

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

THE HONOURABLE MR. ) TUESDAY, THE 25<sup>th</sup>  
JUSTICE WILTON-SIEGEL ) DAY OF FEBRUARY, 2014

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF THE NOTICE OF INTENTION OF COLOSSUS  
MINERALS INC., OF THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO**

**ORDER**

**THIS MOTION**, made by Colossus Minerals Inc. (the “**Company**”) pursuant to the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”) for an Order directing the Registrar to append the sale investment solicitation process (“**SISP**”) as Schedule “A” to the Order of Wilton- Siegel J. dated January 16, 2014 (the “**Initial BIA Proposal Order**”) was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion and on hearing the submissions of the Company’s counsel and such other counsel as may be in attendance.

**SERVICE**

1. **THIS COURT ORDERS** that this Motion is properly returnable today and hereby dispenses with further service thereof.

**DIRECTING REGISTRAR TO APPEND SISF**

2. **THIS COURT ORDERS AND DECLARES** that the Registrar of the Ontario Superior Court of Justice (Commercial List) shall append the SISF attached hereto as schedule “A” to the Initial BIA Proposal Order.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
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# Schedule “A”

## Sale and Investor Solicitation Process

### Defined Terms

1. All capitalized terms used but not otherwise defined herein have the meaning given to them in the Order granted by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on January 16, 2014 (the “**Approval Order**”) in respect of the Company’s proceedings commenced under the BIA on January 13, 2014.

### SISP Procedures

2. The Sale and Investor Solicitation Process (“**SISP**”) procedures set forth herein describe, among other things:
  - > the manner in which the Company’s property will be made available for sale and the manner in which the opportunity for an investment in the Company’s business can be obtained;
  - > the manner in which a Prospective Bidder (as defined below) may gain access to or continue to have access to due diligence materials;
  - > the manner in which bidders and bids become Qualified Bidders (as defined below) and Qualified Offers (as defined below), respectively;
  - > the receipt and negotiation of offers received;
  - > the ultimate selection of a Successful Bidder (as defined below); and
  - > the Court’s approval thereof.
3. The SISP shall be conducted by the SISP Team (as defined below) in consultation and coordination with the DIP Agent.
4. The SISP will be carried out by the Company, with the assistance of the Financial Advisor under the supervision of the Proposal Trustee (collectively, the “**SISP Team**”). Where this SISP

designates a matter the responsibility or obligation of the SISP Team, the SISP Team members shall decide amongst themselves the most effective and efficient manner to discharge the responsibilities and obligations of the SISP Team.

5. The SISP Team will compile a listing of prospective purchasers and investors. The SISP Team will use all reasonable commercial efforts to contact all parties identified in the list as well as any additional parties that the SISP Team believes could be a potential purchaser or potential investor.
6. The SISP Team will conduct a SISP whereby prospective purchasers and investors will have the opportunity to submit a bid for some or all of the Company's property or make an investment in the Company. An investment in the Company may involve, among other things, a restructuring, recapitalization or other form of reorganization of the business and affairs of the Company.
7. The SISP Team will determine whether the SISP should include newspaper, trade publication, internet or other advertising directed at prospective purchasers and investors.
8. As soon as possible after the date of the Approval Order, the SISP Team will send prospective purchasers and investors a solicitation letter summarizing the acquisition and/or investment opportunity (the "**Teaser Letter**"). The Teaser Letter will include a form of confidentiality agreement ("**CA**") or provide instructions to the prospective purchaser or prospective investor on how they may obtain a CA. The prospective purchasers and prospective investors will be required to sign a CA in order to gain access to confidential information (including access to an electronic data room) and to perform due diligence (each prospective purchaser and investor who signs a CA, referred to herein as a "**Prospective Bidder**"). Those parties who have already executed a confidentiality agreement with the Company in a form satisfactory to the Proposal Trustee (such agreement, also a "**CA**" for the purposes hereof) may be excused from executing a new CA if the Proposal Trustee concludes it is not necessary to do so. All CAs shall inure to the benefit of any purchaser of the Company's business.
9. Any sale of the Company's property and any investment in the Company will be made on an "as is, where is" basis, without surviving representations or warranties of any kind, nature except to the extent otherwise set forth in a definitive sale or investment agreement with a Successful Bidder.

## Non-Binding LOIs

10. In order for a Prospective Bidder to participate in the SISP, the Financial Advisor must receive (at the address set out in the Teaser Letter) from such Prospective Bidder a non-binding letter of intent (“LOI”) on or before 5:00 p.m. Toronto Time on February 27, 2014 (“LOI Deadline”), which LOI shall include:
  - (a) in respect of a proposed purchase of the Company’s property, a reasonably detailed listing and description of the property to be included in the proposed sale, and in the case of an investment in the Company’s business, a reasonably detailed description of the manner in which the investment is to be made;
  - (b) an indication of the proposed purchase price or financial terms of such sale or investment;
  - (c) an acknowledgment that the sale or investment, as applicable, will be made on an “as is, where is basis”;
  - (d) an estimate of the number of employees of the Company who will become employees of the Prospective Bidder (in the case of a proposed purchase of the Company’s property) or shall remain as employees of the Company (in the case of an investment in the Company’s business) and, in each case, provisions setting out the terms and conditions of employment for continuing employees;
  - (e) a description of any liabilities to be assumed by the Prospective Bidder;
  - (f) any anticipated regulatory and other approvals required to close the proposed transaction and the anticipated time frame and any anticipated impediments for obtaining any such approvals;
  - (g) a timeline to closing, which is to occur on or before March 14, 2014 with critical milestones; and
  - (h) such other information reasonably requested by the SISP Team.
11. In addition, in order to be considered by the Company, financial information reasonably requested by the SISP Team to demonstrate that the Prospective Bidder has the financial

resources to consummate the transition contemplated by the LOI, must be provided. If the Prospective Bidder intends to acquire the property of the Company or provide an investment through a special purpose vehicle, the equity holders or sponsors of such special purpose vehicle must guarantee the special purpose vehicle's obligations.

12. The SISP Team in consultation with DIP Agent, will review and evaluate the LOIs based on, among other things, the ability of a Prospective Bidder to complete due diligence on a timely basis as well as other purchaser or investor selection criteria that may be developed by the SISP Team in consultation with the DIP Agent. For greater certainty, the SISP Team shall be entitled, following the LOI Deadline, to seek to clarify the terms of an LOI received prior to the LOI Deadline.

#### **Identification of Qualified Bidder(s)**

13. The Company, with the assistance of the Financial Advisor and the Proposal Trustee, shall consider each of the LOIs and determine, with the written consent of the DIP Agent, whether to pursue a transaction on the terms set out in the applicable LOI. Any Prospective Bidder(s) with whom the Company seeks to pursue a transaction on the terms set out in the applicable LOI shall be deemed to be a qualified bidder(s) (the "**Qualified Bidder**"). Prospective Bidders will be advised by the SISP Team on or before February 17, 2014, if they have been selected as a Qualified Bidder, and will thereafter be provided an opportunity to complete due diligence and submit a binding offer to purchase the property of the Company or invest in the Company.

#### **Submissions of Offers**

14. Under the offer procedure (the "**Offer Procedure**") all offers for purchase and/or investment must be submitted in writing by a Qualified Bidder to the Financial Advisor at the address set out in the Teaser Letter and received on or before 5:00 p.m. Toronto Time on February 21, 2014 (the "**Offer Deadline**").

#### **Qualified Offers**

15. An offer will be considered a "**Qualified Offer**" only if (i) it is submitted by a Qualified Bidder on or before the Offer Deadline, (ii) the requirements of paragraph 15 above are satisfied to the satisfaction of the Company and the Proposal Trustee, and (iii) the offer complies with the following requirements:

- (a) it includes a letter stating that the bidder's offer is irrevocable and open for acceptance until at least 11:59 p.m. Toronto Time on the business day after the Closing Date;
- (b) it includes proof of financial ability to close the transaction (as may be requested by the SISP Team), and shall not be conditional upon financing;
- (c) in the case of a proposed purchase of the Company's property, it includes the following: an acknowledgement and representation that the bidder: (a) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its bid; and (b) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the property to be acquired or liabilities to be assumed or the completeness of any information provided in connection therewith, except as expressly stated in the purchase and sale agreement;
- (d) in the case of an investment in the Company's business, it includes the following: an acknowledgement and representation that the bidder: (a) has relied solely upon its own independent review, investigation and/or inspection of any documents in making its bid; and (b) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the businesses of the Company or the completeness of any information provided in connection therewith, except as expressly stated in the investment agreement;
- (e) it will not contain any material conditions to closing other than Court approval or other statutorily required consents or approvals;
- (f) it is, in the reasonable opinion of the SISP Team, likely to close on or prior to March 14, 2014 (as may be extended by the Company with the prior written approval of the DIP Agent, the "Closing Date"); and
- (g) it does not request or entitle the Qualified Bidder to any break-fee, termination fee, expense reimbursement or other type of compensation or payment.

16. Each Qualified Offer will be considered by the Company with the assistance of the Financial

Advisor and the Proposal Trustee. The SISP Team may seek clarifications to any Qualified Offers following the Offer Deadline, and the Proposal Trustee may grant extensions to any deadline set out herein if consented to by the DIP Agent in writing or ordered by the Court.

#### **Post-Offer Procedure**

17. If one or more Qualified Offers are received in accordance with the Offer Procedure, the Company, in consultation with the Proposal Trustee and subject to the prior written approval of the DIP Agent, may choose to:
  - (a) accept one Qualified Offer (the “**Successful Bid**” and the Qualified Bidder making the Successful Bid being the “**Successful Bidder**”) and take such steps as are necessary to finalize and complete an agreement for the Successful Bid with the Successful Bidder; or
  - (b) continue negotiations with a selected number of Qualified Bidders (collectively, the “**Selected Bidders**”) with a view to finalizing an agreement with one of the Selected Bidders.
18. The Company shall be under no obligation to accept the highest or best offer and the selection of the Successful Bid and/or the Selected Bidders shall be entirely in the discretion of the Company, after consultation with the Proposal Trustee and the written approval of the DIP Agent.
19. The Company shall be under no obligation to accept any offer if, after consultation with the Proposal Trustee and prior written approval of the DIP Agent, the Company determines that no suitable offers have been received and rejects all such offers.

#### **Other Terms**

20. The Company will apply to the Court (the “**Approval Motion**”), on at least four days’ notice to the Service List in these proceedings, for an order approving the Successful Bid and authorizing the Company to enter into any and all necessary agreements with respect to the Successful Bid and to undertake such other actions as may be necessary or appropriate to give effect to the Successful Bid.
21. Before the Company serves and files the application for the Approval Motion, the Successful Bidder will provide a deposit of at least 10% of the purchase price in the case of an acquisition of

the property of the Company or 10% of the investment amount in the case of an investment in the Company (the “**Deposit**”). The Deposit will be paid to and held in escrow by the Proposal Trustee and otherwise will be treated as set out in the Successful Bid.

22. If the Deposit is forfeited to the Company, it shall be forfeited as liquidated damages and not as a penalty. The Company shall apply and use any forfeited Deposit in the manner agreed upon by the Company and the Proposal Trustee and as approved in writing by the DIP Agent.
23. The Approval Motion will be held on a date to be scheduled by the Court, upon request by the Company. At the initial return date of the Approval Motion, with the written approval of the DIP Agent, the Company or the Proposal Trustee may request an adjournment of the Approval Motion. If such adjournment is granted by the Court, no further notice or announcement of any such adjournment will be required.
24. All Qualified Offers (other than the Successful Bid) will be deemed rejected on the date of approval of the Successful Bid by the Court.
25. For the avoidance of doubt, the approvals required pursuant to the terms hereof (including the prior approval of the DIP Agent) are in addition to, and not in substitution for, any other approvals required by the BIA or any other statute or as otherwise required at law in order to implement a Successful Bid.
26. There will be no amendments to this SISP without the consent of the Company, the DIP Agent and the Proposal Trustee or, in the absence of such consent, the approval of the Court.

This SISP does not, and will not be interpreted to, create any contractual or other legal relationship among the Company, the Financial Advisor or the Proposal Trustee or between any of them and any bidder, other than as specifically set forth in a definitive agreement that any such bidder may enter into with the Company. At any time during the SISP, the Proposal Trustee may, upon reasonable prior notice to the Company, apply to the Court for advice and directions with respect to the discharge of its power and duties hereunder.

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
[COMMERCIAL LIST]**

**Proceedings commenced in Toronto**

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**ORDER**

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