,
Proposed Information Officer of the Debtors
and not in its personal or corporate capacity**

Per: 
Alan J. Hutchens
Senior Vice-President

Appendix “B”

**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 NEVADA COPPER, INC., NEVADA COPPER CORP.,
0607792 B.C. LTD., LION IRON CORP., NC FARMS LLC AND NC DITCH COMPANY
LLC**

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

**FIRST REPORT OF THE INFORMATION OFFICER
ALVAREZ & MARSAL CANADA INC.**

July 22, 2024

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APPENDICES

Appendix “A” – Pre-Filing Report (without Appendices)

Appendix “B” – Notice of Filing of Second Revised Proposed Bidding Procedures Order

Appendix “C” – Notice of Commencement

1.0 INTRODUCTION

- 1.1 On June 10, 2024 (the “**Petition Date**”), Nevada Copper, Inc. (“**NCI**”) and its affiliates (collectively, the “**Debtors**” or the “**Company**”)¹ commenced cases in the United States Bankruptcy Court for the District of Nevada (the “**U.S. Bankruptcy Court**”) by filing voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “**Chapter 11 Cases**”).
- 1.2 As a result of the Debtors’ strained liquidity caused by operational issues at their mining project in Nevada, the absence of a sale agreement on a viable timeline, and diminishing financial support from their lenders, the Debtors determined it was necessary to file the Chapter 11 Cases to provide the Debtors with access to debtor-in-possession financing and additional time to continue pursuing a sale process under the protections provided by the Bankruptcy Code.
- 1.3 The primary purpose of the Chapter 11 Cases is to provide the Debtors with the necessary relief to continue the sale process that began prior to the Petition Date and find a long-term solution to their operational and financial challenges in a manner that maximizes value. The Debtors include NCI’s Canadian parent, Nevada Copper Corp., (“**NCU**”) and its Canadian subsidiary, 0607792 B.C. Ltd. (“**0607 BC**”, together with NCU, the “**Canadian Debtors**”). Each Canadian Debtor is also a Chapter 11 Debtor in the Chapter 11 Cases.

¹ The Debtors are Nevada Copper, Inc., Nevada Copper Corp., 0607792 B.C. Ltd., Lion Iron Corp., NC Farms LLC and NC Ditch Company LLC.

- 1.4 On the Petition Date, the Debtors filed motions for interim and/or final orders (the “**First Day Motions**”) in the Chapter 11 Cases to permit the Debtors to continue to operate their business in the ordinary course and to continue to advance the sale process. Following a hearing in respect of the First Day Motions, the U.S. Bankruptcy Court granted certain orders (the “**First Day Orders**”), including an order (the “**Foreign Representative Order**”) authorizing NCI to act as foreign representative on behalf of the Debtors’ estates.²
- 1.5 On June 19, 2024, NCI, in its capacity as the foreign representative of the Debtors (in such capacity, the “**Foreign Representative**”), served materials in respect of an application before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for recognition of the Chapter 11 Cases as foreign main proceedings pursuant to Part IV of the *Companies’ Creditors Arrangement Act* (“**CCAA**”) and related relief (the “**Recognition Proceedings**”, and together with the Chapter 11 Cases, the “**Restructuring Proceedings**”).
- 1.6 On June 21, 2024, the Court made two orders:
- (a) an order (the “**Initial Recognition Order**”), among other things: (i) recognizing the Chapter 11 Cases as “foreign main proceedings” in respect of the Debtors; and (ii) granting a stay of proceedings in Canada in respect of the Debtors and their property and business, and in respect of their respective directors and officers; and

² Copies of the each of the Chapter 11 Orders and other documents related to the Chapter 11 Cases are available at the website maintained by Epiq Corporate Restructuring, LLC (“**Epiq**”): <https://dm.epiq11.com/case/nevadacopper/dockets>.

(b) an order (the “**Supplemental Order**”), among other things: (i) recognizing and enforcing in Canada certain of the First Day Orders entered in the Chapter 11 Cases, including the Foreign Representative Order; (ii) appointing Alvarez & Marsal Canada Inc. (“**A&M Canada**”) as information officer in respect of the Recognition Proceedings (in such capacity, the “**Information Officer**”); and (iii) granting the Administration Charge and the DIP Lender’s Charge (each as defined in the Supplemental Order).

1.7 A&M Canada, in its capacity as proposed Information Officer, filed a report dated June 20, 2024 (the “**Pre-Filing Report**”) to provide this Court with, among other things, certain background information with respect to the Debtors and the Chapter 11 Cases. A copy of the Pre-Filing Report without appendices is attached hereto as **Appendix “A”** and is available on the Information Officer’s case website at: <https://www.alvarezandmarsal.com/NevadaCopper> (the “**Case Website**”).

2.0 TERMS OF REFERENCE AND DISCLAIMER

2.1 In preparing this report (the “**First Report**”), A&M Canada has relied solely on information and documents provided by the Foreign Representative and other Debtors, their Canadian legal counsel, the Debtors’ financial advisor in the Chapter 11 Cases, and publicly available documents filed with the U.S. Bankruptcy Court (collectively the “**Information**”). Except as otherwise described in this First Report:

(a) the Information Officer has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Information Officer has not audited or otherwise attempted to verify the accuracy

or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CASs**”) pursuant to the *Chartered Professional Accountants of Canada Handbook* (the “**Handbook**”) and accordingly, the Information Officer expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and

- (b) some of the information referred to in this First Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the Handbook, has not been performed.

2.2 Future-oriented financial information referred to in this First Report was prepared based on estimates and assumptions made by the Debtors’ management and financial advisor. Readers are cautioned that, since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, and the variations could be significant.

2.3 This First Report should be read in conjunction with the Affidavit of Melissa Losco sworn July 18, 2024 (the “**Second Losco Affidavit**”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Second Losco Affidavit or the Pre-Filing Report, as applicable.

2.4 Unless otherwise stated, all monetary amounts contained herein are expressed in United States dollars.

3.0 PURPOSE OF THIS REPORT

3.1 The purpose of this First Report is to provide this Court with information regarding the following:

- (a) the Foreign Representative's motion for an order (the "**Recognition of Final Orders and Bidding Procedures Order**") recognizing and giving effect in Canada by this Court pursuant to the CCAA certain orders that have been granted by the U.S. Bankruptcy Court as discussed below;
- (b) an update on the bar date established in the Chapter 11 Cases; and
- (c) a summary of the activities of the Information Officer since the date of its appointment.

4.0 FINAL ORDERS FOR WHICH RECOGNITION IS BEING SOUGHT

4.1 Following a hearing before the U.S. Bankruptcy Court on July 12, 2024, the U.S. Bankruptcy Court entered final versions of certain of the First Day Orders that it previously granted on an interim basis. The Foreign Representative is now seeking Canadian recognition of certain of those final orders (the "**Final Orders**") and the Bidding Procedures Order (described in Section 5 below), and a hearing before this Court has been scheduled for July 24, 2024 for this purpose. This Court previously recognized interim versions of the Final Orders on June 21, 2024, when it granted the Supplemental Order.

4.2 The Information Officer and its legal counsel have reviewed the terms of each of the Final Orders and supports such requested relief. The Information Officer notes that the Final

Orders are, for the most part, common in Chapter 11 proceedings and are substantially consistent with the interim orders previously recognized by this Court pursuant to the Supplemental Order.

4.3 Each of the Final Orders is defined and further described in the Second Losco Affidavit and copies are attached as exhibits thereto.

4.4 This First Report includes pertinent information regarding the following Final Orders: Final DIP Order, Final Cash Management Order, Final Prepetition Wages Order, and the Final Insurance Order.

Final DIP Order

4.5 A summary of the DIP Facility and the Interim DIP Order, including the Information Officer's assessment of their reasonableness and the basis on which the Information Officer recommended that this Court recognize the Interim DIP Order, was provided in the Pre-Filing Report.

4.6 Following entry of the Interim DIP Order and prior to the hearing on the Final DIP Order, the Office of the United States Trustee (the "UST") appointed an Official Committee of Unsecured Creditors (the "UCC"). The Information Officer understands that the Final DIP Order was the product of negotiation among the Debtors and their stakeholders, including the UCC.

4.7 The Final DIP Order, which is substantially similar to the Interim DIP Order, was entered by the U.S. Bankruptcy Court on July 15, 2024 and authorizes the Debtors to utilize the DIP Facility on a final basis, including certain additional amounts that could only be drawn

following the granting of the Final DIP Order. The Final DIP Order was entered on a consensual basis, following the resolution of certain stakeholder objections.

- 4.8 As described in the Pre-Filing Report, the DIP Facility provides for up to \$60 million in new money DIP financing, consisting of: (i) an initial new money term loan in the aggregate principal amount of \$20 million; and (ii) a new money delayed draw term loan, subject to entry of a final order approving the DIP Facility, in the aggregate principal amount of \$40 million.
- 4.9 The Information Officer understands that as at July 14, 2024, the outstanding cumulative borrowings under the DIP Facility were \$20 million, with the \$40 million incremental amount forecast to be drawn on the week ending July 28, 2024.
- 4.10 The changes negotiated with the UCC include a modification to the credit bidding provisions to ensure that if the UCC successfully challenges any of the prepetition liens, any credit bid including such challenged liens will be modified accordingly. As noted below, the Information Officer understands that no party has currently committed to making a credit bid pursuant to the Bidding Procedures Order.

Final Cash Management Order

- 4.11 The Final Cash Management Order approves the relief previously granted by the U.S. Bankruptcy Court, on a final basis, which, among other things, authorizes the Debtors to continue to operate their Cash Management System, including maintaining existing bank accounts, and to continue to perform intercompany transactions through the Cash Management System. The modifications to the Final Cash Management Order address the

rights of the banks to assert claims for the costs associated with administration of the Cash Management System.

4.12 Given that NCU is a holding company, generally, cash is transferred from NCI to NCU to fund the expenses of NCU. The Cash Management System and the bank accounts in Canada are described in the Pre-Filing Report.³ Although the UST requested that the bank accounts in Canada be closed and the funds transferred to an account that complies with the provisions of the U.S. Bankruptcy Code and the local requirements, following the Information Officer's discussions with the Debtors' counsel and the Debtors' submissions, Judge Barnes determined that maintaining the current Cash Management System was appropriate in the circumstances.

4.13 Since the filing date, approximately \$135,000 has been transferred to NCU pursuant to the Cash Management System.

Final Prepetition Wages Order

4.14 The Final Prepetition Wages Order, among other things, approves the relief previously granted by the U.S. Bankruptcy Court, on a final basis. The relief granted includes authorizing the Debtors to pay all prepetition employee wages, salaries and other accrued compensation, reimburse prepetition business expenses and continue prepetition employee benefits programs. The Final Prepetition Wages Order permits payment of amounts owing

³ In addition, although not referenced in the initial list of bank accounts in the First Day Motions, Bank of Montreal holds a deposit of cash collateral in a bank account ending 4097 to secure certain Debtor obligations in connection with a letter of credit that Bank of Montreal issued to secure the Debtors' performance of obligations under a rail car lease. As the Debtors do not have control over or access to such funds, the Debtors have not treated it as part of their Cash Management System.

under the short-term incentive plan (the “**STIP**”) (other than amounts owing to insiders) and the hourly bonus program. However, the Debtors have filed a motion for approval of a key employee incentive plan and a key employee retention plan which, if approved, are intended to replace the hourly bonus program on a go forward basis. The motions in respect of the post-filing employee programs are scheduled to be heard on July 29, 2024.

Final Insurance Order

- 4.15 The Final Insurance Order approves the relief previously granted by the U.S. Bankruptcy Court, on a final basis, which, among other things, authorizes the Debtors to continue their existing insurance policies and pay for Insurance Obligations and Surety Premiums (each as defined in the Final Insurance Order).

5.0 BIDDING PROCEDURES ORDER

- 5.1 As described in the Pre-Filing Report, prior to the Petition Date, the Company explored various strategic alternatives, including refinancings, recapitalizations, and asset sales, and launched a marketing process for the sale of substantially all of the Company’s assets (the “**Sale Process**”). The Bidding Procedures Order establishes procedures to allow the Debtors to continue the Sale Process and seek U.S. Bankruptcy Court approval of a Successful Bid.⁴

⁴ Capitalized terms used but not defined in this section have the meanings set forth in the Bidding Procedures Order or the Bidding Procedures, as applicable.

- 5.2 The U.S. Bankruptcy Court conducted a hearing in respect of the Bidding Procedures Order on July 19, 2024.
- 5.3 Although the Bidding Procedures Order was contested, the Debtors narrowed the issues in advance of the hearing and filed a revised proposed order, a copy of which is attached hereto as **Appendix “B”**. At the hearing, the remaining unresolved objections were from Trisura Guarantee Insurance Company and Trisura Insurance Company (collectively “**Trisura**”) and the UST. Trisura’s objection was resolved during the hearing, based on comments from the Debtors’ U.S. counsel, and the U.S. Bankruptcy Court overruled on the UST’s objection.
- 5.4 The Information Officer understands that the Foreign Representative intends to provide the entered Bidding Procedures Order to the Court in a supplemental affidavit prior to the hearing for this motion on July 24, 2024 and that the Bidding Procedures Order is expected to be substantially in the form proposed at the hearing.
- 5.5 The Bidding Procedures Order, among other things: (a) approves the Auction and Bidding Procedures; (b) a establishes certain dates and deadlines and scheduling an auction or auctions, if necessary; (c) approves the manner of notice of the auction and sale hearing; (d) approves procedures for the assumption and assignment of certain Executory Contracts and Unexpired Leases in connection with the sale transaction, if any; and (e) approves a process for entry into a stalking horse purchase agreement including any applicable bid protections not to exceed three percent of the proposed purchase price.
- 5.6 The Bidding Procedures Order permits the Debtors, in consultation with the Consultation Parties and with the consent of the DIP Lenders, to select one or more stalking horse bidders

with respect to some or all of the Debtors' assets and enter into a stalking horse purchase agreement that would provide such stalking horse bidders with bid protections. Where a DIP Lender, or any affiliate of a DIP Lender, expressly indicates to the Debtors that it is considering submitting or has actually submitted a bid for any of the Debtors' assets, it shall not have consent rights with respect to the selection of a stalking horse bidder or stalking horse bid protections. If the Debtors intend to enter into a stalking horse purchase agreement, they must do so by August 17, 2024, and file such agreement and certain related documents with the U.S. Bankruptcy Court within two business days. If there are no objections to the proposed stalking horse purchase agreement, the U.S. Bankruptcy Court may enter an order approving the use of such agreement as a stalking horse in the process.

- 5.7 Although the Bidding Procedures Order permits credit bidding in the sale process, the Information Officer understands that no party has committed to making a credit bid at this time and the Debtors remain in active discussions with a number of parties regarding potential transactions.
- 5.8 The Bidding Procedures Order also approves the Assumption and Assignment Procedures, which provides contract counterparties with an opportunity to raise any objections to the proposed assumption and assignment or to the proposed Cure Amounts by the Assumption and Cure Objection Deadline. The Bidding Procedures Order therefore allows contract counterparties an initial opportunity to raise objections to any cure amounts and the assignability of their contracts, and a second opportunity to raise objections to the ability of the proposed prevailing purchaser to comply with the relevant terms of the contract once the Successful Bidder is identified.

5.9 The timeline and key processes contemplated by the Bidding Procedures are summarized as follows:

Date	Deadline
<u>Monday, July 29, 2024</u> , or as soon as reasonably practicable after entry of the Bidding Procedures Order	Service of Sale Notice; Publication of Sale Notice
<u>Tuesday, July 30, 2024</u> , or as soon as reasonably practicable thereafter	Serve notice of potential assumption and assignment to contract counterparties
<u>Tuesday, August 20, 2024</u> (or 21 days after service of an applicable notice of assumption and assignment)	Deadline to object to proposed cure amounts and assumption and assignment
<u>Friday, September 6, 2024</u> , at 5:00 p.m. (prevailing Pacific Time)	Bid Deadline
<u>Monday, September 9, 2024</u> , at 9:00 a.m. (prevailing Pacific Time)	Qualified Bid Designation Date
<u>Tuesday, September 10, 2024</u> , at 12:00 p.m. (prevailing Eastern Time)	Auction (if necessary) to be held at the New York offices of A&O Shearman, or such other location announced to the bidders and Consultation Parties
<u>Thursday September 12, 2024</u>	Serve Notice of Successful Bidder on Contract Counterparties
<u>Friday, September 19, 2024</u> , at 12:00 p.m. (prevailing Pacific Time)	Deadline to object to the proposed Sale; deadline to object to adequate assurance.
<u>Tuesday, September 24, 2024</u> , at 12:00 p.m. (prevailing Pacific Time)	Deadline for responses to objections.
<u>Wednesday, September 25, 2024</u> , at 10:00 a.m. (prevailing Pacific Time) (subject to the Bankruptcy Court's availability)	Sale Hearing
<u>Thursday, September 26, 2024</u>	Entry of Sale Order
On or before <u>Monday, October 8, 2024</u>	Closing

5.10 The Information Officer considered the following in assessing the reasonableness of the Bidding Procedures Order:

- (a) in the Information Officer's view, the contemplated sale process and the Bidding Procedures are commercially reasonable, consistent with procedures approved by this Court in both Canadian-only and cross-border insolvency proceedings, and have been designed to maximize value through a competitive sale process while also mitigating against downside risk for stakeholders;
- (b) the Bid Deadline should provide sufficient time to ensure potential bidders are able to perform diligence and prepare and submit their bids;
- (c) the Bidding Procedures encompass the assets of the Canadian Debtors and the Information Officer is a Consultation Party with respect to the Canadian assets; and
- (d) the Information Officer does not believe the Canadian creditors of the Debtors would be materially prejudiced by the Bidding Procedures.

5.11 Subject to entry of a Bidding Procedures Order substantially in the form presented to the U.S. Bankruptcy Court on July 19, 2024, the Information Officer recommends that this Court recognize the Bidding Procedures Order.

6.0 BAR DATE

6.1 The Information Officer understands that pursuant to local practice in the U.S. Bankruptcy Court, a deadline for the filing of proofs of claim (the "**Bar Date**") was established for all creditors of the Debtors upon the commencement of the Chapter 11 Cases. The Bar Date

is October 15, 2024 or December 9, 2024, solely with respect to governmental units (as that term is defined in the Bankruptcy Code).

6.2 The Foreign Representative has advised that copy of the notice of commencement of the Chapter 11 Cases (the “**Notice of Commencement**”), indicating the Bar Date and the website to access the proof of claim form, was sent to each creditor listed on the creditor matrix within a few days of the commencement of the Chapter 11 Cases. A copy of the Notice of Commencement for NCU is attached hereto as **Appendix “C”**.

6.3 No order in respect of the Bar Date has been entered in the Chapter 11 Cases. The Information Officer understands that the Foreign Representative is of the view that a stand-alone recognition order is not needed for the Bar Date and that it is effective in Canada.

6.4 In order to assist with notification of the Bar Date in Canada, the Information Officer will post a notice on the Case Website that will direct creditors to the claims section of the Epiq website.

7.0 ACTIVITIES OF THE INFORMATION OFFICER

7.1 The activities of the Information Officer since being appointed have included:

- (a) establishing the Case Website to make available copies of the orders granted in the Recognition Proceedings as well as other relevant motion materials, reports, and information. In addition, there is a link on the Information Officer’s website to the Debtors’ restructuring website maintained by Epiq that includes copies of all U.S. Bankruptcy Court materials and orders, petitions, notices, and other materials;

- (b) assisting the Foreign Representative with drafting and coordinating publication of the notice of the Chapter 11 Cases and Recognition Proceedings in *The Globe & Mail (National Edition)* newspaper, on June 28, 2024 and July 5, 2024 and *Le Devoir* on June 28, 2024 and July 5, 2024;
- (c) monitoring the Epiq website for activity in the Chapter 11 Cases;
- (d) responding to stakeholder inquiries, including in respect of a request from Canada Revenue Agency, regarding the Restructuring Proceedings;
- (e) engaging with Debtors' Canadian legal counsel and advisors, including AlixPartners, regarding matters relevant to the Chapter 11 Cases;
- (f) reviewing and commenting on the Debtors' motions and orders in the Restructuring Proceedings; and
- (g) preparing this First Report and reviewing draft materials of the Foreign Representative in connection with the Recognition Proceedings.

8.0 RECOMMENDATIONS

- 8.1 The Information Officer and its legal counsel have reviewed each of the relevant Final Orders and the Bidding Procedures Order and believe that the recognition of the Final Orders, and the Bidding Procedures Order, if entered by the U.S. Bankruptcy Court substantially in the form presented to the U.S. Bankruptcy Court, is reasonable and appropriate in the circumstances. The Information Officer intends to review the entered

form of the Bidding Procedures Order once it is available and will advise this Court at the hearing of any material changes or any changes to its recommendation.

- 8.2 Based on the foregoing, the Information Officer respectfully recommends that this Court grant the relief requested by the Foreign Representative.

All of which is respectfully submitted to the Court this 22nd day of July, 2024.

ALVAREZ & MARSAL CANADA INC.,
Information Officer of the Debtors
and not in its personal or corporate capacity

Per: 

Alan J. Hutchens
Senior Vice-President

Appendix “C”

ALLEN OVERY SHEARMAN STERLING US LLP
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Counsel to the Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:

☒ NEVADA COPPER, INC.
☒ NEVADA COPPER CORP.
☒ NC DITCH COMPANY LLC
☒ NC FARMS LLC
☒ LION IRON CORP.
☒ 0607792 B.C. LTD.

Debtors.¹

Lead Case No.: 24-50566-hlb
 Chapter 11

Jointly Administered with:
 Case No. 24-50567-hlb
 Case No. 24-50568-hlb
 Case No. 24-50569-hlb
 Case No. 24-50570-hlb
 Case No. 24-50571-hlb

Hearing Date: July 19, 2024
 Hearing Time: 10:30 a.m.

**DECLARATION OF ZUL JAMAL IN SUPPORT OF
 DEBTORS' NOTICE OF DESIGNATION OF STALKING HORSE BIDDER**

I, Zul Jamal, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge, information, and belief:

1. I make this declaration (this “***Declaration***”) in support of the *Notice of Designation of Stalking Horse Bidder* (the “***Stalking Horse Notice***”) ² and entry of the proposed order, attached to the Stalking Horse Notice as Exhibit 2, as requested therein. This Declaration supplements the

¹ The Debtors in these chapter 11 cases and the last four digits of their registration numbers in the jurisdiction in which they are organized are: Nevada Copper, Inc. (1157) (Nevada); Nevada Copper Corp. (5323) (British Columbia); 0607792 B.C. Ltd. (2524) (British Columbia); Lion Iron Corp. (2904) (Nevada); NC Farms LLC (0264) (Nevada); and NC Ditch Company LLC (4396) (Nevada).

² Capitalized terms used but not defined herein have the meanings given to such terms in the Stalking Horse Notice.

Declaration of Zul Jamal in Support of Debtors' Motion Seeking Entry of an Order (I)(A) Approving the Auction and Bidding Procedures, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Bid Deadlines and an Auction, and (D) Approving the Form and Manner of Notice Thereof, and (II)(A) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (B) Authorizing the Assumption and Assignment of Assumed Contracts, (C) Authorizing the Sale of Assets and (D) Granting Related Relief [ECF No. 146] (the "**Initial Declaration**") and the Supplemental Declaration of Zul Jamal in Support of Debtors' Bidding Procedures Motion [ECF No. 369] (the "**Supplemental Declaration**" and, together with the Initial Declaration, the "**Sale Process Declarations**"), which are incorporated herein by reference.

2. Except where specifically noted, the statements in this Declaration are based upon: my personal knowledge, belief, or opinion; information that I have received from the Debtors' employees or advisors and employees of Moelis & Company LLC ("**Moelis**") working directly with me or under my supervision, direction, or control; or from the Debtors' records maintained in the ordinary course of their business. As a professional retained by the Debtors, Moelis is charging for services provided in this matter, including a fee for running a successful sale process, but I am not being compensated separately for providing this Declaration or testimony. If I were called upon to testify, I could and would testify competently to the facts set forth herein. I am over the age of 18 years and am authorized to submit this Declaration on behalf of the Debtors.

Professional Background and Qualifications

3. I am a Managing Director of Moelis in Moelis' New York office, located at 399 Park Avenue, 4th floor, New York, NY 10022. Moelis is a leading international investment banking and financial advisory firm (NYSE: MC) with over 1,000 employees in locations around the world. Moelis provides a broad range of financial advisory services including (i) mergers and acquisitions, (ii) recapitalization & restructuring, (iii) capital markets advisory, and (iv) private funds advisory.

4. I have over 23 years of experience in investment banking, providing in-court and out-of-court recapitalization and restructuring advisory services to companies, creditors, sponsors,

and other interested parties. Furthermore, I have specific expertise in chapter 11 bankruptcies, exchange offers, consent solicitations, lender negotiations, and distressed financings. Prior to joining Moelis, I worked at Jefferies Group LLC where I advised clients on a variety of restructuring, leveraged finance, and financial sponsor transactions. I graduated magna cum laude with a Bachelor of Science in Economics from the Wharton School at the University of Pennsylvania.

5. Since I began my career, my experience includes numerous notable restructuring assignments, such as Advanced Glassfiber Yarns, Advanced Lighting Technologies, Aleris International Inc., Alpha Media, American Media, Inc., AMR Corporation, Aston Martin, Cone Mills Corp, Core Digital Media, Inc., Crown Cork & Seal Co., Dex Media, Inc., Diamond Sports Group, LLC, Energy Future Holdings, Genesis Global Holdco, LLC, Hexion Topco, LLC, Holley Performance Products, Inc., Innkeepers USA Trust, Jason Industries, Lyondell Chemical Company, Momentive Performance Materials, Inc., RentPath, Sorenson Communications, Inc., TPC Group Inc., Tribune Company, and Russell-Stanley Holdings, Inc.

Basis for Approving the Designation of the Proposed Stalking Horse Bid

6. The Debtors, with Moelis' assistance, have been engaged in a process (the "***Sale Process***") to sell substantially all of the Debtors' assets (the "***Assets***") in accordance with the bidding procedures (the "***Bidding Procedures***") that were approved by the Court in the *Order (I) Approving Auction and Bidding, Noticing, and Assumption and Assignment Procedures; (II) Scheduling Certain Dates and Deadlines with Respect Thereto; (III) Approving Form Notice to be Provided to Interested Parties; and (IV) Granting Related Relief* [ECF No. 434] (the "***Bidding Procedures Order***"). Following the initial stage of the Sale Process that involved the submission of "Preliminary Bid Documents" (as that term is defined in the Bidding Procedures) by "Potential Bidders" (as that term is defined in the Bidding Procedures), the Debtors concluded that there were multiple "Acceptable Bidders" (as defined in the Bidding Procedures) that would be able to progress to the next phase of the Sale Process. Kinterra Capital Corp. ("***Kinterra***") and its affiliates were determined by the Debtors to be Acceptable Bidders.

1 7. Prior to the entry of the Bidding Procedures Order, Kinterra had indicated its desire
2 to be designated as a “Stalking Horse Bidder” (as such term is defined in the Bidding Procedures).
3 At that time, the Debtors, with the assistance of Moelis and the Debtors’ counsel and other advisors
4 began to engage with Kinterra to determine whether it would be in the best interests of the Debtors
5 and their estates for an affiliate of Kinterra to proceed in that capacity. Although progress had
6 been made in those initial discussions, the Debtors made the decision to pause the discussions in
7 order to allow them to evaluate the bids of other Acceptable Bidders. Even during that pause,
8 Kinterra appeared to aggressively pursue completing its due diligence, and engaged professionals
9 to assist them in that process.

10 8. Ultimately, the Debtors elected to reengage with Kinterra, but solely on the basis
11 that it improved the terms of its bid, including the purchase price as reflected in its Preliminary
12 Bid Documents, to bring it to a level that the Debtors could conclude set an acceptable floor for
13 other bids. Kinterra indicated that it would be interested in moving forward on that basis.

14 9. Following discussions on the basis for continued engagement, the Debtors, Moelis,
15 and their other professionals, and Kinterra and its professionals engaged in intensive – and at times
16 nearly around-the-clock negotiations on the terms of Kinterra’s bid and a related proposed asset
17 purchase agreement. That process culminated in the Debtors agreeing to the terms of a binding
18 bid from Southwest Critical Materials LLC (the “**Proposed Stalking Horse Bidder**”), an affiliate
19 of Kinterra, for substantially all of the Debtors’ Assets (the “**Proposed Stalking Horse Bid**”), as
20 reflected in the asset purchase agreement with the Proposed Stalking Horse Bidder (the “**Proposed**
21 **Stalking Horse Agreement**”), dated August 9, 2024, a copy of which is annexed to the Stalking
22 Horse Notice.

23 10. Prior to the Boards of Directors of both Nevada Copper Corp. and Nevada Copper
24 Inc. meeting to approve the designation of the Proposed Stalking Horse Bidder and the entry of
25 the Debtors into the Proposed Stalking Horse Agreement, the Debtors regularly consulted with,
26 and provided updates to, the “Consultation Parties” (as defined in the Bidding Procedures).
27 Following consultation with the “DIP Lenders” (as such term is used in the Bidding Procedures)
28

1 in their capacity as Consultation Parties, as required by the Bidding Procedures Order, the DIP
2 Lenders consented to the Debtors' entry into the Proposed Stalking Horse Agreement.

3 11. Ultimately, after extensive negotiations with the Proposed Stalking Horse Bidder
4 and consultation with the Consultation Parties (including receiving the consent of the DIP
5 Lenders), the Debtors agreed to provide the Proposed Stalking Horse Bidder with certain bid
6 protections as set forth in the Proposed Stalking Horse Agreement, including the ability to receive
7 either a (i) a break-up fee (the "***Break-Up Fee***") equal to three percent (3%) of the Purchase Price,
8 or \$3,840,000, which is inclusive of the Expense Reimbursement (as defined below) or (ii) an
9 expense reimbursement by the Debtors for reasonable and documented out-of-pocket expenses
10 incurred by the Proposed Stalking Horse Bidder in an amount not to exceed \$1,250,000 in the
11 aggregate (the "***Expense Reimbursement***").

12 12. Based on information provided to the Debtors and Moelis in connection with the
13 Proposed Stalking Horse Bid, I believe that the Proposed Stalking Horse Bidder is not an insider
14 or affiliate of the Debtors and am aware of no common identity of incorporators, directors, or
15 controlling stockholders between the Proposed Stalking Horse Bidder and the Debtors. Moreover,
16 based upon the foregoing, I believe that the negotiations between the Debtors and the Proposed
17 Stalking Horse Bidder were intensive, at arm's length, and in good faith.

18 13. I believe that entry into the Proposed Stalking Horse Agreement is in the best
19 interests of the Debtors' estates and their creditors, as the Proposed Stalking Horse Bid will
20 establish a floor for further bidding that may serve to increase the likelihood of competitive bidding
21 for the Debtors' Assets, facilitate participation of Potential Bidders in the Debtors' sale process,
22 and increase the likelihood that the Debtors will receive the best available price and terms for the
23 Purchased Assets under the circumstances. I also believe that the Proposed Stalking Bidder
24 already expended significant efforts to put itself in a position to be the Proposed Stalking Horse
25 Bidder, and that it will continue to extend considerable efforts through the Auction in an effort to
26 get to closing if it is selected as the "Successful Bidder" (as defined in the Bidding Procedures).

1 14. Based upon my experience, I believe that the Proposed Stalking Horse Bid
2 Protections are reasonable considering the size and complexity of the proposed transaction, the
3 time and effort required of the Proposed Stalking Horse Bidder and its advisors in relation to the
4 proposed transaction, and the opportunity cost of pursuing the Proposed Stalking Horse Bid. In
5 addition, in my experience, I believe that the Proposed Stalking Horse Bid Protections are
6 generally comparable with bid protections that stalking horse bidders typically require in similar
7 circumstances to those presented in the Debtors' chapter 11 cases.

8 15. I believe that the Proposed Stalking Horse Bid Protections are reasonably tailored
9 to encourage, rather than hamper, bidding for the Assets through the remainder of the Sale Process.
10 Notably, the Proposed Stalking Horse Agreement permits the Debtors to continue soliciting
11 inquiries, proposals or offers from Potential Bidders pursuant to the terms of the Bidding
12 Procedures Order, thereby providing the Debtors with the opportunity to seek to maximize the
13 value of their Assets through a further marketing and auction process.

14 16. The Proposed Stalking Horse Bid Protections are a material inducement for the
15 Proposed Stalking Horse Bidder to pursue the transaction contemplated by the Proposed Stalking
16 Horse Agreement and to agree to enter into the Proposed Stalking Horse Agreement subject to the
17 Debtors' continued marketing of their Assets and solicitation of higher and better offers.
18 Moreover, I understand that without the Bid Protections, the Proposed Stalking Horse Bidder
19 would be unwilling to remain obligated to consummate the proposed transaction or otherwise be
20 bound by the Proposed Stalking Horse Agreement. Accordingly, I believe that the granting of the
21 Proposed Stalking Horse Bid Protections as part of the Proposed Stalking Horse Bid is materially
22 beneficial to and is in the best interests of the Debtors, their estates, their creditors and other
23 stakeholders.

24 17. In sum, for the reasons set forth herein, I believe the designation of the Proposed
25 Stalking Horse Bid, the Debtors' entry into the Asset Purchase Agreement, and the granting of the
26 Proposed Stalking Horse Protections provided for in the Proposed Stalking Horse Agreement are
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1 reasonable and appropriate and will assist the Debtors in their efforts to maximize the value of
2 their Assets through a successful and competitive sale process.

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4 *[Remainder of page intentionally left blank]*
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1 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
2 and correct to the best of my knowledge, information, and belief.

3
4 Dated: August 10, 2024

/s/ Zul Jamal
Zul Jamal
Managing Director
Moelis & Company LLC

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

Court File No. CV-24-00722252-00CL

AND IN THE MATTER OF NEVADA COPPER, INC., NEVADA COPPER CORP., 0607792 B.C. LTD.,
LION IRON CORP., NC FARMS LLC AND NC DITCH COMPANY LLC
APPLICATION OF NEVADA COPPER, INC. UNDER SECTION 46 OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**SECOND REPORT OF THE INFORMATION
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