

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 A PLAN OF
COMPROMISE OR ARRANGEMENT WITH RESPECT TO
EXPRESS GOLD REFINING LTD.

FIFTH REPORT OF THE MONITOR

June 3, 2021

INTRODUCTION

1. On October 15, 2020, Express Gold Refining Ltd. (“EGR” or the “**Applicant**”) filed for and obtained protection under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”). Pursuant to the Order of this Court granted October 15, 2020 (the “**Initial Order**”), Deloitte Restructuring Inc. was appointed as the Monitor in these proceedings (in such capacity, the “**Monitor**”). The Initial Order also provided for, among other things, a stay of proceedings with respect to the Applicant until and including October 19, 2020 (the “**Stay Period**”). In his endorsement, Justice Hailey scheduled the comeback hearing (the “**Comeback Hearing**”) for October 19, 2020.

2. At the Comeback Hearing on October 19, 2020, Justice McEwen amended the Initial Order (the “**Amended Initial Order**”) to, among other things, extend the Stay Period until and including October 27, 2020.

3. On October 27, 2020, the Amended Initial Order was amended a second time to approve the monitoring protocol (the “**Monitoring Protocol**”) agreed to among the Applicant, Canada Revenue Agency (“**CRA**”) and the Monitor, and to extend the Stay Period until and including December 15, 2020.

4. On December 14, 2020, the Court granted an Order extending the Stay Period until and including March 15, 2021.

5. On March 8, 2021, the Court granted an Order approving the amended protocol (the “**Amended Monitoring Protocol**”) agreed to on March 1, 2021 among the Applicant, CRA and the Monitor, and extending the Stay Period until and including June 11, 2021.

6. On May 20, 2021, the Monitor filed a motion (the “**Production Motion**”) for an Order granting the Monitor unfettered access to the full and complete books and records of EGR and in particular, all documents in EGR’s possession and control that have been provided to EGR or its tax counsel, Baker McKenzie LLP (“**Tax Counsel**”), by CRA in connection with all GST/HST assessments and reassessments that have been issued or will be issued by CRA (the “**Tax Documents**”). The Production Motion was returnable on May 25, 2021 and was adjourned to be heard on June 8, 2021 at 11:00 a.m. In support of the Production Motion, the Monitor filed its fourth report dated May 19, 2021 (the “**Fourth Report**”). A copy of the Fourth Report without appendices is attached herein as **Appendix “A”**.

PURPOSE

7. The purpose of this fifth report of the Monitor (the “**Fifth Report**”) is to provide the Court with information and updates on the following:

- (a) the activities of EGR and the Monitor from March 4, 2021, the date of the Third Report of the Monitor (the “**Third Report**”) filed in connection with the previous motion to extend the Stay Period granted in these CCAA proceedings (the “**CCAA Proceedings**”), to the date of this Fifth Report;
- (b) EGR’s cash flow results for the 13-week period from February 15, 2021 to May 14, 2021 with a comparison to forecast amounts;
- (c) EGR’s revised cash flow forecast (the “**Revised Cash Flow Forecast**”) for the 17-week period from May 17 to September 10, 2021, and the Monitor’s comments thereon;
- (d) The Monitor’s efforts in obtaining a proper understanding of the GST/HST assessments and claims of CRA as against EGR and the filing of the Production Motion; and

- (e) the Monitor's recommendation regarding the Applicant's request to extend the Stay Period until September 10, 2021 (the "**Stay Extension Period**").

8. This Fifth Report should be read in conjunction with the Affidavit of Atef Salama sworn June 3, 2021 in support of the Applicant's motion for the relief outlined above (the "**Salama Affidavit**").

TERMS OF REFERENCE AND DISCLAIMER

9. In preparing this Fifth Report and making the comments herein, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by EGR, and discussions with management of the Applicant ("**Management**") (collectively, the "**Information**").

10. The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor 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 Generally Accepted Assurance Standards ("**Canadian GAAS**") pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under Canadian GAAS in respect of the Information.

11. Some of the information referred to in this Fifth Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.

12. Future oriented financial information referred to in this Fifth Report was prepared based on Management's estimates and assumptions. 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, even if the assumptions materialize, and the variations could be significant.

13. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

ACTIVITIES OF EGR SINCE THE THIRD REPORT

14. The activities of EGR since the Third Report are set out in the Salama Affidavit at paragraphs 16 to 27, and such activities of EGR that are related to or arising out of these CCAA Proceedings include:

- (a) Complying with the terms of the Amended Monitoring Protocol;
- (b) Continuing to manage its relationships with customers and suppliers to minimize business disruption;
- (c) Continuing to operate its business after Ontario Regulation 265/21, made under the *Emergency Management and Civil Protection Act* (the “**Stay-at-Home Order**”) came into effect on April 8, 2021, as a “business that may open” pursuant to Schedule 2 of Ontario Regulation 82/20, made under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* (the “**Regulation**”). The Regulation was updated through a series of amendments made on April 14, 16 and 17, 2021 (collectively, the “**Amendments**”);
- (d) Continuing to provide regular updates and information to the Monitor with respect to the business; and
- (e) Continuing its efforts to advance the Tax Litigation (as defined in the Salama Affidavit). A status update of the Tax Litigation is provided in paragraphs 28 to 65 of the Salama Affidavit.

ACTIVITIES OF THE MONITOR SINCE THE THIRD REPORT

15. Since the Third Report, the Monitor has undertaken the following activities:

- (a) Monitored EGR’s business in accordance with the Amended Monitoring Protocol;
- (b) Together with its counsel, reviewed the Stay-at-Home Order, the Regulation and the Amendments and concurred with EGR that EGR appears to qualify as a “business that may open” during the Stay-at-Home Order;

- (c) Communicated with the Applicant’s restructuring counsel regarding developments in the CCAA Proceedings and Tax Counsel regarding the status of the Tax Litigation;
- (d) Reviewed EGR’s GST/HST filings and communicated with CRA regarding the processing status. In this regard, CRA processed and released net tax refunds for GST/HST filings for the period from October 16, 2020 to March 2021; April 2021’s GST/HST filing is currently under review;
- (e) Communicated with General Counsel for Justice Canada regarding developments in these CCAA Proceedings;
- (f) Reviewed certain limited documentation in relation to the Tax Litigation;
- (g) Communicated with EGR and CRA in relation to the disclosure of information and documentation that CRA relies on in respect of the claims and allegations asserted by CRA against the Applicant in the Tax Litigation in an effort to effectively assess the CRA claims;
- (h) Prepared and filed the Fourth Report in connection with the Production Motion;
- (i) Attended the Production Motion and addressed the adjournment and re-scheduling of the hearing;
- (j) Assisted EGR in preparing the Revised Cash Flow Forecast and cash flow variance reporting; and
- (k) Attended to various inquiries which the Monitor received from EGR’s creditors and other interested parties through either the Monitor’s telephone hotline or by e-mail.

CASH FLOW FORECAST AND RESULTS RELATIVE TO FORECAST

16. Summarized in the following table are EGR’s actual cash receipts and disbursements for the 13-week period ended May 14, 2021 (the “**Reporting Period**”) as compared to the corresponding weeks in the cash flow forecast included in the Third Report.

Express Gold Refining Ltd.				
Summary of Actual versus Forecast Cash Flows				
For the 13-week period from February 15, 2021 to May 14, 2021				
(\$CAD '000s)				
Unaudited				
	Actual	Forecast	Variance	Note
Receipts				
Collection from Sales and Accounts Receivable	15,984	17,523	(1,539)	A
HST refunds	409	572	(163)	B
Interest and other receipts	11	1	10	
Total Receipts	16,404	18,096	(1,692)	
Disbursements				
Purchases	15,619	17,172	1,553	C
Customer accounts and hedging	1,010	-	(1,010)	D
Salaries and wages	204	229	25	E
Consulting and professional fees	51	66	15	F
General Administrative Expenses	94	172	78	G
Insurance	23	28	5	
Rent	47	46	(1)	
Advertising and promotion	28	55	27	H
Vehicle	10	9	(1)	
Freight	44	35	(9)	
Income Tax	498	300	(198)	I
Total Disbursements	17,628	18,112	484	
Litigation Costs	431	330	(101)	J
Restructuring Costs	695	851	156	K
Total Litigation and Restructuring Costs	1,126	1,181	55	
Net Cash Flow	(2,350)	(1,197)	(1,153)	
Opening Cash	5,344	5,344	-	
Ending Cash	2,994	4,147	(1,153)	

17. EGR's actual net cash flow for the Reporting Period was approximately negative \$2.35 million, compared to forecast net cash outflow of approximately \$1.20 million, resulting in an

unfavourable variance of \$1.15 million. The following are the reasons for the major variances, identified by the notes in the above table:

- (a) An unfavourable variance of \$1.54 million in sales receipts is a permanent difference due to decreased customer traffic as a result of the Stay-at-Home Order;
- (b) An unfavourable variance of \$163,000 in HST refunds is a temporary difference related to the timing of the January GST/HST refund received on May 21, 2021;
- (c) A favourable variance of \$1.55 million in purchases is a permanent difference due to decreased purchase volumes as a result of the Stay-at-Home Order;
- (d) An unfavourable variance of \$1 million related to customer accounts and hedging is primarily driven by net customer withdrawals of \$443,000 from customer accounts held at EGR for hedging or investment purposes, and transfers out totaling \$567,000 to EGR's hedging/trading account held at Saxo Bank. EGR takes positions in the gold futures markets using the Saxo Bank hedging/trading account to hedge against short and long-term fluctuations in the price of gold;
- (e) A favourable variance of \$25,000 in salaries and wages is a timing difference expected to reverse in the next pay period;
- (f) A favourable variance of \$15,000 in consulting and professional fees is a timing difference expected to reverse in the future;
- (g) A favourable variance of \$78,000 in general and administrative expenses is a permanent difference due to Management's efforts to conserve cash;
- (h) A favourable variance of \$27,000 in advertising and promotion expenses is a timing difference from prior periods;
- (i) An unfavourable variance of \$198,000 in income tax payments is a permanent difference as Management increased monthly disbursements by \$66,000 during the Reporting Period as recommended by EGR's tax accountants;

- (j) An unfavourable variance of \$101,000 in litigation costs is a timing difference from prior periods; and
- (k) A favourable variance of \$156,000 in restructuring costs is a timing difference expected to reverse in the future.

APPLICANT'S REVISED CASH FLOW FORECAST

18. The Applicant, with the assistance of the Monitor, has prepared the Revised Cash Flow Forecast, which covers the period from May 17 to September 10, 2021 (the “**Revised Cash Flow Period**”) for the purposes of projecting the cash position of the Applicant’s planned operations and other activities during the Revised Cash Flow Period. A copy of the Revised Cash Flow Forecast is attached as **Appendix “B”** hereto

19. The Revised Cash Flow Forecast has been prepared by Management, using the probable and hypothetical assumptions set out in the notes to the Revised Cash Flow Forecast (the “**Assumptions**”), and is presented on a weekly basis during the Revised Cash Flow Period.

20. EGR’s opening cash balance on May 17, 2021 was \$2.96 million. The forecast cash flow surplus for the Revised Cash Flow Period before litigation and restructuring costs is estimated to be approximately \$154,000. Litigation and restructuring costs in connection with the Tax Litigation and the CCAA proceeding are estimated to be approximately \$680,000 and \$1.06 million respectively over the Revised Cash Flow Period. The forecast cash flow deficit for the Revised Cash Flow Period after litigation and restructuring costs is estimated to be \$1.59 million, resulting in an estimated ending cash balance of \$1.37 million on September 10, 2021.

21. Accordingly, the Applicant is expected to have sufficient liquidity during the proposed Stay Extension Period.

22. The Monitor has reviewed the Revised Cash Flow Forecast to the standard required of a Court-appointed monitor by section 23(1)(b) of the CCAA. Section 23(1)(b) requires a monitor to review the debtor’s cash flow statement as to its reasonableness and to file a report with the Court on the monitor’s findings. The Canadian Association of Insolvency and Restructuring

Professionals' Standards of Professional Practice include a standard for monitors fulfilling their statutory responsibilities under the CCAA in respect of a monitor's report on a cash flow statement.

23. In accordance with the standard, the Monitor's review of the Revised Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to the Information. Since the Assumptions need not be supported, the Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Revised Cash Flow Forecast. The Monitor also reviewed the support provided by Management for the Assumptions and the preparation and presentation of the Revised Cash Flow Forecast.

24. Based on the Monitor's review, nothing has come to its attention that causes it to believe, in all material aspects, that:

- (a) the Assumptions are not consistent with the purpose of the Revised Cash Flow Forecast;
- (b) as at the date of this Report, the Assumptions are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Revised Cash Flow Forecast, given the Assumptions; or
- (c) the Revised Cash Flow Forecast does not reflect the Assumptions.

25. Since the Revised Cash Flow Forecast is based on Assumptions regarding future events, actual results will vary from the information presented even if the Assumptions occur, and the variations could be material. Accordingly, the Monitor expresses no assurance as to whether the Revised Cash Flow Forecast will be achieved. In addition, the Monitor expresses no opinion or other form of assurance with respect to the accuracy of the financial information presented in the Revised Cash Flow Forecast or relied upon by the Monitor in preparing this Fifth Report.

26. The Revised Cash Flow Forecast has been prepared solely for the purposes described above, and readers are cautioned that it may not be appropriate for other purposes.

PRODUCTION MOTION

27. As noted above, the Production Motion was filed by the Monitor for an Order granting it unfettered access to the full and complete books and records of EGR, in particular all Tax Documents. A background of the issue is provided in detail in the Fourth Report.

28. The Monitor is of the view that a proper review and assessment of the ongoing Tax Litigation and the nature of CRA's claims against EGR is fundamental to the progress of this proceeding. Currently, the Monitor has limited access to the Tax Documents and has attempted to facilitate full access to the Tax Documents without success, leaving the Monitor without a fulsome understanding of the substantive tax issues at hand.

29. The Monitor understands from the Tax Litigation update provided in the Salama Affidavit that the Tax Litigation will not be judicially determined in the near-term (*i.e.* 1-2 years). The *status quo* is having a material adverse effect on EGR's financial position as evidenced by the deteriorating cash position outlined in the Applicant's Revised Cash Flow Forecast described above. The Monitor is concerned that a further delay in the CCAA Proceeding, under the *status quo*, may put EGR's chances of successfully restructuring through a plan of compromise or arrangement at risk, for the benefit of all of EGR's stakeholders.

30. EGR supports the Monitor's access to the Tax Documents, however, access is restricted by operation of an implied undertaking rule.

31. Accordingly, the Monitor is seeking an Order to facilitate access to the Tax Documents which in turn will allow the Monitor to understand and independently report to this Court, and to the EGR's stakeholders, regarding the Tax Litigation.

STAY EXTENSION

32. The current Stay Period expires on June 11, 2021. The Applicant is seeking the extension of the Stay Period up to and including September 10, 2021 in order for the Applicant, with the assistance of the Monitor, to:

- (a) preserve the *status quo* and continue to maintain the stability of operations;

- (b) work towards a resolution to the Tax Litigation with CRA, with further substantive evidence provided to the Monitor with regard to same; and
- (c) determine next steps in respect of the CCAA Proceedings.

33. As described above, the Revised Cash Flow Statement indicates that the Applicant will have sufficient liquidity during the Stay Extension Period.

34. In the Monitor's view, the Applicant has acted and continues to act in good faith and with due diligence in these CCAA Proceedings.

35. The Monitor supports EGR's request for the extension of the Stay Period to September 10, 2021.

All of which is respectfully submitted this 3rd day of June, 2021.

**Deloitte Restructuring Inc., solely in its
capacity as Court-appointed Monitor of
Express Gold Refining Ltd.**



Phil Reynolds, LIT
Senior Vice-President



Warren Leung, LIT
Vice-President

Appendix "A" to the Fifth Report of the Monitor

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 A PLAN OF
COMPROMISE OR ARRANGEMENT WITH RESPECT TO
EXPRESS GOLD REFINING LTD.

FOURTH REPORT OF THE MONITOR
May 19, 2021

INTRODUCTION

1. On October 15, 2020, Express Gold Refining Ltd. (“EGR” or the “**Applicant**”) filed for and obtained protection under the *Companies' Creditors Arrangement Act* (the “**CCAA**”). Pursuant to the Order of this Court granted October 15, 2020 (as may be amended, restated or supplemented from time to time, the “**Initial Order**”), Deloitte Restructuring Inc. (“**Deloitte**”) was appointed as the Monitor in these proceedings (in such capacity, the “**Monitor**”). The Initial Order also provided for, among other things, a stay of proceedings with respect to the Applicant until and including October 19, 2020 (the “**Stay Period**”). In his endorsement, Justice Hainey scheduled the comeback hearing (the “**Comeback Hearing**”) for October 19, 2020.
2. On October 18, 2020, Deloitte filed the First Report of the Monitor (the “**First Report**”) which, among other things, described the activities of EGR and the Monitor and the

development of a monitoring protocol, in conjunction with the Applicant, with respect to the business operations of EGR.

3. At the Comeback Hearing on October 19, 2020, Justice McEwen amended the Initial Order (the “**Amended Initial Order**”) to, among other things, extend the Stay Period until and including October 27, 2020.
4. On October 27, 2020, the Amended Initial Order was amended a second time (the “**Second Amended Initial Order**”) to approve the monitoring protocol (the “**Monitoring Protocol**”) agreed to among the Applicant, the Canada Revenue Agency (“**CRA**”) and the Monitor, and to extend the Stay Period until and including December 15, 2020.
5. On December 14, 2020, the Court granted an Order extending the Stay Period until and including March 15, 2021.
6. On March 8, 2021, the Court granted an Order approving the amended protocol (the “**Amended Monitoring Protocol**”) agreed to on March 1, 2021 among the Applicant, CRA and the Monitor, and extending the Stay Period until and including June 11, 2021.

PURPOSE

7. The purpose of this fourth report of the Monitor dated May 19, 2021 (the “**Fourth Report**”) is to provide information to the Court on the relief sought by the Monitor related to access to certain books and records of the Applicant that may be restricted by CRA as it relates to the Tax Litigation (defined below).

ACCESS TO EGR'S BOOKS AND RECORDS

8. In his affidavit sworn October 14, 2020 (the “**First Salama Affidavit**”), EGR’s Vice-President, Atef Salama, states that the sole reason for EGR’s application for creditor protection under the CCAA is its ongoing tax disputes with CRA, most notably a GST/HST reassessment by CRA resulting in tax liability in excess of \$180 million. At paragraph 4 of the First Salama Affidavit, Mr. Salama goes as far as to state that “... but for the disputes with the [CRA]... [EGR] would be a solvent and successful business with no need for the protections afforded by these proceedings.” A copy of the First Salama Affidavit (without exhibits) is attached hereto as **Appendix “A”**.
9. EGR’s financial statements appear to support Mr. Salama’s assertions. For example, for the year ended May 31, 2020, EGR had earnings before tax of approximately \$8.4 million and, for the year ended May 31, 2019, EGR had earnings before tax of approximately \$3.3 million. EGR appears to be able to service its debt obligations in the ordinary course except for the tax liability related to the GST/HST reassessment.
10. Pursuant to section 23(1)(c) of the CCAA, the Monitor is required to report to this Court regarding “any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company’s business and financial affairs and the cause of its financial difficulties or insolvency...”.
11. The Monitor’s investigation into EGR’s business and financial affairs must include a full investigation into the ongoing tax disputes/assessments/litigation between EGR and CRA (collectively, the “**Tax Litigation**”), as the Tax Litigation is the root cause of EGR’s

insolvency. To date, the Monitor has faced continuing challenges in accessing certain records related to the Tax Litigation, either from EGR or the CRA.

12. Section 24(e) of the Second Amended Initial Order stipulates that the Monitor shall have “...full and complete access to the... books, records, data, including data in electronic form, and other financial documents of the Applicant...”
13. The Monitor further notes that section 24 of the CCAA provides that “for the purposes of monitoring the company’s business and financial affairs, the monitor shall have access to the company’s property, including the premises, books, records, data, including data in electronic form, and other financial documents of the company, to the extent that it is necessary to adequately assess the company’s business and financial affairs.”
14. To date, EGR has granted the Monitor access to its books and records but it has not been at liberty to provide access to documents produced by CRA to its tax counsel, Baker McKenzie LLP (“**EGR’s Tax Counsel**”) in the course of the Tax Litigation which are subject to the implied undertaking rule which binds EGR’s Tax Counsel (collectively, the “**Tax Documents**”).¹ EGR does not oppose the Monitor’s request for unfettered access to *all* of EGR’s books and records, including the Tax Documents. However, the issue, as the Monitor understands it, is that CRA produced the Tax Documents to EGR in the course of the Tax Litigation and therefore the Tax Documents are protected by operation of the implied undertaking rule to which EGR’s Tax Counsel is subject by operation of law.

¹ The Tax Litigation includes an appeal proceeding that EGR has commenced at the Tax Court of Canada bearing Court File No. 2020-1214(GST_G).

Access to the Tax Documents will allow the Monitor to understand and independently report to this Court, and to EGR's stakeholders, regarding the Tax Litigation.

THE MONITOR'S EFFORTS TO DATE

15. On January 25, 2021, the Monitor requested from CRA, via its counsel in the CCAA Proceedings, the Department of Justice (the "**CCAA DOJ**"), information that would allow the Monitor to substantively understand the Tax Litigation and the carousel scheme that is being alleged by CRA, which includes but is not limited to the Tax Documents.
16. The CCAA DOJ responded to the Monitor's request for information on February 11, 2021, advising that CRA is unable to provide this information to the Monitor directly, due to confidentiality restrictions imposed on CRA pursuant to section 241 of the *Income Tax Act* (Canada). However, CRA then stated that if EGR authorizes the Monitor to obtain a copy of the requested documents, then it would be amenable to the Monitor seeking an Order authorising limited disclosure, provided the Order mandates that the contents of the disclosure be confidential and not form a part of the public record or be shared with anyone else.
17. Separately, the Monitor requested copies of the Tax Documents, including a CRA "position paper" and "audit report", from EGR's Tax Counsel, but it told the Monitor that it cannot produce the Tax Documents unless CRA or its counsel in the Tax Litigation, the Department of Justice Canada ("**Tax DOJ**"), agree to waive the implied undertaking rule which binds EGR's Tax Counsel.

18. The Monitor notes that EGR's Tax Counsel has made two written requests, on January 18 and February 1, 2021, to Tax DOJ asking for its consent to EGR's Tax Counsel's disclosure of the Tax Documents to the Monitor. Tax DOJ responded on February 17, 2021, advising that CRA would consent to an Order authorizing EGR to share the position paper and audit report with the Monitor, but only on the basis that the contents of the disclosure would be kept confidential and not form a part of the public record or be shared in any capacity.
19. In short, both CCAA DOJ and Tax DOJ have told the Monitor that they will only agree to disclose the Tax Documents to the Monitor if such disclosure is made under a Court Order preserving confidentiality.
20. In an effort to avoid the time and cost of a court attendance, on March 1, 2021, Monitor's counsel, Dentons Canada LLP ("**Dentons**"), proposed to satisfy CRA's confidentiality concerns by way of executing a written undertaking.
21. On March 22, 2021, following email and telephone correspondence among Dentons, the Monitor and CCAA DOJ, Dentons provided CCAA DOJ with a draft confidentiality undertaking (the "**Draft Undertaking**") setting out terms under which CRA would provide the Monitor with access to confidential documents in the Tax Litigation, including but not limited to the Tax Documents. On April 14, 2021, CCAA DOJ provided the Monitor's counsel with a revised Draft Undertaking, which limited disclosure to CRA's position paper and audit report. In a separate email, CCAA DOJ advised that it was unable to extend the undertaking to all confidential documents in the Tax Litigation, as a waiver of the implied undertaking rule was required in respect of each specific document. Copies of the email correspondence between Dentons and CCAA DOJ regarding the Draft Undertaking

is attached as **Appendix “B”**. Given the volume of documents in the Tax Litigation, this is not a tenable solution.

22. The Monitor has exhausted its efforts to obtain access to information that is critically important to its ability to understand the Tax Litigation and fulfil its obligations under the CCAA and the Orders issued by this Court. The Monitor is therefore seeking an Order of this Court that would facilitate the unfettered access to the books and records of EGR, including all documents in EGR’s possession in connection with the Tax Litigation. It is important to note that the proposed Order would add and contain necessary protections and safeguards to ensure that no confidential information is disclosed to third parties, or used by the Monitor for any purpose other than fulfilling its duties under the Second Amended Initial Order and the CCAA (subject to further Order(s) of the Court).

23. To be clear, the Monitor does not seek access to the Tax Documents in order to “insert” itself into the Tax Litigation. The Monitor’s aims are to discharge its duties to this Court and to EGR’s stakeholders, and to advance the CCAA Proceeding. In this regard, the Monitor is hopeful that such disclosure will also allow the Monitor to report to this Court regarding the *bona fides* of EGR’s filing for creditor protection, the state of EGR’s business and financial affairs and the cause of its insolvency, and whether EGR “has acted, and is acting, in good faith and with due diligence”, as required by section 11.02(3) of the CCAA. A fulsome understanding of the Tax Litigation will also enable the Monitor to assess the prospects of the business continuing as a going concern, to assist with possible non-litigation resolutions, potentially aiding in preserving value for all stakeholders and to assist EGR and its stakeholders in facilitating a plan of compromise or arrangement.

24. The Monitor's current efforts to facilitate a compromise or arrangement are being frustrated by its inability to fully access EGR's books and records in connection with the Tax Litigation and better assess the nature of CRA's claims against EGR.

25. The Monitor understands that the Tax Litigation will not be judicially determined in the near-term (*i.e.* 1-2 years) and that the *status quo* is having a material adverse effect on EGR's financial position. For example, the cash flow forecast appended to the Monitor's Third Report shows a net cash outflow of \$1.4 million during the 17-week period – from a cash position of \$5.3 million in February 2021 to a projected cash position of \$3.9 million in June 2021. The forecast decline in cash position is a result of estimated litigation and restructuring costs totaling \$1.5 million during the 17-week period. The Monitor is concerned that a further delay in the CCAA Proceeding, under the *status quo*, may put EGR's chances of successfully restructuring through a plan of compromise or arrangement at risk.

All of which is respectfully submitted this 19th day of May, 2021.

**Deloitte Restructuring Inc.,
Solely in its capacity as Court-appointed Monitor
of Express Gold Refining Ltd.**

A handwritten signature in cursive script, appearing to read "Phil Reynolds".

Phil Reynolds, LIT
Senior Vice-President

Appendix "B" to the Fifth Report of the Monitor

Express Gold Refining Ltd.
17-week cash flow forecast for the period May 17, 2021 to September 10, 2021
Amounts in CAD, unaudited

Notes	Week Ending	1 21-May	2 28-May	3 4-Jun	4 11-Jun	5 18-Jun	6 25-Jun	7 2-Jul	8 9-Jul	9 16-Jul	10 25-Jul	11 30-Jul	12 6-Aug	13 13-Aug	14 20-Aug	15 27-Aug	16 3-Sep	17 10-Sep	TOTAL
Receipts																			
1	Sales	1,210,345	968,276	1,210,345	1,210,345	1,210,345	1,210,345	968,276	1,210,345	1,210,345	1,210,345	1,210,345	968,276	1,210,345	1,210,345	1,210,345	1,210,345	968,276	19,607,833
2	HST refunds	252,937	-	-	-	-	119,464	-	-	-	156,349	-	-	-	-	156,349	-	-	685,093
3	Interest income	-	-	423	-	-	-	423	-	-	-	-	423	-	-	-	423	-	1,693
	Total Receipts	1,463,281	968,276	1,210,768	1,210,345	1,210,345	1,239,809	968,699	1,210,345	1,210,345	1,366,693	1,210,345	968,699	1,210,345	1,210,345	1,366,693	1,210,768	968,276	20,294,574
Disbursements																			
4	Purchases	1,186,138	948,910	1,186,138	1,186,138	1,186,138	1,186,138	948,910	1,186,138	1,186,138	1,186,138	1,186,138	948,910	1,186,138	1,186,138	1,186,138	1,186,138	948,910	19,215,431
5	Salaries and wages	16,683	31,484	-	13,557	16,683	31,484	-	13,557	16,683	31,484	-	13,557	16,683	31,484	-	13,557	-	246,895
6	Consulting and professional fees	16,904	-	-	16,504	-	-	-	16,504	-	-	-	-	16,504	-	-	-	16,504	82,520
7	General Administrative Expenses	7,880	7,880	7,880	7,880	7,880	7,880	7,880	7,880	7,880	7,880	7,880	7,880	7,880	7,880	7,880	7,880	7,880	133,958
8	Insurance	-	-	-	6,952	-	-	-	6,952	-	-	-	6,952	-	-	-	-	6,952	32,238
9	Rent	-	-	-	14,480	-	-	-	14,480	-	-	-	14,480	-	-	-	-	14,480	57,922
10	Advertising and promotion	2,608	2,608	2,608	2,608	2,608	2,608	2,608	2,608	2,608	2,608	2,608	2,608	2,608	2,608	2,608	2,608	2,608	44,338
11	Vehicle	-	1,598	1,473	-	1,598	-	1,473	-	1,598	-	1,473	-	1,598	-	1,473	-	1,598	12,284
12	Freight	-	-	-	-	12,565	-	-	-	-	-	-	-	-	-	-	-	-	50,259
13	Income Tax	-	66,000	-	-	66,000	-	-	-	-	-	66,000	-	-	-	66,000	-	-	264,000
	Total Disbursements	1,229,813	1,058,480	1,219,531	1,210,182	1,243,855	1,295,708	982,303	1,210,182	1,243,855	1,228,110	1,264,224	995,860	1,225,694	1,246,270	1,264,224	1,233,087	988,467	20,139,845
	Net Cash Flow Before Litigation and Restructuring Costs	233,468	(90,205)	(8,763)	162	(33,510)	34,101	(13,604)	162	(33,510)	138,583	(53,879)	(27,161)	(15,350)	(35,926)	102,469	(22,220)	(20,191)	154,528
14	Litigation Costs	136,085	-	-	-	136,085	-	-	-	136,085	-	-	130,000	-	-	-	-	136,085	680,426
15	Restructuring Costs	-	116,937	-	83,755	-	210,000	-	-	-	130,000	-	-	-	130,000	-	-	-	1,060,692
	Total Litigation and Restructuring Costs	136,085	116,937	-	83,755	136,085	210,000	-	-	130,000	130,000	-	130,000	-	130,000	-	-	136,085	1,741,117
	Net Cash Flow	97,383	(207,141)	(8,763)	(83,493)	(169,595)	(175,899)	(13,604)	162	(33,879)	8,583	(53,879)	(157,161)	(151,435)	(165,926)	102,469	(152,220)	(156,276)	(1,586,589)
16	Opening Cash	2,957,429	3,054,813	2,847,672	2,838,909	2,755,316	2,585,721	2,409,822	2,396,217	2,266,380	2,096,784	2,105,368	2,051,489	1,894,328	1,742,893	1,576,967	1,679,437	1,527,117	2,957,429
	Ending Cash	3,054,813	2,847,672	2,838,909	2,755,316	2,585,721	2,409,822	2,396,217	2,266,380	2,096,784	2,105,368	2,051,489	1,894,328	1,742,893	1,576,967	1,679,437	1,527,117	1,370,841	1,370,841

Notes
General

- Receipts and disbursements denominated in U.S. Dollars have been converted into Canadian Dollars using an exchange rate of CAD:USD 1.21 = USD\$1.00.
- Projected disbursements include GST and HST charged for purchases of goods and services.
- Receipts from sales are estimated based on historical average monthly sales, collected weekly.
- The projected tax refunds are estimated based on input tax credits claimed on GST and HST paid to vendors.
- Receipts from interest income earned on deposits.
- These projected disbursements represent payments to suppliers of precious metals such as gold, silver, platinum and palladium bullion in the form of bars. The Company also purchases unrefined bars and scrap gold for refining.
- These projected disbursements include payroll costs for all salaried and hourly employees. The forecast amounts are based on historic run rates. Hourly employees are paid bi-weekly and salaried employees are paid monthly. Payroll disbursements include all employee source deductions, employee and employer portions of CPP and EI, and other payroll-related taxes.
- These projected disbursements include payments to EGR's advisors for corporate matters.
- These projected disbursements include payments related to office supplies, repair and maintenance, telephone and networking, bank charges, travel, software and utilities.
- These projected disbursements include premium payments for general, property and liability insurance, employee benefits, life insurance, and car insurance.
- These projected disbursements include rent payments to Faring Properties Inc., a related party.
- These projected disbursements relate to the various advertising and promotional initiatives.
- These projected disbursements represent vehicle lease and other vehicle-related expenses.
- These projected disbursements represent freight expenses to transport inventory for refining or for delivery to customers.
- These projected disbursements represent corporate income tax instalments.
- These projected disbursements represent payments to legal advisors for litigation matters.
- These projected disbursements include payments to EGR's legal advisor for specialist restructuring advice and the fees and costs of the Monitor and its counsel.
- The opening cash balance and cash on hand balance at the start of the cash flow forecast.



Express Gold Refining Ltd.

Precious Metals Dealer • Refining • Assaying

June 2, 2021

Deloitte Restructuring Inc.
Bay Adelaide East
8 Adelaide Street West
Suite 200
Toronto, Ontario M5H 0A9
Canada

Attention: Phil Reynolds

Dear Sirs:

**Re: Proceedings under the *Companies' Creditors Arrangement Act* ("CCAA")
Responsibilities/Obligations and Disclosure with Respect to Cash Flow Projections**

In connection with the CCAA proceedings in respect of Express Gold Refining Ltd. ("**EGR**"), the management of EGR ("**Management**") has prepared the attached Cash Flow Statement and the assumptions on which the Cash Flow Statement is based.

EGR confirms that:

1. The Cash Flow Statement and the underlying assumptions are the responsibility of EGR;
2. All material information relevant to the Cash Flow Statement and to the underlying assumptions has been made available to Deloitte Restructuring Inc., in its capacity as Monitor of EGR;
3. Management has taken all actions that it considers necessary to ensure:
 - a. That the individual assumptions underlying the Cash Flow Statement are appropriate in the circumstances;
 - b. That the individual assumptions underlying the Cash Flow Statement, taken as a whole, are appropriate in the circumstances; and
 - c. That all relevant assumptions have been properly presented in the Cash Flow Statement or in the notes accompanying the Cash Flow Statement.
4. Management understands and agrees that the determination of what constitutes a material adverse

215 Victoria St., Suite 400, Toronto, Ontario M5B1T9

Phone: (416) 366-4000 **Fax:** (416) 363-9633 **Email:** info@xau.ca **Website:** <http://www.xau.ca>



Express Gold Refining Ltd.

Precious Metals Dealer • Refining • Assaying

change in the projected cash flow or financial circumstances, for the purposes of our monitoring the on-going activities of EGR, is ultimately at your sole discretion, notwithstanding that Management may disagree with such determination;

5. Management understands its duties and obligations under the CCAA and that a breach of these duties and obligations could make EGR's Management liable to fines and imprisonment in certain circumstances; and
6. The Cash Flow Statement and assumptions have been reviewed and approved by the EGR's board of directors or Management has been duly authorized by EGR's board of directors to prepare and approve the cash flow assumptions.

Yours truly,

Atef Salama
Vice President

**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 WITH RESPECT TO EXPRESS GOLD REFINING
LTD.**

<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</p> <p>PROCEEDING COMMENCED AT TORONTO</p> <p>FIFTH REPORT OF THE MONITOR</p>	<p>DENTONS CANADA LLP 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1</p> <p>Robert J. Kennedy (LSO # 474070) Tel: (416) 367-6756 Fax: (416) 863-4592 robert.kennedy@dentons.com</p> <p>Mark A. Freake (LSO #63656H) Tel: (416) 863-4456 mark.freake@dentons.com</p> <p><i>Lawyers for Deloitte Restructuring Inc., the Monitor</i></p>
--	--