

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
TACORA RESOURCES INC.**

**(Applicant)**

**REPLY RECORD OF THE APPLICANT  
(APPROVAL AND REVERSE VESTING ORDER)**

March 14, 2024

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TO: THE SERVICE LIST

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**I N D E X**

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1.	Reply Affidavit of Joe Broking sworn March 14, 2024
2.	Reply Affidavit of Michael Nessim sworn March 14, 2024
A.	Exhibit "A" – Email from Stikeman to Goodmans dated November 29, 2023
B.	Exhibit "B" – Email correspondence between Greenhill and Jefferies (December 2023)
3.	Reply Affidavit of Dr. Sharon Brown-Hruska affirmed March 14, 2024
A.	Exhibit "A" – Reply Expert Report of Dr. Sharon Brown-Hruska
B.	Exhibit "B" – Form 53 – Acknowledgement of Expert Duty of Dr. Sharon Brown-Hruska

# TAB 1

Court File No. 23-00707394-00CL

**ONTARIO  
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**(Applicant)**

**REPLY AFFIDAVIT OF JOE BROKING  
(Sworn March 14, 2024)**

I, **JOE BROKING**, of the City of Grand Rapids, in the State of Minnesota, United States of America, MAKE OATH AND SAY:

1. I am the President and Chief Executive Officer of Tacora Resources Inc. ("**Tacora**" or the "**Company**" or the "**Applicant**"). I have been the President and Chief Executive Officer of Tacora since October 2021. Prior to becoming President and Chief Executive Officer, I was Executive Vice President and Chief Financial Officer of Tacora from July 2017 to October 2021. I have also been a member of the Company's board of directors (the "**Board**") since October 2021.

2. Together with other members of management, I am responsible for overseeing the Company's operations, liquidity management and restructuring efforts. As such, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records, press releases, and public filings of the Company and have spoken with certain of the directors, officers and/or employees of the Company, as necessary. Where I have relied upon such information, I believe such information to be true.

3. Capitalized terms used in this affidavit and not otherwise defined have the meanings ascribed to them in my affidavits sworn on October 9, 2023 (the "**First Broking Affidavit**"), October 15, 2023, January 17, 2024, and most recently February 2, 2024 (the "**Fourth Broking Affidavit**", and collectively, the "**Broking Affidavits**") in support of the Company's motion seeking approval of the Subscription Agreement dated January 29, 2024, entered into between Tacora, as issuer, and the Investors. All references to currency in this affidavit are references to United States dollars, unless otherwise indicated.

4. I have reviewed the affidavit of Matthew Lehtinen sworn March 1, 2024 (the “**Lehtinen Affidavit**”) filed in connection with Cargill’s opposition to the Company’s sale approval motion. I swear this affidavit in reply to the Lehtinen Affidavit.

5. Nothing contained in the Lehtinen Affidavit has caused me to change any of the statements I made in the Broking Affidavits. To the extent that this affidavit does not address any particular point that is raised in the Lehtinen Affidavit, it should not be taken as an acknowledgement or admission that I agree with them.

**A. Cargill’s Proposed Recapitalization Transaction**

6. The Lehtinen Affidavit states that Tacora failed to use the Solicitation Process to achieve a value maximizing transaction that respected the interests of all stakeholders, including Cargill. In particular, the Lehtinen Affidavit alleges, among other things, that Tacora failed to properly engage with Cargill on the Cargill Recapitalization Transaction, failed to properly consider the impact of the proposed Transactions on Cargill, and elected not to use its discretion within the Solicitation Process to extend timelines to allow Cargill to submit another, or a revised, Bid.

7. I strongly disagree with Mr. Lehtinen’s characterization of events. As described in the Fourth Broking Affidavit, the Company, with input and advice from Greenhill and Stikeman, and in consultation with the Monitor, considered each of the Phase 2 Bids received. As part of these deliberations, consideration was given to the structure of the Investors’ Bid, which requires a new marketing agreement for the sale of iron ore, and the resulting unsecured claim created by excluding the current Offtake Agreement under the Transactions. The Board understood that “claims likely to be created by a Bid” was a specific consideration for evaluating Bids under the Solicitation Process. As part of these deliberations, the Board, with input and advice from Greenhill and Stikeman, and in consultation with the Monitor, also considered whether compliance with the SISP Procedures should be waived to advance the unqualified Cargill Bid. However, the Company did not have confidence that the contingent new equity financing could be achieved in the circumstances given, among other things, the feedback provided to the Company by third party investors during the Pre-Filing Strategic Process and the Solicitation Process, including feedback from certain of the potential equity financing parties that Cargill represented it was engaging with to raise capital. Moreover, as described below, even if it was actionable, the Cargill Bid had significant flaws.

8. The fact that replacement of the Offtake Agreement results in a material claim does not change the fact that Cargill's Phase 2 Bid did not comply with the requirements of the Solicitation Process (as it was contingent on raising new equity financing) and was a non-actionable transaction for Tacora. As described in the Fourth Broking Affidavit, the Cargill Bid also contained several problematic features, including:

- (a) the Bid was structured as an asset sale but contained a condition that requires that the purchaser be satisfied, in its sole discretion, that the Company's tax attributes be preserved in all material respects and available to be utilized by the purchaser, which is not possible in an asset sale;
- (b) the Bid did not specify the new equity participants to be new majority owners of the Company (or the purchaser) following Closing as the Bid was contingent on raising new equity from third parties. This adversely impacted the Company's ability to evaluate necessary regulatory approvals and the ability and willingness of the potential equity participants to provide further necessary financing for the business;
- (c) the Bid contained conditions which were likely not achievable based on the Company's analysis, including, among other things, (i) a minimum cash condition; (ii) a condition to maintain tax attributes (as noted, a different structure would have been required to preserve tax attributes); and (iii) a financing condition to raise new equity;
- (d) the Bid contained no commitment from Cargill (or any other equity participant) to provide any new capital to the Company; and
- (e) even assuming the contingent financing could be raised from third parties, the Bid did not provide sufficient financing to adequately capitalize the Company to fund required capital expenditures and operating costs necessary to achieve the required "ramp up" of production at the Scully Mine to allow for the business to sustainably operate in the future.

9. For additional context on the above, even if Cargill was able to raise \$85 million of equity financing and complete the Recapitalization Transaction, given the various required closing payments, the Company would have been left with minimal cash upon closing of the transaction. In the First Broking Affidavit and the Fourth Broking Affidavit, I highlighted the necessity for

additional capital investments to be made in the Scully Mine during this “ramp up” phase, which are critical for the sustainability and stability of Tacora’s operations moving forward. Without an increase in production, the Company will continue to operate at a deficit. Cargill’s proposed Recapitalization Transaction would not provide sufficient financing to adequately capitalize the Company to fund these necessary capital investments.

10. Additionally, the Company would have continued to be burdened by the full amount of the Senior Notes, which were contemplated to be reinstated without the consent of the Senior Noteholders. Servicing the Senior Notes from operational cash flow had previously proven to be unsustainable for Tacora. In the First Broking Affidavit, I explained that Tacora had encountered various operational challenges since the third quarter of 2022 due to a confluence of factors, including, but not limited to, capital constraints, equipment failures, difficult capital project execution, various operational issues, and high indebtedness. In or around November 2022, when Tacora had approximately \$225 million in secured indebtedness pursuant to the Senior Notes, Tacora was unable to service its debt from its operations and required additional financing. Reinstating the Senior Notes would also hinder the Company’s ability to attract third party investors willing to invest in Tacora’s business. The Company’s past efforts to raise capital during the Pre-Filing Strategic Process, when Tacora had substantially the same capital structure as proposed under the Recapitalization Transaction, demonstrates that third parties are not interested in investing in or acquiring all or a portion of Tacora’s business without the Company being deleveraged.

11. In addition, the market feedback was clear – investors are not interested in providing new money without significant changes to the Offtake Agreement. During the Solicitation Process, Tacora had previously communicated what it believed to be the necessary concessions from Cargill on the Offtake Agreement in order for investors to provide new equity in Tacora. However, Cargill never made any such concessions and the Recapitalization Transaction provides that the Offtake Agreement will continue on the same terms (with some potential sharing with Tacora).

12. Accordingly, even if the Recapitalization Transaction was actionable (which it was not), the transaction did not address the fundamental underlying issues that caused Tacora to commence these CCAA Proceedings. These issues are required to be addressed for Tacora to restructure in a sustainable manner.

13. I understand from the Lehtinen Affidavit that Cargill is now offering a new proposed Plan of Compromise and Arrangement (the “**Plan**”) in respect of Tacora appended as Exhibit “R” to the Lehtinen Affidavit. I understand that the Plan is on substantially the same terms as the Cargill Recapitalization Transaction except that it also contemplates (a) that Tacora will obtain a New Senior Secured Pre-Payment Facility in the approximate range of \$150 – \$200 million, and (b) the Senior Priority Margining Facility will be increased from \$25 million to \$75 million.

14. As set out above, I had serious concerns about the Company’s go-forward capital structure under Cargill’s proposed Recapitalization Transaction, which is even worse under the proposed Plan. Assuming that Tacora uses the maximum range under the Senior Priority Margining Facility and the New Senior Secured Pre-Payment Facility, Tacora would have approximately \$450 million in secured indebtedness compared with approximately \$225 million in secured indebtedness in December 2022 when the Company already could not service its existing debt. Under Cargill’s proposed Plan, the Company will be significantly overleveraged, and I believe it would be difficult, if not impossible, for Tacora to service the indebtedness contemplated by the Cargill Plan and, accordingly, the Plan would be highly detrimental to Tacora and its stakeholders.

**B. The Offtake Agreement**

15. The Lehtinen Affidavit states that Tacora and Cargill enjoy economic alignment via the profit-sharing mechanism set out in the Offtake Agreement. Based on the Company’s books and records, as of January 2024, Cargill has realized a profit of approximately [REDACTED] under the Offtake Agreement, which is an average of approximately [REDACTED] of Tacora Premium Concentrate (“**TPC**”).

16. I have recently learned that Cargill has earned even more under the Offtake Agreement than Tacora was aware. I understand, based on Cargill’s internal records, that Cargill had earned approximately [REDACTED] under the Offtake Agreement as of January 2024, which is an average of over [REDACTED] of TPC. Accordingly, [REDACTED]

17. For the duration of the Offtake Agreement, Tacora has always operated at a deficit, and it has cumulative losses of over \$345 million since starting its efforts to restart the Scully Mine. Cargill is the only stakeholder that earned a profit or positive return from Tacora. Each other

significant financial stakeholder of Tacora has seen a material decrease in the value, or a total loss, of their investment in Tacora, including Tacora's shareholders and the Senior Noteholders. Consequently, I do not believe that Tacora and its stakeholders "enjoy economic alignment" with Cargill on the Offtake Agreement.

SWORN remotely via videoconference, by Joe Broking, stated as being located in the City of Grand Rapids, in the State of Minnesota, before me at the City of Toronto, in Province of Ontario, this 14<sup>th</sup> day of March 2024, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*.

DocuSigned by:  
  
36124C4216DD47C...

Commissioner for Taking Affidavits, etc.  
Philip Yang

DocuSigned by:  
  
0E9B6B7A9424D8

**JOE BROKING**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED, AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TACORA RESOURCES INC.**

Applicant

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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Proceeding commenced at Toronto

**REPLY AFFIDAVIT OF  
JOE BROKING  
(SWORN MARCH 14, 2024)**

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## TAB 2

Court File No. 23-00707394-00CL

**ONTARIO  
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**(Applicant)**

**REPLY AFFIDAVIT OF MICHAEL NESSIM  
(Sworn March 14, 2024)**

I, **MICHAEL NESSIM**, of the City of Toronto, in the Province of Ontario, Canada,  
MAKE OATH AND SAY:

1. I am a Managing Director of Greenhill & Co. Inc. ("**Greenhill**" or the "**Financial Advisor**") and Head of Greenhill's Metals & Mining Group in North America. I have been working with Tacora Resources Inc. ("**Tacora**" or the "**Company**") since Greenhill's engagement in January 2023, and assisted with the Company's Pre-Filing Strategic Process and, more recently, the Solicitation Process (each as defined below). As such, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated.
2. Capitalized terms used herein and not otherwise defined have the meaning given to them in the Affidavit of Joe Broking sworn February 2, 2024 (the "**Broking Affidavit**"). All references to currency in this affidavit are references to United States dollars, unless otherwise indicated.
3. I swore an affidavit dated February 2, 2024 (the "**First Nessim Affidavit**") in support of the Company's motion seeking approval of the Subscription Agreement dated January 29, 2024, entered into between Tacora, as issuer, and the Investors. I have reviewed the affidavit of Matthew Lehtinen sworn March 1, 2024 (the "**Lehtinen Affidavit**") and the report of David Roland dated March 1, 2024 (the "**Roland Report**") filed in connection with Cargill's opposition to the Company's sale approval motion.
4. I swear this affidavit in reply to the Lehtinen Affidavit. This affidavit also addresses certain of the factual contentions or assumptions that appear to have been made in the Roland Report.

5. Nothing contained in the Lehtinen Affidavit or the Roland Report has caused me to change any of the statements I made in the First Nessim Affidavit. To the extent that this affidavit does not address any particular point that is raised in the Lehtinen Affidavit or the Roland Report, it should not be taken as an acknowledgement or admission that I agree with them.

6. As a brief overview, the Lehtinen Affidavit and Roland Report allege various unfounded complaints regarding the Solicitation Process. However, neither addresses the fundamental deficiency of Cargill's Phase 2 Bid – that it was an unqualified and non-actionable Bid that contained an unsatisfied financing condition. This condition was contained in the Phase 2 Bid submitted by Cargill, despite the Company's (and apparently Cargill's) attempts to raise new equity financing for almost a year. As described in the First Nessim Affidavit and further below, the Company had expended significant efforts during the Pre-Filing Strategic Process and the Solicitation Process to identify potential parties who would provide Tacora with new money financing with Tacora's current capital structure and Offtake Agreement. However, the market feedback was clear – third party investors are not interested in providing new money without significant changes to the capital structure, the Offtake Agreement, or both.

## I. THE SOLICITATION PROCESS

### A. Process for Engaging With Financing Parties

7. The Lehtinen Affidavit raises several complaints related to the specific protocol Cargill was required to follow in their engagement with potential financing parties. In paragraphs 69 – 72 of the Lehtinen Affidavit, Mr. Lehtinen describes the protocol that Greenhill followed in permitting Cargill and Jefferies LLC (“**Jefferies**”) to engage with specific potential equity financing parties. Mr. Lehtinen essentially complains that Cargill was not provided with free reign to engage immediately with each potential financing party that it identified.

8. Though Mr. Lehtinen complains that Greenhill required Cargill to follow certain procedures, the protocol setting out these procedures was expressly incorporated into the SISP Procedures at paragraphs 17 – 21. The Solicitation Order authorized and directed the Company and Greenhill to follow the Court-approved SISP Procedures and all parties were required to follow the incorporated protocol in order to engage with potential financing parties.

9. The communication protocol, and the SISP Procedures, generally were only approved by the Court after Cargill and its advisors had been provided with a draft form for their input. On

September 4, 2023, when Tacora was initially preparing to file for CCAA protection in order to obtain additional critical liquidity, draft SISP Procedures were provided to Cargill's counsel for their review and comment. On October 7, 2024, following the recommencement of planning for a potential CCAA filing, Tacora again provided Cargill's counsel with draft SISP Procedures for their review and comment. I understand from Lee Nicholson of Stikeman Elliott LLP ("**Stikeman**"), counsel to the Company, that the draft SISP Procedures provided to Cargill on October 7, 2024, included a final bid deadline of January 19, 2024, and substantially similar milestones to the final SISP Procedures. I also understand that the communication protocol was included in draft SISP Procedures which were provided to Cargill on October 14, 2023. I understand from Mr. Nicholson that Cargill's counsel reviewed and commented on these SISP Procedures, and I understand that Cargill consented to the approval of the Solicitation Order.

10. The protocol contained in the SISP Procedures expressly contemplates that Phase 1 Bidders and potential financing parties are prohibited from speaking without the consent of Greenhill and the Monitor, except as specifically provided in the SISP Procedures. The SISP Procedures provide specific protocols for engaging with potential equity financing parties, debt financing parties and offtake financing parties. The guidelines were included in the SISP Procedures to allow Greenhill, under the supervision of the Monitor, to appropriately balance allowing bidders to engage with financing parties to develop a consortium Bid while attempting to prevent bidders from "front running" the process in an attempt to achieve less competition, all with a view to obtain the best Bid available in the circumstances. Greenhill's actions and engagement throughout the Solicitation Process were guided by these principles.

11. For example, as described in paragraph 71 of the Lehtinen Affidavit, during Phase 1 of the Solicitation Process, Greenhill did not consent to Cargill contacting five parties which Cargill and Jefferies had requested permission to speak with. The primary reason that Greenhill, in consultation with the Monitor, did not consent to Cargill contacting these five specific parties was that each of them had already been in contact with Greenhill and, through experience, Greenhill knew that these parties would potentially be interested in a standalone Bid or the Offtake Opportunity. If such a party might potentially develop a standalone Bid, it was important to the process to surface such a Bid in order to generate competitive tension within the Solicitation Process. Further, if a party was potentially interested in the Offtake Opportunity, they were not a natural party to participate in a potential Cargill consortium given the existing Offtake Agreement and Cargill's desire to preserve it. These decisions were made with the input and approval of the Monitor, in accordance with the SISP Procedures.

**B. Greenhill's Efforts to Assist Cargill**

12. At paragraph 15 of the Lehtinen Affidavit, Mr. Lehtinen alleges that Tacora and its advisors created numerous challenges, delay and obstacles for bidders to obtain financing. I strongly disagree with Mr. Lehtinen complaint. On the contrary, Greenhill, in conjunction with the Monitor, provided Cargill and Jefferies with constant feedback throughout the Solicitation Process and attempted to assist Cargill with their efforts to form a potential consortium bid after it became clear after Phase 1 of the Solicitation Process that Cargill was the only likely Bidder that could compete with the Investors' Bid.

13. As examples of the activities Greenhill, Stikeman and the Monitor undertook to assist Cargill and Jefferies:

- (a) Tacora, Greenhill and the Monitor held weekly calls with Cargill and Jefferies on the status of operations at Tacora to provide them with the latest information regarding performance of the Scully Mine;
- (b) On October 19, 2023, Greenhill contacted Cargill and Jefferies and invited them to provide names of potential bidders that Greenhill should contact during the Solicitation Process. Neither Cargill nor Jefferies responded to this request;
- (c) During Phase 1 of the Solicitation Process, Greenhill permitted Cargill to speak to financing parties, unless such parties had the potential to be a stand-alone Bidder or interested in the Offtake Opportunity;
- (d) Prior to the Phase 1 Bid Deadline, Cargill provided Greenhill, Stikeman and the Monitor will a draft transaction term sheet with undisclosed economic terms. Tacora's advisors held calls with Cargill and Jefferies on November 14, 2024 to discuss the term sheet. Greenhill offered Jefferies the opportunity to complete the economic terms of the term sheet in order for Greenhill to explore with other parties participating in the process whether they would be potentially interested in the proposed transaction structure. Neither Cargill nor Jefferies provided economic terms of the proposed transaction. On November 29, 2023, Stikeman formally wrote Cargill's counsel indicating that "[t]he principal economic terms of the Term Sheet... have not been provided" and therefore Greenhill and the Monitor were not

able to provide detailed feedback. A copy of the correspondence sent by Stikeman to Cargill's counsel is attached at **Exhibit "A"**.<sup>1</sup>

- (e) Stikeman provided Cargill and Jefferies with a specific form of confidentiality agreement that Cargill could use with potential financing parties to streamline the confidentiality agreement negotiation process;
- (f) Greenhill arranged for recorded management presentations and provided access to the VDR to allow Cargill's potential financing parties to get up to speed as quickly as possible without the need to schedule separate management presentations;
- (g) On December 21, 2023, Greenhill offered Jefferies the opportunity to record a presentation from PIP (as defined below), Tacora's mining and operational consultant, that could be used in a manner similar to the recorded management presentation to allow Cargill's potential financing parties to get up to speed as quickly as possible. Jefferies never responded to Greenhill on this offer; and
- (h) Following Phase 1 of the Solicitation Process, after it became clear that Cargill was the primary Bidder that could compete with the Investors' Bid, Greenhill offered each other Phase 1 Bidder (other than the Investors and Bidder #3 who indicated they preferred to pursue a standalone Bid) an opportunity to engage with Cargill on a potential consortium bid. Greenhill also referred Cargill to other parties that were potentially interested in a transaction but did not submit a Bid. One prospective new money equity investor and one of the prospective new debt investors referenced at paragraph 92 of the Lehtinen Affidavit were Phase 1 Bidders that Greenhill directed to Cargill following the Phase 1 Bid Deadline.

### **C. Feedback on the Offtake Agreement**

14. Contrary to the allegations at paragraph 82 in the Lehtinen Affidavit, Tacora did provide feedback on amendments to the Offtake Agreement to Cargill and Jefferies during the Solicitation Process. On November 17, 2023, Tacora, Greenhill and the Monitor convened a call with Cargill

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<sup>1</sup> Despite the Company indicating it was willing to facilitate discussions with third party financing parties, Cargill submitted a Phase 1 Bid that contemplated a transaction fully backstopped by Cargill and was not conditional upon raising new financing from third parties. The Bid structure contemplated by Cargill during the Solicitation Process significantly changed from Phase 1 to Phase 2.

and Jefferies to communicate amendments to the Offtake Agreement that the Company thought would be necessary to attract new equity to be invested into the Company. Greenhill communicated to Jefferies and Cargill that they could provide details on what amendments could be made to the Offtake Agreement in order for that to be communicated to potential financing parties. Neither Jefferies nor Cargill ever indicated during the Solicitation Process what Cargill was willing to amend. None of these amendments suggested by the Company were reflected in Cargill's Phase 2 Bid.

**D. Engagement with the Investors**

15. In paragraph 82 of the Lehtinen Affidavit, Mr. Lehtinen complains that Tacora and its advisors did not attempt to facilitate discussions between Cargill and the Ad Hoc Group during the Solicitation Process. As an initial matter, Greenhill and the Monitor were aware that both Cargill and the Ad Hoc Group would participate as bidders during the Solicitation Process. The SISF Procedures expressly restricted discussions between parties acting as competing bidders as it is generally important to prevent competing bidders from colluding during an active sales process to preserve tension and achieve the best results in the circumstances. Greenhill had also participated in the extensive discussions between Cargill and the Ad Hoc Group prior to the CCAA Proceedings where the parties were unable to achieve a resolution. Despite the Company's best efforts to achieve a consensual restructuring transaction, the parties were unable to reach an agreement.

16. I am informed by Lee Nicholson of Stikeman that on January 29, 2024, prior to execution of the Subscription Agreement, in response to a request by counsel to Cargill, Stikeman made inquiries of counsel to the Investors as to whether they were interested in having a discussion with Cargill. I am informed by Mr. Nicholson that counsel to the Investors indicated that the Investors were not interested in such a discussion. Additionally, I am informed by Mr. Nicholson that Stikeman sent an email to the Monitor on or around February 5, 2024, advising that Tacora does not have an issue with discussions between Cargill's counsel and the Investors' counsel, provided that such discussions are attended by the Monitor. I understand Cargill has not initiated any such discussions despite being invited to do so.

## E. PIP Engagement

17. Throughout the Solicitation Process, Greenhill, in consultation with the Monitor, facilitated due diligence for interested parties, including arranging management meetings and meetings with other consultants engaged by Tacora. Each confidentiality agreement entered into by interested parties in connection with the Solicitation Process required that requests for information be directed to Greenhill, the Monitor or Stikeman. Controlling the information flow for interested parties is important for ensuring fairness for all parties involved in a sales process.

18. Partners in Performance (“**PIP**”) is a global mining consulting firm that had been engaged in February 2023 by Tacora to initiate an operational stabilization and turnaround program at the Scully Mine. On December 14, 2023, following the Phase 1 Bid Deadline, Jefferies requested authorization from Greenhill for PIP to be available to participate on calls with potential equity financing parties. On December 18, 2023, Greenhill responded to Jefferies and noted that it was necessary to put some protocols in place and separate calls between PIP and Cargill’s potential equity financing parties would require supervision by the Monitor. Jefferies responded on December 19, 2023, and noted its preference was to not have the Monitor included since it would add additional logistical challenges. Ultimately, on December 19, 2023, Greenhill advised Jefferies that the Monitor would need to be involved from a process perspective, but Jefferies never responded. Attached hereto as **Exhibit “B”** is a copy of the above-referenced email thread between Greenhill and Jefferies.

19. It was important to Greenhill and the Company that participants in the Solicitation Process respected the terms of the confidentiality agreements being entered into and the terms of the Solicitation Process generally.

20. I am informed by Joe Broking that the Company advised PIP that they should only engage in discussions with Cargill or any of its advisors and representatives with the permission of the Company, as PIP is working for the Company as a representative of the Company during the Solicitation Process. Further, I understand from Mr. Broking that the Company also advised PIP that they should not provide any Company information to any party without Tacora’s consent.

## II. EQUITY FINANCING

21. The Lehtinen Affidavit baldly states at paragraph 93 that “it was essentially impossible for any third party to have been in a position to make a binding commitment to invest equity in Tacora by the January 19, 2024 deadline in the SISP, unless the third party had been involved with Tacora well in advance of December 2023.”

22. As set out above, on October 7, 2023, following the recommencement of planning for a potential CCAA filing, Tacora provided Cargill’s counsel with draft SISP Procedures for review and comment, which included a final bid deadline of January 19, 2024, and substantially similar milestones to the final SISP Procedures. Cargill did not propose extending the timelines contemplated by the SISP Procedures at the time.

23. I also believe, contrary to the statements of Mr. Lehtinen, that there was sufficient time for Cargill and the interested parties they had identified to fully participate in the Solicitation Process to produce an actionable Bid. Interested parties were provided access to management, opportunities to submit diligence questions, travel windows to perform site visits before the winter holiday season, and otherwise fully able to perform due diligence and evaluate Tacora with the time provided by the Solicitation Process. Additionally, four of the five equity financing parties that Cargill referenced in its Bid had previously been involved in Tacora and had conducted due diligence well in advance of the Solicitation Process. Two of the parties participated in either the Pre-Filing Strategic Process or DIP solicitation process, one party had been working with Cargill on a potential investment since early 2023, and one party is a significant customer of Tacora’s iron ore that is very familiar with Tacora and had performed a site visit in October 2023.

24. I do not believe that lack of time is what caused Cargill to be unable to find an equity financing party. On the contrary, based on the Pre-Filing Strategic Process and Solicitation Process, I believe that Cargill is unable to raise additional financing because investors are not interested in providing new money equity without significant changes to Tacora’s capital structure, the Offtake Agreement, or both.

25. In addition, Mr. Lehtinen’s assertions that Cargill simply needed to be provided with more time are demonstrably false when considered against the fact that Cargill originally asked for three additional weeks beyond January 19, 2024, to satisfy its equity financing condition. Cargill still has access to Tacora’s virtual dataroom and its potential equity financing parties had access until February 9, 2024 – three weeks following the Phase 2 Bid Deadline. Based on the Lehtinen

Affidavit, I understand that Cargill continues to work on securing third party financing. It has now been nearly eight weeks past the Court-ordered Phase 2 Bid Deadline. As of the date of the Lehtinen Affidavit, I understand that Cargill has still not been able to secure any third-party financing.

SWORN remotely via videoconference, by Michael Nessim, stated as being located in the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in Province of Ontario, this 14<sup>th</sup> day of March 2024, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*.

DocuSigned by:  
  
30124C4218DD47C...

Commissioner for Taking Affidavits, etc.  
Philip Yang

DocuSigned by:  
  
AD90F578250A445...

**MICHAEL NESSIM**

**EXHIBIT "A"**

referred to in the Affidavit of

**MICHAEL NESSIM**

Sworn March 14, 2024

DocuSigned by:  


38124C4218DD47C...

---

A Commissioner for Taking Affidavits  
Philip Yang

# Stikeman Elliott

**Stikeman Elliott LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, ON M5L 1B9

Main: 416 869 5550  
Fax: 416 947 0866  
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Lee Nicholson  
Direct: +1 416 869 5604  
Mobile: +1 647 821 1931  
leenicholson@stikeman.com

November 29, 2023

**By Email**

Goodmans LLP  
Bay Adelaide Centre, West Tower  
333 Bay Street, Suite 3400  
Toronto ON  
M5H 2S7

**Attention: Robert Chadwick**

Dear Sir:

**Re: Tacora Resources Inc. (CV-23-00707394-00CL) – Transaction Term Sheet for Recapitalization Transaction (the “Term Sheet”)**

We write in response to the Term Sheet delivered to Tacora Resources Inc. (“**Tacora**” or the “**Company**”) on November 14, 2023, by Cargill International Trading Pte. Ltd and Cargill, Incorporated (collectively, “**Cargill**”). The Company and its advisors, and the Monitor, have reviewed, analyzed and considered the Term Sheet and contemplated recapitalization transaction (the “**Transaction**”) on a preliminary basis.

The principal economic terms of the Term Sheet and the Transaction have not been provided (including, the proposed purchase price and related stakeholder recoveries) and the financing and other key components of the Transaction are not committed by Cargill or other required financing parties. Accordingly, as previously communicated by Greenhill & Co. Canada Ltd. to Jefferies LLC, the Company, its advisors and the Monitor are not able to provide detailed feedback at this time. It appears that Cargill requires further discussions with financing parties to advance the Term Sheet such that the contemplated Transaction can be fully developed and presented to the Company as a potentially actionable solution. As you know, the Company and its advisors have been working with Cargill and its advisors to facilitate further discussions with potential financing parties through the Court-approved sale and investment solicitation process (the “**SISP**”). We hope to continue to facilitate such discussions to allow Cargill to advance a transaction as a bid in accordance with the milestones contemplated by the SISP.

If Cargill can advance the Term Sheet and a transaction in the context of the SISP such that they are a potentially actionable restructuring solution for Tacora and its stakeholders, the Company and the Monitor will fully consider such option.

This letter should not be construed to suggest that the non-economic terms of the Term Sheet are acceptable to the Company and the Company expects such terms would need to be negotiated and discussed if the Transaction can be advanced by Cargill, including, among other things, the treatment and the commercial terms of the offtake agreement and other related agreements, the contemplated purchase price adjustments, the milestones and the implementation method.

## Stikeman Elliott

2

We appreciate Cargill's continued willingness to advance potential transactions to find a going-concern solution in respect of Tacora.

Yours truly,

Stikeman Elliott LLP



Lee Nicholson

LN/kl

cc: Paul Bishop, Jodi Porepa – FTI Consulting Canada Inc.  
Ryan Jacobs, Jane Dietrich – Cassels Brock & Blackwell LLP  
Ashley Taylor, Philp Yang – Stikeman Elliott LLP  
Chetan Bhandari, Michael Nessim, Usman Masood – Greenhill & Co. Canada Ltd.  
Caroline Descours – Goodmans LLP  
Jeremy Matican – Jefferies LLC

**EXHIBIT "B"**

referred to in the Affidavit of

**MICHAEL NESSIM**

Sworn March 14, 2024

DocuSigned by:  


38124C4218DD47C...

---

A Commissioner for Taking Affidavits  
Philip Yang

---

**From:** Usman Masood <[usman.masood@greenhill.com](mailto:usman.masood@greenhill.com)>

**Sent:** Tuesday, December 19, 2023 4:11 PM

**To:** Ryan Sheehy <[rsheehy@jefferies.com](mailto:rsheehy@jefferies.com)>; Kevin Zhao <[kevin.zhao@greenhill.com](mailto:kevin.zhao@greenhill.com)>;  
Project.Caramel.2023.All <[Project.Caramel.2023.All@jefferies.com](mailto:Project.Caramel.2023.All@jefferies.com)>

**Cc:** Project Element 2023 <[ProjectElement2023@greenhill.com](mailto:ProjectElement2023@greenhill.com)>

**Subject:** Re: Project Element - Management Presentation

Thanks Ryan.

Re: agenda - what we are trying to ascertain is if the discussion requires mgmt input as well. The PiP role has evolved over time and mgmt has hired additional staff at certain roles. Want to make sure appropriate folks are on from Tacora side if required. Are you trying to give Mresources a sense for the PiP operating team or trying to cover operational topics?

Wrt to monitor involvement, they will need to be involved from a process perspective, but are generally quite flexible based on our experience.

Kind Regards,  
Usman

—

**Usman Masood**  
**Managing Director**

**Greenhill & Co. Canada Ltd.**  
79 Wellington Street West, Suite 3403  
Toronto, ON, Canada | M5K 1K7

Tel (Voice & Text): [+1.416.601.2578](tel:+14166012578)  
Personal Mobile (No Texting): [+1.647.391.5531](tel:+16473915531)  
Email: [usman.masood@greenhill.com](mailto:usman.masood@greenhill.com)

*Sent from my iPhone. Kindly excuse any typos.*

---

**From:** Ryan Sheehy <[rsheehy@jefferies.com](mailto:rsheehy@jefferies.com)>  
**Sent:** Tuesday, December 19, 2023 7:47:59 PM  
**To:** Usman Masood <[usman.masood@greenhill.com](mailto:usman.masood@greenhill.com)>; Kevin Zhao <[kevin.zhao@greenhill.com](mailto:kevin.zhao@greenhill.com)>;  
Project.Caramel.2023.All <[Project.Caramel.2023.All@jefferies.com](mailto:Project.Caramel.2023.All@jefferies.com)>  
**Cc:** Project Element 2023 <[ProjectElement2023@greenhill.com](mailto:ProjectElement2023@greenhill.com)>  
**Subject:** RE: Project Element - Management Presentation

You don't often get email from [rsheehy@jefferies.com](mailto:rsheehy@jefferies.com). [Learn why this is important](#)

Usman,

We would like to facilitate a call between M Resources and PIP but expect there will be others. Preference would be not to have the monitor included since it will add additional logistical challenges. We would expect ahead of any call that sufficient detail on agenda would be provided to PIP.

Regards,

**Ryan Sheehy**

Senior Vice President  
Jefferies LLC  
Cell: 917.750.8647

---

**From:** Usman Masood <[usman.masood@greenhill.com](mailto:usman.masood@greenhill.com)>  
**Sent:** Monday, December 18, 2023 12:32 PM  
**To:** Ryan Sheehy <[rsheehy@jefferies.com](mailto:rsheehy@jefferies.com)>; Kevin Zhao <[kevin.zhao@greenhill.com](mailto:kevin.zhao@greenhill.com)>;  
Project.Caramel.2023.All <[Project.Caramel.2023.All@jefferies.com](mailto:Project.Caramel.2023.All@jefferies.com)>  
**Cc:** Project Element 2023 <[ProjectElement2023@greenhill.com](mailto:ProjectElement2023@greenhill.com)>  
**Subject:** Re: Project Element - Management Presentation

Hi Ryan -

Do you expect to host a single investor call at this point where PiP would be asked to join? We have to put some protocols in place and will likely require the supervision of the Monitor.

Also - do you have a set of DD questions you envision posing to PiP?

Not saying we won't be able to accommodate in some form, but will need to be a structured session. Unfortunately, having PiP join on an ad hoc basis is unlikely to be feasible.

Usman

—

**Usman Masood**  
**Managing Director**

**Greenhill & Co. Canada Ltd.**  
79 Wellington Street West, Suite 3403  
Toronto, ON, Canada | M5K 1K7

Tel (Voice & Text): [+1.416.601.2578](tel:+14166012578)  
Personal Mobile (No Texting): [+1.647.391.5531](tel:+16473915531)  
Email: [usman.masood@greenhill.com](mailto:usman.masood@greenhill.com)

*Sent from my iPhone. Kindly excuse any typos.*

---

**From:** Ryan Sheehy <[rsheehy@jefferies.com](mailto:rsheehy@jefferies.com)>  
**Sent:** Monday, December 18, 2023 12:58 PM

**To:** Usman Masood <[usman.masood@greenhill.com](mailto:usman.masood@greenhill.com)>; Kevin Zhao <[kevin.zhao@greenhill.com](mailto:kevin.zhao@greenhill.com)>;  
Project.Caramel.2023.All <[Project.Caramel.2023.All@jefferies.com](mailto:Project.Caramel.2023.All@jefferies.com)>  
**Cc:** Project Element 2023 <[ProjectElement2023@greenhill.com](mailto:ProjectElement2023@greenhill.com)>  
**Subject:** RE: Project Element - Management Presentation

You don't often get email from [rsheehy@jefferies.com](mailto:rsheehy@jefferies.com). [Learn why this is important](#)

Usman,

Wanted to follow-up on our PIP request. Can you please confirm?

Thank you,

**Ryan Sheehy**

Senior Vice President  
Jefferies LLC  
Cell: 917.750.8647

---

**From:** Ryan Sheehy

**Sent:** Thursday, December 14, 2023 10:16 AM

**To:** Usman Masood <[usman.masood@greenhill.com](mailto:usman.masood@greenhill.com)>; Kevin Zhao <[kevin.zhao@greenhill.com](mailto:kevin.zhao@greenhill.com)>;  
Project.Caramel.2023.All <[Project.Caramel.2023.All@jefferies.com](mailto:Project.Caramel.2023.All@jefferies.com)>

**Cc:** Project Element 2023 <[ProjectElement2023@greenhill.com](mailto:ProjectElement2023@greenhill.com)>

**Subject:** RE: Project Element - Management Presentation

We would like general approval for them to engage with our financing sources to be most efficient given the tight timeline. We believe based on conversations, many parties will want to speak to them over the course of the marketing process. Of course, these would all be within the names that you've approved for our outreach.

**Ryan Sheehy**

Senior Vice President  
Jefferies LLC  
Cell: 917.750.8647

---

**From:** Usman Masood <[usman.masood@greenhill.com](mailto:usman.masood@greenhill.com)>

**Sent:** Thursday, December 14, 2023 10:01 AM

**To:** Ryan Sheehy <[rsheehy@jefferies.com](mailto:rsheehy@jefferies.com)>; Kevin Zhao <[kevin.zhao@greenhill.com](mailto:kevin.zhao@greenhill.com)>;  
Project.Caramel.2023.All <[Project.Caramel.2023.All@jefferies.com](mailto:Project.Caramel.2023.All@jefferies.com)>

**Cc:** Project Element 2023 <[ProjectElement2023@greenhill.com](mailto:ProjectElement2023@greenhill.com)>

**Subject:** Re: Project Element - Management Presentation

Thanks Ryan.

To confirm, which investor calls are you referring to?

Usman

—

**Usman Masood**  
**Managing Director**

**Greenhill & Co. Canada Ltd.**  
79 Wellington Street West, Suite 3403  
Toronto, ON, Canada | M5K 1K7

Tel (Voice & Text): [+1.416.601.2578](tel:+14166012578)  
Personal Mobile (No Texting): [+1.647.391.5531](tel:+16473915531)  
Email: [usman.masood@greenhill.com](mailto:usman.masood@greenhill.com)

*Sent from my iPhone. Kindly excuse any typos.*

---

**From:** Ryan Sheehy <[rsheehy@jefferies.com](mailto:rsheehy@jefferies.com)>  
**Sent:** Thursday, December 14, 2023 9:55:23 AM  
**To:** Usman Masood <[usman.masood@greenhill.com](mailto:usman.masood@greenhill.com)>; Kevin Zhao <[kevin.zhao@greenhill.com](mailto:kevin.zhao@greenhill.com)>;  
Project.Caramel.2023.All <[Project.Caramel.2023.All@jefferies.com](mailto:Project.Caramel.2023.All@jefferies.com)>  
**Cc:** Project Element 2023 <[ProjectElement2023@greenhill.com](mailto:ProjectElement2023@greenhill.com)>  
**Subject:** RE: Project Element - Management Presentation

We can do earlier than 9 if no other options, but that remains our preference given other obligations.

Separately we would like to have PIP available to participate on investor calls. We consider them a Representative as defined by the NDA between Cargill and Tacora. Can you please OK this request?

**Ryan Sheehy**  
Senior Vice President  
Jefferies LLC  
Cell: 917.750.8647

---

**From:** Usman Masood <[usman.masood@greenhill.com](mailto:usman.masood@greenhill.com)>  
**Sent:** Thursday, December 14, 2023 9:42 AM  
**To:** Ryan Sheehy <[rsheehy@jefferies.com](mailto:rsheehy@jefferies.com)>; Kevin Zhao <[kevin.zhao@greenhill.com](mailto:kevin.zhao@greenhill.com)>;  
Project.Caramel.2023.All <[Project.Caramel.2023.All@jefferies.com](mailto:Project.Caramel.2023.All@jefferies.com)>  
**Cc:** Project Element 2023 <[ProjectElement2023@greenhill.com](mailto:ProjectElement2023@greenhill.com)>

**Subject:** Re: Project Element - Management Presentation

Let us double check and revert. Availability into late am was more spotty, that is why we suggested an early start. Could 8 or 8:30 am also work, or is 9 am the absolute earliest?

Usman

—

**Usman Masood**  
**Managing Director**

**Greenhill & Co. Canada Ltd.**  
79 Wellington Street West, Suite 3403  
Toronto, ON, Canada | M5K 1K7

Tel (Voice & Text): [+1.416.601.2578](tel:+14166012578)  
Personal Mobile (No Texting): [+1.647.391.5531](tel:+16473915531)  
Email: [usman.masood@greenhill.com](mailto:usman.masood@greenhill.com)

*Sent from my iPhone. Kindly excuse any typos.*

---

**From:** Ryan Sheehy <[rsheehy@jefferies.com](mailto:rsheehy@jefferies.com)>  
**Sent:** Thursday, December 14, 2023 8:57:32 AM  
**To:** Kevin Zhao <[kevin.zhao@greenhill.com](mailto:kevin.zhao@greenhill.com)>; Project.Caramel.2023.All <[Project.Caramel.2023.All@jefferies.com](mailto:Project.Caramel.2023.All@jefferies.com)>  
**Cc:** Project Element 2023 <[ProjectElement2023@greenhill.com](mailto:ProjectElement2023@greenhill.com)>  
**Subject:** RE: Project Element - Management Presentation

Some people who received this message don't often get email from [rsheehy@jefferies.com](mailto:rsheehy@jefferies.com). [Learn why this is important](#)

Greenhill team,

We would have strong preference for 9am ET tomorrow. Is this possible?

Thank you,

**Ryan Sheehy**  
Senior Vice President  
Jefferies LLC  
Cell: 917.750.8647

---

**From:** Kevin Zhao <[kevin.zhao@greenhill.com](mailto:kevin.zhao@greenhill.com)>

**Sent:** Wednesday, December 13, 2023 6:10 PM  
**To:** Project.Caramel.2023.All <[Project.Caramel.2023.All@jefferies.com](mailto:Project.Caramel.2023.All@jefferies.com)>  
**Cc:** Project Element 2023 <[ProjectElement2023@greenhill.com](mailto:ProjectElement2023@greenhill.com)>  
**Subject:** Project Element - Management Presentation

[External Message]

Jefferies Team,

Can you let us know if you are available for a management presentation (2 hours) this Friday beginning at either 7am or 730am ET?

Regards,  
Kevin

---

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TACORA RESOURCES INC.**

Applicant

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

Proceeding commenced at Toronto

**REPLY AFFIDAVIT OF  
MICHAEL NESSIM  
(SWORN MARCH 14, 2024)**

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Ashley Taylor (LSO #39932E)**  
Tel: (416) 869-5236  
Email: [ataylor@stikeman.com](mailto:ataylor@stikeman.com)

**Lee Nicholson (LSO #66412I)**  
Tel: (416) 869-5604  
Email: [leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)

**Natasha Rambaran (LSO #80200N)**  
Tel: (416) 869-5504  
Email: [qrambaran@stikeman.com](mailto:qrambaran@stikeman.com)

**Philip Yang (LSO #82084O)**  
Tel : (416) 869-5593  
Email: [pyang@stikeman.com](mailto:pyang@stikeman.com)

Lawyers for the Applicant

# TAB 3

Court File No. CV-23-00707394-00CL

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
TACORA RESOURCES INC.**

**(Applicant)**

**AFFIDAVIT OF DR. SHARON BROWN-HRUSKA  
(Affirmed March 14, 2024)**

I, **Dr. Sharon Brown-Hruska**, of the City of Burke, in the State of Virginia, United States of America, AFFIRM AND SAY:

1. I am a principal of Hruska Economics LLC, former Acting Chairman of the U.S. Commodity Futures Trading Commission, and former Chief Economist to the U.S. Department of State. I have over 30 years of experience in commodities and securities markets and associated regulatory matters.
2. On February 2, 2024, I tendered an expert report in this proceeding for Tacora Resources. Inc. ("**Tacora**") On March 2, 2024, Cargill, Incorporated and Cargill International Trading Pte Ltd. delivered the report of Jeremy Cusimano to Tacora, which responds to my report of February 2<sup>nd</sup>. I have been asked by counsel for Tacora to reply to Mr. Cusimano's report. Attached as **Exhibit "A"** to this affidavit is a copy of the Reply Expert Report of Dr. Sharon Brown-Hruska dated March 14, 2024 (the "**Reply Report**")
3. My qualifications are detailed in section I of the Reply Report as well as Appendix "A". The information and documents I relied upon in reaching the conclusions set out in the Reply Report are listed in Appendix "B".

4. I have completed the Reply Report in compliance with my duties as an expert to the Ontario Superior Court of Justice. Attached as **Exhibit "B"** to this affidavit is the copy of my Form 53 - Acknowledge of Expert's Duty in this matter that I executed on January 31, 2024.

**AFFIRMED** remotely by Robert J. Reid of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 14<sup>th</sup> day of March, 2024 in accordance with O.Reg. 431/20, Administering Oath or Declaration Remotely



DocuSigned by:  


FB5E21A0B41548B...

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Robert J. Reid LSO#88670P  
Commissioner for Taking Affidavits

DocuSigned by:  


15FAB8C67808465...

---

Dr. Sharon Brown-Hruska

This is Exhibit "A" referred to in the Affidavit of Dr. Sharon Brown-Hruska affirmed by Dr. Sharon Brown-Hruska of the City of Burke, in the State of Virginia, before me at the City of Toronto, in the Province of Ontario, on March 14, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



FB5E31A8B41548B

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Commissioner for Taking Affidavits (or as may be)

**RJ REID**

Court File No. 23-00707394-00CL

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF**  
**TACORA RESOURCES INC.**

(Applicant)

**REPLY REPORT OF SHARON BROWN-HRUSKA, PH.D.**

**ON THE IRON ORE SALE AND PURCHASE CONTRACT BETWEEN**  
**TACORA RESOURCES INC. AND CARGILL INTERNATIONAL**  
**TRADING PTE LTD.**

**MARCH 14, 2024**

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### APPENDIX A: CURRICULUM VITAE

### APPENDIX B: MATERIALS RELIED UPON

**I. ENGAGEMENT AND BACKGROUND**

1. I have been retained by Stikeman Elliott LLP, counsel for Tacora Resources Inc. (Tacora), in connection with Tacora's proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (CCAA).
2. On February 2, 2024, I submitted a report in this matter (Brown-Hruska Report).
3. On March 1, 2024, I was provided with a copy of a report by Jeremy Cusimano (the Cusimano Report) in this matter. The Cusimano Report responds to my Brown-Hruska Report.
4. I have been asked to review and respond to the Cusimano Report.

**II. QUALIFICATIONS AND REMUNERATION**

5. My qualifications and remuneration are set out in the Brown-Hruska Report. My curriculum vitae, attached as Appendix A, more fully sets forth my qualifications and expertise. I reiterate my Acknowledgement of Expert's Duty which I attested to and attached to the Brown-Hruska Report.

**III. MATERIALS REVIEWED**

6. This report is based on my expertise in the commodities industry, my experience as a former Commissioner and Chairman of the CFTC, and my analysis and review of affidavit evidence as provided by counsel. I have also considered academic literature, regulatory and legal notices and reports, and practitioner publications generally used and relied upon by persons in my field of occupation. The materials considered in forming my opinions beyond those already listed in the Brown-Hruska Report are listed in Appendix B.

**IV. SUMMARY OF OPINIONS**

7. The Cusimano Report does not respond to or dispute the opinions and conclusions set forth in the Brown-Hruska Report.

8. Rather, it purports to take a functional approach that considers a different issue. The Cusimano Report suggests that “the Offtake Agreement, Stockpile Agreement, and relevant amendments have characteristics that are functionally similar to financial products such as swaps and options.”<sup>1</sup> In so concluding, it selectively picks some characteristics of a derivative, while sidestepping the fact that derivatives such as swaps and options primarily *function* as a means to hedge or speculate on prices. The Offtake Agreement’s primary purpose is not to provide Tacora or Cargill with the ability to hedge or speculate on iron ore prices. The undisputed function of the Offtake Agreement is to operate as a mechanism to enable Tacora to sell and Cargill to buy iron ore concentrate—the opposite of the commonly understood functional uses of derivatives to hedge or speculate on commodity prices.
9. As the closest analogy to a derivative, the Cusimano Report opines that the Offtake Agreement is functionally similar to a Total Return Swap (TRS),<sup>2</sup> which has hedging features.<sup>3</sup> The comparison is inapplicable for several reasons.
- a. First, the Cusimano Report misstates the role of the profit share by asserting that for Cargill it “reclaim[s] some of the Provisional Purchase Price[.]” even though Cargill would pay a true-up to the Provisional Purchase Price with or without the profit share. In addition, the Cusimano Report also misleadingly characterizes the profit share’s effect on Tacora as enabling Tacora “to obtain value from the iron ore without actually owning it[.]” However, the primary purpose of the Offtake Agreement is to enable Tacora to sell the iron ore concentrate it mined and Cargill to purchase and market it. Since the profit share is a component of the final price for the iron ore concentrate, these propositions are strained and unconvincing.

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<sup>1</sup> Cusimano Report, ¶22.

<sup>2</sup> “This floating price profit (or loss) sharing payment operates similarly to a Total Return Swap (‘TRS’). A TRS is a derivative contract that replicates the cash flows of an investment in an assessment and requires parties to make payments to each other based on the performance of an underlying asset.” (Emphasis added.) Cusimano Report, ¶60. Closing footnote omitted.

“As I have described above, the design of the pricing mechanisms in the Offtake Agreement, Stockpile Agreement, and relevant amendments have characteristics (e.g., margining and total return swap-like payments) that are functionally similar to financial products. Such features allow Cargill and Tacora, as parties to the agreements, to better manage price and timing risk in the open market.” (Emphasis added.) Cusimano Report, ¶65.

<sup>3</sup> “The TRS simultaneously permits the second party to protect itself against a decline in value of the underlying asset(s).” (Emphasis added.) Cusimano Report, ¶60. Closing footnote omitted.

- b. Second, unlike a TRS where one party's gain is the other's loss, both Tacora and Cargill can win substantially as a result of the true-up in the final purchase price. Therefore, the risk profile under the Offtake Agreement is substantially different than that commonly found in a TRS.
  - c. Third, unlike a TRS where one party receives an agreed-upon rate or interest payment based on a notional principal and the other receives exposure to a financial asset's performance, Tacora and Cargill both remain substantially exposed to iron ore's financial performance under the Offtake Agreement and its active amendments. Despite the features of the Offtake Agreement that the Cusimano Report relies upon for its TRS comparison, Tacora and Cargill retain the same directional price exposure. Thus, the purported TRS-like features of the Offtake Agreement do not function as a means to offset price risk or perform a hedging function for either party.
  - d. Fourth, a TRS is a defined type of derivative, governed by industry standard documentation, typically issued pursuant to an International Swaps and Derivatives Association (ISDA) Master Agreement. The Offtake Agreement lacks many of the core characteristics of a TRS and that of an ISDA Master Agreement or other documentation commonly accompanying a TRS.
10. Based on the Cusimano Report's inconsistencies with definitions and the widely accepted functions and features of derivatives, it is my opinion that the Cusimano Report's conclusions are incorrect and that the Offtake Agreement is not, and does not function like, a derivative as commonly understood by financial market authorities.

**V. THE CUSIMANO REPORT DOES NOT DISPUTE THE OPINIONS AND CONCLUSIONS SET FORTH IN THE BROWN-HRUSKA REPORT**

11. The Cusimano Report does not respond to or dispute the opinions and conclusions set forth in the Brown-Hruska Report, but rather takes a "different approach." ¶12 of the Cusimano Report reads,

[w]hile the Brown-Hruska Report attempted to interpret whether the Offtake Agreement was a derivative agreement or an EFC under CCAA provisions, my analysis takes a different approach. My report is instead designed to

provide a technical view of how the Offtake Agreement functions and the nuances of its mechanics in practice.<sup>4</sup> (Emphasis added.)

The Cusimano Report does not dispute that the Offtake Agreement is not a derivative contract as commonly understood by financial market authorities. Rather, the Cusimano Report suggests that the Offtake Agreement shares certain functional similarities to “a financial product.”<sup>5</sup>

12. Thus, the Cusimano Report does not respond to or otherwise dispute key opinions of the Brown-Hruska Report:

- (1) The Offtake Agreement is a supply contract for high-grade iron ore concentrate;<sup>6</sup>
- (2) The Offtake Agreement is not a derivative agreement as commonly understood in the industry;<sup>7</sup> and
- (3) Offtake agreements for iron ore concentrate are not traded on exchanges and are not the subject of recurrent dealings in OTC commodities markets.<sup>8</sup>

## **VI. THE CUSIMANO REPORT IGNORES ASPECTS OF THE OFFTAKE AGREEMENT THAT ARE *NOT* FUNCTIONALLY SIMILAR TO A DERIVATIVES CONTRACT**

### **A. The *function* of a derivative contract is to hedge or speculate on a commodity price, and the Offtake Agreement functions as a supply contract.**

13. The Cusimano Report’s summary of opinions posits that the Offtake Agreement—as it stands—functionally resembles swaps and options, which are derivative products.

Based on the documents that I have reviewed and information that I have been presented with, it is my opinion that the Offtake Agreement, Stockpile Agreement, and relevant amendments have characteristics that are functionally similar to financial products such as swaps and options. The mechanisms of

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<sup>4</sup> Cusimano Report, ¶12.

<sup>5</sup> “As I have described above, the design of the pricing mechanisms in the Offtake Agreement, Stockpile Agreement, and relevant amendments have characteristics (e.g., margining and total return swap-like payments) that are functionally similar to financial products. Such features allow Cargill and Tacora, as parties to the agreements, to better manage price and timing risk in the open market.” (Emphasis added.) Cusimano Report, ¶65.

<sup>6</sup> Brown-Hruska Report, Section V.

<sup>7</sup> Brown-Hruska Report, Section VI.

<sup>8</sup> Brown-Hruska Report, Section VII.

these agreements and amendments provide hedging and risk management capabilities to the parties.<sup>9</sup> (Emphasis added.)

14. The Offtake Agreement is not a financial product and does not function as a hedging or risk management vehicle as commonly understood by financial market authorities or commodities markets. The Offtake Agreement is a commercial contract between a producer or seller (Tacora) and a buyer (Cargill) for high-grade iron ore concentrate. It governs loading, shipping, logistics, payment, and marketing. By facilitating the sale of iron ore concentrate, the Offtake Agreement is functionally a supply contract for iron ore, and the risks highlighted by the Cusimano Report are ones expected to emanate from the production and sale of a commodity.

**B. The features of the Offtake Agreement that Cusimano relies upon for his TRS comparison—including the provisional payment, true-up payments, and the profit share—do not hedge price risk or change the risk profiles of Tacora or Cargill.**

15. The Cusimano Report’s conclusion suggests that certain features of the Offtake Agreement (and associated Stockpile Agreement), such as the potential for margin payments and so-called TRS-like payments resemble “financial products” and provide Tacora with “hedging and other risk management.”

As I have described above, the design of the pricing mechanisms in the Offtake Agreement, Stockpile Agreement, and relevant amendments have characteristics (e.g., margining and total return swap-like payments) that are functionally similar to financial products. Such features allow Cargill and Tacora, as parties to the agreements, to better manage price and timing risk in the open market.

In operation, the Offtake Agreement, Stockpile Agreement, and relevant amendments provided hedging and other risk management services to Tacora by affording flexibility around pricing structures, notably through the use of options, as well as flexibility around timing risks by making deliveries under the Stockpile Agreement.<sup>10</sup> (Emphasis added.)

16. This logic falters, however, since if one were to strip out key features that underpin the Cusimano Report’s claim that the Offtake Agreement resembles a “financial product,” Tacora’s price risk remains the same. Suppose the Offtake Agreement lacked both (a) the Stockpile Agreement or any similar mechanism to advance

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<sup>9</sup> Cusimano Report, ¶22.

<sup>10</sup> Cusimano Report, ¶¶65-66.

payment to Tacora and pass title to Cargill ahead of the Final Purchase Price and (b) the potential margin payments during the voyage—two features the Cusimano Report cites as providing hedging for Tacora. Without those two features, Tacora’s iron ore price exposure would remain *exactly the same*. That is the case because all the intermediary invoices and payments prior to the Final Purchase Price (approximately three months into the voyage) get trued up to the Final Purchase Price.

17. Accelerating cash flow to Tacora through the Stockpile Agreement is not functionally similar in any sense to the initial payment in an option or a swap contract. The provisional payment is not an option premium or a payment based on a *notional* value.<sup>11</sup> Just because the Offtake Agreement specifies cash flows from Cargill to Tacora and vice versa—and a derivative agreement like a swap contract also features cash flows—does not make the Offtake Agreement a derivative product.
18. Except for the shifting of the timing of payments, the net effect of Cargill’s collective payments to Tacora is the same regardless of whether the Offtake Agreement has potential margining payments or a mechanism to transfer title to Cargill (a key underpinning of the Cusimano Report’s proposition that the Offtake Agreement has TRS-like payments). As Mr. Cusimano concedes, “Both parties are at risk of potential changes in the Platts 62% Index between when the title to a shipment of iron ore transfers to Cargill at the stockpile and when Cargill completes the sale to its final customer and the Purchase Price invoice is issued.”<sup>12</sup> Thus, the provisional payments do not practically serve a hedging or risk management function with respect to the final price.

**C. Producing a commodity and then entering into an agreement to regularly sell it is *not* functionally similar to entering into a derivative agreement.**

19. The Cusimano Report’s argument that the Offtake Agreement is functionally similar to a derivative is like saying a farmer—because he/she produces crops and takes the

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<sup>11</sup> According to the CFTC, the U.S.’s derivatives regulator, a TRS represents “an agreement between two counterparties where one party, the seller of the credit risk, agrees to pay the other party the difference in value of a specified asset, index or derivative of an asset or an index, multiplied by an agreed-upon notional value should that value increase between specified periods of time. In exchange, the other party, the buyer of the credit risk, agrees to pay the difference in value of the specified asset multiplied by the notional value should that value decrease between the same specified periods of time.” “Swaps Report Data Dictionary,” *CFTC*, accessed at: <https://www.cftc.gov/MarketReports/SwapsReports/DataDictionary/index.htm>.

<sup>12</sup> Cusimano Report, ¶49.

crop to the elevator or cooperative, of which he/she is a member, has entered into a derivative contract with the grain elevator by virtue of membership and sales to the elevator. To sell grain, farmers often belong to “elevators” that buy, store, and market the grain. But a membership agreement with an elevator or cooperative is not a derivative simply because the farmer produces crops and has an agreement to regularly sell his crops there. Producing a good and entering into an agreement to regularly sell that good—and Cargill to regularly buy that good—does not make the agreement a derivative.

20. Even if the elevator and farmer agree to price the sale off of the futures price (akin to an index price), the sales to the elevator do not become futures. Each sale’s timing, quantity, and quality vary with each individual load—as in the case of the Offtake Agreement.
21. The main thrust of the Offtake Agreement to provide a mechanism to enable Tacora to sell and Cargill to buy physical product is functionally the opposite of the commonly understood functions of derivatives, which are most often used by commercial market participants to hedge a commodity price. The farmer has a supply relationship with the elevator and its commodity price risks come from crop production. Like the farmer’s membership in a cooperative, the Offtake Agreement does not change the price risk associated with iron ore production. Taking an opposing derivative position, like taking a position in an iron ore forward or swap, would offset or reduce the price risk associated with iron ore production. But the basic structure of the Offtake Agreement—with a provisional payment based on the index and true-ups throughout the shipment and at Final Purchase Price—continues to expose Tacora and Cargill to price risk. As Mr. Cusimano concedes, Cargill must still hedge the risk of its purchases of iron ore by using derivatives, whether it does so on a one-off or portfolio basis.<sup>13</sup> That Cargill engages in hedging to offset its commodity price risks simply furthers the point that the Offtake Agreement does not operate as a hedge for Cargill or Tacora.

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<sup>13</sup> Cusimano Report, ¶33.

## VII. THE CUSIMANO REPORT INCORRECTLY COMPARES THE OFFTAKE AGREEMENT TO A TOTAL RETURN SWAP

22. The Cusimano Report incorrectly compares the mechanics of the Offtake Agreement (and implicitly the associated Stockpile Agreement, which transfers title from Tacora to Cargill early on) to the mechanics of a TRS—a derivative contract whereby the TRS’s “receiver” party gains exposure to the benefit (or loss) of an asset’s performance without actually owning it in exchange for making interest payments to the TRS’s “payer” party.
23. The Cusimano Report reads,

Under the profit sharing arrangement in the Offtake Agreement, payments are made by Cargill to Tacora based on the calculation described above in paragraph 48. However, if market prices decline sufficiently between the time of the Provisional Purchase Price and Purchase Price calculations, Tacora will need to make a payment to Cargill under the profit sharing arrangement. This floating price profit (or loss) sharing payment operates similarly to a Total Return Swap (“TRS”). A TRS is a derivative contract that replicates the cash flows of an investment in an asset and requires parties to make payments to each other based on the performance of an underlying asset. A TRS permits one party to simulate investment in the underlying asset(s) without incurring the burden of ownership of the assets(s).<sup>14</sup> (Emphasis added.)

24. In its conclusion, the Cusimano Report underscores the comparison.

As I have described above, the design of the pricing mechanisms in the Offtake Agreement, Stockpile Agreement, and relevant amendments have characteristics (e.g., margin and total return swap-like payments) that are functionally similar to financial products. Such features allow Cargill and Tacora, as parties to the agreements, to better manage price and timing risk in the open market.<sup>15</sup> (Emphasis added.)

25. The Cusimano Report’s selective comparison of features between the Offtake Agreement and certain “financial products” appears vague and of questionable relevance to whether the Offtake Agreement is a derivative. However, the Cusimano Report’s “functional” comparison between the Offtake Agreement (and its active amendments) and a TRS fails for several reasons as discussed below.

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<sup>14</sup> Cusimano Report, ¶60. Internal footnote omitted.

<sup>15</sup> Cusimano Report, ¶65.

**A. The Cusimano Report misstates the role of the profit share, claiming that for Cargill it “reclaim[s] some of the Provisional Purchase Price,” but Cargill would pay a true-up to the Provisional Purchase Price with or without the profit share.**

26. The Cusimano Report claims that the Offtake Agreement’s profit share mechanism enables Cargill to reclaim some of the Provisional Purchase Price.

Through the profit share agreements, Tacora is able to obtain value from the iron ore without actually owning it and Cargill, alternatively, is able to protect itself from a decline in the value of iron ore through its ability to reclaim some of the Provisional Purchase Price based on the Platts 62% index.<sup>16</sup> (Emphasis added.)

27. This statement mischaracterizes the Final Purchase Price. The Final Purchase Price, which occurs three calendar months into the voyage and represents a true-up to prior payments, consists of the following:

$$\text{Final Purchase Price} = \text{Price Index (PI)}^{17} - \text{Freight Costs (FC)} + \text{Tacora Profit Share (PS)}$$

Without the profit share, the Final Purchase Price would consist of the following:

$$\text{Final Purchase Price} = \text{Price Index (PI)} - \text{Freight Costs (FC)}$$

Thus, even without the profit share, Cargill’s Final Purchase Price represents a true-up from the Provisional Purchase Price based on the prevailing market price of iron ore during the third month of the voyage.

28. Put more simply, the profit share represents what it sounds like it represents: a sharing of Cargill’s profit. Cargill’s profit is measured as the difference between the price it receives from its ultimate customer and a contemporaneous iron ore price<sup>18</sup> (plus a freight adjustment). Contrary to what the Cusimano Report suggests, the profit share has nothing to do with the Provisional Purchase Price (which occurs much earlier). If the Provisional Purchase Price did not exist, the profit share would remain the same. Thus, to say that the profit share resembles a TRS because Cargill can potentially

<sup>16</sup> Cusimano Report, ¶60.

<sup>17</sup> For reference, the Price Index (PI) represents the average Platts 62% Index price during the third calendar month of the voyage.

<sup>18</sup> The exact price depends on *how* Cargill sells to its ultimate customer, but all variations are contemporaneous to the ultimate buyer’s purchase date: If sold on a floating price, then the “Base Price” off of which Cargill’s profit is measured is the average Platts 62% during the same period the ultimate customer faces; if fixed price on a forward basis, then the Base Price is the relevant Platts 62% swaps/futures price when the contract is struck; and if spot, then the Base Price is the relevant day’s Platts 62% spot price.

“reclaim some of the Provisional Purchase Price” mischaracterizes the function of the profit share.

**B. The Cusimano Report also misleadingly characterizes the profit share’s effect on Tacora as enabling Tacora “to obtain value from the iron ore without actually owning it.”**

29. The Cusimano Report’s assertion that the profit share enables Tacora “to obtain value from the iron ore without actually owning it” is misleading. Revisiting the same quote:

Through the profit share agreements, Tacora is able to obtain value from the iron ore without actually owning it and Cargill, alternatively, is able to protect itself from a decline in the value of iron ore through its ability to reclaim some of the Provisional Purchase Price based on the Platts 62% index.<sup>19</sup> (Emphasis added.)

30. Stepping into the Cusimano Report’s function-based analytical framework, it must be stressed that the profit share does not meaningfully affect Tacora’s so-called ability “to obtain value from the iron ore without actually owning it.” Suppose one were to strip out the profit share component from the Final Purchase Price, as contemplated above. Title for the iron ore would still transfer from Tacora to Cargill at the stockpile, and Tacora’s collective cash received from Cargill would equal the Final Purchase Price, exclusive of the profit share component. Thus, it is misleading to write, “Through the profit share agreements, Tacora is able to obtain value from the iron ore without actually owning it.”<sup>20</sup>

**C. Unlike a TRS where one party’s gain is the other’s loss, both Tacora and Cargill can win substantially. Therefore, the risk profile under the Offtake Agreement is substantially different than under a TRS.**

31. Under a TRS, the receiver party receives exposure to the benefit (or loss) of an asset’s performance without actually owning it, in exchange for making interest payments to

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<sup>19</sup> Cusimano Report, ¶60.

<sup>20</sup> Cusimano Report, ¶60.

the payer party.<sup>21</sup> In a TRS on a commodity, the receiver party typically receives the total return of a commodity index.<sup>22</sup>

32. In the case of the Offtake Agreement, absent any *actual* hedging, Tacora remains exposed to iron ore prices. Any payments and true-ups preceding the Final Purchase Price functionally advance cash to Tacora to alleviate its working capital needs. Cargill's payoff is different because of the formula for calculating the profit share. As a result, Cargill's risk profile is completely different than if it were the payer party on a TRS. If Tacora (receiver party) and Cargill (payer party) engaged in an actual TRS, Tacora's gain would equal Cargill's loss, and vice versa. Under the Offtake Agreement, both can win big on a shipment. For example, the Final Purchase Price (e.g., \$140/DMT) can far exceed Tacora's extraction costs (e.g., \$100/DMT) and Cargill's ultimate customer price (e.g., \$160/DMT) can far exceed its Final Purchase Price (e.g., \$140/DMT). It is thus inappropriate to compare the functionality of the Offtake Agreement to a TRS.

**D. A TRS typically includes interest or index payments based on a set notional amount at regular intervals between both parties, whereas the Offtake Agreement does not.**

33. A TRS typically includes interest or index payments made by both parties at regular intervals.<sup>23</sup> Under the Offtake Agreement, while margin payments can potentially

<sup>21</sup> According to the CFTC, the U.S.'s derivatives regulator, a TRS represents "an agreement between two counterparties where one party, the seller of the credit risk, agrees to pay the other party the difference in value of a specified asset, index or derivative of an asset or an index, multiplied by an agreed-upon notional value should that value increase between specified periods of time. In exchange, the other party, the buyer of the credit risk, agrees to pay the difference in value of the specified asset multiplied by the notional value should that value decrease between the same specified periods of time." "Swaps Report Data Dictionary," *CFTC*, accessed at: <https://www.cftc.gov/MarketReports/SwapsReports/DataDictionary/index.htm>.

<sup>22</sup> "Other commodity index swaps resemble total rate of return swaps where one party, the seller, agrees to pay the other party, the buyer, the difference in value of a specified commodity index, multiplied by an agreed upon notional value should that value increase between specified periods of time. In exchange, the other party agrees to pay the difference in value of the specified index, should that value decrease between the same specified periods of time. As part of the agreement the buyer may also make an additional payment each period to the seller based on a floating rate index multiplied by the notional value." *Id.*

<sup>23</sup> "There are a number of variations on the standard deal we have described. Sometimes, instead of there being a cash payment for the change in value of the bond, there is a physical settlement where the payer exchanges the underlying asset for the notional principal at the end of the life of the swap. Sometimes the change-in-value payments are made periodically rather than all at the end." Hull, John C., "Options, Futures, and Other Derivatives," 6<sup>th</sup> Edition, *Prentice Hall* (2005), p. 516.

"Other commodity index swaps resemble total rate of return swaps where one party, the seller, agrees to pay the other party, the buyer, the difference in value of a specified commodity index, multiplied by an agreed upon notional value should that value increase between specified periods of time. In exchange, the other party agrees to pay the difference in value of the specified index, should that value decrease between the same specified periods of time. As part of the

occur between Tacora and Cargill, these payments are not made at regular intervals. Instead, margin payments occur based on the Margin Amount.<sup>24</sup> As such, the Offtake Agreement is not “functionally similar” to a TRS.

34. Additionally, the profit share component of the Offtake Agreement does not operate similarly to a TRS. The Cusimano Report notes, “[t]his floating price profit (or loss) sharing payment operates similarly to a Total Return Swap (‘TRS’).”<sup>25</sup> Under the profit share component, there are no payments made by both parties on a regular basis. Instead, the Offtake Agreement defines profit share as “being a payment from the Buyer to the Seller calculated in respect of a Parcel[,]” though the Seller may be invoiced “in the event that Profit in respect of any Parcel is not sufficient to achieve this amount [\$1/DMT].”<sup>26</sup> Thus, the ultimate gain to Cargill is not determined when potential margin payments would be exchanged, since the final price depends on the final calculated profit share, which is not known until the final sale is made to Cargill’s customer.

**E. As with all over-the-counter derivatives transactions, a TRS is typically governed by its own standard documentation, such as an ISDA Master Agreement.**

35. As with all over-the-counter derivatives transactions, a TRS is typically governed by its own standard documentation, such as an ISDA Master Agreement.<sup>27</sup> A TRS is a derivative contract that is defined according to standard definitions<sup>28</sup> and subject to a legal framework for payments, netting, and close-out as documented under an ISDA Master Agreement.<sup>29</sup> The ISDA Master Agreement is a flexible and widely accepted

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agreement the buyer may also make an additional payment each period to the seller based on a floating rate index multiplied by the notional value.” “Swaps Report Data Dictionary,” *CFTC*, accessed at: <https://www.cftc.gov/MarketReports/SwapsReports/DataDictionary/index.htm>.

<sup>24</sup> Iron Ore Sale and Purchase Contract, Restatement, Clause 15, “Netting and Margining,” 9 Nov, 2018, p. 15.

<sup>25</sup> Cusimano Report, ¶60.

<sup>26</sup> Iron Ore Sale and Purchase Contract, Restatement, Clause 11.1, “Purchase Price,” 9 Nov, 2018, pp. 10-12.

<sup>27</sup> Legal Guidelines For Smart Derivatives Contracts: The ISDA Master Agreement, “The ISDA Master Agreement is the standard contract used to govern all over-the-counter (OTC) derivatives transactions entered into between the parties. Transactions across different asset classes and products are often documented under the same agreement.” p. 4, accessed at <https://www.isda.org/a/23iME/Legal-Guidelines-for-Smart-Derivatives-Contracts-ISDA-Master-Agreement.pdf>.

<sup>28</sup> See, for example, 2005 ISDA Commodity Definitions & User’s Guide, accessed at <https://www.isda.org/book/2005-isda-commodity-definitions-users-guide/>.

<sup>29</sup> Legal Guidelines For Smart Derivatives Contracts: The ISDA Master Agreement, “The ISDA Master Agreement is the standard contract used to govern all over-the-counter (OTC) derivatives transactions entered into between the parties.

standard documentation for all types of OTC derivatives. As a result of its wide acceptance and industry-standard documentation, OTC derivatives including TRS transactions share the same basic features. As noted, the Offtake Agreement lacks many if not all of the standard features of a TRS, and is not governed by an ISDA Master Agreement.

- ~~36.~~ As noted in my initial report, offtake agreements on iron ore concentrate do not trade on an exchange and are not subject to recurrent dealings in the OTC markets. The type of industry-standard documentation that one might expect to accompany a TRS is not present in the Offtake Agreement. The Offtake Agreement's bespoke features, the specification that the only allowable and specific commodity that can be delivered, sold, and purchased under the contract, Tacora Premium Concentrate, buttresses the point that the Offtake Agreement does not function like a TRS and is not subject to recurrent dealings in the OTC market that one might find with actual TRS derivative products.

## **VIII. FURTHER WORK**

37. The opinions in this report are based on the documents and information available to me as of March 14, 2024. Should additional relevant evidence become available, I reserve the right to supplement this report to address that additional evidence.

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Transactions across different asset classes and products are often documented under the same agreement.” p. 4, accessed at <https://www.isda.org/a/23iME/Legal-Guidelines-for-Smart-Derivatives-Contracts-ISDA-Master-Agreement.pdf>.



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## **Appendix A**

### **Sharon Brown-Hruska, Ph.D.**

#### **Professional Experience**

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|---------------|--|
| 2021- Present | <b>Principal and Managing Director</b> , Hruska Economics, LLC<br><br><b>Affiliated Consultant</b> , Global Securities and Finance Practice, National Economic Research Associates, Inc., Washington, DC<br><br><b>Academic Affiliate</b> , Stoneturn Group, Washington DC |
| 2019–2021     | <b>Chief Economist</b> , Office of the Chief Economist, Economic Growth, Energy, and the Environment, U.S. Department of State, Washington, DC   |
| 2006–2019     | <b>Managing Director</b> , Partner, and Vice President, Global Securities and Finance Practice, National Economic Research Associates, Inc., Washington, DC  |
| 2012–2015     | <b>Visiting Professor of Finance</b> , A.B. Freeman School of Business, Tulane University, New Orleans, LA   |
| 2002–2006     | <b>Commissioner and Acting Chairman</b> (2004-2005), U.S. Commodity Futures Trading Commission, Washington, DC   |
| 1998–2005     | <b>Assistant Professor of Finance</b> , School of Management, <b>Mercatus Center Research Fellow</b> , 1999–2002, George Mason University, Fairfax, VA   |
| 1995–1998     | <b>Assistant Professor of Finance</b> , A.B. Freeman School of Business, <b>Lilly Endowment Teaching Fellow</b> , 1997-1998; <b>Newcomb Fellow</b> , 1996-1998, Tulane University, New Orleans, LA   |
| 1994–1995     | <b>Adjunct Professor of Finance</b> , Pamplin College of Business, Investments, <b>H.B. Earhart Fellow</b> , Center for the Study of Futures and Options Markets, 1987–1990, Virginia Polytechnic Institute and State University, Falls Church, VA                         |
| 1990–1995     | <b>Financial Economist</b> , Division of Economic Analysis, Commodity Futures Trading Commission, Washington, DC   |

## Education

Virginia Polytechnic Institute and State University, Ph.D., Economics, 1994; M.A., Economics, 1988; B.A., Economics and International Studies, 1983.

## Publications in the Last 10 Years

- Report on Proposed SEC Rule “Position Reporting of Large Security-Based Swap Positions,” [Activist Investing] (with Patrick Conroy and Nadim Siddique), Appendix A, Mar. 21, 2022.
- “Economics of Commodities Trading,” *Regulation of Commodities Trading*, M. Liebi and J. Markham, eds., Oxford University Press, London, 2020.
- “The Impact of Post-Crisis Regulatory Reforms on Cross-Border Financial Transactions.” *Proceedings of the ASIL Annual Meeting*, 112, 41-44. 2018.
- “The Virtual Currency Regulatory Framework in Global Context” (with Trevor Wagener), *Capital Markets Law Journal*, Oxford University Press, London, Oct. 2018.
- “Ethanol RIN Market Analysis and Potential Reforms” (with Alex Kfoury, Trevor Wagener), Prepared for Valero Services, Inc., at <https://www.fuelingusjobs.com/library/public/Study/-2018-10-18-NERA-White-Paper-on-the-RIN-Market-Final.pdf>, Oct. 18, 2018.
- “Crypto Market Surveillance Has Arrived,” (with Jordan Milev and Trevor Wagener), *Law360*, May 25, 2018.
- “Recent Trends in Virtual Currency Regulation, Enforcement, and Litigation.” (with Trevor Wagener), at <https://www.nera.com/publications/archive/2018/recent-trends-in-virtual-currency-regulation--enforcement--and-l.html>, NERA Economic Consulting, May 18, 2018.
- “Dodd-Frank Wall Street Reform and Consumer Protection Act,” (with Julian Hammer, Anna Pinedo, and David Sawyer), *Encyclopedia of Business Ethics and Society*, 2<sup>nd</sup> ed., Robert W. Kolb, ed., April 2018.
- “Deterrence Theory,” (with Trevor Wagener and Robert Zwirb), *Encyclopedia of Business Ethics and Society*, 2<sup>nd</sup> ed., Robert W. Kolb, ed., April 2018.
- “Energy Markets,” (with James McFarland), *Encyclopedia of Business Ethics and Society*, 2<sup>nd</sup> ed., Robert W. Kolb, ed., April 2018.
- “Excessive Speculation,” (with Ryan Cummings and Peter Lissy), *Encyclopedia of Business Ethics and Society*, 2<sup>nd</sup> ed., Robert W. Kolb, ed., April 2018.
- “FINRA,” (with Jeffrey Holik), *Encyclopedia of Business Ethics and Society*, 2<sup>nd</sup> ed., Robert W. Kolb, ed., April 2018.
- “Foreign Exchange Markets,” (with Georgi Tsvetkov and Trevor Wagener), *Encyclopedia of Business Ethics and Society*, 2<sup>nd</sup> ed., Robert W. Kolb, ed., April 2018.
- “Money Laundering,” *Encyclopedia of Business Ethics and Society*, 2<sup>nd</sup> ed., Robert W. Kolb, ed., April 2018.
- “Options Contracts and Markets,” (with Georgi Tsvetkov and Trevor Wagener), *Encyclopedia of Business Ethics and Society*, 2<sup>nd</sup> ed., Robert W. Kolb, ed., April 2018.

**Sharon Brown-Hruska**

Cost-Benefit Analysis of the CFTC’s Swap Dealer De Minimis Exception Definition (with Ryan Cummings, Georgi Tsvetkov, and Trevor Wagener), American Bankers Association at <https://comments.cftc.gov/Handlers/PdfHandler.ashx?id=28659>, Mar 29, 2018, 16-69.

“BSA/AML Compliance and Enforcement: An Update for the Securities and Derivatives Industry,” *Market Solutions*, Financial Markets Association, June 2017.

“New Regulations for Securitizations and Asset-Backed Securities,” (with Georgi Tsvetkov and Trevor Wagener), *Handbook of Mortgage-Backed Securities*, 7<sup>th</sup> ed., Frank J. Fabozzi, ed., Oxford University Press, Oct. 18, 2016.

“Market Manipulation and Spoofing: From Pit Trading to Big Data,” *Risk Desk*, Scudder Publishing, Sep. 16, 2016.

Developments in Bank Secrecy Act and Anti-Money Laundering Enforcement and Litigation, [https://www.nera.com/content/dam/nera/publications/2016/PUB\\_Developments\\_BSA\\_AML\\_Lit-06.16.pdf](https://www.nera.com/content/dam/nera/publications/2016/PUB_Developments_BSA_AML_Lit-06.16.pdf), June 30, 2016.

“On Retail Forex, Regulators Have Failed To Reach Far Enough,” *Forbes*, *Capital Flows*, Avik Roy, ed., Jan. 12, 2015.

“Cost-Benefit Analysis of the CFTC's Proposed Margin Requirements for Uncleared Swaps,” *NERA Publication*, (with Trevor Wagener), December 02, 2014.

**Testimony at Trial and in Depositions in Last 4 Years**

Deposition, MF Global Assigned Assets LLC, Claimant, v. Certain Underwriters At Lloyd’s, London; Aspen Insurance Uk Limited, Federal Insurance Company, U.S. Specialty Insurance Company, Westchester Fire Insurance Company, Everest Reinsurance Company, Continental Insurance Company, And Great American Insurance Company, Respondents, October 31, and November 1, 2023.

**Congressional Testimony**

Testimony of Acting Chairman Sharon Brown-Hruska before the Agriculture, Nutrition and Forestry Committee, U.S. Senate, Hearing, Washington, DC, Mar. 8, 2005.

Testimony of Acting Chairman Sharon Brown-Hruska, Subcommittee General Farm Commodities and Risk Management, U.S. House of Representatives, Hearing, Washington, DC, Mar. 3, 2005.

Testimony for Senate Confirmation before the Agriculture, Nutrition and Forestry Committee, U.S. Senate, Hearing, Washington, DC, Jun. 25, 2002.

**Public Director and Advisory Boards**

2021–Present Management Board, PRIME Finance Foundation

2021–Present Board of Directors, Athena Technology Acquisition Corp. II, Audit Committee Chair

**Sharon Brown-Hruska**

2021–Present Chairman, Regulatory Oversight Committee and Board of Directors, FMX Futures Exchange

2021–Present Advisory Board Member, Ten12

2021–Present Advisory Board Member, Social Capital Campaign

2017–2018 Board of Directors, PRIME Finance Dispute Resolution and Education Foundation

2015–2018 CFTC Energy and Environmental Markets Advisory Committee

2011–2018 Working Group on Financial Markets, Federal Reserve Bank of Chicago

2010–2013 Public Director, Corporate Governance Committee, MarketAxess Holdings, Inc.

2009–2016 Board of Directors, Electronic Liquidity Exchange (ELX), Chairman, Regulatory Oversight Committee

2009–2010 Board of Directors, North American Derivatives Exchange (Nadex)

2007–2016 Trustee, International Securities Exchange Holdings, Inc. (ISE Trust)

2007–Present Pamplin School of Business Finance Advisory Board, Virginia Tech

2006–2007 Independent Director, Board of Directors, Dillon Read Financial Products Funds, Dillon Read Capital Management

2005–2011 Women in Leadership and Philanthropy Council, Virginia Tech

2003–2006 Chairman, CFTC Technology Advisory Committee

2003–2006 Financial Literacy and Education Commission, Chairman of the Website Development Committee, led the effort to develop and launch *mymoney.gov*

**Tacora Resources Inc.**  
**Appendix B**  
**Materials Considered**  
**Beyond Those Already Listed in the Brown-Hruska Report**

***Expert Reports in this Matter***

Affidavit of Jeremy Cusimano sworn March 1, 2024.

Report of Sharon Brown-Hruska, Ph.D. dated February 2, 2024.

***Online***

“2005 ISDA Commodity Definitions & User’s Guide,” *ISDA*, accessed at:  
<https://www.isda.org/book/2005-isda-commodity-definitions-users-guide/>.

“Legal Guidelines for Smart Derivatives Contracts: The ISDA Master Agreement,” *ISDA*,  
accessed at: <https://www.isda.org/a/23iME/Legal-Guidelines-for-Smart-Derivatives-Contracts-ISDA-Master-Agreement.pdf>.

“Swaps Report Data Dictionary,” *CFTC*, accessed at:  
<https://www.cftc.gov/MarketReports/SwapsReports/DataDictionary/index.htm>.

This is Exhibit "B" referred to in the Affidavit of Dr. Sharon Brown-Hruska affirmed by Dr. Sharon Brown-Hruska of the City of Burke, in the State of Virginia, before me at the City of Toronto, in the Province of Ontario, on March 14, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  


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FD5E91A0D41548B  
Commissioner for Taking Affidavits (or as may be)

**RJ REID**

FORM 53

Courts of Justice Act

ACKNOWLEDGMENT OF EXPERT'S DUTY

(General heading)

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is Sharon Brown-Hruska (name). I live at Burke (city), in the State of Virginia (province/state) of United States of America (name of province/state).
2. I have been engaged by or on behalf of Tacora Resources Inc. (name of party/parties) to provide evidence in relation to the above-noted court proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
  - (a) to provide opinion evidence that is fair, objective and non-partisan;
  - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
  - (c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date 1/31/2024

DocuSigned by:  
*Sharon Brown-Hruska*  
 15FAB8C67800405...  
 Signature

**NOTE:** This form must be attached to any expert report under subrules 53.03(1) or (2) and any opinion evidence provided by an expert witness on a motion or application.

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS  
AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TACORA  
RESOURCES INC.**

Applicant

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

Proceeding commenced at Toronto

**AFFIDAVIT OF  
DR. SHARON BROWN-HRUSKA  
(AFFIRMED MARCH 14, 2024)**

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Barristers & Solicitors  
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Toronto, Canada M5L 1B9

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**Lee Nicholson (LSO #66412I)**

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**Eliot Kolers LSO #: 38304R**

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**Philip Yang (LSO #82084O)**

Tel : (416) 869-5593  
Email: [pyang@stikeman.com](mailto:pyang@stikeman.com)

Counsel to the Applicant,  
Tacora Resources Inc.

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

Court File No. CV-23-00707394-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
TACORA RESOURCES INC.

(Applicant)

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

PROCEEDING COMMENCED AT TORONTO

**REPLY RECORD OF THE APPLICANT  
(APPROVAL AND REVERSE VESTING ORDER)**

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5300 Commerce Court West  
199 Bay Street  
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