

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY  
ASHLAND DIVISION**

IN THE MATTER OF:

**SPECIAL METALS CORPORATION, et al.**  
Debtors.

**Chapter 11 Case**

**CASE NOS. 02-10335-  
02-10338**

**JOINTLY ADMINISTERED  
JUDGE WILLIAM S. HOWARD**

**FOURTH INTERIM AND FINAL APPLICATION  
OF ROTHSCHILD INC.  
FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES**

Name of Applicant: Rothschild Inc.

Authorized to Provide Professional Services to: SPECIAL METALS CORPORATION, et al.

Date of Retention: As of July 9, 2002

Period for which compensation and reimbursement are sought: Fourth Interim: August 1, 2003 – November 26, 2003  
Final: July 9, 2002 – November 26, 2003

Amount of compensation sought as actual, reasonable, and necessary: Fourth Interim: \$1,538,709.68  
Final: \$3,450,000.00

Amount of expense reimbursement sought as actual, reasonable, and necessary: Fourth Interim: \$4,413.18  
Final: \$164,205.60

This is a(n):  X  Interim  X  Final Application

If this is not the first application filed, disclose the following for prior application:

<u>Date Filed</u>	<u>Period Covered</u>	<u>Requested Fees</u>	<u>Requested Expenses</u>	<u>Approved Fees</u>	<u>Approved Expenses</u>
1/15/03	7/9/02-11/30/02	\$711,290.32	\$78,494.26	\$711,290.32	\$78,494.26
5/15 /03	12/1/02-4/31/03	\$600,000.00	\$71,681.84	\$600,000.00	\$71,681.84
9/10/03	4/1/03 – 7/31/03	\$600,000.00	\$9,616.32	\$600,000.00	\$9,616.32

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TO: THE HONORABLE WILLIAM S. HOWARD

Rothschild Inc. ("Rothschild"), financial advisor and investment banker for the above-captioned debtors and debtors-in-possession (the "Debtors" or the "Company"), makes this fourth interim application for the period August 1, 2003 through November 26, 2003 (the "Fourth Interim Period") and final application for the period July 7, 2002 through November 26, 2003 (the "Final Period") for compensation and reimbursement of expenses, and in support thereof respectfully represents:

1. This application is made pursuant to (i) Sections 328(a) and 331 of title 11 of the United States Code (the "Bankruptcy Code"), (ii) Rule 2016 of the Federal Rules of Bankruptcy Procedure, (iii) the Order of the United States Bankruptcy Court for the Eastern District of Kentucky (the "Bankruptcy Court" or this "Court"), dated May 2, 2002 (the "Fee Procedures Order"), establishing procedures for interim compensation and reimbursement of expenses of professionals, (iv) the Order of this Court, dated September 13, 2002 (the "Retention Order"), approving the retention of Rothschild as financial advisor and investment banker to the Debtors, nunc pro tunc, as of July 9, 2002, under the terms set forth in the Debtors' application therefor

and under the terms of the engagement letter, dated July 9, 2002 (the "Engagement Letter") between Rothschild and the Debtors and (v) the Order of this Court, dated September 29, 2003 (the "Confirmation Order"), confirming the Debtors' Second Amended Joint Plan of Reorganization dated August 7, 2003. Copies of the Retention Order and the Engagement Letter are attached hereto as Exhibit A.

2. Under the Engagement Letter, as approved pursuant to the Retention Order, Rothschild is entitled to payment of, among other things, a cash advisory fee of \$150,000 per month as long as the engagement continues (the "Monthly Fee"), plus reimbursement of reasonable and necessary expenses. The Engagement Letter also provides for payment of a completion fee (the "Completion Fee"), payable in cash upon the earlier of (a) the confirmation of a Plan of Reorganization and the Plan of Reorganization becoming effective or (b) the consummation of another transaction, equal to (x) \$3,000,000.00, minus (b) a credit (the "Monthly Fee Credit") equal to 100% of the Monthly Fees paid to the Rothschild in excess of \$450,000.00.

3. Annexed hereto as Exhibit B are the invoices for the total compensation and expenses sought by Rothschild for the Fourth Interim Period, including a breakdown of Rothschild's expenses incurred during the Fourth Interim Period. In summary, during the Fourth Interim Period, Monthly Fees accrued under the Engagement Letter for August 2003, September 2003, October 2003, and November 2003 in the aggregate equaled \$600,000.00. Upon the occurrence of the Effective Date, Rothschild also earned the Completion Fee of \$3,000,000.00. After giving effect to the accrued Monthly Fee Credit, which aggregated \$2,061,290.32 assuming payment of all Monthly Fees through and including November 2003, the Completion Fee payable to Rothschild during the Fourth Interim Period equals \$938,709.68.

In addition, Rothschild incurred reasonable and necessary expenses during the Fourth Interim Period in the amount of \$4,413.18.

4. Copies of invoices detailing Rothschild's fees and expense reimbursements for the period from July 9, 2002 through July 31, 2003 are attached as exhibits to Rothschild's First, Second and Third Interim Fee Applications filed in these Chapter 11 cases and served upon the notice parties, which applications were approved in their entirety by this Court pursuant to previous fee orders. Copies of such invoices therefore have not been attached hereto but are available from the Court or Rothschild upon request by any interested party.

5. Pursuant to the Fee Procedures Order and previously delivered monthly statements, the Debtors have paid Rothschild a total of \$364,250.12 for services performed during the Fourth Interim Period, consisting of (i) 80% of accrued Monthly Fees for August 2003 September 2003 and October 2003, plus (ii) \$4,250.12 for reimbursement of necessary and reasonable expenses.

6. By this Application, Rothschild seeks an order: (i) granting allowance and approval of (A) interim compensation for services rendered during the Fourth Interim Period, consisting of \$1,538,709.68 of fees plus the reimbursement of reasonable and necessary expenses incurred by Rothschild during the Fourth Interim Period in the amount of \$4,413.18, for a total of \$1,543,122.86 and (B) final compensation for services rendered during the Final Period, consisting of \$3,450,000.00 of fees plus the reimbursement of reasonable and necessary expenses incurred by Rothschild during the Final Period in the amount of \$164,205.60, for a total of \$3,614,205.60; (ii) ratifying and confirming all payments received by Rothschild in respect of fees and disbursements during the Fourth Interim Period and the Final Period, in each case pursuant to prior fee orders and the Fee Procedures Order, and as detailed in the monthly statements and (iii) authorizing and directing the Debtors to make payment in respect of any

accrued fees and disbursements not yet paid to Rothschild for the Fourth Interim Period and the Final Period, as detailed in the invoices, including any “holdback” amounts withheld pursuant to the Fee Procedures Order.

7. Given the size and complexity of these cases, the complicated corporate and financial structure of the Debtors, the degree of activity during the Fourth Interim Period and the Final Period, and the high level of services rendered by Rothschild to the Debtors, as more fully described below, Rothschild submits that the compensation it seeks is fair and reasonable and should be allowed.

### **BACKGROUND**

8. The Company is one of the world's leading producers of nickel-base super alloys. The Company's alloy products are used worldwide in the aerospace, gas turbine, oil and gas and automotive industries.

9. The Debtors commenced these Chapter 11 reorganization cases on March 27, 2002 (the “Petition Date”). During the pendency of these Chapter 11 cases, the Debtors have continued to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

10. On September 13, 2002, this Court entered the Retention Order, pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code, authorizing the employment and retention of

Rothschild as financial advisor and investment banker for the Debtors as of July 9, 2002, under the terms set forth in the Engagement Letter.<sup>1</sup>

11. On May 9, 2003, the Debtors filed their First Joint Plan of Reorganization and on August 7, 2003, the Debtors filed their Second Amended and Restated Joint Plan of Reorganization (the “Plan”).

12. On September 29, 2003, this Court entered the Confirmation Order, by which, among other things, this Court found that the Plan was in compliance with the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules and that the requisite statutory majorities of classes of claims and interests entitled to vote thereon had voted in favor of the Plan, and the Plan was confirmed. The Plan became effective on November 26, 2003 (the “Effective Date”). Pursuant to paragraph 26 of the Confirmation Order and section 2.4 of the Plan, retained professionals in these cases have been instructed to submit final applications for payment of compensation accrued through, and reimbursement of expenses incurred as of, the Effective Date.

### **RETENTION OF ROTHSCHILD**

13. After interviewing several investment banking firms, the Company elected to engage Rothschild to advise the Debtors in this Chapter 11 as of July 9, 2002. Rothschild understands that the Debtors chose to retain Rothschild due to Rothschild’s reputation as a leading investment banking firm and financial advisor in the restructuring and metals sectors and its substantial experience advising debtors, creditors’ committees and other parties in interest in connection with all aspects of the financial restructuring and Chapter 11, including financial advice

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<sup>1</sup> Certain indemnification provisions contained in the Engagement Letter and in Exhibit A thereto were not approved under the Retention Order; such indemnification provisions were separately approved, subject to certain

regarding mergers, acquisitions, divestitures, public and private financings and spin-offs and evaluation of assets and liabilities, formulation and negotiation of plans of reorganization and the restructuring of indebtedness.

14. By the Retention Order, this Court approved the employment and retention of Rothschild as financial advisor and investment banker to the Debtors to provide assistance to the Company in evaluating the complex financial and economic issues raised by these Chapter 11 cases and to fulfill their statutory and fiduciary duties. Rothschild was retained by the Company to perform such services as the Company may request including:

(a) to the extent Rothschild deems necessary, appropriate and feasible, or the Company may request, review and analyze the Company's assets and the operating and financial strategies of the Company, and the business plans and financial projections prepared by the Company, including, but not limited to, testing assumptions and comparing those assumptions to historical Company and industry trends;

(b) evaluate the Company's debt capacity in light of its projected cash flows and assist in the determination of an appropriate capital structure for the Company;

(c) assist the Company and its other professionals in reviewing the terms of any proposed Transaction, in responding thereto and, if directed, in obtaining alternative proposals for a Transaction, whether in connection with a Plan (as defined below) or otherwise;

(d) determine a range of enterprise values for the Company and any securities that the Company offers or proposes to offer in connection with a Transaction;

(e) advise the Company on the risks and benefits of considering a Transaction with respect to the Company's intermediate and long-term business prospects and strategic alternatives to maximize the business enterprise value of the Company, whether pursuant to a Plan or otherwise;

(f) review and analyze any proposals the Company receives from third parties in connection with a Transaction, including, without limitation, any proposals for debtor-in-possession financing, as appropriate;

(g) assist or participate in negotiations with third parties submitting proposals and with the parties in interest, including, without limitation, any current or prospective creditors of, or holders of equity in, the Company in connection with a Transaction;

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modifications, pursuant to an Order of this Court, also dated September 13, 2002.

(h) advise and attend meetings of third parties and official constituencies, as necessary;

(i) if requested by the Company, participate in hearings before the Bankruptcy Court and provide relevant testimony with respect to the matters described herein and issues arising in connection with any proposed Plan;

(j) to the extent deemed desirable by the Company, identify and/or initiate potential Transactions; and

(k) render such other financial advisory and investment banking services as may be agreed upon by Rothschild and the Company in connection with any of the foregoing.

### **SUMMARY OF SERVICES RENDERED**

15. All services rendered by Rothschild pursuant to the Retention Order during the Final Period, including services rendered during the Fourth Interim Period, were performed at the request or direction of the Debtors or legal professionals of McGuireWoods LLP. Throughout the course of Rothschild's engagement, Rothschild has provided a broad range of necessary financial advisory services. A detailed description of the services performed by Rothschild during the Fourth Interim Period is attached hereto as Exhibit C. The major areas of effort during the Final Period, including areas of effort during the Fourth Interim Period, may be summarized by project category as follows:

#### **A. Operational and Financial Due Diligence**

16. Rothschild's operational and financial due diligence involved numerous meetings and telephone calls with officers and employees of the Debtors, as well as due diligence visits to the offices of the Debtors. Topics discussed and reviewed included business operations by location, customers, industries, products, cost drivers, capital expenditures and current operating performance. These meetings and conversations occurred continuously from the inception of Rothschild's engagement until the effectiveness of the Plan with varying degrees of frequency.



While preparing the Confidential Information Memorandum and other key marketing materials for the Sale Process (described below), as well as while preparing valuation and debt capacity analyses for the Debtors, Rothschild held regular meetings and conversations with the Debtors' management regarding financial and operational due diligence. Thereafter, Rothschild held similar discussions with management upon its release of monthly data and upon the release its various revised near and long-term projections.

17. Additionally, Rothschild held numerous meetings and conversations regarding the Debtors' operating strategy and historical operating results, variance of these results to prior forecasts, assumptions for future operating and financial projections and numerous other subjects, including implementation of operational improvement initiatives. Rothschild reviewed and performed various analyses of the Company's long-term financial projections and capital expenditure budget. Rothschild's review involved the analysis of various revisions to the Company's detailed sales projections and commercial assumptions, including actual booked sales, projected recovery of key markets, nickel pricing and new business opportunities, as well as discussions with the Company's sales management. Rothschild also reviewed the Company's operating cost structure, status of performance improvement initiatives and capital expenditure requirements to support the detailed sales projections. Rothschild was instrumental in working with the Debtors to develop a business plan that, in management's estimation, accurately reflected the Company's future operating results based on macro economic and industry trends, the historical performance of the Company's operations and execution of various operational improvement initiatives. Lastly, prior to both the disclosure statement and confirmation hearings, Rothschild reviewed with management the available year-to-date actual financial results and revisited the underlying assumptions and financial projections of the Company's business plan.

## **B. Financial/Valuation Analysis**

18. Rothschild performed, updated and reviewed various analyses of the Debtors' financial projections, capital structure and the potential financial implication of various restructuring scenarios. Rothschild's review involved the analysis of the Debtors' historical and interim financial performance and the Debtors' projections, as well as discussions with the Debtors management and an analysis of the industry, financial and market performance of their competitors (see Operational and Financial Due Diligence). Rothschild prepared, updated and reviewed with the Company detailed operating and recapitalization models to analyze the Company's long-term financial projections, to evaluate various reorganization alternatives and to perform various valuation analyses. Given that Rothschild was not retained until after the Petition Date, and given the necessity to advance the reorganization expeditiously, Rothschild dedicated significant resources to quickly and successfully perform these analyses within an accelerated time period.

19. Based on its financial analysis process, Rothschild performed a wide range of analyses to assist the Debtors and their other advisors in the Chapter 11 process with regard to valuation and debt capacity, including comparable company, precedent transaction, discounted cash flow and credit comparison analyses. As part of its valuation work, Rothschild prepared a detailed analysis of recent operating, financial and valuation statistics of selected competitive specialty metals companies and selected precedent transactions. Rothschild also performed significant analysis and sensitivity testing of potential debt structure alternatives for the Company. Rothschild prepared a debt capacity analysis based on the Company's financial projections and capital requirements that it presented to the Company's labor unions, which was instrumental in successfully negotiating and implementing the achieved labor concessions.

20. Rothschild completed and synthesized its analyses into comprehensive recapitalization, valuation and debt capacity analyses (i) in August 2002, in conjunction with the Sale Process managed by Rothschild (see Sale Process) and for presentations to the Debtors' Board of Directors, Secured Bank Lenders (the "Bank Group") and Official Committee of Unsecured Creditors (the "Committee"), (ii) in November 2002, as updated based on the Company's revised long-term projections and for presentation to the Debtors' Board of Directors, (iii) in April 2003, as updated based on management's further revised long-term projections and to support the preparation of the Debtors' First Disclosure Statement, dated May 9, 2003, and (iv) in July 2003, as updated based on management's further revised long-term projections and to support the preparation of the Debtors' Second Amended Disclosure Statement, dated August 8, 2003

### **C. Sale Process**

21. The Debtors retained Rothschild to, among other things, carry out a process to explore a sale of all or substantially all of the Debtors assets as a going concern either through one transaction for the Company in its entirety or a combination of transactions for major business components (the "Sale Process"). The Sale Process involved three stages: The first stage was the identification of parties potentially interested in and capable of acquiring the Debtors. The second stage was the organization and preparation of marketing materials and the assistance to management in connection with due diligence investigations by potential bidders. The third (and final) stage was the negotiation and evaluation of bids.

22. Throughout the course of the Sale Process, Rothschild created comprehensive marketing materials to assist potential bidders in evaluating the investment opportunity. The following is a summary of the materials prepared:

(a) Rothschild prepared a comprehensive potential acquirers list, selecting more than 50 potential acquirers based on industry knowledge and input from the Company, Bank Group and Committee. The list included both strategic and financial companies based in the US and abroad.

(b) Rothschild, in conjunction with McGuireWoods, created a Confidentiality Agreement to distribute to potential acquirers. The Confidentiality Agreement was created with a view towards maintaining control of information flow throughout the process and protecting the Debtors and their assets.

(c) Rothschild prepared a summary overview of the Debtors' operations and the potential investment opportunity (the "Teaser"). The Teaser was distributed with the Confidentiality Agreement to potential investors.

(d) Rothschild created a comprehensive Confidential Information Memorandum (the "CIM") to distribute in the first round of bidding to parties that executed a Confidentiality Agreement. The CIM provided potential buyers with an overview of the Debtors, including their history, operations, strategy, management, financial projections and corporate structure. The CIM also outlined the key investment highlights of the business and current market trends.

(e) An Initial Bid Procedures Letter was created by Rothschild and was distributed, along with the CIM, to potential acquirers that executed a Confidentiality Agreement. The letter outlined the date on which Initial Non-Binding Indications of Interest ("Indications") were to be submitted, to whom the Indications should be submitted, and information that should be included in the Indication. A Final Binding Bid Procedures Letter was also created by Rothschild and was distributed to potential acquirers selected into the second round after receipt of Indications.

(f) Rothschild worked with the Debtors to develop a Management Presentation to provide bidders with a complete understanding of the Debtors and all of their operations and product lines, their position in its industry sectors and detailed consolidated and business-by-business financial information, both historical and projected.

(g) Rothschild worked with the Debtors to organize a comprehensive data room, which contained detailed information for potential buyers on all aspects of business, financial, legal and accounting due diligence.

(h) Throughout the Sale Process, Rothschild also coordinated meetings among potential buyers and selected Company management and employees, and coordinated all incremental information requests from potential buyers.

23. Rothschild conducted a thorough Sale Process in an attempt to maximize the value of the Debtor. All of the constituencies in the case agreed to the Sale Process, which consisted of many components as outlined below.

(a) Rothschild solicited interest from each of the selected potential acquirers on the buyers list, through telephone calls and distribution of the Teaser and other non-confidential marketing materials.

(b) Parties that wanted to pursue a transaction negotiated Confidentiality Agreements with Rothschild, the Company and McGuireWoods, and ultimately executed such agreements with over 40 parties.

(c) Rothschild subsequently delivered the CIM and Initial Bid Procedures Letter to the parties that executed a Confidentiality Agreement.

(d) Each party that received the CIM was directed to submit an Initial Non-Binding Indication of Interest by November 6, 2002 if they were interested in pursuing a transaction involving the purchase of all or selected assets of the Debtor.

(e) After distribution of the CIM, Rothschild in coordination with the Debtor responded to preliminary due diligence requests and prepared for receipt of the Indications.

(f) Simultaneously, Rothschild worked with management to develop its management presentation and assemble a data room containing comprehensive business, industry, financial, accounting and legal information on the Company, and in conjunction with McGuireWoods, prepared the Asset Purchase Agreement for distribution to bidders accepted into the second round of bidding.

(g) In November 2002, Rothschild received Indications from 10 parties for either the entire business or individual business components and created a summary overview of the salient terms of each after review and discussion with each bidder. Rothschild then distributed the overview to, and reviewed with, the Debtors, McGuireWoods and the financial advisors and counsel to the Bank Group and the Committee. After input from all of the constituencies, the Debtor selected eight parties to participate in comprehensive due diligence.

(h) During the period of comprehensive due diligence, potential acquirers were invited to visit the data room, attend management presentations, meet with senior management and selected employees and visit operating facilities. Each of these activities was coordinated through Rothschild. Additionally, Rothschild participated in a majority of the due diligence sessions and each of the management presentations.

(i) Potential acquirers that participated in the second round of bidding were directed by Rothschild to submit a Final Binding Proposal with a marked Asset Purchase Agreement by February 6, 2003.

(j) Rothschild received proposals from five parties, all financial acquirers: three offers were for the entire business while two were for individual business components. A separate strategic buyer separately submitted a preliminary, non-binding offer for the entire company later in February.

(k) Rothschild reviewed and analyzed the terms of the proposals and created a summary overview of the salient terms of each. Rothschild held discussions with each bidder to clarify terms and participated with the Debtors in meetings with each bidder for the entire business. Rothschild then distributed the overview to the Debtors, McGuireWoods and the financial advisors and counsel to the Bank Group and the Committee, and participated in a meeting with the Steering Committee of the Bank Group. Rothschild spent considerable time discussing counterproposals with the Debtors, McGuireWoods and Bank Group advisors, and participated in negotiations with the bidders for the entire business to improve upon the terms and conditions of their proposals. After review of the proposals, the Debtors determined to continue proceeding on a dual track of formulating and proposing a stand-alone Plan, and pursuing the Sale Process.

(l) After input from all of the constituencies, the Debtor asked the two potential buyers whose proposals were more favorable and more likely to close, to clarify their offers by removing certain conditions and to attempt to reach agreements with the Debtors' labor unions, at their own expense. One potential buyer agreed to proceed as requested. Rothschild coordinated further due diligence and participated in discussions and meetings with the Debtors, the potential buyer and labor union representatives. Rothschild also participated in discussions with the Debtors and the party who had provided the preliminary, non-binding offer regarding clarifying the terms and conditions, and coordinated further due diligence.

(m) After additional due diligence and negotiations with the labor unions, the potential buyer who had agreed to proceed submitted a revised offer for a lower proposed cash purchase price. After review of the proposal and after discussions with the Bank Group and Committee, the Debtors determined that the sale proposal would not result in a greater recovery than, or was otherwise a viable alternative to the terms and conditions of, the Plan.

#### **D. Bank Group and Committee Meetings and Discussions**

24. Rothschild participated in numerous meetings and conference calls with Debtors and each the Bank Group and the Committee, their respective legal advisors, Latham & Watkins and Blank Rome Tenzer Greenblatt LLP, and their respective financial advisors, Kroll Zolfo Cooper and Ernst & Young. Rothschild was responsible for presenting and discussing strategic alternatives to maximize value, valuation of the business as a whole, debt capacity, potential capital structures and the Sale Process. Over the course of such meetings and conference calls referenced above, Rothschild discussed with these parties valuation, consideration in a stand-

alone reorganization, Sale Process and alternatives, exit financing and alternatives, and status of negotiations with the labor unions and the Pension Benefit Guarantee Corporation (the “PBGC”). Through these discussions, Rothschild developed an understanding of the objectives and requirements of the Bank Group and the Committee. Rothschild also participated in numerous meetings and conference calls with the financial advisors and Bank Group agent regarding the status of issues and items relating to the above referenced and other case topics, including the DIP agreement and covenants, operating results, weekly cash flow projections and business plan due diligence.

#### **E. Plan of Reorganization Negotiations and Analysis**

25. Rothschild participated in numerous meetings and discussions with the Debtors and their advisors, and in meetings and discussions with the Bank Group, the Committee and their advisors to negotiate the terms of the Plan, including, but not limited to, the Debtors’ going-forward business plan, valuation, debt capacity, capital structure, and the structure and pricing of reorganization securities, including the Exit Facility, the Lenders’ Second Lien Notes and common equity of the reorganized company issued to the pre-petition creditors under the Plan. The financial analyses prepared by Rothschild and described in section B, above, the results of which were shared with the Bank Group and the Committee, served as the basis for negotiations regarding the Plan. Rothschild assisted in the formulation of the capital structure and new securities to be issued under the Plan, including the Lenders’ Second Lien Notes and new common shares.

26. Rothschild participated in the negotiation process with respect to modifications to the existing labor agreements and pension obligations necessary to implement the Plan. Rothschild participated in numerous meetings and conference calls with the Debtors, McGuireWoods and

the Debtors' labor counsel from McDermott, Will & Emery to discuss and analyze modification alternatives and the strategy and status of negotiations with the labor constituencies and PBGC. Rothschild assisted the Debtors in preparing analyses of potential modification alternatives and in assessing their impact on the Debtors' financial projections and debt capacity. Rothschild also participated in several meetings and conference calls with the Debtors and USWA and IAM representatives to discuss the Plan, the Sale Process, the level of necessary modifications and proposed modifications to existing labor agreements. Rothschild participated in and prepared for Bankruptcy Court Hearings with respect to the Debtors' motions under Sections 1113 and 1114 of the Code for modifications to labor agreements and retiree obligations. Directed by and in conjunction with McGuireWoods, Rothschild prepared expert witness testimony for the above hearings.

27. Rothschild, working closely with the Debtors and McGuireWoods, prepared and reviewed numerous documents that served as the basis for information contained in Disclosure Statement. The documentation provided by Rothschild contained information which included, but was not limited to, background and formulation of the proposed plan of reorganization, description of new securities to be issued including new common stock and the Lenders' Second Lien Note, implied recoveries to claimants based on the proposed plan of reorganization, the Debtors' financial projections and pro-forma adjustments, the Debtors' administrative claims, and Rothschild's valuation based on the proposed plan of reorganization. Rothschild also assisted the Debtors in preparing its liquidation analysis.

#### **F. Exit Financing**

28. In conjunction with the Plan process, Rothschild conducted a comprehensive process to solicit a senior secured exit financing to fund the various cash components of the Plan, with



the goal to maximize cash available for repayment to the Bank Group. In January 2003, Rothschild prepared a list of ten potential asset-based lenders, which it reviewed with the Debtors and financial advisors to the Bank Group. Rothschild contacted the ten potential lenders and in conjunction with McGuireWoods, negotiated confidentiality agreements with seven parties interested in pursuing the transaction.

29. Rothschild worked with the Debtors to prepare detailed due diligence materials, which Rothschild distributed in January 2003 to the seven parties who executed confidentiality agreements. An eighth potential party received the due diligence materials in February 2003 after execution of a confidentiality agreement. After distribution of the materials, Rothschild in coordination with the Debtors responded to preliminary due diligence requests. Rothschild held numerous conference calls with each potential lender regarding due diligence, facility structure, capital structure requirements of the Bank Group and process, and participated with the Debtors in meetings with five of the potential lenders.

30. In late February and early March 2003, Rothschild received preliminary financing proposals from five potential lenders, of which three were detailed non-binding letters of intent. Rothschild reviewed and analyzed the terms of the proposals with the Debtors. Rothschild also held discussions with each potential lender to clarify key terms, including, but not limited to, principal amount, availability, advance rates, term, pricing, financial covenants and additional permitted indebtedness. Each lender proposed an asset-based credit facility on a standard borrowing base of accounts receivables and inventory secured by all available assets, and each required significant excess availability at the closing of its facility.

31. Rothschild created a summary overview of the salient terms of each proposal and distributed the overview to the Debtors, McGuireWoods, the Bank Group and its advisors.

Rothschild also held a conference call to discuss the overview with the Debtors, the Bank Group Steering Committee and their respective advisors in March 2003. After input from the Bank Group, the Debtors conducted further negotiations with each potential lender with the goal to select two lenders to complete due diligence and provide binding commitment letters in a competitive process. Rothschild held numerous conference calls with the potential lenders to clarify the proposals, particularly with respect to availability and the Lenders' Second Lien Note, and received revised proposals from several of the potential lenders. Rothschild reviewed and analyzed these proposals with the Debtors and provided copies to the Bank Group's financial advisor. After discussions with and input from the Bank Group and its advisors, the Debtors selected Congress Financial and CIT Business Credit in April 2003 to complete comprehensive due diligence and provide binding commitment letters.

32. During the period of comprehensive due diligence, Rothschild with the Debtors coordinated information requests, site visits and asset appraisals, as well as participated in numerous due diligence conference calls with each of the lenders. Rothschild also reviewed and analyzed with the Debtors preliminary borrowing base calculations prepared by each lender and participated in numerous conference calls with the Debtors to resolve outstanding issues. Rothschild received binding commitment letters in June 2003 from the two lender, prepared a summary overview of the salient terms and discussed the commitment letters with the Debtors. Rothschild distributed the commitment letters and summary overview to and held numerous discussions with the Bank Group's financial advisor regarding the proposed facility terms and treatment of the Lenders' Second Lien Note. Despite the below-budget performance of the Debtors' operations noted by each lender and the Debtors' revised financial projections, Rothschild was instrumental in negotiating with each lender to provide a fully-underwritten

commitment not subject to syndication. After discussions with and input from the Bank Group and its advisors, the Debtors executed the commitment letter with Congress Financial.

33. Rothschild assisted the Debtors in completing Congress's final due diligence and in analyzing the various versions of the borrowing base and availability calculation. Rothschild also reviewed and participated in numerous worksessions with the Debtors regarding Congress's credit agreement, proposed facility structure and covenants, and the Lenders' Second Lien Note intercreditor agreement. Rothschild participated in numerous conference calls and several meetings with the Debtors and Congress to resolve outstanding issues, including ineligible accounts, availability requirements, covenants and conditions, facility structure and Lender Second Lien Note terms, and held numerous conference calls with the Bank Group's financial advisor regarding the above items.

#### **G. Board of Director Meetings and Discussions**

34. Rothschild participated in numerous meetings and conference calls with the Board of Directors of Special Metals (the "Board"). Rothschild prepared detailed discussion materials on and reviewed with the Board, among other things, the Sale Process and Exit Facility Process, as well as valuation and debt capacity, as contemplate by the plan of reorganization set forth in the Disclosure Statement. Additionally, Rothschild was responsible for preparing detailed discussion materials on and reviewing with the Board the various proposals from potential buyers in the Sale Process and potential lenders in the Exit Facility Process.

#### **H. General Advice on Various Financial and Strategic Issues**

35. During the Final Period, Rothschild advised the Company on a number of additional, miscellaneous business and financial matters. Rothschild participated in regular conference calls

with the Debtors and its other advisors to discuss issues concerning the Chapter 11 cases and various related issues.

### **SUMMARY OF EXPENSES INCURRED**

36. In the course of rendering services to the Debtors as its financial advisor, Rothschild incurred and paid reasonable and necessary out-of-pocket expenses aggregating \$4,413.18 during the Fourth Interim Period. Details of the expenses incurred during the Fourth Interim Period are provided in Exhibit B. Rothschild submits that all such expenses were necessarily incurred, are reasonable in amount and represent only the actual costs incurred by Rothschild.

37. Rothschild's charges for expenses to the Company are determined in the same manner as for clients in non-bankruptcy matters and are consistent with applicable U.S. Trustee Guidelines. Out-of-pocket expenses incurred by Rothschild are charged to a client if the expenses are incurred for the client or are otherwise necessary in connection with services rendered for such particular client. Rothschild does not factor general overhead expenses into disbursements charged to clients in connection with Chapter 11 cases. Rothschild has followed its general internal policies with respect to out-of-pocket expenses billed to the Debtors as set forth below, with any exceptions fully explained.

(a) Rothschild's general policy permits its employees to bill lunch or dinner meals to a client if the employee is required to provide services to the client during such mealtime due to extreme time constraints. Rothschild's employees are permitted to order meals in the office if Rothschild's employee is required to work after 8:00 p.m. on weekdays or more than five (5) consecutive hours on weekends or holidays. Meal expenses incurred during meetings which employees and other meeting participants are required to attend are billed at cost. Rothschild bills breakfast or dinner meals to a client if the employee is travelling on client matters at cost.

(b) Messengers and couriers are used by Rothschild to deliver hard copy documents relating to a client matter, which require receipt on an expedited basis;

otherwise, Rothschild uses the regular postal system. Any charges for either messengers or couriers are billed to a client at cost.

(c) All airfare charges billed to a client in a Chapter 11 case are billed at cost and are based on coach fare rates.

(d) Rothschild charges for transportation to and from airports and while traveling on client matters at cost.

(e) The research/database category consists of the cost of using databases (e.g., Disclosure, Securities Data Corporation, Dow Jones, Lexis-Nexis, etc.) to which Rothschild subscribes to search for and obtain information used in Rothschild's financial analyses. Rothschild pays the vendor's standard rate for such database services. In certain instances, Rothschild has determined that paying a flat annual or monthly fee for such services is less costly than contracting for such services on a per use basis. Such annual or monthly services are allocated to clients based on such clients' use of each service. The research category also consists of charges from outside services which supply, for a fee, financial documents from regulatory agencies which can not be obtained from databases subscribed to by Rothschild.

(f) Rothschild bills photocopying charges at the rate of \$.10 per page for black and white copies and \$1.00 per page for color copies.

(g) With respect to local travel, Rothschild's general policy enables employees to travel by taxi or, in certain circumstances, by private car service, to and from meetings while rendering services to a client on a client related matter, for which the client is charged. This policy is based on Rothschild's determination that travel by taxi or private car service is the most efficient use of a professional's time. Rothschild's employees are not permitted to charge personal commuting expenses to a client unless the employee is traveling after 8:00 p.m. and has been required to work late as a result of the time exigencies of that client's matters.

(h) Telephone expenses are charged based on Rothschild's actual cost of telephone charges with respect to client matters. Cellular phone charges are based on vendor's actual invoices.

(i) Word processing charges represent actual costs incurred by Rothschild's in-house vendor, Bowne, and actual cost of overtime secretarial support in connection with client matters.

(j) Conference calls arranged through a third party vendor are charged a \$0.75 per minute usage charge based on the vendor's charges for such services.

## LEGAL BASIS FOR REQUESTED COMPENSATION

38. Rothschild is entitled to receive the fees it has requested in accordance with the express terms of the Engagement Letter and the provisions of Section 328(a) of the Bankruptcy Code.

39. Section 330 of the Bankruptcy Code provides for the award of compensation to professionals. 11 U.S.C. § 330. Section 330, by its terms, is “subject to” the provisions of Section 328 of the Bankruptcy Code. *Id.* Section 328(a) permits a debtor, with the Court’s approval, to employ a professional person “on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis.” 11 U.S.C. § 328(a).

40. Section 328 represents a departure from the practice that prevailed prior to the enactment of the Bankruptcy Code in 1978. The purpose of Section 328 was to permit the pre-approval of compensation arrangements as a method of insuring that the most competent professionals would be available to provide services in bankruptcy cases. See *In re Westbrooks*, 202 B.R. 520, 521 (Bankr. N.D. Ala. 1996) (percentage fee arrangements “comport with the Bankruptcy Code’s goal of attracting highly qualified professionals to the bankruptcy forum”); *In re Olympia Holding Corp.*, 176 B.R. 962, 964 (Bankr. M.D. Fla. 1994). Once the terms of a professional’s retention have been approved under Section 328(a), the agreed-upon compensation cannot be altered unless the agreed terms “prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.” 11 U.S.C. § 328(a); see also *In re Reimers*, 972 F.2d 1127, 1128 (9th Cir. 1992) (compensation agreement approved under Section 328(a) must be enforced in the absence of unforeseeable circumstances, and is not subject to a “reasonableness” review under Section 330);

In the Matter of National Gypsum Company, 123 F.3d 861 (5th Cir. 1997) (same); In re Olympia Holding Corp., 176 B.R. at 964 (same). As the Court explained in National Gypsum:

If the most competent professionals are to be available for complicated capital restructuring and the development of successful corporate reorganization, they must know what they will receive for their expertise and commitment. Courts must protect those agreements and expectations, once found to be acceptable.<sup>2</sup>

41. As noted above, pursuant to the Retention Order, this Court approved the retention of Rothschild under the terms of the Engagement Letter, subject to certain modifications, pursuant to Section 328(a). The Retention Order recites the terms of the compensation to be paid to Rothschild under the Engagement Letter and contains explicit factual findings regarding the reasonableness of such fees. Specifically, under paragraph G of the Retention Order, this Court found that:

The method for calculating the compensation to be paid to Rothschild set forth in the Engagement Letter is consistent with the methods for calculating compensation to be paid to financial advisors under similar circumstances and is reasonable in comparison to fees charged by similar professionals performing similar tasks.

42. In addition, decretal paragraph 6 of the Retention Order provides that “[t]he Monthly Fees, Completion Fee, and the M&A Fee shall be subject to review solely under the standards set forth in Bankruptcy Code section 328(a), and not under any standard set forth in Bankruptcy Code section 330.”

43. There have been no developments since the entry of the Retention Order that were “not capable of being anticipated” and that would justify any modification to the terms of Rothschild’s retention. Accordingly, Rothschild submits that the fees and expense

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<sup>2</sup> 123 F.3d at 863.

reimbursements sought herein should be allowed and approved by this Court pursuant to Sections 328(a) and 330 of the Bankruptcy Code.

44. Rothschild respectfully submits that the services it has rendered to the Debtors have been necessary and in the best interest of the Debtors and their estates and have furthered the goals of all parties in interest. The compensation requested for the Fourth Interim Period and the Final Period for services rendered by Rothschild to the Debtors is fully justified and reasonable based on the following: (a) the degree of activity during the Fourth Interim and Final Periods, and the high level of services rendered by Rothschild to the Debtors, (b) the complexity of the issues presented, (c) the skill necessary to perform the investment banking services properly, (d) the preclusion of other employment, (e) customary fees charged in non-bankruptcy situations for similar services rendered, (f) time constraints required by the exigencies of the case and (g) the experience, reputation and ability of the professionals rendering services.

45. The amount of fees and expenses sought in this application and Rothschild's billing processes are consistent with market practices for investment banking firms both in and out of a bankruptcy context. Rothschild does not bill its clients based on the number of hours expended by its professionals. It bills clients on a retainer basis (generally monthly or quarterly), plus a transaction fee, based upon successful completion of a transaction. Accordingly, Rothschild does not have hourly rates for its professionals and Rothschild's professionals generally do not maintain time records for the work performed for its clients. Rothschild's policy, for all engagements in or out of bankruptcy, is to dedicate the appropriate number of professionals to the assignment to complete the work as efficiently as possible. Rothschild has, however, maintained a summary of services performed by Rothschild on behalf of the Debtors during the Fourth Interim Period and Final Period. These records describe the services rendered for this



period and have been attached as Exhibit C for the Fourth Interim Period. Copies of records detailing Rothschild's services for the period from July 9, 2002 through July 31, 2003 are attached as exhibits to Rothschild's First, Second and Third Interim Fee Applications filed in these Chapter 11 cases and served upon the notice parties, which applications were approved in their entirety by this Court pursuant to previous fee orders. Copies of such invoices therefore have not been attached hereto but are available from the Court or Rothschild upon request by any interested party.

### **PERSONNEL WHO RENDERED SERVICES**

46. Senior level professionals with extensive experience in the areas of investment banking, bankruptcy services and the metals industry directed Rothschild's team. Members of Rothschild's restructuring group and metals and mining group performed the investment banking services summarized above. Annexed hereto as Exhibit D are the resumes of key professionals of Rothschild providing services to the Debtors. The restructuring group's services were performed primarily by Todd R. Snyder, Managing Director, William R. Shaw, Vice President, Daniel J. Klock, Associate, Naveen Bhatia, Analyst, Carissa Meyer, Analyst, and other professionals and paraprofessionals, as needed. Rothschild's general staffing policy is to assign senior bankers and experienced junior bankers to each restructuring assignment. The senior banker, Todd Snyder, has overall responsibility for the case. He is primarily responsible for developing strategy with respect to the case, directing negotiations and interfacing with the other senior professionals involved with the case. The additional senior banker, in this case William R. Shaw, is responsible for day-to-day coordination of the case and the review of all financial analyses. The experienced junior banker, in this case Daniel J. Klock, assists with the day-to-day coordination of the case and performs with the financial analysts, in this case Naveen Bhatia and

Carissa Meyer, extensive financial analyses and presentation preparation. The metals and mining group's services were performed primarily by James Griffin, Managing Director, Ron Vance, Managing Director, Kerry McKeon, Vice President, Stefka Kavaldjieva, Analyst, and other professionals and paraprofessionals, as needed.

47. The senior bankers, the experienced junior bankers and the financial analysts coordinate their actions so as to not duplicate efforts. Given that the senior bankers and the experienced junior bankers and the financial analysts have different roles in the case but have overlapping responsibilities, there are frequent times where it is appropriate for two or more bankers to be present at a meeting.

### CONCLUSION

48. Rothschild submits that the services summarized by this application and rendered by Rothschild to the Debtors were substantial, highly professional and instrumental to the successful resolution of the Debtors' Chapter 11 cases. Such services were reasonable and necessary to the Debtors' performance of their duties.


49. Rothschild hereby certifies that all services for which compensation is sought were performed for and on behalf of the Company and not on behalf of any individual creditor or party in interest. Rothschild has not entered into any agreement, express or implied, with any party in interest for the purpose of fixing or sharing fees or other compensation to be paid for professional services rendered in these cases.

\* \* \*

WHEREFORE, Rothschild respectfully requests that this Court enter an order: (i) granting allowance and approval of (A) interim compensation for services rendered during the Fourth Interim Period, consisting of \$1,538,709.68 of fees plus the reimbursement of reasonable and necessary expenses incurred by Rothschild during the Fourth Interim Period in the amount of \$4,413.18, for a total of \$1,543,122.86 and (B) final compensation for services rendered during the Final Period, consisting of \$3,450,000.00 of fees plus the reimbursement of reasonable and necessary expenses incurred by Rothschild during the Final Period in the amount of \$164,205.60, for a total of \$3,614,205.60; (ii) ratifying and confirming all payments received by Rothschild in respect of fees and disbursements during the Fourth Interim Period and the Final Period, in each case pursuant to prior fee orders and the Fee Procedures Order, and as detailed in the monthly statements and (iii) authorizing and directing the Debtors to make payment in respect of any accrued fees and disbursements not yet paid to Rothschild for the Fourth Interim Period and the Final Period, as detailed in the invoices, including any "holdback" amounts withheld pursuant to the Fee Procedures Order.

Dated: New York, New York  
January 8, 2004

ROTHSCHILD INC.

By:   
WILLIAM R. SHAW  
Vice President  
1251 Avenue of the Americas  
51<sup>st</sup> Floor  
New York, New York 10020  
Telephone: (212) 403-3500  
Facsimile: (212) 403-3501  
FINANCIAL ADVISOR AND  
INVESTMENT BANKER FOR THE  
DEBTORS

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing was served this 12th day of January, 2003, by regular United States mail, postage prepaid, upon the following:

Special Metals Corporation  
Attn: Dennis Wanlass  
3200 Riverside Drive  
Huntington, WV 25705-1771

McGuireWoods LLP  
Attn: Robert G. Sable and Mark E. Freedlander  
625 Liberty Avenue  
Dominion Tower, 23<sup>rd</sup> Floor  
Pittsburgh, PA 15222

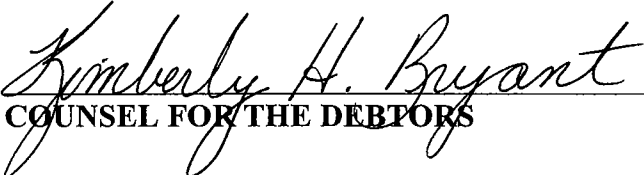
Blank Rome Tenzer & Greenblatt, LLP  
Attn: Mark E. Richards  
Chrysler Building  
405 Lexington Avenue  
New York, NY 10174-0208

Stoll, Keenon & Park, LLP  
Attn: Gregory D. Pavey  
300 West Vine Street  
Suite 2100  
Lexington, KY 40507

Credit Lyonnais  
c/o Latham & Watkins  
Attn: Robert Rosenberg and Shari Siegel  
885 Third Avenue, Suite 1000  
New York, NY 10022

Wise & Delcotto  
Attn: Tracey N. Wise  
219 North Upper Street  
Lexington, KY 40507

Office of the United States Trustee  
100 East Vine Street, Suite 803  
Lexington, Kentucky 40507

  
**COUNSEL FOR THE DEBTORS**

**VERIFICATION**

STATE OF NEW YORK §

§


NEW YORK CITY §

WILLIAM R. SHAW, after being duly sworn according to law, deposes and says:

1. I am a Vice President with the applicant firm, Rothschild Inc. (“Rothschild”), which firm maintains offices for providing financial advisory and investment banking services at 1251 Avenue of the Americas, New York, NY 10020. Rothschild has acted as financial advisor and investment banker to and rendered professional services on behalf of Special Metals Corporation and its affiliated debtors and debtors in possession (the “Debtors”).

2. I have performed many of the financial advisory and investment-banking services rendered by Rothschild as advisor to the Debtors and am thoroughly familiar with all other work performed on behalf of the Debtors by the professionals in the firm.

3. I have reviewed the foregoing Application and the facts set forth therein are true and correct to the best of my knowledge, information and belief. Moreover, I have reviewed the United States Trustee Guidelines For Reviewing Applications For Compensation And Reimbursement Of Expenses Filed Under 11 U.S.C. Section 330 (the "Guidelines") and the Application substantially complies with these Guidelines, as modified by any applicable local rules and any administrative orders entered in these cases.

  
WILLIAM R. SHAW, Vice President

SWORN AND SUBSCRIBED before me this 8<sup>th</sup> day of Janaury, 2004

  
Notary Public  
My Comission Expires:

**DONNA GRASSO SHANDLEY**  
Notary Public, State Of New York  
No.01GR6058322  
Qualified in Westchester County  
Commission Expires May 7, 20 07

# **EXHIBIT A**

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY  
ASHLAND DIVISION

EASTERN DISTRICT OF KENTUCKY  
CLERK

IN RE: ) Chapter 11  
SPECIAL METALS CORPORATION, et al. )  
) Bankruptcy Nos. 02-10335 - SEP 12 2002  
) 02-10338  
) AT LEXINGTON  
) JOINTLY ADMINISTERED JERRY D. TRUITT, CLERK  
) U.S. BANKRUPTCY COURT  
) JUDGE WILLIAM S. HOWARD

**ORDER AUTHORIZING THE EMPLOYMENT OF ROTHSCHILD INC., NUNC PRO TUNC, AS FINANCIAL ADVISOR AND INVESTMENT BANKER TO THE DEBTORS AND DEBTORS IN POSSESSION**

Upon the application (the "Application") of the Debtors for an order pursuant to sections 327(a) and 328 of title 11 of the United States Code (the "Bankruptcy Code") authorizing and approving the employment and retention of Rothschild Inc. ("Rothschild") to serve as financial advisor and investment banker, as provided in the Application, to the Debtors in these cases; and upon the affidavit of Todd R. Snyder of Rothschild (the "Snyder Affidavit"); and the Court being satisfied, based on the representations made in the Application and the Snyder Affidavit, that said firm represents no interest adverse to the Debtors' estates with respect to the matters upon which it is to be engaged, and that the employment of Rothschild, as provided in the Application, is necessary and in the best interests of the Debtors and their estates; and it appearing that notice of the Application having been given to the parties specified in the Application, and that no other or further notice need be given; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore,

**IT IS HEREBY FOUND AND DETERMINED THAT:**



- A. On or about August 14, 2002, the Debtors filed an application seeking authorization to employ and retain Rothschild pursuant to sections 327(a) and 328(a) of the Bankruptcy Code.
- B. The terms and conditions of Rothschild's employment, including details regarding the services to be performed by Rothschild and the compensation to be paid by the Debtors to Rothschild on account of such services, are set forth in an engagement letter between the Debtors and Rothschild dated July 9, 2002 (the "Engagement Letter").<sup>1</sup>
- A. The Engagement Letter specifies that Rothschild is to be employed to provide the following services (the "Financial Advisory Services") to the Debtors:
1. to the extent Rothschild deems necessary, appropriate and feasible, or the Debtors may request, review and analyze the Debtors' assets and the operating and financial strategies of the Debtors, and the business plans and financial projections prepared by the Debtors, including, but not limited to, testing assumptions and comparing those assumptions to historical Debtor and industry trends;
  2. evaluate the Debtors' debt capacity in light of its projected cash flows and assist in the determination of an appropriate capital structure for the Debtors;
  3. assist the Debtors and their other professionals in reviewing the terms of any proposed Transaction (as defined in the Engagement Letter), in responding thereto and, if directed, in obtaining alternative proposals for a Transaction, whether in connection with a Plan (as defined in the Engagement Letter) or otherwise;
  4. determine a range of enterprise values for the Debtors and any securities that the Debtors offer or propose to offer in connection with a Transaction;
  5. advise the Debtors on the risks and benefits of considering a Transaction with respect to the Debtors' intermediate and long-term business prospects

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<sup>1</sup> This Order is qualified in its entirety by reference to the provisions of the Engagement Letter. The Engagement Letter will control in the event of any inconsistency between this Order, the application and the Engagement Letter. Unless otherwise defined, capitalized terms shall have the meaning ascribed to such terms in the Engagement Letter.

and strategic alternatives to maximize the business enterprise value of the Debtors, whether pursuant to a Plan or otherwise;

6. review and analyze any proposals the Debtors receive from third parties in connection with a Transaction, including, without limitation, any proposals for debtor-in-possession financing, as appropriate;
7. assist or participate in negotiations with third parties submitting proposals and with the parties in interest, including, without limitation, any current or prospective creditors of, or holders of equity in, the Debtors in connection with a Transaction;
8. advise and attend meetings of third parties and official constituencies, as necessary;
9. if requested by the Debtors, participate in hearings before the Bankruptcy Court and provide relevant testimony with respect to the matters described herein and issues arising in connection with any proposed Plan;
10. to the extent deemed desirable by the Debtors, identify and/or initiate potential Transactions; and
11. render such other financial advisory and investment banking services as may be agreed upon by Rothschild and the Debtors in connection with any of the foregoing.

B. Rothschild has indicated its willingness to act in these cases and render the Financial Advisory Services to the Debtors.

C. As compensation for providing the services outlined above and in the Engagement Letter, the Engagement Letter provides that Rothschild shall be entitled to compensation as follows:

1. Commencing as of July 9, 2002 and ending upon the termination of the Engagement Letter, and whether or not a Transaction is proposed or consummated, a monthly cash advisory fee (the "Monthly Fee") of \$150,000 per month. Both the initial Monthly Fee for July 2002 (which shall be pro-rated based on the commencement of services as of July 9, 2002) and the Monthly Fee for August 2002 shall be payable by the Debtors upon the Effective Date, and thereafter the Monthly Fee shall be payable by the Debtors in advance on the first day of each month; and
2. A fee (the "Completion Fee") of \$3,000,000, payable in cash upon the earlier of (a) the confirmation of a Plan and the Plan becoming effective, or (b) the consummation of another Transaction; and

3. A fee (the "M&A Fee") of up to 1.25% of the aggregate consideration, as further specified in Exhibit B to the Engagement Letter, if (a) the Debtors sell or acquire assets or equity interests or any securities convertible into, or options, warrants or other rights to acquire, such equity interests, which sale or acquisition does not constitute a Transaction, and (b) Rothschild provides services in connection with such sale or acquisition, including without limitation any services of the kind contemplated under this Agreement, which fee shall be payable in cash at the closing of any such sale or acquisition.

F. The Debtors and Rothschild have acknowledged and agreed that the fees payable to Rothschild under the Engagement Letter are reasonable. The Debtors and Rothschild have further acknowledged and agreed that the hours worked, the results achieved and the ultimate benefit to the Debtors of the work performed, in each case, in connection with this engagement, may be variable, and that the Debtors and Rothschild have taken this into account in setting the fees under the Engagement Letter.

G. The method for calculating the compensation to be paid to Rothschild set forth in the Engagement Letter is consistent with the methods for calculating compensation to be paid to financial advisors under similar circumstances and is reasonable in comparison to fees charged by similar professionals performing similar tasks.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, DECREED AND DETERMINED THAT:**

1. In accordance with sections 327(a) and 328(a) of the Bankruptcy Code, the Application is granted, and the Debtors, as debtor-in-possession, be, and they hereby are, authorized to employ and retain Rothschild as their financial advisor and investment banker upon the terms and conditions set forth in the Engagement Letter nunc pro tunc as of July 9, 2002.

2. In accordance with the Engagement Letter and subject to approval of the Bankruptcy Court, upon performing the services set forth in therein and described generally above, Rothschild shall have earned compensation as follows:

- (i) Commencing as of July 9, 2002 and ending upon the termination of the Engagement Letter, and whether or not a Transaction is proposed or consummated, a monthly cash advisory fee (the "Monthly Fee") of \$150,000 per month. Both the initial Monthly Fee for July 2002 (which shall be pro-rated based on the commencement of services as of July 9, 2002) and the Monthly Fee for August 2002 shall be payable by the Debtors upon the Effective Date, and thereafter the Monthly Fee shall be payable by the Debtors in advance on the first day of each month; and
- (ii) A fee (the "Completion Fee") of \$3,000,000, payable in cash upon the earlier of (a) the confirmation of a Plan and the Plan becoming effective, or (b) the consummation of another Transaction; and
- (iii) A fee (the "M&A Fee") of up to 1.25% of the aggregate consideration, as further specified in Exhibit B to the Engagement Letter, if (a) the Debtors sell or acquire assets or equity interests or any securities convertible into, or options, warrants or other rights to acquire, such equity interests, which sale or acquisition does not constitute a Transaction, and (b) Rothschild provides services in connection with such sale or acquisition, including without limitation any services of the kind contemplated under this Agreement, which fee shall be payable in cash at the closing of any such sale or acquisition.

3. Rothschild shall credit (a) against any M&A Fee, 100% of the Monthly Fees paid under Section 4(a) of the Engagement Letter in excess of \$450,000 (the "Monthly Fee Credit") to the extent not previously credited against any fee hereunder and (b) against the Completion Fee, any Monthly Fee Credit not previously credited against any fee hereunder and 100% of any M&A Fees paid (the "M&A Fee Credit"); provided, however, that no such credit or credits shall exceed the fee against which it is applied.

4. Subject to any order or orders of the Court establishing procedures for and limitations on payment of interim compensation and reimbursement of expenses of professionals ("Fee Procedures") the Debtors shall pay Rothschild on a monthly basis, pursuant to the terms of the Engagement Letter, for services rendered to the Debtors, and shall reimburse Rothschild for reasonable out-of-pocket expenses incurred in connection with such services, including, without limitation, reasonable fees and expenses of Rothschild's external counsel (without the need for

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**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY  
ASHLAND DIVISION**

EASTERN DISTRICT OF KENTUCKY  
SEP 13 2002

IN RE: ) Chapter 11  
)  
) Bankruptcy Nos. 02-10335 -  
) 02-10338  
SPECIAL METALS CORPORATION, et al. )  
) JOINTLY ADMINISTERED  
)  
) JUDGE WILLIAM S. HOWARD

AT LEXINGTON  
JERRY D. TRUITT, CLERK  
U.S. BANKRUPTCY COURT

**ORDER AUTHORIZING THE DEBTORS TO GRANT AN INDEMNITY TO  
ROTHSCHILD INC., AS FINANCIAL ADVISOR AND INVESTMENT BANKER  
TO THE DEBTORS AND DEBTORS IN POSSESSION**

Upon the motion (the "Motion") of Special Metals Corporation ("Special Metals") and certain of its direct and indirect subsidiaries, as debtors and debtors in possession (collectively the "Debtors"), for an order, pursuant to sections 327(a), 328(a) and 330(a) of Title 11 of the United States Code (the "Bankruptcy Code"), authorizing the Debtors to grant an indemnity to Rothschild Inc. ("Rothschild"), the Debtors' financial advisor and investment banker, pursuant to the terms of that certain engagement letter (the "Rothschild Agreement") annexed as Exhibit "A" to the Motion; and this Court having determined that such indemnity is in the best interests of the Debtors, their creditors and equity security holders; and due notice of the Motion having been served on (i) the United States Trustee for Region 8, (ii) counsel to the DIP lenders, (iii) counsel to the Committee, and (iv) the parties in interest that have requested notice; and it appearing that no other or further notice is required; and after due deliberation and sufficient cause appearing therefore, it is

ORDERED, that the Motion is granted, and the Debtors are authorized to indemnify and hold harmless Rothschild and its affiliates, counsel and other professional advisors, and the respective directors, officers, controlling persons, agents and employees of each of the foregoing (collectively, the "Indemnified Parties") pursuant to the indemnification provisions of the Rothschild Agreement but subject to the following conditions:

- (a) all requests of Indemnified Persons for payment of indemnity, contribution, or otherwise pursuant to the indemnification provisions of the Rothschild Agreement shall be made by means of an interim or final fee application and shall be subject to the approval of, and review by, the Court to ensure that such payment conforms to the terms of the Rothschild Agreement, the Bankruptcy Code, the Bankruptcy Rules, the Standing Orders in these cases, and further orders of this Court, and is reasonable based upon the circumstances of the litigation or settlement in respect of which indemnity is sought; provided, however, that in no event shall an Indemnified Party be indemnified or receive contribution (a) in the case of gross negligence, willful misconduct, breach of fiduciary duty, if any, or fraud on the part of that or any other Indemnified Party, or (b) for conduct by such Indemnified Party that was not in good faith or that such person


did not reasonably and prudently believe was in the best interests of the Debtors;

- (b) in no event shall an Indemnified Party be indemnified or receive contribution or other payment under the indemnification provisions of the Rothschild Agreement if the Debtors, their estates, or the official committee of unsecured creditors appointed in these cases assert a claim for, and the Court determines by final order that such claim arose out of (a) gross negligence, willful misconduct, breach of fiduciary duty, if any, or fraud on the part of that or any other Indemnified Party, or (b) conduct by such Indemnified Party that was not in good faith or that such person did not reasonably and prudently believe was in the best interests of the Debtors; and
- (c) in the event an Indemnified Party seeks reimbursement for attorneys' fees from the Debtors pursuant to the Rothschild Agreement, the invoices and supporting time records from such attorneys shall be annexed to Rothschild's own interim and final fee applications, and such invoices and time records shall be subject to the United States Trustee's guidelines for compensation and reimbursement of expenses and the approval of the Bankruptcy Court under the standards of section 330 of the Bankruptcy Code without regard to whether such attorney has been

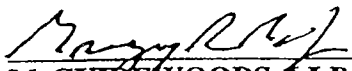
retained under section 327 of the Bankruptcy Code; and it is  
further

ORDERED, that this Court retains jurisdiction with respect to all matters  
arising from or related to the implementation of this Order.

DATED: SEP 13 2002

  
Honorable William S. Howard  
Judge United States Bankruptcy Court

Tendered by:

  
McGUREWOODS, LLP  
Robert G. Sable, Esquire  
Mark E. Freedlander, Esquire  
Dominion Tower, 23<sup>rd</sup> Floor  
325 Liberty Avenue  
Pittsburgh, PA 15222  
Telephone: (412) 667-6000  
Facsimile: (412) 667-6050

-and-

**GREENEBAUM DOLL & MCDONALD PLLC**  
Gregory R. Schaaf  
333 West Vine Street, Suite 1400  
Lexington, KY 40507  
Telephone: (859) 231-8500  
Facsimile: (859) 255-2742

Counsel to Special Metals Corporation,  
INCO Alloys International, Inc., Special Metals  
Domestic Sales Corporation and A-1 Wire Tech, Inc.



**Pursuant to Local Rule 9022-1(c), counsel for the Debtor shall serve this Order on the parties that are listed on the short service list, and shall file with the Court a certificate of service within five (5) business days hereof.**

LEX 596232v1



## ROTHSCHILD INC.

July 9, 2002

Special Metals Corporation  
3200 Riverside Drive  
Huntington, WV 25705

Attention: T. Grant John, President

Ladies and Gentlemen:

This letter (this "Agreement") will confirm the terms and conditions of the agreement among Special Metals Corporation (collectively with its subsidiaries and affiliated debtors and debtors-in-possession, the "Company") and Rothschild Inc. ("Rothschild") regarding the retention of Rothschild as financial advisor and investment banker to the Company in connection with the Company's bankruptcy cases (the "Chapter 11 Cases") under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), currently pending in the Bankruptcy Court for the Eastern District of Kentucky, Ashland Division (the "Bankruptcy Court").

Section 1 Services to be Rendered. In connection with the formulation and implementation of various options for restructuring, reorganization or other strategic alternatives relating to the businesses of the Company, whether pursuant to a Transaction (as defined below), any series or combination of Transactions or otherwise, Rothschild will perform such services as the Company may request including, but not limited to, the following:

(a) to the extent Rothschild deems necessary, appropriate and feasible, or the Company may request, review and analyze the Company's assets and the operating and financial strategies of the Company, and the business plans and financial projections prepared by the Company, including, but not limited to, testing assumptions and comparing those assumptions to historical Company and industry trends;

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(b) evaluate the Company's debt capacity in light of its projected cash flows and assist in the determination of an appropriate capital structure for the Company;

(c) assist the Company and its other professionals in reviewing the terms of any proposed Transaction, in responding thereto and, if directed, in obtaining alternative proposals for a Transaction, whether in connection with a Plan (as defined below) or otherwise;

(d) determine a range of enterprise values for the Company and any securities that the Company offers or proposes to offer in connection with a Transaction;

(e) advise the Company on the risks and benefits of considering a Transaction with respect to the Company's intermediate and long-term business prospects and strategic alternatives to maximize the business enterprise value of the Company, whether pursuant to a Plan or otherwise;

(f) review and analyze any proposals the Company receives from third parties in connection with a Transaction, including, without limitation, any proposals for debtor-in-possession financing, as appropriate;

(g) assist or participate in negotiations with third parties submitting proposals and with the parties in interest, including, without limitation, any current or prospective creditors of, or holders of equity in, the Company in connection with a Transaction;

(h) advise and attend meetings of third parties and official constituencies, as necessary;

(i) if requested by the Company, participate in hearings before the Bankruptcy Court and provide relevant testimony with respect to the matters described herein and issues arising in connection with any proposed Plan;

(j) to the extent deemed desirable by the Company, identify and/or initiate potential Transactions; and

(k) render such other financial advisory and investment banking services as may be agreed upon by Rothschild and the Company in connection with any of the foregoing.

Notwithstanding anything else contained herein, Rothschild may decline to advise the Company in connection with any transaction of the kind described in Section 4(c) hereof.

As used herein, the term "Transaction" shall mean, collectively: (a) any transaction or series of transactions that effects material amendments to or other material changes in any of the Company's outstanding indebtedness, trade claims, leases (both on and off balance sheet) and other liabilities including, without limitation, pursuant to a plan of reorganization (a "Plan") under the Bankruptcy Code; (b) (i) any merger, consolidation, reorganization, recapitalization, refinancing, business combination or other transaction pursuant to which the Company (or control thereof) is acquired by, or combined with, any person, group of persons, partnership, corporation or other entity (each, an "Acquirer") or (ii) any acquisition, directly or indirectly, by an Acquirer (or by one or more persons acting together with an Acquirer pursuant to a written agreement or otherwise), whether in a single transaction, multiple transactions or a series of transactions, of (A) other than in the ordinary course of business, all or substantially all of the assets or operations of the Company or (B) any outstanding or newly-issued shares of the Company's capital stock or any securities convertible into, or options, warrants or other rights to acquire such capital stock or other equity securities of the Company for the purpose of effecting a recapitalization or change of control of the Company; (c) any restructuring, reorganization or similar transaction, whether or not pursuant to a Plan; or (d) any transaction similar to any of the foregoing.

In performing its services pursuant to this Agreement, and notwithstanding anything to the contrary herein, Rothschild is not assuming any responsibility for the Company's decision to pursue (or not to pursue) any business strategy or to effect (or not to effect) any Transaction or other transaction. Rothschild shall not have any obligation or responsibility to provide accounting, audit, "crisis management" or business consultant services to the Company, and shall have no responsibility for designing or implementing operating, organizational, administrative, cash management or liquidity improvements.

**Section 2 Information Provided by the Company.** The Company will cooperate with Rothschild and furnish to, or cause to be furnished to, Rothschild any and all information as Rothschild deems appropriate to enable Rothschild to render services hereunder (all such information being the "Information"). The Company recognizes and confirms that Rothschild (i) will use and rely primarily on the Information and on information available from generally recognized public sources in performing the services contemplated by this Agreement without having assumed any obligation to verify independently the same, (ii) does not assume responsibility for the accuracy or completeness of the Information and such other information, and (iii) will not act in the official capacity of an appraiser of specific assets of the Company or any other party. The Company confirms that the information to be furnished by the Company, when delivered, to the best of its knowledge will be true and correct in all material respects, will be prepared in good faith, and will not contain any material misstatement of fact or omit to state any material fact. The Company will promptly notify Rothschild if it learns of

anymaterial inaccuracy or misstatement in, or material omission from, any Information theretofore delivered to Rothschild.

**Section 3 Application for Retention of Rothschild.** The Company's obligations hereunder shall be subject to the approval of the Bankruptcy Court. The Company shall apply promptly to the Bankruptcy Court pursuant to Section 327(a) and 328(a) of the Bankruptcy Code and Rule 2014 of the Federal Rules of Bankruptcy Procedure, for approval of (A) this Agreement and (B) Rothschild's retention by the Company under the terms of this Agreement or terms otherwise acceptable to Rothschild, *nunc pro tunc* to the date of this Agreement. The Company shall use its best efforts to obtain such Bankruptcy Court approval and authorization subject to the standard of review provided in Section 328(a) of the Bankruptcy Code and not subject to any other standard of review under Section 330 of the Bankruptcy Code. The Company shall supply Rothschild and its counsel with a draft of such application and any proposed order authorizing Rothschild's retention sufficiently in advance of the filing of such application and proposed order to enable Rothschild and its counsel to review and comment thereon. Rothschild shall have no obligation to provide any services under this Agreement unless Rothschild's retention under the terms of this Agreement or terms otherwise acceptable to Rothschild is approved in the manner set forth above by a final order of the Bankruptcy Court no longer subject to appeal, rehearing, reconsideration or petition for certiorari, and which order is reasonably acceptable to Rothschild in all respects. The date of entry of such an order shall be referred to as the "Effective Date".

Rothschild further acknowledges that in the event that the Bankruptcy Court approves its retention by the Company, payment of Rothschild's fees and expenses shall be subject to: (i) the jurisdiction and approval of the Bankruptcy Court under Section 328(a) of the Bankruptcy Code and the order approving Rothschild's retention, (ii) any applicable fee and expense guideline orders and (iii) any requirements governing interim and final fee applications. In the event that Rothschild's engagement hereunder is approved by the Bankruptcy Court, and notwithstanding any other provision hereof, the Company shall pay all fees and expenses of Rothschild hereunder as promptly as practicable in accordance with the terms hereof and the orders governing interim and final fee applications, and after obtaining all further approvals from the Bankruptcy Court, if any. In so agreeing to seek Rothschild's retention under Section 328(a) of the Bankruptcy Code, the Company acknowledges that it believes that Rothschild's general restructuring experience and expertise, its knowledge of the capital markets and its merger and acquisition capabilities will inure to the benefit of the Company in pursuing any Transaction or other transaction, that the value to the Company of Rothschild's services hereunder derives in substantial part from that expertise and experience and that, accordingly, the structure and amount of the Monthly Fee, the Completion Fee and the M&A Fee (as each is defined below) are reasonable regardless of the number of hours to

be expended by Rothschild's professionals in performance of the services to be provided hereunder.

**Section 4 Fees of Rothschild.** As compensation for the services rendered hereunder, the Company, and its successors, if any, agree to pay Rothschild (via wire transfer or other mutually acceptable means) the following fees in cash:

(a) Commencing as of the date hereof and ending upon the termination hereof, and whether or not a Transaction is proposed or consummated, a monthly cash advisory fee (the "Monthly Fee") of \$150,000 per month. Both the initial Monthly Fee for July 2002 (which shall be pro-rated based on the commencement of services as of the date hereof) and the Monthly Fee for August 2002 shall be payable by the Company upon the Effective Date, and thereafter the Monthly Fee shall be payable by the Company in advance on the first day of each month.

(b) A fee (the "Completion Fee") of \$3,000,000, payable in cash upon the earlier of (i) the confirmation of a Plan and the Plan becoming effective or (ii) the consummation of another Transaction.

(c) A fee (the "M&A Fee") as specified in Exhibit B hereto if (i) the Company sells or acquires assets or equity interests or any securities convertible into, or options, warrants or other rights to acquire, such equity interests, which sale or acquisition does not constitute a Transaction, and (ii) Rothschild provides services in connection with such sale or acquisition, including without limitation any services of the kind contemplated under this Agreement, which fee shall be payable in cash at the closing of any such sale or acquisition.

(d) To the extent the Company requests Rothschild to perform additional services not contemplated by this Agreement, such additional fees as shall be mutually agreed upon by Rothschild and the Company, in writing, in advance.

The Company and Rothschild acknowledge and agree that (i) the hours worked, (ii) the results achieved and (iii) the ultimate benefit to the Company of the work performed, in each case, in connection with this engagement, may be variable, and that the Company and Rothschild have taken such factors into account in setting the fees hereunder.

**Section 5 Credit.** Rothschild shall credit (a) against any M&A Fee, 100% of the Monthly Fees paid under Section 4(a) in excess of \$450,000 (the "Monthly Fee Credit") to the extent not previously credited against any fee hereunder and (b) against the Completion Fee, any Monthly Fee Credit not previously credited against any fee

hereunder and 100% of any M&A Fees paid (the "M&A Fee Credit"); provided, however, that no such credit or credits shall exceed the fee against which it is applied.

Section 6 Expenses. Without in any way reducing or affecting the provisions of Exhibit A hereto, the Company shall reimburse Rothschild for its reasonable out-of-pocket expenses incurred in connection with the provision of services hereunder, the execution, delivery and enforcement of this Agreement and the consummation of any Transaction contemplated or attempted hereby, in each case including without limitation the fees, disbursements and other charges of Rothschild's counsel. Reasonable expenses shall also include, but not be limited to, expenses incurred in connection with travel and lodging, data processing and communication charges, research and courier services. Consistent with and subject to the existing orders of the Bankruptcy Court, the Company shall promptly reimburse Rothschild for expenses under this Section 6 upon presentation of an invoice or other similar documentation with reasonable detail.

Section 7 Indemnity. The Company agrees to the provisions of Exhibit A hereto which provide for indemnification by the Company of Rothschild and certain related persons and entities. Such indemnification is an integral part of this Agreement and the terms thereof are incorporated by reference as if fully stated herein. Such indemnification shall survive any termination, expiration or completion of this Agreement or Rothschild's engagement hereunder. Notwithstanding the foregoing, however, in the event that the Bankruptcy Court does not approve the indemnity provisions contained herein and in Exhibit A, Rothschild shall not exercise its right to terminate this Agreement pursuant to Section 8 hereof based on such decision by the Bankruptcy Court pending resolution of the appeal of such decision.

Section 8 Term. The term of Rothschild's engagement shall extend until the earlier of the consummation of a Transaction or the confirmation of a Plan and the Plan becoming effective. This Agreement may be terminated by either the Company or Rothschild after ninety (90) days from the date hereof by providing thirty (30) days advance notice in writing. If terminated, Rothschild shall be entitled to payment of any fees for any monthly period which are due and owing to Rothschild upon the effective date of termination; however, such amounts will be pro-rated for any incomplete monthly period of service, and Rothschild will be entitled to reimbursement of any and all out-of-pocket expenses described in Section 6. Termination of Rothschild's engagement hereunder shall not affect or impair the Company's continuing obligation to indemnify Rothschild and certain related persons as provided in Exhibit A and its continuing obligations under Section 9 hereof. Without limiting any of the foregoing, and subject to Section 5 hereof, the Completion Fee and any M&A Fee shall be payable in the event that, in the case of the Completion Fee, a Plan or other Transaction or, in the case of any M&A Fee, a transaction of the kind described in Section 4(c) hereof, is consummated at anytime prior to the expiration of 12 months after such termination, or a letter of intent or

definitive agreement with respect thereto is executed at any time prior to 12 months after such termination (which letter of intent or definitive agreement subsequently results in the consummation of a Plan or other Transaction or a transaction of the kind described in Section 4(c) hereof at any time), (x) as to which Rothschild advised the Company hereunder prior to the termination of this Agreement or (y) which involves a party identified to the Company by Rothschild or with whom the Company had discussions regarding a Plan or other Transaction or a transaction of the kind described in Section 4(c) hereof, in each case during the term of Rothschild's engagement hereunder; provided, however, that Rothschild shall not be entitled to an M&A Fee pursuant to this Section in connection with any transaction of the kind described in Section 4(c) hereof with respect to which Rothschild declined to advise the Company pursuant to Section 1 hereof.

Section 9 Miscellaneous.

(a) *Administrative Expense Priority.* The Company agrees that Rothschild's compensation as set forth herein and payments made pursuant to reimbursement and indemnification provisions of this Agreement shall be entitled to priority as expenses of administration under Sections 503(b)(1)(A) and 507(a)(1) of the Bankruptcy Code and shall be entitled to the benefits of any "carve-outs" for professional fees and expenses in effect in the Chapter 11 Cases pursuant to one or more financing orders entered by the Bankruptcy Court.

(b) *Survival.* Sections 4 through 9 hereof, inclusive, including the provisions set forth in Exhibits A and B hereto, shall survive the termination or expiration of this Agreement.

(c) *Benefit of Agreement; No Reliance by Third Parties.* The advice (oral or written) rendered by Rothschild pursuant to this Agreement is intended solely for the benefit and use of the Company and its professionals in considering the matters to which this Agreement relates, and the Company agrees that such advice may not be relied upon by any other person, used for any other purpose or reproduced, disseminated, quoted or referred to at any time, in any manner or for any purpose, nor shall any public references to Rothschild be made by the Company, without the prior written consent of Rothschild (which consent shall not be unreasonably withheld) or as otherwise provided in this Agreement.

(d) *Nature of Relationship.* The relationship of Rothschild to the Company hereunder shall be that of an independent contractor and Rothschild shall have no authority to bind, represent or otherwise act as agent for the Company. The parties hereto acknowledge and agree that by providing the services contemplated hereunder, Rothschild will not act, nor will it be deemed to have acted, in any managerial or



fiduciary capacity whatsoever with respect to the Company, or any third party including security holders, creditors or employees of the Company.

(e) *Public Announcements.* The Company agrees that Rothschild may at its option and expense, after announcement of the Transaction, place announcements and advertisements or otherwise publicize the Transaction in such financial and other newspapers and journals as it may choose, stating the Rothschild acted as financial advisor to the Company in connection with such Transaction. The Company further consents to Rothschild's public use or display of the Company's logo, symbol or trademark as part of Rothschild's general marketing or promotional activities, provided such use or display is in the nature of a public record or tombstone announcement in relation to the Transaction.

(f) *CHOICE OF LAW; JURISDICTION.* THIS AGREEMENT HAS BEEN NEGOTIATED, EXECUTED AND DELIVERED AT AND SHALL BE DEEMED TO HAVE BEEN MADE IN NEW YORK, NEW YORK. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH FEDERAL BANKRUPTCY LAW AND THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO SUCH STATE'S PRINCIPLES OF CONFLICTS OF LAWS. REGARDLESS OF ANY PRESENT OR FUTURE DOMICILE OR PRINCIPAL PLACE OF BUSINESS OF THE PARTIES HERETO, EACH SUCH PARTY HEREBY IRREVOCABLY CONSENTS AND AGREES THAT ANY AND ALL CLAIMS OR DISPUTES BETWEEN THE PARTIES HERETO PERTAINING TO THIS AGREEMENT OR TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE BROUGHT IN THE BANKRUPTCY COURT OR ANY COURT HAVING APPELLATE JURISDICTION OVER THE BANKRUPTCY COURT. BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT. EACH PARTY HERETO HEREBY WAIVES ANY OBJECTION WHICH IT MAY HAVE BASED ON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. ROTHSCHILD AND THE COMPANY EACH CONSENT TO THE SERVICE OF PROCESS IN ACCORDANCE WITH FEDERAL BANKRUPTCY LAW AND THE FEDERAL RULES OF BANKRUPTCY PROCEDURE (FOR SO LONG AS THE CHAPTER 11 CASES ARE PENDING), AND OTHERWISE IN ACCORDANCE WITH NEW YORK LAW.

(g) *Waiver of Jury Trial.* Each of the parties hereto hereby knowingly, voluntarily and irrevocably waives any right it may have to a trial by jury in respect of any claim upon, arising out of or in connection with this Agreement or any Transaction. Each