

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE REGIONAL	)	WEDNESDAY, THE 10 <sup>TH</sup>
	)	
SENIOR JUSTICE MORAWETZ	)	DAY OF FEBRUARY, 2016

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF ESSAR STEEL ALGOMA INC., ESSAR TECH ALGOMA INC.,  
ALGOMA HOLDINGS B.V., ESSAR STEEL ALGOMA (ALBERTA) ULC,  
CANNELTON IRON ORE COMPANY AND ESSAR STEEL ALGOMA INC. USA

**Applicants**

**ORDER**  
**(Re SISP Approval)**

**THIS MOTION**, made by Essar Steel Algoma Inc., Essar Tech Algoma Inc., Algoma Holdings B.V., Essar Steel Algoma (Alberta) ULC, Cannelton Iron Ore Company and Essar Steel Algoma Inc. USA (together, the "**Applicants**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order approving a sale and investment solicitation process (the "**SISP**"), was heard February 9, 2016 and this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Rajat Marwah sworn January 29, 2016 and the supplemental affidavit of Rajat Marwah sworn February 5, 2016 (the "**Marwah Affidavits**"), and the Exhibits attached thereto, and the Eighth Report of Ernst & Young Inc., in its capacity as the Court-appointed Monitor (the "**Eighth Report**") and on hearing the submissions of counsel for the Applicants, the Monitor, the DIP Lenders, the Prepetition Lenders, the Ad Hoc Committee of Essar Algoma Noteholders, the Ad Hoc Committee of Junior Noteholders, the United Steelworkers together with its Local 2724 and its local United Steelworkers Union Local

2251, Representative Counsel on behalf of the Applicants' retirees (collectively, the "**Core Stakeholders**"), and counsel for those other parties appearing as indicated by the counsel sheet, no one else appearing although properly served, as appears from the affidavits of Kathryn Esaw and Yannick Katirai, filed.

## **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record in respect of this Motion is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined shall have the meanings ascribed to them in the SISP.

## **SALE AND INVESTMENT SOLICITATION PROCESS**

3. **THIS COURT ORDERS** that the SISP, a copy of which is attached hereto as **Schedule "A"**, is hereby approved.
4. **THIS COURT ORDERS** that the Applicants are authorized to commence the SISP immediately in accordance with its terms. The Applicants, the Monitor, Evercore Group LLC (in its capacity as financial advisor to the Applicants, the "**Financial Advisor**") and CDG Group LLC (in its capacity as chief restructuring advisor to the Applicants, the "**CRA**") are hereby authorized and directed to perform their respective obligations under the SISP and to do all things reasonably necessary in relation to such obligations.
5. **THIS COURT ORDERS** that each of the Applicants, the Monitor, the Financial Advisor, the CRA and their respective affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the SISP, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of the Applicants, the Monitor, the Financial Advisor or the CRA, as applicable, in performing their obligations under the SISP, as determined by this Court.

## **NON-DISCLOSURE ARRANGEMENTS**

6. **THIS COURT ORDERS** that the Applicants are authorized and directed to enter into non-disclosure agreements (“**NDAs**”) with each potential bidder (each, a “**SISP Bidder**”) in form and substance acceptable to the Applicants and the Monitor or as directed by the Court.

7. **THIS COURT ORDERS** that no SISP Bidder shall discuss potential transactions or matters related thereto involving the Applicants, their business or their assets with any of the United Steelworkers, its Local 2724 and its Local 2251, and any department, agency or representative of Her Majesty in Right of Ontario or Her Majesty in Right of Canada (collectively, the “**Critical Constituents**”) unless such person has executed an NDA and a consent (the “**Constituent Consent**”) in form and substance acceptable to the Applicants and the Monitor or as directed by the Court.

8. **THIS COURT ORDERS** that the Critical Constituents shall not discuss potential transactions or matters related thereto involving the Applicants, their business or their assets with any SISP Bidder who has not executed an NDA and Constituent Consent and that any discussions between Critical Constituents and SISP Bidders shall be conducted in accordance with the terms of the NDA, Constituent Consents and the SISP.

9. **THIS COURT ORDERS** that the Core Stakeholders and SISP Bidders shall not contact, communicate with or have dealings with the customers and suppliers of the Applicants with respect to the Applicants, their business or their assets or in relation to any bid related to the Applicants, their business or their assets, except with the written consent of the CRA and the Monitor.

## **GENERAL**

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States or any other jurisdiction to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order, including the United States Bankruptcy Court for the district of Delaware. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide

such assistance to the Applicants and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.



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## SCHEDULE "A"

## SALE AND INVESTMENT SOLICITATION PROCESS

1. On November 9, 2015, Essar Steel Algoma Inc. ("**Algoma**"), Essar Tech Algoma Inc., Essar Steel Algoma (Alberta) ULC, Cannelton Iron Ore Company and Essar Steel Algoma Inc. USA (together with Algoma Holdings B.V., the "**Applicants**") obtained an initial order (as amended or amended and restated from time to time, the "**Initial Order**") under the *Companies' Creditors Arrangement Act* (the "**CCAA**") from the Ontario Superior Court of Justice, Commercial List (Toronto) (the "**CCAA Court**").
2. On November 9, 2015, each of the Applicants other than Algoma Holdings B.V. filed a voluntary petition under chapter 15 of the United States Bankruptcy Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**").
3. On November 19, 2015, Algoma Holdings B.V. was added as an Applicant in the CCAA proceedings. On November 20, 2015, Algoma Holdings B.V. filed a voluntary petition under chapter 15 of the Bankruptcy Code in the Bankruptcy Court.
4. Pursuant to the Initial Order, Ernst & Young Inc. was appointed as monitor of the Applicants (in such capacity, the "**Monitor**"). Pursuant to an engagement letter dated October 14, 2015, Evercore Group L.L.C. was retained as the financial advisor to the Applicants (the "**Financial Advisor**"). Pursuant to a CCAA Court order dated January 29, 2016, Mr. John Strek of the CDG Group, LLC was appointed as Chief Restructuring Advisor (the "**CRA**") of the Applicants.
5. Pursuant to the Initial Order and as required under the Senior Secured, Priming and Superpriority Debtor-In-Possession Amended and Restated Credit Agreement dated as of November 9, 2015 as amended and restated as of November 13, 2015 (as amended on November 23, 2015 and on December 18, 2015, and as further amended from time to time, the "**DIP Agreement**"), the Applicants are pursuing a Sale and Investment Solicitation Process (the "**SISP**") for the purpose of identifying one or more financiers of, purchasers of and/or investors in the Applicants' Business and/or Property (each as defined below) with a completion date of a transaction or transactions no later than August 31, 2016 (the "**Opportunity**").
6. The procedures set forth herein describe the process to be followed in the SISP, including the manner in which Persons may gain access to or continue to have access to due diligence materials concerning the Applicants, their business and operations (the "**Business**") and their assets, undertakings and properties (collectively, the "**Property**"), the manner in which a bid becomes a Qualified Bid, the receipt and negotiation of Qualified Bids received, and the guidelines for the ultimate selection of Successful Bid(s) and/or Alternate Bids(s).

## Defined Terms

7. Capitalized terms used but not otherwise defined in this SISP shall have the following meanings:
- (a) **"Ad Hoc Committee of Essar Algoma Noteholders"** means the group of Prepetition Senior Secured Noteholders represented by Goodmans LLP;
  - (b) **"Ad Hoc Committee of Junior Noteholders"** means the group of Prepetition Junior Priority Noteholders represented by Cassels Brock & Blackwell LLP;
  - (c) **"Alternate Bid"** shall have the meaning attributed to it in Section 36;
  - (d) **"Alternate Bidder"** shall have the meaning attributed to it in Section 36;
  - (e) **"Applicants"** shall have the meaning attributed to it in Section 1;
  - (f) **"Approval Motion"** means the motion, in form and substance reasonably acceptable to the DIP Agent and the Requisite DIP Lenders, seeking approval by the CCAA Court of the Successful Bid with the Successful Bidder and, if applicable, any Alternate Bid if the Successful Bid is not consummated;
  - (g) **"Approval Order"** means an order of the CCAA Court, in form and substance reasonably acceptable to the DIP Agent and the Requisite DIP Lenders, approving, among other things, the Successful Bid and the consummation thereof and, if applicable, any Alternate Bid if the Successful Bid is not consummated;
  - (h) **"Bankruptcy Code"** shall have the meaning attributed to it in Section 2;
  - (i) **"Bankruptcy Court"** shall have the meaning attributed to it in Section 2;
  - (j) **"Business"** shall have the meaning attributed to it in Section 6;
  - (k) **"Business Day"** means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
  - (l) **"CCAA"** shall have the meaning attributed to it in Section 1;
  - (m) **"CCAA Court"** shall have the meaning attributed to it in Section 1;
  - (n) **"CIM"** means the confidential information memorandum;
  - (o) **"Consultation Parties"** means counsel and financial advisors to (a) the DIP Agent and/or the DIP Lenders; (b) the Prepetition Agents and/or the Prepetition Lenders; (c) the Ad Hoc Committee of Essar Algoma

Noteholders; (d) the Ad Hoc Committee of Junior Noteholders; (e) the USW; and (f) the Retirees;

- (p) **"CRA"** shall have the meaning attributed to it in Section 4;
- (q) **"Credit Bid"** means an offer in the form of a Sale Proposal or an Investment Proposal, pursuant to which the consideration offered includes an exchange for, and in full and final satisfaction of, all or a portion of a secured claim against the Applicants;
- (r) **"Data Room"** means an electronic data room compiled and maintained by the Applicants containing confidential information in respect of the Applicants, the Business and the Property;
- (s) **"DIP Agent"** means Deutsche Bank AG New York Branch in its capacity as administrative agent under the DIP Agreement;
- (t) **"DIP Agreement"** shall have the meaning attributed to it in Section 5;
- (u) **"DIP Facilities"** shall have the meaning attributed to it in the DIP Agreement;
- (v) **"DIP Lenders"** means the lenders under the DIP Agreement;
- (w) **"Draft APA"** shall have the meaning attributed to it in Section 25(a);
- (x) **"Financial Advisor"** shall have the meaning attributed to it in Section 4;
- (y) **"Financial Wherewithal Information"** shall have the meaning attributed to it in Section 17(b)(viii);
- (z) **"Initial Order"** shall have the meaning attributed to it in Section 1;
- (aa) **"Intercreditor Agreements"** means, collectively, (i) the Intercreditor Agreement dated as of November 14, 2014 among the Applicants, the Prepetition Agents, the Prepetition Senior Secured Notes Trustee and the Prepetition Junior Priority Notes Trustee and (ii) the Pari Passu Intercreditor Agreement dated as of November 14, 2014 among the Applicants, the Prepetition Term Loan Agent (as defined in the DIP Agreement) and the Prepetition Senior Secured Notes Trustee, in each case as amended, restated, supplemented or modified from time to time;
- (bb) **"Investment Proposal"** means an offer to make an investment in, restructure, reorganize or refinance the Applicants' Business that is not a Sale Proposal;
- (cc) **"Monitor"** shall have the meaning attributed to it in Section 4;
- (dd) **"Monitor's Website"** means [www.ey.com/ca/essaralgoma](http://www.ey.com/ca/essaralgoma);



- (ee) **"NDA"** means a non-disclosure and standstill agreement in form and substance satisfactory to the Applicants, the Financial Advisor and the Monitor;
- (ff) **"Notifying Party"** shall have the meaning attributed to it in Section 24;
- (gg) **"Opportunity"** shall have the meaning attributed to it in Section 5;
- (hh) **"Person"** means any individual, group, partnership, firm, joint venture, trust, entity, corporation, unincorporated organization, trade union, pension plan administrator, pension plan regulator, governmental authority or agency, employee or other association, or similar entity, howsoever designated or constituted and wherever located;
- (ii) **"Phase I Bid"** shall have the meaning attributed to it in Section 17;
- (jj) **"Phase I Bid Deadline"** means April 1, 2016, or such later date as may be determined by the Applicants, in consultation with the CRA, the Financial Advisor and the Consultation Parties, with the approval of the Monitor;
- (kk) **"Phase I Bidder"** shall have the meaning attributed to it in Section 13;
- (ll) **"Phase II Bid"** shall have the meaning attributed to it in Section 28;
- (mm) **"Phase II Bid Deadline"** means such date as may be determined by the Applicants, in consultation with the CRA, the Financial Advisor and the Consultation Parties, with the approval of the Monitor;
- (nn) **"Phase II Bidder"** shall have the meaning attributed to it in Section 21;
- (oo) **"Plan"** means a plan of compromise or arrangement proposed to some or all of the creditors of the Applicants pursuant to the CCAA;
- (pp) **"Prepetition Agents"** shall have the meaning attributed to it in the DIP Agreement;
- (qq) **"Prepetition Junior Priority Notes Indenture"** means the indenture dated of November 14, 2014 pursuant to which the Prepetition Junior Priority Notes were granted;
- (rr) **"Prepetition Junior Priority Noteholders"** means the holders of the Prepetition Junior Priority Notes;
- (ss) **"Prepetition Junior Priority Notes"** shall have the meaning attributed to it in the DIP Agreement;
- (tt) **"Prepetition Junior Priority Notes Trustee"** shall have the meaning attributed to it in the DIP Agreement;

- (uu) **"Prepetition Lenders"** shall have the meaning attributed to it in the DIP Agreement;
- (vv) **"Prepetition Senior Facilities"** shall have the meaning attributed to it in the DIP Agreement;
- (ww) **"Prepetition Senior Secured Note Indenture"** means the indenture dated of November 14, 2014 pursuant to which the Prepetition Senior Secured Notes were granted;
- (xx) **"Prepetition Senior Secured Noteholders"** means the holders of the Prepetition Senior Secured Notes;
- (yy) **"Prepetition Senior Secured Notes"** shall have the meaning attributed to it in the DIP Agreement;
- (zz) **"Prepetition Senior Secured Notes Trustee"** shall have the meaning attributed to it in the DIP Agreement;
- (aaa) **"Prime Clerk Website"** means the website maintained by Prime Clerk LLC in respect of the Applicants' cases under the Bankruptcy Code, being <https://cases.primeclerk.com/essarsteel/>;
- (bbb) **"Property"** shall have the meaning attributed to it in Section 6;
- (ccc) **"Qualified Phase I Bid"** shall have the meaning attributed to it in Section 17;
- (ddd) **"Qualified Phase II Bid"** shall have the meaning attributed to it in Section 28;
- (eee) **"Requisite DIP Lender"** shall have the meaning attributed to it in the DIP Agreement;
- (fff) **"Retirees"** means the retirees of the Applicants represented by Ursel Phillips Fellows Hopkinson LLP in the CCAA proceedings;
- (ggg) **"Sale Proposal"** means an offer to acquire all, substantially all or a portion of the Applicants' Property;
- (hhh) **"SISP"** shall have the meaning attributed to it in Section 5;
- (iii) **"SISP Approval Order"** means the order of the CCAA Court dated February 10, 2016, approving the SISP;
- (jjj) **"Solicitation Letter"** means a letter describing the Opportunity, outlining the SISP and inviting recipients of the Solicitation Letter to express their interest pursuant to this SISP.

- (kkk) **“Successful Bid”** shall have the meaning attributed to it in Section 35(a);
- (lll) **“Successful Bidder”** shall have the meaning attributed to it in Section 35(a); and
- (mmm) **“USW”** means the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Services Workers International Union together with its Local 2724 and its local United Steelworkers Union Local 2251.

### Timeline

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

Milestone	Deadline
Phase I Bid Deadline	April 1, 2016
Phase II Bid Deadline	To be determined
Close Sale Transaction or Implement Plan	August 31, 2016

These key dates may be extended by the Applicants pursuant to this SISP, subject to the DIP Agreement and the Milestones contained therein and any order of the CCAA Court.

### Solicitation of Interest

9. As soon as reasonably practicable after the granting of the SISP Approval Order, but in any event by no later than Friday, February 12, 2016, the Financial Advisor will send the Solicitation Letter and NDA to the list of potential bidders identified by the Applicants, in consultation with the CRA, the Financial Advisor and the Monitor.
10. As soon as reasonably practicable after the granting of the SISP Approval Order, the Monitor will post notice of the SISP Approval Order and the SISP on the Monitor's Website and shall cause such notice to be posted on Prime Clerk's Website.
11. As soon as reasonably practicable after the granting of the SISP Approval Order, the Applicants shall issue a press release in respect of the SISP.
12. The Financial Advisor will send the Solicitation Letter and NDA to any other party that requests these documents that the Applicants, in consultation with the CRA, the Financial Advisor and the Monitor, determine is a credible bidder.

## Phase I

### *Phase I Due Diligence*

13. Any Person who returns an executed NDA and a letter setting forth the identity of the Person, the contact information of the Person and full disclosure of the direct and indirect principals of the potential bidder shall be a **"Phase I Bidder"**.
14. Every Phase I Bidder shall receive the CIM providing additional information considered relevant to the Opportunity.
15. Phase I Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and Business in connection with their participation in the SISP and the submission of any bid.
16. Phase I Bidders shall be advised that representatives of the USW and the Retirees are available to meet with them in respect of the formulation of their bid. Any communications between Phase I Bidders and the USW and/or the Retirees shall be supervised by representatives of the Monitor provided that the discussions shall remain confidential and shall not be disclosed without the consent of the parties to the discussion. In connection with the foregoing, the Monitor shall continue to have duties to the CCAA Court to ensure that the SISP proceeds in a manner that complies with the CCAA and the terms of the SISP. The provisions of this paragraph are subject to further order of the CCAA Court.

### *Phase I Bid*

17. A Phase I Bidder who wishes to pursue the Opportunity must deliver a non-binding letter of interest (a **"Phase I Bid"**) to the Financial Advisor by 5:00 p.m. (Eastern Time) on the Phase I Bid Deadline. Such Phase I Bid shall be a **"Qualified Phase I Bid"** if it meets all of the following criteria:
  - (a) The bid contains a summary of the proposed transaction highlighting the material terms of the Phase I Bid, including whether the Phase I Bid is:
    - (i) A Sale Proposal; or
    - (ii) An Investment Proposal;
  - (b) In the case of a Sale Proposal, the bid includes:
    - (i) A purchase price stated in United States Dollars;
    - (ii) The form of consideration for the proposed sale;
    - (iii) Key assumptions supporting the purchase price valuation including the implied enterprise value on a debt-free and cash-free basis;

- (iv) A specific indication of the expected structure and financing of the transaction (including, but not limited to the sources of financing to fund the acquisition);
- (v) A description of the Property that is subject to the transaction and any of the Property expected to be excluded;
- (vi) Description of the Phase I Bidder's intentions for the Business, including any plans or conditions related to the Applicant's management and employees;
- (vii) The key terms and provisions to be included in any order of the CCAA Court approving the contemplated sale;
- (viii) Written evidence of ability to consummate the proposed transaction, that will allow the Applicants, in consultation with the CRA, the Financial Advisor and the Monitor, to make a determination as to the Phase I Bidder's financial and other capabilities to consummate the proposed transaction including, among other things, the following (the **"Financial Wherewithal Information"**):
  - (A) the Phase I Bidder's or, in the case of a Phase I Bidder formed for the purposes of entering into the proposed transaction, the actual or proposed direct or indirect equity holders of such Phase I Bidder's, current financial statements (audited if they exist);
  - (B) evidence of the Phase I Bidder's or, in the case of a Phase I Bidder formed for the purposes of entering into the proposed transaction, the actual or proposed direct or indirect equity holders of such Phase I Bidder's, internal resources;
  - (C) proof of any debt or equity funding commitments that are needed to close the contemplated transaction and any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Applicants, in consultation with the CRA, the Financial Advisor and the Monitor, demonstrating that such Phase I Bidder has the ability to close the contemplated transaction; and
  - (D) contact names and numbers for verification of financing sources,
- (ix) A description of the conditions and approvals required for a final and binding offer, including any anticipated corporate, security holder, internal or regulatory approvals required to close the transaction, and an estimate of the anticipated time frame and any anticipated impediments for obtaining such approvals;

- (x) An outline of any additional due diligence required to be conducted in order to submit a final and binding offer; and
  - (xi) Any other terms or conditions of the Sale Proposal that the Phase I Bidder believes are material to the transaction.
- (c) In the case of an Investment Proposal, the bid includes:
- (i) A description of how the Phase I Bidder proposes to structure the proposed investment;
  - (ii) The aggregate amount of the equity and/or debt investment to be made in the Business or the Applicants in United States Dollars;
  - (iii) Key assumptions supporting the purchase price valuation including the implied enterprise value on a debt-free and cash-free basis;
  - (iv) Description of the Phase I Bidder's intentions for the Business, including any plans or conditions related to the Applicant's management and employees;
  - (v) The equity, if any, to be allocated to the secured creditors, unsecured creditors, shareholders and/or any other stakeholder of the Applicants;
  - (vi) The underlying assumptions regarding the pro forma capital structure (including the form and amount of anticipated equity and/or debt levels, debt service fees, interest or dividend rates, amortization, voting rights or other protective provisions (as applicable), redemption, prepayment or repayment attributes and any other material attributes of the investment);
  - (vii) A specific indication of the expected structure and financing of the transaction (including, but not limited to the sources of financing to fund the acquisition);
  - (viii) The provision of the Financial Whereewithal Information;
  - (ix) A description of the conditions and approvals required for a final and binding offer, including any anticipated corporate, security holder, internal or regulatory approvals required to close the transaction, and an estimate of the anticipated time frame and any anticipated impediments for obtaining such approvals;
  - (x) An outline of any additional due diligence required to be conducted in order to submit a final and binding offer; and
  - (xi) Any other terms or conditions of the Investment Proposal which the Phase I Bidder believes are material to the transaction;

- (d) The bid contains a schedule detailing the sources and uses of debt, cash and equity contemplated in the proposal;
  - (e) The bid includes a statement disclosing any connections or agreements between the Phase I Bidder, on the one hand, and the Applicants, their shareholders and affiliates and all of their respective directors and officers and/or any other known Phase I Bidder, on the other hand;
  - (f) The bid includes an acknowledgement that any Sale Proposal or Investment Proposal is made on an "as-is, where-is" basis; and
  - (g) The bid is received by the Financial Advisor, the Applicants, the CRA and the Monitor by 5:00 p.m. (Eastern Time) on the Phase I Bid Deadline.
18. Upon receipt of any Phase I Bids, the Financial Advisor shall forward copies of all such Phase I Bids to the Applicants, the CRA and the Monitor, forthwith. The Monitor shall determine what information with respect to the Phase I Bids shall be provided to the Consultation Parties. All stakeholders of the Applicants shall have the right to attend before the CCAA Court to obtain the disclosure of any information with respect to the Phase I Bids.

#### *Assessment of Phase I Bids*

19. Following the Phase I Bid Deadline, the Applicants, in consultation with the CRA, the Financial Advisor, the Consultation Parties and the Monitor, will assess the Phase I Bids received by the Phase I Bid Deadline and determine whether such bids constitute Qualified Phase I Bids. The Applicants, in consultation with the CRA and the Financial Advisor, with the approval of the Monitor, may waive compliance with any one or more of the requirements specified above and deem such non-compliant bid to be a Qualified Phase I Bid.
20. The Applicants, in consultation with the CRA, the Financial Advisor and the Consultation Parties, with the approval of the Monitor, may reject any Phase I Bid if it is determined that such bid does not constitute a Qualified Phase I Bid, is otherwise inadequate or insufficient, or is otherwise contrary to the best interests of the Applicants and their creditors and other stakeholders.

#### *Selection of Phase II Bidders*

21. If it is determined by the Applicants, in consultation with the CRA and the Financial Advisor, with the approval of the Monitor, that a Phase I Bidder that has submitted a Qualified Phase I Bid (including where compliance with the bid requirements has been waived) has a bona fide interest in completing a Sale Proposal or Investment Proposal, and such bid has not been rejected pursuant to Section 20 above, then such Phase I Bidder shall be deemed to be a **"Phase II Bidder"**.
22. The Financial Advisor shall notify (a) each Phase I Bidder in writing as to whether the Phase I Bidder has been determined to be a Phase II Bidder and therefore shall be

permitted to proceed to Phase II, and (b) the Consultation Parties of the list of Phase II Bidders, within five (5) Business Days after the Phase I Bid Deadline.

23. Any of the DIP Lenders, the Prepetition Lenders, the Prepetition Senior Secured Noteholders, and the Prepetition Junior Priority Noteholders who notifies the Financial Advisor in writing within ten (10) Business Days after the Phase I Bid Deadline that they intend to participate in Phase II of the SISP shall be deemed to be a Phase II Bidder regardless of whether it submitted a Phase I Bid.
24. Notwithstanding anything to the contrary in this SISP, if any of the DIP Lenders, the Prepetition Lenders, the Prepetition Senior Secured Noteholders or the Prepetition Junior Priority Noteholders notifies the Financial Advisor of its intention to participate in Phase II of the SISP (such party, a "**Notifying Party**"), such Notifying Party and their counsel and financial advisors shall not receive any information concerning any other Phase II Bidder or any Phase II Bid and shall not be entitled to any further consultation rights as a Consultation Party pursuant to this SISP. For greater certainty, if any or all of the DIP Lenders or the Prepetition Lenders are Notifying Parties then none of the DIP Lenders or Prepetition Lenders or their counsel and financial advisors shall receive any information concerning any other Phase II Bidder or any Phase II Bid and shall not be entitled to any further consultation rights as Consultation Parties pursuant to the SISP.

## Phase II

### *Phase II Due Diligence*

25. Each Phase II Bidder shall:
  - (a) Receive access to the Data Room, which shall include a form of draft purchase agreement (the "**Draft APA**");
  - (b) Be invited to participate in management presentations; and
  - (c) Be invited to participate in on-site tours and inspections (within reason and not at the expense of the Applicants maintaining "business as usual" operations).
26. The Applicants, in consultation with the CRA, the Financial Advisor and the Monitor, shall allow each Phase II Bidder such further access to due diligence materials and information relating to the Property and Business as they deem appropriate in their reasonable business judgment and subject to competitive and other business considerations.
27. Phase II Bidders shall be advised that representatives of the USW and the Retirees are available to meet with them in respect of the formulation of their bid. Any communications between Phase I Bidders and the USW and/or the Retirees shall be supervised by representatives of the Monitor provided that the discussions shall remain confidential and shall not be disclosed without the consent of the parties to the discussion. In connection with the foregoing, the Monitor shall continue to have



duties to the CCAA Court to ensure that the SISP proceeds in a manner that complies with the CCAA and the terms of the SISP. The provisions of this paragraph are subject to further order of the CCAA Court.

*Phase II Bids*

28. A Phase II Bidder that wishes to make a formal offer to purchase or make an investment in the Applicants or their Property and Business (a "**Phase II Bid**") shall submit a binding offer that complies with all of the following requirements prior to 5:00 p.m. (Eastern Time) on the Phase II Bid Deadline. Such Phase II Bid shall be a "**Qualified Phase II Bid**" if it meets all of the following criteria:
- (a) The bid complies with all of the requirements set forth in respect of Phase I Qualified Bids other than the requirements set out in Sections 17(b)(ix), 17(b)(x), 17(c)(ix), 17(c)(x), and 17(g) herein;
  - (b) The bid is binding and includes a letter confirming that the Phase II Bid is irrevocable until the selection of the Successful Bidder and the Alternate Bidder, if any, provided that if such Phase II Bidder is selected as the Successful Bidder or the Alternate Bidder, its offer shall remain irrevocable until the earlier of (i) the completion of the transaction with the Successful Bidder, and (ii) September 30, 2016, subject to further extensions as may be agreed to under the applicable transaction agreement(s);
  - (c) The bid is in the form of duly authorized and executed transaction agreements, and in the case of:
    - (i) a Sale Proposal, the bid includes an executed APA, including all exhibits and schedules contemplated thereby (other than exhibits and schedules that by their nature must be prepared by the Applicants), together with a blackline to the Draft APA; and
    - (ii) an Investment Proposal, the bid includes the draft transaction documents contemplated to effect the Investment Proposal, including all exhibits and schedules contemplated thereby (other than exhibits and schedules that by their nature must be prepared by the Applicants);
  - (d) The bid includes written evidence of a firm commitment for financing or other evidence of ability to consummate the proposed transaction satisfactory to the Applicants, in consultation with the CRA, the Financial Advisor and the Monitor;
  - (e) The bid is not subject to the outcome of unperformed due diligence or contingency financing;
  - (f) Any conditions to closing or required approvals, including any agreements or approvals with the Applicants' unions, regulators or other stakeholders, are set

forth in detail such that the Applicants, in consultation with the CRA, the Financial Advisor and the Monitor, can assess the risk to closing associated with any such conditions or approvals;

- (g) The bid fully discloses the identity of each entity that will be entering into the transaction or the financing (including through the issuance of debt in connection with such bid), or that is participating or benefiting from such bid, and such disclosure shall include, without limitation: (i) in the case of a Phase II Bidder formed for the purposes of entering into the proposed transaction, the identity of each of the actual or proposed direct or indirect equity holders of such Phase II Bidder and the terms and participation percentage of such equity holder's interest in such bid; and (ii) the identity of each entity that has or will receive a benefit from such bid from or through the Phase II Bidder or any of its equity holders and the terms of such benefit;
  - (h) The bid is accompanied by a non-refundable good faith cash deposit, equal to 10% of the total purchase price or investment contemplated under the Phase II Bid which shall be paid to the Monitor and held in trust until the earlier of (i) closing of the Successful Bid, and (ii) rejection of the Phase II Bid pursuant to Section 38;
  - (i) The bid includes acknowledgements and representations of the Phase II Bidder that: (i) it had an opportunity to conduct any and all due diligence desired regarding the Property, Business and the Applicants prior to making its offer; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, Property or the Applicants or the completeness of any information provided in connection therewith, except to the extent otherwise provided under any definitive sale or investment agreement executed by the Applicants;
  - (j) The bid includes evidence, in form and substance reasonably satisfactory to the Applicants, in consultation with the CRA, the Financial Advisor and the Monitor, of authorization and approval from the Phase II Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction agreement(s) submitted by the Phase II Bidder; and
  - (k) The bid is received by the Financial Advisor by 5:00 p.m. (Eastern Time) on the Phase II Bid Deadline.
29. Upon receipt of any Phase II Bids, the Financial Advisor shall forward copies of all such Phase II Bids to the Applicants, the CRA and the Monitor, forthwith. Subject to Section 24, the Monitor shall determine what information with respect to the Phase II Bids shall be provided to the Consultation Parties. All stakeholders of the Applicants

shall have the right to attend before the CCAA Court to obtain the disclosure of any information with respect to the Phase II Bids.

30. Notwithstanding anything in this SISP, the SISP Approval Order or the Approval Order to the contrary, a Credit Bid or a cash bid from the DIP Agent (on behalf of the DIP Lenders) or any of the Prepetition Agents (on behalf of the applicable Prepetition Lenders) shall be a Qualified Phase II Bid (without regard to the conditions set out in Section 28 other than Section 28(b), (c), (e), (f), (h) to the extent that the deposit shall be 10% of any cash portion of the bid, (i) and (k)).

#### *Assessment of Phase II Bids*

31. Following the Phase II Bid Deadline and subject to Section 24, the Applicants, in consultation with the CRA, the Financial Advisor and the Monitor, will assess the Phase II Bids received by the Phase II Bid Deadline and determine whether such bids constitute Qualified Phase II Bids. The Applicants, in consultation with the CRA and the Financial Advisor, with the approval of the Monitor, may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant bid to be a Qualified Phase II Bid.
32. Phase II Bids may not be modified, amended, or withdrawn after the Phase II Deadline without the written consent of the Applicants and the Monitor, in consultation with the Consultation Parties, except for proposed amendments to increase the purchase price or otherwise improve the terms of the Phase II Bid for the Applicants.
33. The Applicants, in consultation with the CRA, the Financial Advisor and the Consultation Parties (subject to Section 24), with the approval of the Monitor, may reject any Phase II Bid if it is determined that such bid does not constitute a Qualified Phase II Bid, is otherwise inadequate or insufficient, or is otherwise contrary to the best interest of the Applicants and its creditors and other stakeholders.
34. The Financial Advisor shall notify each Phase II Bidder in writing as to whether its Phase II Bid constitutes a Qualified Phase II Bid that was not otherwise rejected by the Applicants for the reasons set forth in Section 32 above, within ten (10) Business Days of the Phase II Bid Deadline.

#### **Evaluation of Qualified Bids and Subsequent Actions**

35. The Applicants shall evaluate the Qualified Phase II Bids, including as to the purchase price or imputed value, the form of consideration, the treatment of stakeholders, the recovery for creditors, and any delay or other risks (including financing risks and closing risks). Following such evaluation, in consultation with the CRA, the Financial Advisor, the Consultation Parties (subject to Sections 18, 24 and 29) and the Monitor, the Applicants may:
  - (a) Accept one of the Qualified Phase II Bids (the "Successful Bid" and the offeror making such Successful Bid the "Successful Bidder") and take such

steps as may be necessary to finalize definitive transaction documents for the Successful Bid with Successful Bidder; or

- (b) Continue negotiations with selected Phase II Bidders who have submitted Qualified Phase II Bids with a view to finalizing acceptable terms with one or more of the Qualified Bidders.
- 36. The Applicants may also, in consultation with the CRA, the Financial Advisor, the Consultation Parties (subject to Section 24) and the Monitor, select the next highest or otherwise best Qualified Phase II Bid to be an alternate bid (the "**Alternate Bid**" and such bidder, the "**Alternate Bidder**").
- 37. If a Successful Bidder fails to consummate the Successful Bid for any reason, then the Alternate Bid will be deemed to be the Successful Bid and the Applicants will proceed with the transaction pursuant to the terms of the Alternate Bid. Alternate Bids shall remain open for acceptance until the completion of the transaction with the Successful Bidder.
- 38. All Qualified Phase II Bids (other than the Successful Bid and the Alternate Bid) shall be deemed rejected by the Applicants on and as of the date of the execution of the definitive documents contemplated by the Successful Bid by the Applicants.
- 39. If no Qualified Phase II Bids are received by the Phase II Bid Deadline, the SISP shall automatically terminate. If no transaction has been successfully consummated with the Successful Bidder or the Alternate Bidder by September 30, 2016, the SISP shall automatically terminate.

#### **Approval Motion**

- 40. At the Approval Motion, the Applicants shall seek the Approval Order.
- 41. The consummation of the transaction contemplated by the Successful Bid, or the Alternate Bid if the Successful Bid does not close, will not occur unless and until the Approval Order is granted.

#### **"As Is, Where Is"**

- 42. Any sale of the Business and/or Property or any investment in the Applicants or their Business will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Applicants or their advisors or agents, including the Financial Advisor and the CRA, or by the Monitor, except to the extent otherwise provided under any definitive sale or investment agreement with the Successful Bidder executed by the Applicants. Neither the Applicants nor their advisors or agents, including the Financial Advisor and the CRA, or the Monitor make any representation or warranty as to the information contained in the Solicitation Letter, the CIM, any management presentation or the Data Room, except to the extent otherwise provided under any definitive sale or investment agreement with the Successful Bidder executed by the Applicants. Each Phase II Bidder is

deemed to acknowledge and represent that: (a) it has had an opportunity to conduct any and all due diligence regarding the Business and Property prior to making its Phase II Bid; (b) it has relied solely on its own independent review, investigation, and/or inspection of any documents and/or the Business and Property in making its Bid; and (c) it did not rely on any written or oral statements, representations, promises, warranties, conditions or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Business and Property, or the completeness of any information provided in connection therewith, except to the extent otherwise provided under any definitive sale or investment agreement executed by the Applicants.

#### **No Entitlement to Expense Reimbursement or Other Amounts**

43. Subject to the DIP Agreement, Phase I Bidders and Phase II Bidders are not entitled to any breakup fee, termination fee, expense reimbursement, or similar type of payment or reimbursement.

#### **Jurisdiction**

44. Upon submitting a Phase I Bid or a Phase II Bid, the Phase I Bidder and the Phase II Bidder, as applicable, shall be deemed to have submitted to the exclusive jurisdiction of the CCAA Court with respect to all matters relating to the SISF and the terms and conditions of any Sale Proposal or Investment Proposal.

#### **Communications**

45. All Persons wishing to communicate with the Financial Advisor, including all bidders, shall direct all communications or discussions with respect to the SISF, including but not limited to, any requests for information about the Applicants, the Property or Business or with respect to the terms or conditions of any proposed or actual bid, or the status of any such bids, directly to the Financial Advisor at:

#### **EVERCORE GROUP L.L.C.**

Attention: Jose Miguel Smith and Akshay Natarajan  
(Global Metals, Mining & Materials Group)  
15 Stanhope Gate  
London, W1K 1LN  
United Kingdom

Telephone: +44-207-653-6000  
E-mail: Project.A1@evercore.com  
Fax: +44-207-653-6001

and

Attention: Dan Aronson and Bo Yi  
(Restructuring & Debt Advisory Group)

55 East 52nd Street, 35th Floor  
New York, NY 10055

Telephone: 212-857-3100  
E-mail: Project.A1@evercore.com  
Fax: 212-658-9586

### **Role of the Monitor**

46. The Monitor shall participate in the SISP in the manner set out herein and is entitled to receive all information in relation to the SISP.

### **Modifications and Reservations**

47. The Prepetition Agents, on behalf of the applicable Prepetition Lenders, the DIP Agent, on behalf of the applicable DIP Lenders, some or all of the Prepetition Senior Secured Noteholders and some or all of the Prepetition Junior Priority Noteholders, may make a Credit Bid, whether as a stalking horse (through a designated nominee) or otherwise.
48. Notwithstanding anything to the contrary contained herein, nothing in this SISP shall operate to modify the terms of or affect any rights or remedies under the Intercreditor Agreements. For greater certainty, any Credit Bid submitted by any secured creditor must comply with the terms of the Intercreditor Agreements and shall be subject to the Intercreditor Agreements in all respects.
49. The Applicants, in consultation with the Financial Advisor, the CRA and the Consultation Parties, with the approval of the Monitor, reserve the right to amend, modify or terminate this SISP, including by:
- (a) Executing a stalking horse agreement; or
  - (b) Taking any other action,
- subject to any order of the CCAA Court.
50. The Applicants shall have no obligation to agree to conclude a sale or investment arising out of the SISP, and reserve the right, in consultation with the CRA, the Financial Advisor, the Consultation Parties and the Monitor, to reject any offer or other proposal made in connection with the SISP.
51. This SISP does not, and will not be interpreted to, create any contractual or other legal relationship between the Applicants or their advisors, including the CRA and the Financial Advisor, or the Monitor and any bidder, other than, with respect to the Applicants, as specifically set forth in a definitive agreement executed by the Applicants.

52. Notwithstanding this SISP, any stakeholder can apply to Court for the right to advance a recapitalization, restructuring or other transaction in respect of the Applicants or their Business or Property.

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

Court File No. CV-15-000011169-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
ESSAR STEEL ALGOMA INC., ESSAR TECH ALGOMA INC., ALGOMA HOLDINGS B.V.,  
ESSAR STEEL ALGOMA (ALBERTA) ULC, CANNELTON IRON ORE COMPANY AND  
ESSAR STEEL ALGOMA INC. USA

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER**

**(Re SISP Approval)**

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