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.

JOINT TRANSCRIPT BRIEF

MFC DISPUTE MOTION RETURNABLE APRIL 16, 2024

I N D E X

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CROSS-EXAMINATION OF JOSEPH ANDREW BROKING II

On Affidavits Sworn
March 21, 2024, and March 28, 2024
Held via Arbitration Place Virtual
on Thursday, April 4, 2024, at 1:02 p.m.

900-333 Bay Street   Toronto, Ontario M5H 2R2

APPEARANCES:

Eliot Kolers RJ Reid	Counsel for the Applicant, Tacora Resources Inc.
Colm St. Roch Seviour Josh Merrigan	Counsel for 1128349 BC Ltd.
Stephanie Voudouris	Counsel for the Monitor

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Arbitration Place Virtual
--- Upon commencing Thursday, April 4, 2024 at 1:02 p.m.
AFFIRMED: JOSEPH ANDREW BROKING II
CROSS-EXAMINATION BY MR. SEVIOUR:
1 Q. Mr. Broking, my name is Colm Seviour. I am with Josh Merrigan. Together we represent 1128349 BC Ltd., and will be asking you questions on your affidavit materials this afternoon.
A. Yes.
2 Q. To begin, could you state your name and address for the record?
A. Joseph Andrew Broking, the second. That is my name. Address: My home address is 18125 Romans Road, Grand Rapids, Minnesota, 55744.
3 Q. And your current employer is Tacora Resources Inc. Is that correct?
A. That is correct.
4 Q. What position do you currently hold with Tacora?
A. I am a director, president and chief executive officer.
5 Q. As I understand it,

Mr. Broking, you have been involved with the Tacora Mine project from its outset, in 2017. Is that correct?

A. That is correct.

6 Q. You initially were chief financial officer and vice president of Tacora and you succeeded to become chief executive officer, subsequently. Is that correct?

A. Yes, that is correct.

7 Q. What are your academic qualifications, please?

A. I have a Bachelor of Science in Accounting.

8 Q. Do you have any professional designations?

A. No.

9 Q. So, in the mining world, are you on the numbers side as opposed to the geologic and mining-of-rocks side?

A. Yeah, it is an interesting question. Without getting into my background I have, yes, I have a degree in accounting. But really I was on full academic scholarship in college, and my dual path involved operations in heavy industry and finance and accounting. I started at that time, almost 30 years ago at this point.

So you are correct that, by degree, my expertise is in accounting and finance. But certainly, by experience, I have -- I am getting old; I have almost 30 years in industry, between pulp and paper, heavy equipment manufacturing and metals and mining.

10 Q. I wanted to turn specifically now to your March 21 affidavit that you filed in this matter, with 1128349. And I may refer to 1128349 as 112 from time to time. It is a long name and it gets easier if we do it that way, maybe. But in that affidavit, you state that:

> "Tacora is aware that Cargill Inc. has maintained an approximately 10 to 11 per cent interest in Tacora since 2018."

Do you recall that?

MR. KOLERS: Can you just identify where you are?

MR. SEVIOUR: Sure. I am at

paragraph 37 of the March 21 affidavit. And, if the witness would like to look at that, that is perfectly fine.

THE WITNESS: Yeah, I recall.

MR. SEVIOUR:

11 Q. I wanted to explore that a bit with you. First of all, do you understand Cargill Inc. -- as I understand, it is a very large private U.S. corporation. Is that right?

A. That is my understanding, as well. Yes.

12 Q. And is it also your understanding that it is one of the world's largest commodity trading businesses?

A. It is my understanding that, yeah, Cargill does have a significant commodity trading presence, globally. I don't know exactly how large, but it is significant.

13 Q. That is a worldwide exposure, is it not?

A. I believe so. Yes.

14 Q. Can you confirm that the counterparty to the Scully Mine Offtake Agreement, a company called Cargill International Trading Pte. Ltd., is a wholly owned subsidiary of Cargill

Inc.?

A. Yes, I can confirm that.

15 Q. And we will talk about the counterparty as Cargill International in this proceeding today, as opposed to Cargill Inc., its parent company, if that is all right. Do you understand that approach?

A. Yes, I do.

16 Q. So I wanted to talk about Cargill Inc.'s acquisition of its interest in Tacora.

MR. SEVIOUR: Counsel, I am referring to paragraph 36 of the March 21 affidavit.

17 Q. And I took from that paragraph that, in late 2018, Tacora was facing delays in the commencement of production at the Scully Mine. Is that correct?

A. Yes, that is correct.

18 Q. Was this the initial commissioning following the acquisition from the Cliff's CCAA?

A. Yeah, so -- that is correct. Initially as it states in the affidavit, we completed the acquisition of what we call the

Scully Mine in July of 2017. And then, post-July of 2017, we started the process to complete a feasibility study and finish the capital fundraising efforts to fully fund the restart of the Scully Mine.

19 Q. There were delays in commencing production. Correct?

A. No, there weren't delays in commencing production. There were delays in completing the financing activities. We weren't at the -- in late 2018, we weren't at the point yet where we working to restart. We were still in the capital fundraising stage.

20 Q. But you needed capital at that time. Is that right?

A. That is correct.

21 Q. I am going to turn up the October 31, 2018, board minutes. I think you should have that on the screen. Do you see those, Mr. Broking? Sorry, Josh is going to share that?

MR. KOLERS: Counsel --

THE WITNESS: And if you could zoom in for me, please, I would appreciate it.

MR. MERRIGAN: Sorry, counsel and Mr. Broking, are you able to currently see it on the screen, that has meeting minutes on them?

MR. KOLERS: No. We don't see anything right now.

MR. MERRIGAN: Okay.

MR. KOLERS: We see you.

MR. MERRIGAN: Okay. We may need to ask the moderator to allow us the ability to share our screen.

APV TECHNOLOGY SPECIALIST: I believe you have permissions to share screen. You don't have the green icon on the bottom of the Zoom window.

MR. MERRIGAN: Yes, I have it now. Thank you. It should be available to you now.

MR. KOLERS: Our screen is a little bit far away from where we are sitting, in front of the camera. So yeah, if you could zoom in. That -- a little bit more than that, please.

MR. SEVIOUR: Scroll down a bit?

MR. KOLERS: Yeah, if you could zoom a little more, please? Maybe one more? Thank you. Okay. Is that all right?

THE WITNESS: I will try.

MR. KOLERS: It is the October 31, 2018, board minutes.

MR. SEVIOUR:

22 Q. Mr. Broking, as we understand it, these are directors' minutes for October 31 of 2018, and they were produced by your counsel last week. And I am going to ask that Josh scroll down a bit, on page 1.

It reflects that -- it says in paragraph in the centre:

> "All present at the meeting were Mr. Joseph Broking..."

And do you recall that meeting and these minutes?

MR. SEVIOUR: Yes, I recall the minutes and vaguely recall the meeting. Yes. For the benefit of the Reporter, we are going to want to have this exhibited as the first exhibit. Perhaps we can say JB No. 1 to the transcript, and I don't understand, subject to counsel's comments, whether or not there should be any confidentiality restriction on this?

MR. KOLERS: If what we can do, what we have been doing in some of the other examinations is sort of behaving as if the whole transcript is confidential, and then we will review it afterwards and advise.

MR. SEVIOUR: And I think that that is fine. Obviously, we are free to share with counsel and clients despite the confidentiality, I would expect.

MR. KOLERS: That is correct, unless we would identify otherwise.

MR. SEVIOUR: Fair enough. Mr. Reporter, if we proceed on the basis that this will be exhibited as -- are we agreed that this should be JB No. 1.

MR. KOLERS: Exhibit 1, that is fine.

MR. SEVIOUR: Exhibit 1. And it will be confidential, as will the entirety of the transcript.

EXHIBIT NO. 1: Tacora Board of Directors' minutes dated October 31, 2018.

MR. SEVIOUR:

23 Q. So we can flip over to page 2 of the document -- just keep scrolling

down. Right there. That is fine.

In the centre of the page, we see the motions recorded. And the minutes state:

"Following discussion upon motion duly made, seconded and carried, the board approved substantially as proposed, No. 1, the equity cash call for $77.5 million..."

That is U.S. $77.5 million...

"...in support of the approved budgets, financing plan and development decision."

And II:

"The amendment to the Cargill Offtake Agreement with execution simultaneous with the equity call."

Do you see those references, Mr. Broking?

A. Yes, I do.

24 Q. And you were a party to those discussions. Is that correct?

A. Yes, I was at this board meeting.

25 Q. And the equity cash call for U.S. $77.5 million, this was the need for capital that you described a moment ago, to complete the financing for mine commissioning?

A. Yeah. This, in conjunction with the senior secured credit facility would have fully funded the restart.

26 Q. But, at this time, Tacora was looking for and needed capital. Correct?

A. That is correct.

27 Q. And the reference to the simultaneous amendment to the Cargill Offtake Agreement, that was also an element of the financing transactions at the time?

A. Yes.

--- (Off-record discussion)

MR. SEVIOUR:

28 Q. At paragraph 36 of your affidavit, I took it that this equity funding included approximately $20 million U.S. from Cargill Inc. Is that correct, Mr. Broking?

A. Yes, that is correct.

29 Q. And I took it from your affidavit also that Cargill Inc. became invested in a company called Proterra M&M MGCA Cooperatief UA?

A. Yeah, that is correct.

30 Q. And maybe we can call that Proterra Cooperatief for shorthand in this discussion.

And I took it from your affidavit as well that Proterra Cooperatief was at that time 100 per cent owner of Proterra M&M MGCA B.V.

A. That is my understanding, as well.

31 Q. And you call the second Proterra entity Proterra Holding in your affidavit, I believe. And I would like to use that terminology, as we go forward.

A. Okay.

32 Q. Can we flip up document 484 first, Josh, and then 485? But we will go to 484, first. I am turning up document 484 from Tacora's production of last week. It is an e-mail dated April 22, 2021 from Sam Byrd to Joe Broking

and Phil Mulvihill, copied to others.

Do you see that, Mr. Broking?

A. Would you please zoom in? Keep going. Okay. Can you scroll up, please?

33 Q. I think you see the full document there.

A. Yeah, okay. I can see it. I can't see the to/from.

MR. KOLERS: Yeah. We can't see the date or the to/from. And the print is quite small.

MR. MERRIGAN: I don't think there is a way to increase the size of that.

MR. KOLERS: Would you mind if Mr. Broking moves a little closer to the screen, like, walks off camera for a second, to see the screen a bit better?

MR. SEVIOUR: Sure, that is fine.

THE WITNESS: Okay. Thank you.

MR. KOLERS: Sorry, did you have a question for him, to identify this or something?

MR. SEVIOUR:

34 Q. I just wanted to make sure that he was comfortable that this was an e-mail from Sam Byrd to him, and that he could be comfortable that it was an e-mail he received. Yes?

A. Yes, that is correct.

MR. SEVIOUR: Okay. And I would like that marked as Exhibit 2 to the cross-examination transcript, Mr. Reporter.

EXHIBIT NO. 2: E-mail dated April 22, 2021, from Sam Byrd to Joe Broking and Phil Mulvihill, copied to others. (Tacora 484). (Marked on a confidential basis).

MR. SEVIOUR:

35 Q. This relates to ownership disclosure, and refers to an attachment called the Proterra-Tacora investment structure chart, March 21 -- March 31 of 2021. Do you see that?

A. Yes, I do.

36 Q. And I am going to flip that up -- we either punch through or -- yes.

So you see the ownership chart. Is that sufficiently large for you?

A. Yes.

MR. KOLERS: And just, if I can identify, this exhibit is confidential. And so it might be easier to the extent you are referring to it, and perhaps you don't refer to the percentages and things like that on the transcript. If you need to, go ahead, please. And then we will just have to identify that part as confidential, as well. But if you can steer around it, that might be a little easier, later.

MR. SEVIOUR: Yeah. I mean, the percentages are relevant counsel, so I am sorry, I am not going to be able to accommodate that.

37 Q. I just wanted to be clear on some of these, but the investment structure chart that you have, Mr. Broking, it reflects the ultimate ownership, at least as at March 31 of 2021 of Tacora Resources Inc. Is that fair?

A. Yeah, that is correct.

38 Q. And it shows that Cargill Inc. at that point at least held 16.3 per cent interest in Proterra Cooperatief?

A. Yes, that is correct.

39 Q. And that the Proterra Holding entity at that point held 68.2 per cent in in Tacora Resources. Correct?

A. Yeah, that is correct.

40 Q. And you will see reference to Black River Capital Funds?

A. That is correct.

41 Q. Those funds are shown to have substantial ownership interest in Proterra Cooperatief at that point in time. Is that correct?

A. Yeah, that is correct -- 57.7 per cent, if my math is correct.

42 Q. Okay. And that interest that Cargill is shown to have in that chart, is that to your knowledge or your understanding a function of the $20 million U.S. investment in November 2018?

A. I believe that is correct. Yes.

43 Q. Thank you.

MR. SEVIOUR: Josh, can we turn up 370, and blow it up?

MR. MERRIGAN: Yes.

MR. SEVIOUR: Please.

44 Q. Mr. Broking, I am next going to refer you to a document that was produced as No. 370 by your counsel, last week. It is an e-mail, which it reflected to be from you on October 22, 2018 to Phil Mulvihill and Leon Davies. Do you see that?

A. Is it possible to zoom in, just a little bit?

45 Q. If you need to inspect the screen as you did before, please do.

A. Yes, that is correct.

46 Q. You are saying in this e-mail:

"Please find the attached Tacora ownership schedule as of September 30, 2018."

A. That is correct.

47 Q. And that was closer in time to the $20 million investment that we talked about a minute ago. Correct?

MR. KOLERS: Sorry, closer in time than the previous exhibit?

MR. SEVIOUR: Closer in time

than the March 31, 2021 chart we just looked at.

48 Q. This e-mail was in September of 2018, which is closer in time to the Cargill investment in November of 2018?

A. Yeah, that is correct.

49 Q. And the chart that is attached, Mr. Broking, is that one that you prepared for your transmission to Messrs. Mulvihill and Davies?

A. Yeah. This was a chart that was prepared by myself and the finance team.

50 Q. We are just going to punch up the chart. And that reflects again an ownership interest as of September 30, 2018, with Proterra Holding showing to be an 82.22 per cent holder of common equity?

A. That is correct.

51 Q. So that's --

A. On a non-diluted basis, that is correct.

52 Q. Yeah. And that is higher than it was in the 2021 chart that we looked at a minute ago, I think. Is that correct?

A. Yeah, that is correct.

53 Q. Do you know why it was

higher in 2018 than it was in 2021? What was the difference?

A. Well, by 2021, the company had solicited and raised additional equity from the other parties that were listed on the previous exhibit, from March 31 of 2021.

54 Q. Okay. Fair enough. So I guess the point is that if Cargill Inc. had 16.3 per cent back in 2018, it was at a higher level than it would have been in 2021. Correct?

A. Yeah. At 9/30/2018, Cargill Inc. had zero equity interest. My understanding is they had zero equity interest in Tacora Resources Inc., at that time.

55 Q. Its interest was in Proterra Cooperatief. Correct?

A. This was prior to the November of 2018 transaction, so there was no interest of Cargill Inc. in the B.V., at this time. This was prior to that.

56 Q. Fair enough. I will accept that.

MR. SEVIOUR: If this could be marked as Exhibit 3?

MR. KOLERS: Yes. I think it

is confidential, as well.

MR. SEVIOUR: Thank you.

EXHIBIT NO. 3:
E-mail dated October 22, 2018, from Mr. Broking to Phil Mulvihill and Leon Davies. (Tacora 370). (Marked on a confidential basis).

MR. SEVIOUR:

57 Q. We talked about the Black River Funds a minute ago. And I am going to turn up document 303, which is a bank reconciliation document and some banking materials produced by your counsel last week, dating from July 31 of 2017.

Can you see that Mr. Broking?

A. Yes, I can.

58 Q. I just wanted to flip over to the fifth page of that document, which is a Bank of Montreal business banking statement, and scroll down.

We see there are the first two entries, under opening balance, reflect substantial payments by Black River Capital, one for $2,795,675.70, and the other for almost $28 million. Do you see those?

A. Yes, I do.

MR. SEVIOUR: I would like to mark that as Exhibit 4.

EXHIBIT NO. 4: Tacora bank reconciliation document and banking materials dated July 31, 2017. (Tacora 303).

MR. KOLERS: And I am not sure if you established whether Mr. Broking has seen this one before.

MR. SEVIOUR:

59 Q. Mr. Broking, are you comfortable that this is a bank statement related to the Tacora operations in July of 2017?

A. Yes.

60 Q. Thank you.

MR. KOLERS: Okay.

MR. SEVIOUR: Counsel, does that satisfy it?

MR. KOLERS: Yeah, thank you.

MR. SEVIOUR: Okay.

61 Q. Mr. Broking, paragraph 27 of your affidavit says that you were aware that there were private equity funds spun off by Cargill in 2016, to form Proterra Investment Partners?

MR. KOLERS: Sorry, which paragraph did you say?

MR. SEVIOUR: It is paragraph 27.

MR. KOLERS: Yes, sorry. Thank you.

THE WITNESS: That is correct.

MR. SEVIOUR:

62 Q. And do you know if these are the Black River Funds that we saw records of, a moment ago?

A. Yes. I believe that these are the Black River Funds.

63 Q. Back to Exhibit 2 to this cross-examination, this document 484 which we looked at a minute ago, I wanted to return to that, and particularly page 2 of that --

MR. SEVIOUR: The second page, Josh. Sorry, this is -- yeah, it is the 484 document. It is two or three pages.

MR. MERRIGAN: The PDF page.

MR. SEVIOUR: It had the attachment of the chart, I think. But I am not looking at the chart.

MR. MERRIGAN: This?

MR. SEVIOUR: Can you scroll down? Continue scrolling, please. Continue scrolling. Stop there.

64 Q. There is an entry that is on the screen. Can you read that, Mr. Broking?

A. I would have to move up, but is it okay if I go up to the screen?

65 Q. Sure. And we show that as an e-mail from Sam Byrd, to you, and copied to others?

A. Can you scroll up just a little bit, so I can see the to/from, please? Thank you. So I agree this is an e-mail from Sam to myself and copying others. Please scroll down, again?

66 Q. And then, so Sam is saying to you, and this is in April 22 -- or April 22, 2021, you say:

"For the prior IPO prospectus in 2018, we stated the following..."

What IPO prospectus was that, Mr. Broking?

A. Yeah, as part of our capital fundraising efforts between July of 2017 and ultimately when we closed on all of the capital to fully fund the restart in November of 2018, we did attempt to raise equity capital through an initial public offering on the TSX exchange. I believe that IPO was launched in May of 2018.

67 Q. And it didn't close?

A. Yeah, that is correct. We ended up withdrawing the IPO.

68 Q. So the end of the paragraph that Mr. Byrd sends to you contains the statement:

"Cargill..."

...in the very last line:

"Cargill remains a passive minority investor in funds managed by Proterra."

Do you see that?

A. I do. Yes.

69 Q. And, to your knowledge, does that include the Black River Capital Funds that we talked about a moment ago?

A. I am not certain.

70 Q. Were you aware of other funds managed by Proterra that Cargill would have been a passive minority investor in, at that time, in 2018?

A. I am not -- again, I don't know. I am not certain.

71 Q. If we could scroll up in that e-mail, the same e-mail, continue going up. Stop there. Just maybe up a little bit more.

So part of this same e-mail string is an e-mail on 22 April, 2001(sic) from you to Phil Mulvihill. And again, it is in the ownership disclosure category. And you are saying to Phil:

"That is correct, Phil. Due to required related-party disclosure, the Cargill ownership will need to be disclosed."

Do you remember the context

for this exchange with Mr. Mulvihill?
A. I do vaguely remember this exchange in the context of the IPO. Yes.
72 Q. Okay. What was that about? What was the related-party issue?
A. This was in regards to Cargill's passive ownership in Proterra Investment Partners.
73 Q. Just to close out this line of questions, to the best of your knowledge did any Cargill entity have an investment in Black River Funds when the Scully Mine assets were acquired. Do you know that?
A. I am not certain if it was in the Black River Funds, because I don't know the whole investment structure of Proterra, but, yeah. Yeah, so I am not certain exactly what the fund's structure is, specifically at Proterra Investment Partners. So I don't know where that Cargill investment would be.
74 Q. Because you do talk about Cargill having an indirect and a direct interest in Proterra in your affidavit. I just wondered, in addition to the interest in Proterra Cooperatief that we already explored and looked at

the chart on, were you aware of any other interest by Cargill or Cargill Inc. or Cargill International in Tacora, either directly or indirectly, in 2017?

A. No. No, I was not aware of any direct or indirect interest. When we started the IPO process for the reasons that are being discussed within this e-mail, you know, we -- there was discussion that Cargill did have a passive investment in Proterra Investment Partners.

75 Q. Okay. Thank you. I would like to turn up exhibit or document 724 that was produced last week. What I have pulled up here is a Tacora ownership table as of December 31, 2023. Are you able to identify that, Mr. Broking?

A. Yes.

76 Q. Okay.

MR. SEVIOUR: We ask that be marked as Exhibit 4. This is No. 5, Josh tells me.

EXHIBIT NO. 5: Tacora ownership table as of December 31, 2023.

(Tacora 724).

MR. SEVIOUR:

77 Q. So to the very bottom of the page where we have a section entitled, "Memo: Proterra M&M MGCA B.V. ownership," do you see that section, Mr. Broking?

A. Yes, I do.

78 Q. And we see the Cargill interest at 16.60 per cent?

A. That is correct.

79 Q. And that is an increase over the 16.3 per cent that we showed Cargill as having in Proterra Cooperatief in the prior chart. Is that fair?

A. Yeah, that is correct.

80 Q. Do you know what explains that change?

A. I do not recall what explains that change.

81 Q. Okay. Thank you.

MR. SEVIOUR: So that has been marked as well, Josh.

82 Q. I think we have talked about this, the $20 million Cargill investment occurred at the same time as an amendment to the

initial Cargill Offtake Agreement. Is that right?

A. I am sorry, can you repeat the question?

83 Q. The initial -- the $20 million Cargill Inc. investment occurred at the same time as an amendment to the original Cargill Offtake Agreement?

A. Yeah, that is correct, in approximately November of 2018.

84 Q. And that amendment extended the Offtake Agreement term from the initial term to 2033. Is that correct?

A. That is correct.

85 Q. And I think you described there was some changes to the pricing formula at the time?

A. No. There were no changes to the pricing formula at that time that I recall. Well, actually there were changes to the provisional pricing mechanism, but not the pricing formula. This was more the difference between the provisional pricing versus the final price.

86 Q. Okay. And who sought -- was this Cargill International that was seeking these Offtake Agreement amendments?

A. It was -- yeah, it was in relation to the capital fundraising effort to fully fund the restart of the Scully Mine in approximately November of 2018. So there were negotiations that were happening between the company and its stakeholders regarding that equity fundraising, including Cargill.

87 Q. But the November 2018 amendment, that was really a condition of the Cargill Inc. $20 million financing. Is that right?

A. Yeah. That was a piece of that capital fundraising effort; that is correct.

88 Q. It was a condition of the fundraising, right?

A. Yeah. That is what I said, I think.

89 Q. Okay.

A. Yes.

90 Q. And this November Offtake Agreement, which was restated at the time, was that the agreement that was in place when the royalty payments commenced to be made in 2019, to 112?

A. Yeah, that is correct. We commenced making royalty payments after we commenced operations in the middle of 2019. So this would have been the Offtake Agreement that was in place at the time.

91 Q. And so the financing and the Offtake Agreement amendment that we have talked about, did they coincide with the appointment of Phil Mulvihill of Cargill Inc. to the Tacora board?

A. Yes, that is correct. At that time, Phil Mulvihill was appointed to the Tacora board along with the other, I don't know, seven to nine members at that time. I don't recall it; it was always a big board.

92 Q. Was that also a condition of the financing that was being done?

A. Yeah, that is correct.

93 Q. I think that the record that we filed reflects that Tacora issued a press release in November of 2018.

MR. SEVIOUR: And counsel, just for your reference, if you wanted to refer to it, it is page 297 of the 112 motion record. It is attached as exhibit R to Mr. Morrow's affidavit.

MR. MERRIGAN: That is page 497 of Morrow's affidavit.

MR. SEVIOUR: It is page 497 of the affidavit? Okay. That is page 497 of Mr. Morrow's affidavit, not of the record.

MR. KOLERS: I think it might be page 506 of the record.

MR. SEVIOUR: I am looking for a press release, November 27, 2018.

MR. KOLERS: Yes.

THE WITNESS: Yes.

MR. SEVIOUR: Do you have that?

MR. KOLERS: We do.

THE WITNESS: Yes.

MR. KOLERS: We have exhibit R to Mr. Morrow's affidavit in front of the witness.

MR. SEVIOUR:

94 Q. And, so in that press release, this would have been reporting following the transactions and successful achievement of those transactions that we have been talking about, and the completion of the Scully Mine restart financing.

Just scroll down to the -- just there. So in the paragraph in the middle of the page there that starts:

"We are extremely pleased..."

...and then this is taken from Larry Lehtinen, who was then the executive chairman and CEO of Tacora. He said:

"We are extremely pleased to have the Scully Mine restart fully financed, et cetera."

And he goes on to say, in the second sentence:

"Special thanks go out to the political leaders of Newfoundland and Labrador and Quebec. The leaders at the United Steelworkers Union, our valued partners at SFPPN and the Port of Sept-Îles. Our long-term strategic equity investors, Proterra

Investment Partners, Aequor, Cargill and MacGlobal."

So fair to say that, at that point, Tacora regarded Cargill among others to be one of its long-term strategic equity investors?

A. Yeah, that is correct. We mentioned all of our long-term equity investors in this press release on November 27.

95 Q. I wanted to talk briefly about the Stockpile Agreement, which you have mentioned that a number of times in your filings in this case. And it was dated December 17 of 2019, according to your affidavit.

And I think you say that it really functioned as part of the Offtake Agreement. Is that fair?

A. Yeah, it is fair to say that the Onshore Purchase Agreement works with the Offtake Agreement.

96 Q. And effectively, under the Stockpile Agreement, Cargill International has agreed to prepay for Tacora concentrate?

MR. KOLERS: So I am going to let you ask Mr. Broking just for his understanding. I am not sure it is prepaying. But I don't want him -- I don't want to start getting into legal interpretations of the agreement, obviously.

MR. SEVIOUR: Okay.

THE WITNESS: So the Onshore Purchase Agreement really functions as a working capital facility where Cargill is actually purchasing and taking title to the concentrate once it is delivered to the port at SFPPN, and unloaded from trains.

MR. SEVIOUR:

97 Q. So that would be an earlier payment, than if payment was made only at the point of shipment. Is that fair?

A. Yeah, it is correct that it functions as a working capital facility. So once -- as part of that, Tacora receives payments on a provisional pricing basis from Cargill on a weekly basis.

98 Q. And if you compare that to the normal operation of the Offtake Agreement, the payments, the provisional payments made under the Stockpile Agreement, they would be paid to Tacora possibly a month or two prior to shipment

of concentrate?
A. When you say "prior to shipment of concentrate", what do you mean?
99 Q. Well, as I understand it, under the Offtake Agreement, provisional pricing would be paid at the point of shipment, without the benefit of the Stockpile Agreement. Is that fair?
A. Well, shipment can be defined a couple of different ways in the context of our deliveries. We ship product from the Scully Mine via rail, to SFPPN. And then we ultimately ship product to the end customers via vessel, once it is loaded onto a vessel and delivered to those customers.
100 Q. When you talk about this as a working capital facility, it is intended to get funds into Tacora's hands as early as possible for the concentrate being delivered to the port. Is that fair?
A. Yeah, that is fair. That is correct. In terms of the concentrate being delivered to the port? Yes, it allowed us to collect receivables sooner.
MR. KOLERS: I don't want to

give evidence, sir, but just, "as early as possible" is a fairly subjective term. I think it would be fair to say that it smooths out the payments as a -- and it separates it from the shipping by vessel, or the loading of shipping on the shipping by vessel of those -- of the title transfer payments.

THE WITNESS: And I agree with that.

MR. SEVIOUR: Thank you, Mr. Broking and counsel.

101 Q. And just to be clear, under that Stockpile Agreement, Cargill International does in fact take title to the concentrate at the point it is delivered to the stockpile. Correct?

A. That is correct.

102 Q. Whose idea was this arrangement? How did this come up?

A. I don't recall exactly the genesis of whose idea it was and how the conversation started.

103 Q. But was it an arrangement that was entered into to meet the financing needs of Tacora at that time?

A. Yes. It was an arrangement that was made to be able to turn our sales into cash in a timely fashion.

104 Q. Okay. You go on in your March 21 affidavit --

MR. SEVIOUR: And counsel, I am referring to paragraph 40(a) now.

105 Q. ...you say that:

"In March 2020, Proterra Holding contributed $10 million in response to a cash call, and that some portion of that was funded by Cargill Inc."

Do you recall that?

A. Yes.

106 Q. And why was there a cash call?

A. Due to delays in the ramp-up of the Scully Mine, the business needed additional capital, which is why there was a cash call.

107 Q. Do you know what portion of the $10 million came from Cargill Inc. at that time?

A. No, I do not.

108 Q. Do you know if any equity was issued to Cargill Inc. by any of the Proterra entities at that time?

A. I don't recall, but I am not aware of the details.

109 Q. Thank you. That infusion of capital, it resulted in an amendment to the Offtake Agreement which gave Cargill the option to extend the Offtake Agreement for life of mine. Is that fair? I am looking at your paragraph 32 when I make that statement.

A. Yeah, that is correct.

110 Q. And that amendment was a condition of that $10 million financing?

A. Yeah, that is correct.

MR. SEVIOUR: Pull up 641, Josh.

111 Q. There is one further amendment on the term of the agreement. And I would ask Josh to pull up a letter agreement, January 31 of 2023, which is Tacora's document 641 from the last week's production. And I am looking at the attachment to that, Joe, the actual...

And my interest is in

paragraph 7 of this side letter agreement between Cargill International and Tacora. And paragraph 7 says:

"The options of the buyer to extend the term of the offtake in clause 35 of the offtake and clause 2 of the life of mine letter are amended as follows. The term of the offtake is hereby extended to life of mine as defined in clause 2 of the life of mine letter, without any need for buyer to serve any notice exercising an option or to take any other step."

This locked in and made conclusive the extension to life of mine for the Offtake Agreement. Is that fair?

A. Yeah, that is correct. This was -- I mean they had life of mine effectively prior. So it really didn't change anything, but this cleaned it up.

112 Q. Okay.

MR. SEVIOUR: We will mark this as Exhibit 6. We are on No. 6 Josh.

MR. MERRIGAN: Yes.

EXHIBIT NO. 6:
Letter agreement dated January 31, 2023. (Tacora 641).

MR. SEVIOUR: Thank you, Mr. Broking.

113 Q. So next in this discussion about Cargill's financing, Cargill invested $15 million U.S. on November 10 of 2022 for preferred shares in Tacora. Do you recall that?

A. Yes, I do.

114 Q. And what led to this? Why did that happen, Mr. Broking?

A. Again, it was in regards to slower than anticipated ramp-up of production, which ultimately resulted in the need for additional capital, which led to this transaction.

115 Q. And was Tacora in financial difficulties at this time?

A. Yes. I would say Tacora

was in financial difficulties at this time.

116 Q. And I am going to refer to Tacora's financial statements for 2021 and 2022, which is exhibit Z to Mr. Morrow's affidavit.

MR. SEVIOUR: Do you have a page reference, Josh? Page 726 is what I have.

MR. MERRIGAN: That's it.

MR. SEVIOUR: So if we could pull up that exhibit and page reference, that would be...?

MR. MERRIGAN: It is 736 of Mr. Morrow's affidavit. Would you like the page reference?

MR. SEVIOUR: Counsel, do you have page 726 of exhibit Z?

MR. KOLERS: We have the page numbers of your record, as opposed to the affidavit. So 726 of your record does not look like what we have on the screen.

Do you have a heading or something? Do you have a heading close by, or a number of pages from the end?

MR. SEVIOUR: It is five pages from the end of Morrow's exhibit Z.

MR. MERRIGAN: That should be 734 on the document.

MR. KOLERS: Yeah, 734, it has a heading, "Related-party transactions" in the middle.

MR. SEVIOUR: That is the one I had, wanted to focus on.

117 Q. There is a reference to Cargill. Do you see that, Mr. Broking?

A. Yes, I do.

118 Q. This is part of your financial statements where related-party transactions are discussed by your accountants. And under the section titled, "Cargill" it states:

"As a result of the 15 million preferred share investment described in note 25, Cargill is a related party as of December 31, 2022."

Were you consulted in connection with that classification, Mr. Broking?

A. Not from a technical accounting perspective, if that is what you are referring to. No.

119 Q. No. And so this was your accountants making that conclusion. Is that fair?

A. That is correct.

120 Q. And Tacora was governed by International Financial Reporting Standards, the IFRS, at the time?

A. That is correct.

121 Q. What is your understanding of the related-party classification? What does it mean to you?

A. Well, from a high-level perspective, based on certain ownership percentages, a party could be designated as a related party from a high-level perspective.

122 Q. And at this stage of the game, what was your understanding as to why Cargill Inc. had met that threshold and was being classified as a related party to Tacora?

A. Well, per the disclosure within the financial statements, it says:

"As a result of the $15 million preferred share investment..."

123 Q. Mm-hmm:

A. :

"...Cargill is a related party as of December 31, 2022."

124 Q. And this issue had first come up in April of 2021, when you were talking with -- I think it was perhaps Mr. Byrd or Mr. Mulvihill -- when you talked about disclosure of Cargill and Tacora's related-party status. Is that a different discussion?

A. I don't recall the -- are you referencing one of the e-mails that we looked at earlier? I just don't recall.

125 Q. Yeah, I was. It is Exhibit 2. I think we talked about it; in April 22, 2021, you had said to Mr. Mulvihill -- and I am happy to have you pull it up; 484 is the document from Tacora last week on the subject of ownership disclosure. And you said:

"That is correct. Due to required related-party disclosure, the Cargill ownership will need to be disclosed."

Was that a different discussion? Or was that linked to the IFRS classification that we see here?

MR. KOLERS: Sorry, when you say "different discussion", obviously the other e-mail is over a year and a half before this note in the financial statements.

MR. SEVIOUR: Yes.

126 Q. I am wondering if it is the same subject matter, is it the same classification that was being discussed in 2021 that was reflected in the financials in 2022?

A. I just don't recall what the topic of this conversation was.

127 Q. Okay. Just before we move on from the preferred share financing, can you confirm that one element of the preferred share financing in November of 2022 was Cargill Inc.'s entitlement to appoint a director to Tacora's board?

A. That is correct.

128 Q. That would have been in addition to Mr. Mulvihill, who sat on the board at that time?

A. That is correct.

129 Q. Thank you. So a lot of discussion in the materials that the parties have

exchanged about the non-arm's length transactions and the arm's length agreements, et cetera. When we see the related-party classification under IFRS, Mr. Broking, with your financing and accounting knowledge, does that mean that related party means a non-arm's length transaction?

MR. KOLERS: You are not asking this from a legal interpretation perspective?

MR. SEVIOUR: I am asking the witness, who has financial accounting knowledge and background, as to whether or not in his understanding, "related party" denotes a non-arm's length relationship.

MR. KOLERS: Do you have an understanding?

THE WITNESS: In my opinion...

MR. KOLERS: No, don't give him your opinion. Do you have an understanding of that?

THE WITNESS: Yeah. I mean, from a high-level perspective but, yes, it is nuanced in the details. So whether or not a related party can have an arm's length transaction is nuanced in the details that we would need to understand the context of that general question.

MR. SEVIOUR:

130 Q. So what you are saying to me is it may or may not be non-arm's length, depending on the details of the transaction? Is that what I should understand?

A. Yes, that is what I am saying.

131 Q. What about this transaction, the preferred share transaction which led to the designation by your accountants that Cargill and Tacora were related parties? Is that a transaction which, given your knowledge of it, was non-arm's length? You had issuance of preferred equity -- or preferred shares convertible to equity and a board seat entitlement.

Was that a non-arm's length arrangement, the way you saw it?

A. No. It was an arm's length arrangement that was approved by the board of directors where Cargill only had one seat on a very large board. So in fact, this would be an arm's length transaction.

132 Q. Okay. If I asked you if

Tacora at any time gave any thought to enlisting the non-arm's length definition of net revenues because of the related-party status of Tacora and Cargill, was that ever considered? Did that ever come under discussion?

A. I don't recall if it was discussed. What I would say though is that, you know, we don't believe that it was necessary to switch the definitions or the definition of earned royalties to the second provision.

133 Q. Okay. I am going to talk about the Offtake Agreement. And your affidavit says that you, you and the Lehtinen guys reached out to potential offtakers when you were putting this deal together back in 2016 and 2017.

Why did you just go to two offtake possibilities? Wouldn't there have been more?

A. Well, there are certainly number of offtakers globally, but it is not a materially larger universe for offtakes, like we were looking for. So there would be a limited number of players involved. And the two that we selected felt like would give us with a good competitive process.

134 Q. You say that in the negotiation of the initial Offtake Agreement in April of 2017, I think was the date, that there was some Proterra input into the Offtake Agreement. And I am referring to paragraph 28 of your March 21 affidavit. Do you have that?

MR. KOLERS: Just looking at it.

THE WITNESS: Yeah, I am just looking at 28.

MR. SEVIOUR:

135 Q. You say that --

A. So --

136 Q. Sorry?

A. No. If you could repeat the question, please?

137 Q. So I am pointing you to that. You say that:

"Proterra did have some input into the profit share discussion in relation to the Offtake Agreement."

Do you see that?

A. Yeah. They were not

involved in the initial term sheet negotiations between Cargill and Tacora.

138 Q. Who at Proterra got involved at any point, here?

A. At this point in time, there wasn't any material involvement at all from Proterra. You know, I mean, we did solicit advice because Proterra was being considered as the primary private equity funding partner to make the acquisition of the Scully Mine, which did lead to some changes. But again, it was limited.

139 Q. Who at Proterra had that limited involvement?

A. There were two people at Proterra that we talking to at the time. It would have been Torben Thordsen and Sam Byrd.

140 Q. There are no e-mails or documents that you referred to in relation to their involvement in that exercise. Is that fair?

A. Yeah, I don't recall.

141 Q. Yes. You say in your affidavit that neither you nor the Lehtinens had previously worked with Mr. Davies of Cargill before you engaged on the discussion of the Offtake Agreement. That is at paragraph 22 of

your affidavit.

A. That is correct.

142 Q. What about -- put that up. What about the Lehtinens' company, Magnetation Inc. Did they have prior dealings with Cargill, do you remember?

A. Going all the way back to 2011, there was effectively a non-binding agreement that was signed between Cargill, or a subsidiary of Cargill, I don't recall, and Magnetation Inc., which was majority owned by Larry Lehtinen. That was again an agreement to look at opportunities in iron ore. But I wasn't a part of Magnetation until March of 2012.

143 Q. And while that agreement between Cargill and Magnetation was in place, were you involved in administering any of that agreement, or involved in that deal at all?

A. No. To my knowledge, there was limited to no activity as it relates to that agreement.

144 Q. Because we have just put up on the screen a press release from WCCO News, from January 6 of 2011, that talks about Cargill Inc. teaming with an iron range company that

extracts high-grade iron from old taconite tailings. And it goes on to name Magnetation as that company. Do you see that?

A. Yes, I do.

145 Q. Is that the deal that you are talking about?

A. Yeah, that is correct. Again, I didn't join Magnetation and the Magnetation companies until March of 2012. And I was the CFO of Magnetation Inc. and other subsidiaries of Magnetation Inc.

And to my knowledge, there was no activity regarding this agreement that is talked about in this press release.

146 Q. But you can confirm that there was at least some agreement, whether or not there was activity under it, between Cargill and Magnetation, which was an arrangement that was concluded before you came to Magnetation as CFO?

A. Yeah, I can confirm that there was an agreement.

147 Q. Yes.

A. But again, when I joined it as the CFO in March of 2012 until 2016, there was no activity with Cargill or no development work that was done that I am aware of.

148 Q. Okay. And talking a bit more about the Offtake Agreement and as it evolved, you filed an affidavit in February of this year which said that there had been 13 side letters done under the Offtake Agreement prior to the CCAA process. Do you recall that?

MR. KOLERS: So we don't have that affidavit here. Can we just go off the record for a second?

MR. SEVIOUR: Sure.

--- (Off-record discussion).

--- Recess taken at 2:23 p.m.

--- Upon resuming at 2:33 p.m.

MR. SEVIOUR:

149 Q. Mr. Broking, when we broke, I had referred you to your February 2, 2024 affidavit. In paragraph 63, you talk about 13 side letters to the Offtake Agreement prior to the CCAA proceedings?

A. Sorry, I am just reading this.

150 Q. Sure.

A. Okay. I am ready for your question.

151 Q. Okay. So do you agree you referred to 13 side letters?

A. Yes.

152 Q. And I wondered over what time frame they covered, please?

MR. KOLERS: Do you know?

THE WITNESS: I don't know exactly what time frame they covered.

MR. SEVIOUR:

153 Q. In any sense, were they spread out all over the time of the operations until now? Or until CCAA? Or?

A. They would not have been -- well, the answer is I don't know. But what I can say is they would not have been spread out over the entire length of the operation. The context would have been prior to the CCAA proceedings, but I don't know specifically what time period, if that was six months or a year. I just don't know.

154 Q. And would they have commenced early in the mine's operation? Or were they more skewed in number towards the latter part of the mine's operations, before CCAA?

A. Yeah, they would not --

we would not have done side letters like this early in the operation, as this would have been more approximately in 2023 -- approximately.

155 Q. As I understand your description of the side letters, they were intended to mitigate against the risk of price fluctuations in the Platts 62 per cent index, for Tacora's benefit?

A. In general, the side letters that we enter into can define many things within the pricing. For example, it could define the freight amount, freight terms. There could be in this instance what we are talking about here is fixing the P62 price of iron ore. But side letters could define many things, specific to a vessel shipment.

156 Q. Maybe we can turn one up, if we could look at Sam Morrow's exhibit BB, which is a September 14, 2021, signed side letter between Tacora and Cargill International.

A. I see it.

157 Q. Do you see it?

A. Yes.

158 Q. My interest is in the definition of fixed price in paragraph 4. It

says:

[redacted].

A. I see that. Yes.

159 Q. And then if we go up in the letter, the letter is helpful, and it states its purpose in paragraph 2. And if you scroll up there, to paragraph 2:

"The purpose of this letter is to change the pricing provisions of the offtake as they apply to certain weights of iron ore shipped at certain times from a floating to a fixed price as a method of buyer providing to seller a degree of insulation from anticipated iron ore market price movements."

A. I see that paragraph.

160 Q. And that was a price protection arrangement that Cargill was prepared

to give Tacora?

A. Yes, that is correct.

161 Q. In paragraph 64 of your February 2 affidavit, you talk about two other side letter agreements where the Platts 62 per cent index value was replaced with a fixed price. Is that similar? Perhaps have a look at that, but is that similar to what we are seeing in the exhibit we just looked at?

MR. KOLERS: You are preferring to paragraph 62 of --

MR. SEVIOUR: Paragraph 64.

MR. KOLERS: ...64, of the February affidavit?

MR. SEVIOUR: Of the February 2, 2024 affidavit.

THE WITNESS: Can you restate the question, please?

MR. SEVIOUR:

162 Q. That refers to the replacement of the Platts 62 per cent index value with fixed price, in the two letters that are referred to?

A. That is correct.

163 Q. Is that similar to what

we are seeing in the exhibit we just looked at, the September 14, 2021 side letter?

A. Yes. I believe that is the case.

164 Q. So these are, you know, three examples of price protection arrangements. Correct?

A. That is correct.

165 Q. Would you call these hedging arrangements?

A. I would call them fixed price contracts.

166 Q. Okay. Are they designed to mitigate market risk to Tacora?

A. They are designed to fix the price relative to certain tonnages. That is what I would say.

167 Q. And who is asking for this? Is this a Tacora-driven ask or is it Cargill pressing for it? Or how does that come about?

A. Yeah, good question. So typically, arrangements like this are the result of Tacora's management team and the board looking to fix price.

168 Q. Why would they want to do that?

A. Well, it says here that we would want to protect against price fluctuations.

169 Q. Okay. And why would Cargill agree to a request like that?

A. As part of their agreement, their Offtake Agreement, they are willing to fix prices if we choose to do that. When I say "we", the company chooses to do that.

170 Q. Cargill has an interest in securing the supply from the Scully Mine. Correct?

A. Yes, that is correct.

171 Q. So in one sense, Tacora and Cargill have overlapping interests in the sense that Tacora wants to keep the Scully Mine going and Cargill similarly wants to keep the Scully Mine going. Is that fair?

A. Yes, that is correct.

172 Q. I wanted to refer you to the Wabush lease and particularly, clause A13 of the lease.

MR. SEVIOUR: Can you pull

that up, please, Josh.

173 Q. Can you see that, Mr. Broking?

MR. KOLERS: Yeah, we have it in front of him. It is A13. It is in exhibit -- I think it is exhibit A to Mr. Broking's affidavit on this motion.

MR. SEVIOUR: Okay.

174 Q. So this is a provision of the lease which deals with trading activities. And it states, Mr. Broking:

"The lessee will have the right to engage in forward sales futures trading or commodity options trading and other price hedging, price protection derivatives, synthetic and speculative arrangements, the trading activities which may involve the possible physical delivery of iron ore products. Earned royalty will not apply to and the lessor will not be entitled to participate in the profits or losses generated by the lessee or its affiliates in such trading activities. If the lessor or its affiliates engage in trading activities, the earned royalties on the iron ore products underlying such trading activities will be determined on the basis of the value of such iron ore products without regard to the price or proceeds actually received by the lessee or any of its affiliates for or in connection with the sale, or the manner in which a sale to the third party is made by the lessee or any of its affiliates. The aforementioned value will be determined in accordance with paragraph (ii) of the definition of net revenues herein."

...which is the non-arm's length net revenues branch of the net revenues definition.

And my question to you, if the letter agreements, these side letter agreements, were price protection agreements between Tacora and Cargill International designed to assist Tacora in avoiding price fluctuations, would these be price protection arrangements within clause 13 which would suggest that it would be a non-arm's length net revenues definition should apply?

A. Yeah. So in terms of, you know, this definition and the formula, the first part of this paragraph says that we basically in summary will not include hedging activities or price participation measures in the calculation of earned royalties.

And at all times we did not

include any of those mechanisms in terms of the calculation of earned royalties. We had consistently used the definition (i), for calculating earned royalties under the lease agreement. And, like I said, we had not included the impact of any hedging or fixed price or any other types of arrangements. So that was the process that we used.

175 Q. When you are referring to (i) in that answer, you are talking about the first branch of the net revenues definition. That is J(i), is that right?

A. Yes, that is correct.

176 Q. Just let me understand this. If you are into a carriage of iron ore, a shipment of iron ore over a period of time during which iron ore is being shipped and, as between Tacora and Cargill there is a fixed price, and that price in fact is not realized -- either there is a higher or a lower price -- how does that factor into the first branch of the net revenues definition? How does that work?

If there is a lower price, for example, then Tacora has been guaranteed by Cargill. How does that translate in an offtake agreement, payment and calculation of net revenues?

A. In those instances, it is my understanding from the team that we don't include the impact of these types of arrangements in the calculation of earned royalties under the lease.

177 Q. But did Tacora ever consider that if it is into price protection arrangements and hedging of product, that they should be using the J(ii) definition?

A. So we didn't consider that for a couple of reasons. First of all, I will use the term Scully royalty or 112. 112 conducted an audit of Tacora's books and records in 2021, where we disclosed all of our calculations in great detail -- went through a full audit process.

And the results of that audit were basically there were no questions, and they were in agreement based on that audit, that our calculation was accurate, No. 1.

No. 2, the definition of net royalties under (ii) lacks definition of methodology and detail. So there was not a way or an agreement between 112 and Tacora Resources on exactly what that calculation would look like. So it was -- we felt it was not applicable.

178 Q. Did you give any consideration to the notion that because there was an engagement of the J(ii) definition in article 13, the tenor of the agreement was to recognize that the price protection and hedging arrangement was, you know, just by its nature was going to be a non-arm's length transaction which should be treated under the second branch of the net revenues definition?

A. Well, I wouldn't agree that it wasn't an arm's length transaction. Only one element of the pricing formula was fixed, which is the P62 price. The balance of the formula was subject to ultimately negotiations between the offtaker and the ultimate purchaser and consumer of our product. And all of those transactions were done at arm's length with independent third parties.

So I wouldn't agree that it was not an arm's length transaction. And therefore, again, J(ii) is not applicable.

179 Q. But isn't the key

transaction as between the seller and the buyer, being Tacora and Cargill International, that is a sale transaction that is central to the Offtake Agreement. And under that agreement, Cargill International takes title to the iron ore concentrate at the stockpile at the port?

A. That is correct, Cargill does take title. But they really act as an RA sales and marketing agent for the ultimate end user. And, as I stated, every sale that we have done to Cargill and then, in addition, Cargill to the ultimate consumer of the iron ore, that product was ultimately sold to an independent third party. And those sales were conducted at arm's length.

180 Q. Okay.

A. And that is important to Tacora, because it impacts the ultimate realized selling price for our product. When I say "it", I should be careful with pronouns: That ultimate negotiation that happens between Cargill and the independent third-party consumer and buyer of the Scully Mine iron ore determines ultimately a piece of our final selling price.

181 Q. We can move on from that

article, and I think I understand your position.

I want to talk about the advance payments facility that was done in and through early 2023. This was another advanced payment arrangement, this time involving Cargill International?

A. That is correct.

182 Q. And I did want to refer you to Stikeman's letter that was produced. It is document 526 that Josh will flash up on the screen.

MR. KOLERS: Document 526 you said?

MR. SEVIOUR: Document 526 from last week's production.

MR. KOLERS: Thank you.

MR. SEVIOUR:

183 Q. It is an e-mail letter dated December 9, 2022, from Philip Yang to a number of parties, including Joe Broking as a copied person. Its subject line is:

"Consent to additional financing pursuant to the term sheet between Tacora and Cargill International

Trading Pte. Limited."

Do you see Mr. Yang's transmittal e-mail, Mr. Broking, and are you comfortable that this was directed to you?

A. Yes.

184 Q. And the letter itself, if we could pull that up...

MR. SEVIOUR: Is it part of the same document?

MR. MERRIGAN: I think it might be the next document, sequentially.

MR. SEVIOUR: Yes.

185 Q. There is then the attached December 19, 2022 letter, under Stikeman Elliott letterhead, that was in fact signed by Stikeman Elliott. And it had the same reference line that I just mentioned.

Do you recall this letter, Mr. Broking?

A. Yes, I do.

MR. SEVIOUR: If I can mark that as Exhibit 7.

EXHIBIT NO. 7:
December 19, 2022 letter,
under Stikeman Elliott

letterhead.

MR. SEVIOUR: If you turn to page 2, if you could scroll down in the document, Josh? Yes, right there is fine.

186 Q. We see that Mr. Yang is writing to stakeholders of Tacora, and he has headed his discussion:

"Tacora is in financial distress."

And from your point of view, is that a fair description of where Tacora was at that time?

A. Yes, it is.

187 Q. And Mr. Yang described a significant liquidity crisis at the time. Is that a fair description?

A. Yes.

188 Q. And Mr. Yang, if you scroll down the page, indicates in the second-last paragraph there that:

"In order to avoid payment default on the senior secured notes, Tacora sought financial assistance from the shareholders."

Do you see that reference?

A. Yes, I do.

189 Q. And he goes on to say:

"Tacora was able to secure $5 million from Cargill in the form of a convertible preferred equity financing, which funds were used to make the payment under the senior secured notes and fund operations."

So it appears that only Cargill of the shareholders came forward with the capital that was being sought or the financing that was being sought. Is that correct?

A. In September? Are you referring to the preferred equity?

190 Q. Yes.

A. Yes, that is correct.

191 Q. The advanced payments facility arrangement, this was to provide some additional financing to fund operations to get through the liquidity challenges. Was that the

intent?

A. Yes, that is correct.

192 Q. And the total initial advances were $30 million. Correct?

A. That is correct.

193 Q. And of that amount, $15 million was in fact paid to Cargill International to guarantee a floor price of [redacted]?

A. That is correct.

194 Q. Are you able to confirm that the price did not in fact go below [redacted], so that the guarantee was not triggered?

A. Off the top of my head, no, I don't recall.

195 Q. Do you recall that the guarantee was triggered? Or you don't recall that, either?

A. I don't recall what the price of iron ore was at the time, and whether or not the guarantee was triggered.

196 Q. This facility, because it was amended, it ultimately provided for Cargill International the right to penny warrants entitling it to acquire up to 35 per cent of Tacora?

A. That is correct.

197 Q. We had looked at the January 31, 2023 life of mine letter, which was document 641, I think. We looked at that a bit earlier in this discussion this afternoon. And my question was -- and I think it is Exhibit 6, in fact, in this cross-examination.

Was that done as a condition of the advanced payment facility arrangements?

A. Can you repeat the question in its entirety?

198 Q. Sure. And I am sorry if that was disjointed, because I think it was.

But do you recall that we looked earlier at Exhibit 6 to this deposition this afternoon, which was a January 31, 2023 letter agreement between Cargill International and Tacora, which conclusively set the life of mine as the term for the Offtake Agreement? And that is document 641 that Josh has on the screen.

MR. KOLERS: That was the provision --

THE WITNESS: Yes.

MR. KOLERS: ...that locked in the option.

THE WITNESS: Yes, I recall that.

MR. SEVIOUR:

199 Q. And that was done in January 31 of 2023, which is contemporaneous with the advanced payments facility time frame. And I am asking if that letter agreement locking in the life of mine term conclusively, was that done as a condition of that financing for the advanced payments facility?

A. Yes, I believe it was. But again, this was -- Cargill already had a life-of-mine provision within the agreement in term. So this was more of a clean-up item than it was changing the actual term, because the life of mine provision already existed.

200 Q. Okay. Did the advanced payment facility arrangement put Cargill International and Tacora at non-arm's length? Did this closeness in a time of crisis put them effectively close, legally together, and to the point that they were not at arm's length?

A. No. I mean, the advanced payment facility again was approved by the board of directors. And the board of directors was not controlled by Cargill. There were -- again the board at this time was still quite large. So I wouldn't say that this did what you are suggesting.

201 Q. There was also a Wetcon Agreement in July of 2023?

A. That is correct.

202 Q. This is an arrangement whereby Cargill International prepaid for wet concentrate at the mine site, itself?

A. Yes, that is correct.

203 Q. And that was done to assist Tacora's liquidity problems. Is that correct?

A. Yes, that is correct.

204 Q. So it is another advanced payment arrangement?

A. It was an agreement to purchase intermediate product or wet concentrate that was stockpiled at the mine. So yes, it was a mechanism of paying Tacora for product, intermediate product, at the mine site.

205 Q. Okay. Just changing gears slightly: In your February 2, 2024 affidavit, you talked about the benefits of the

proposed Javelin offtake agreement. Do you know what I am referring to?

MR. KOLERS: I am sure he knows what you referring to, but do you have a paragraph reference?

MR. SEVIOUR: Yeah. It is paragraph 69 that is of interest to me. So if you can have look at that?

THE WITNESS: Thank you. I will. Okay. I have refamiliarized myself with 69(a), (b), and (c).

MR. SEVIOUR:

206 Q. And you say in that paragraph:

"The Javelin agreements provide for a lower total cost for the marketing and sale of iron ore relative to the current Offtake Agreements. Tacora expects that this lower cost will translate into higher long-term profitability for the company."

And do you remain of that view?

A. Yes, I do remain of that view at this time.

207 Q. Okay. The paragraph talks about current Offtake Agreements, in plural. And I am a bit confused by that. Is that something more than the Offtake Agreement? Does that include the Stockpile Agreement? Can you explain? Or is that a typo, do you know?

A. I would say that that is a typo.

MR. KOLERS: It is probably defined term in the affidavit. If you give me a minute, I can look back.

THE WITNESS: Unless it includes --

MR. SEVIOUR:

208 Q. Mr. Broking, are you aware of the Monitor's recent supplement to the fourth report dated March 26 of 2024 in this proceeding?

A. Yes, I am.

209 Q. And I am referring to paragraph 29 of the Monitor's supplement, where

the Monitor refers to the Cargill Offtake Agreement and states as following. And I am quoting from -- according from the latter part of paragraph 29, which Josh has helpfully put up on the screen:

> "The Monitor understands that Tacora is of the view that the Cargill Offtake Agreement is off-market, significantly inhibits Tacora's ability to raise capital to fund the necessary ramp-up and that Tacora cannot be restructured with the current Cargill Offtake Agreement in place. The Monitor agrees with this conclusion."

Are you able to confirm Tacora's view as it has been stated by the Monitor?

A. I can confirm the view, but I would qualify it by saying this: When we entered into arm's length negotiations with

Cargill in 2017 and 2018, the term of that Offtake Agreement originally was six years. Then it was extended to basically 15 years, the equivalent of what the term sheet is for the existing Javelin offtake agreement.

And also, you know, Tacora at the time was a start-up with a product, a product that was not well received in the U.S. and Canadian pellet market, when Cliff's was operating this mine. So there was a significant amount of technical marketing and investment that needed to be made by Cargill in order to establish the Scully Mine or the Tacora Scully product, what we refer to as Tacora premium concentrate, in the market.

So initially, there did need to be significant investment to establish the product in the market. And we felt like that, to a contract, was a market contract.

As the financial situation evolved with Tacora, which we have been talking about throughout this examination, there were provisions that changed that were amended within that Offtake Agreement that now contribute to where we are today in that Offtake Agreement, being an off-market agreement. So I think that context is helpful.

210 Q. In that evolution, what factors have caused it to be off market in your view?

A. Well, the one that jumps out is the life of mine provision. It does, as stated, make it difficult to raise equity capital with a life of mine contract.

And, as we moved through and evolved, you know, it was our intention to be able -- initially, it was our intention to be able to renegotiate this contract once it got close to expiring. And, at that time, we may have considered changes to the economics as well.

211 Q. Sorry, I wasn't clear on what you said. It was your intent to renegotiate, when?

A. Originally, when we entered into this agreement, it would have been management's intention to renegotiate the terms of this contract at the time that -- or just before it was expiring. But obviously, as the agreement evolved into a life of mine agreement, you know, it made the prospect of that difficult, which is one of the reasons that we have ended up in CCAA.

212 Q. Thank you. Briefly talk about exhibit -- this is your original affidavit, October 9, 2023. And it is tab B, a summary of current and fully diluted ownership.

Do you have that?

MR. KOLERS: Which paragraph is that, sorry?

MR. SEVIOUR: It is tab B to the October 9, 2023 affidavit of Joe Broking.

THE WITNESS: Okay. I have it in front of me.

MR. SEVIOUR:

213 Q. This is the summary of current and fully diluted ownership for Tacora Resources Inc.?

A. That is correct.

214 Q. You are familiar with that document?

A. Yes, I am.

MR. SEVIOUR: I ask that that be marked and entered as, I think it is No. 8, is it Josh?

MR. MERRIGAN: Yes.

EXHIBIT NO. 8:

Document entitled, "Summary of current and fully diluted ownership for Tacora Resources Inc."

MR. SEVIOUR:

215 Q. And I don't want to spend much time on this, but this, is this still accurate? This is filed at the point of the CCAA application. Is this still accurate today, Mr. Broking?

A. Yes, it is.

216 Q. So it shows that there are Cargill warrants, either Cargill International warrants entitling acquisition of up to 35 per cent of the company in a fully diluted basis. Is that a correct --

A. Yeah, that is correct. If they were to exercise the warrants, that is correct.

217 Q. And again, the Cargill preferred C shares, if exercised, would confer Cargill Inc. with a 1.5 per cent interest on a fully diluted basis. Is that correct?

A. That is correct. If they

are triggered, that is correct.

218 Q. So, on a fully diluted basis, the Cargill interest would be collectively 36.5 per cent interest, if exercised?

A. Yeah, that is correct.

219 Q. Okay.

MR. SEVIOUR: Have we marked that? We did. Okay.

220 Q. Mr. Broking, since late 2015 when Cargill put in its $20 million and acquired its indirect equity interest in Tacora, is it fair to say Tacora has been looking for financial support from the Cargill entities in terms of capital investment? Is that correct?

A. Well, I would say it this way: Cargill -- or excuse me, Tacora Resources Incorporated has embarked on several capital fundraising initiatives throughout the course of its existence, really starting in May of 2018 with the IPO.

Those fundraising activities continued throughout, like I said, the existence of Tacora up until where we are today. We would have solicited capital from a suite of investors both equity and debt investors depending on which capital fundraising effort we are talking about.

And to the extent we were able to raise capital from third parties such as, for example, the bond offering that was completed, we did that. But to the extent we were not able to raise third-party capital, then we went to the existing stakeholders of the business for that capital, which one of those existing stakeholders is Cargill.

But again, keep in mind we were talking about Proterra and the entities that have an ownership interest in the co-op or the B.V., as well as the other equity holders of the business.

221 Q. But of all those other potential investment sources, only Cargill International has been able to facilitate the Stockpile Agreement, the Wetcon Agreement, and the advanced payments facility agreement. Is that fair?

A. It is true that Cargill put in place those agreements, but there have been other agreements. For example, you know, the Ad Hoc Group also funded some capital in 2023. And depending on what time period you are talking about, I mean, Proterra would have contributed significant equity capital to this business throughout its operations.

So it is not fair to say Cargill is the only one that contributed, to contribute. There have been other stakeholders, both new and -- the stakeholders that existed upon inception that have contributed capital to the business in forms, in certain forms.

222 Q. So I want to talk about a couple of things about governance points. And I think we have already talked about Phil Mulvihill. And I understand from your affidavit that he was succeeded on the Tacora board by Leon Davies, who is also a Cargill Inc. management employee?

A. Sorry, sorry, not Cargill Inc.

223 Q. What Cargill was he?

A. He would have been Cargill Metals.

224 Q. Cargill Metals. And Cargill Metals is a subsidiary of Cargill Inc.?

A. That is correct.

225 Q. And he served for a period of time, I think. And was he succeeded by

anybody else? Did anybody go on the board for Cargill, after Mr. Davies?

A. No. Cargill agreed to have their appointee be an independent member of the board of directors.

226 Q. And who was that?

A. Mr. Randy Benson.

227 Q. And who is Mr. Benson's employer?

A. I believe Mr. Benson is self-employed as a -- in the business of restructuring. So he serves on boards. He gets appointed as chief restructuring officer in certain distress situations, and he is fully independent to all of the stakeholders that are currently on the screen, and really all stakeholders of Tacora.

228 Q. I am going to pull up document 637. This sort of record is a register of directors, section 126, for Tacora Resources Inc. It doesn't say its current date.

Do you see that, Mr. Broking?

A. Yes, I do. Yes.

229 Q. I have a couple simple question I think, on this. This doesn't show

Mr. Davies, but it does show a number of the other Tacora directors. My interest is in any persons other than Phil Mulvihill on this board who were Cargill employees or designates.

Is there anybody else that came from Cargill that was a Tacora director that is shown on this register?

A. No.

230 Q. And I think I understood from your affidavit that Proterra Holding had the principal entitlement to shareholder -- to director appointments. And I am wondering how many of these names that we see on the left-hand side were Proterra nominees.

Can you tell me that?

A. Yes, I can. Torben Thordsen would have been a Proterra nominee; Sam Byrd would have been a Proterra nominee; Dave Durrett would have been a Proterra nominee; James Warren would have been a Proterra nominee; Nick Carter would have been a Proterra nominee; Phil Mulvihill would have been a Proterra nominee.

Again, when I say "Proterra", to be clear, Proterra the Co-op or B.V. So these board members were Proterra B.V. nominees, but many of them -- well, the only one that was a Cargill employee or an affiliate of Cargill was Phil Mulvihill. The rest of them would have been independent to Cargill. Yeah, that is right. That is right.

231 Q. What about the names below Mulvihill?

A. Thierry Martel was independent. He was on the board at one point, when he was the CEO. Mike Barton was an Orion appointee, Orion Mine Finance; Peter Steiness Larsen was an appointee of Sydvaranger. Joe Broking, that is me, independent.

Andrew Ham was an appointee of Orion, and Jacques Perron was an independent appointee of the board, and the board chairman for a period of time.

MR. SEVIOUR: We will mark that as an exhibit. What number are we at Josh?

MR. MERRIGAN: Nine.

MR. SEVIOUR: Okay, nine.

EXHIBIT NO. 9: Register of directors of Tacora Resources Inc. (Tacora 637).

MR. SEVIOUR:

232 Q. What about a man by the name of Ned Dau. Did you know him?

A. Can you repeat the name?

233 Q. Ned Dau?

A. No.

234 Q. What about a man by the name of David Dines, D-I-N-E-S?

A. I did know David Dines. I got to know him as part of being with Tacora.

235 Q. He was Cargill's -- Cargill Inc.'s CFO. Is that correct?

A. Yeah. He actually had a couple of different titles between 2018 and when he retired. But I think he retired; I believe he retired as the CFO of Cargill.

236 Q. Do you have any recollection of him moving from Cargill Inc. to Proterra Investment Partners?

A. No. I am not aware of that.

237 Q. We can pull up the October 9 affidavit now. I am going to refer you to your original affidavit in this proceeding dated October 9. And my interest is in paragraph

156, where you talk about the terms of the DIP agreement.

A. Okay.

MR. SEVIOUR: And Josh is going to find me the right section: So 136, and right at the last piece of this paragraph. Can I scroll out a bit? Can you go up?

238 Q. This just is in the "other provision" section of this part of your affidavit, which is correct? You had it correctly on your -- that is fine.

So the second paragraph in that section, are you are able to see that, Mr. Broking?

MR. KOLERS: We have the affidavit in front of him, but...

THE WITNESS: What line? What page was that on?

MR. KOLERS: Or what paragraph?

MR. SEVIOUR: Page 40.

MR. KOLERS: Sorry, I couldn't hear that.

MR. SEVIOUR: Page 40.

MR. KOLERS: Okay. We have it

now.

MR. SEVIOUR: Okay.

239 Q. So it is in the section, "Other provisions." And my interest is in the second paragraph in that section?

A. Okay.

MR. KOLERS: This is relating to the DIP?

MR. SEVIOUR: This is describing the DIP financing features.

MR. KOLERS: Yes.

MR. SEVIOUR:

240 Q. The description says that:

"Unless an event of default then exists, Cargill shall cause Cargill to continue to provide Tacora with the services of a full-time operational consultant and two part time capital project consultants in a manner consistent with past practice, to assist

with Tacora's business
and operations."

So my interest was in the reference to the fact that it was going to be consistent with past practice by Cargill, and wondered what was Cargill's past practice of assisting Tacora's business and operations that you had in mind in that part of your affidavit?

A. So, commencing in early 2023 due to employee turnover, which really was a function of being distressed -- when I say employee turnover, I would say a management-level turnover within the Scully Mine -- Cargill really provided one person on a part-time basis to help with Scully Mine operations in conjunction with an operational consultant called Partners in Performance to -- again, to assist with operations and operational improvement efforts at the Scully Mine. This started approximately the first quarter of 2023.

And then in addition to that, the company was doing work on a capital investment program which would allow the company or Tacora Resources to ultimately ramp the Scully Mine up to six million tonnes per year.

So Cargill provided up to two consultants who assisted the company, Tacora, and PIP, in the capital assessment or the capital needs of the business. And that also started in approximately the first quarter of 2023.

241 Q. Matt Lehtinen said in one of his filings that Cargill had provided Andrew Kirby as plant general manager for Tacora for approximately one year.

Can you confirm or otherwise explain?

A. Yeah. No, that is consistent with what I just said. Andrew Kirby was the Cargill employee who assisted with interim general manager duties. Like I said, that started in approximately the first quarter of 2023, from memory. So that is correct.

242 Q. He also referred to Cargill's employee, Timothy Sylow, as being someone who worked with Mr. Kirby on turnaround and capital projects planning.

A. That is correct. Consistent with what I have said, Tim was the one Cargill representative who really focused on capital investment and capital projects-related improvements at the Scully Mine.

243 Q. Okay. Anything prior to 2023? Did Cargill people have -- did Cargill have operational roles in the mine management, before that?

A. No.

244 Q. You work with Matt Lehtinen. Correct?

A. I did work with Matt Lehtinen.

245 Q. He is now -- he has formerly had your position as Tacora CEO. That is correct, is it? Do I have that right?

A. That is not correct. His father, Larry Lehtinen, was the executive chairman and CEO. Matt was the chief operating officer and chief marketing officer at different times, for Tacora.

246 Q. And now he is with Cargill Inc. Correct?

A. He is with, I believe, Cargill Metals.

247 Q. Okay. He has been involved in the Scully Mine project from the beginning, like yourself. Is that fair?

A. He was involved in the Scully Mine project from early 2017 through January of 2020. That really constitutes his involvement in the Scully Mine and Tacora Resources.

248 Q. I am going to turn up Mr. Morrow's affidavit, which has a quote from Mr. Lehtinen. This would be Sam's affidavit, paragraph 31.

MR. KOLERS: At 31?

THE WITNESS: Okay. We have it.

MR. SEVIOUR: Okay. There we go. It is actually -- yeah, 31.

249 Q. So Mr. Morrow is placing some reliance on Matt Lehtinen's filing in the March 1, 2024, affidavit that he filed in Cargill's responding motion record. I just wanted to take you through a couple of statements made by Mr. Lehtinen, to see if you agreed or disagreed with them.

The quoted statement starts by saying:

"Cargill has been a key partner and important source of financial support for Tacora since its inception."

Do you agree with that, Mr. Broking?

A. Yes, I would agree with that, along with the other key partners and source of financial support that have been with the company since its inception in 2017.

For example, the bond holders with $225 million in senior secured debt; Proterra, Proterra Investment Partners with material equity investments, what it is -- so I agree that Cargill has been and along with others, key partners and an important source of financial support.

250 Q. He goes on to say:

"Cargill is Tacora's offtake and technical market provider under the Offtake Agreement that was negotiated in April of 2017."

Is that fair?

A. Yes.

251 Q. He goes on to say:

"Cargill is or has also been party to other key related agreements and arrangements with Tacora including..."

And just deal with the first category:

"...multiple working capital facilities to optimize Tacora's operations, working capital, cash flow, and liquidity, including under the APF, the Stockpile Agreement and the Wetcon Agreement."

Is that fair?

A. Yes, that is fair.

252 Q. He goes on to say also, that:

"Cargill has provided support as provider of a hedging program in a cost-efficient and beneficial manner for Tacora..."

Do you agree with that?

A. As we discussed, the context here would be the fixed-price side letters. Yes.

253 Q. Finally:

"...Cargill, as provider of operational expertise and assistance, at the Scully Mine."

MR. KOLERS: I think that was the subject of your previous discussion.

THE WITNESS: Yes. I --

MR. SEVIOUR: I believe these are --

MR. KOLERS: It is no more than what was discussed before.

MR. SEVIOUR:

254 Q. Nothing more to be said about that, Mr. Broking?

A. No, other than what we have already talked about.

255 Q. Okay. So as a general question and, you know, we have gone through the

dynamics of financing and equity and that whole fusion, the price protection arrangements.

Was there any point in time in the relationship between Tacora and the Cargill entities, Mr. Broking, that you felt that Tacora had become non-arm's length to either or both of the Cargill entities that we have talked about today?

A. No, I do not feel that way, for some of the reasons that I already discussed. I mean, as it relates to the Offtake Agreement and sales to third parties, I mean, ultimately every single sales transaction for a vessel that Tacora sold was an arm's length negotiation between Cargill and an independent third party. So no.

256 Q. But just to be clear, those third parties, the ultimate end customer, they are not parties to the Offtake Agreement. It is only Tacora and Cargill International that are parties to the Offtake Agreement?

A. It is true that only Tacora and Cargill are parties to the Offtake Agreement, which again provides marketing services and technical marketing capabilities based on the paragraph that we have just discussed.

But a critical element of each sales transaction is the final selling price, which is a function of independent third party, arm's length negotiations between Cargill and that independent third party.

257 Q. And I understand that that has got a price implication. So I do accept that. I wanted to talk to you about your criticisms of David Persampieri's report.

Just to change gears --

MR. KOLERS: Are we moving to Mr. Broking's second affidavit on this motion?

MR. SEVIOUR:

258 Q. So I will be referring to your affidavit which is dated March 28.

A. Okay.

259 Q. I just wondered, Mr. Broking, is the Wabush lease, the core lease agreement in this case, is this your first iron ore royalty agreement? Had you had any prior exposure to iron ore royalties?

A. Yes, I had. In my duties as executive vice president, chief financial and member of the board of directors of Magnetation

LLC, which was an iron ore mining company, we had multiple mineral leasing agreements with entities such as the state of Minnesota, the Great Northern Iron Ore Properties and others, just to name a few.

260 Q. And Magnetation's business as I understood it was a tailings-directed processing arrangement? Or did it include actual iron ore mining operations?

A. The mineral lease agreements which you are referring to, we had mineral lease agreements to mine tailings. We also had a mineral lease agreement to mine in situ iron ore on the western Mesabi Iron Range. And there was really no difference, by the way, between the tailings lease agreement and the in situ iron ore agreement in Minnesota, in this case.

261 Q. In paragraphs 6 to 8 of your affidavit, you talk about the timing that Mr. Persampieri uses to calculate his rendered payment. You question Mr. Persampieri's use of the quarter of shipment as the proper timing for the calculation of the price of iron ore concentrate. Do I have that right?

A. Are you referring to 6(a)?

262 Q. Yes?

A. Yes, that is correct.

263 Q. And I understand, or maybe I don't understand but tell me if I am right, I interpret this to mean that you are saying that the quarterly -- that this quarterly price that he uses could differ from the price upon which, you know, Cargill International in our structure could sell to an ultimate third party buyer in a later quarter. Is that the point?

A. Yeah, that is the point. There could be a timing difference and, in most case, would be a timing difference between the price of various iron ore price indices in the quarter of vessel shipment compared to when that vessel shipment ultimately is delivered and final-settles, which would be consistent, by the way, not just with Tacora's agreement, but with other agreements.

264 Q. But for the purposes of the net revenues definition in the lease, both for arm's length and non-arm's length transactions, do you agree that the relevant sale that we are

talking about is the sale from Tacora to Cargill International?

A. No. Well, it depends how you define that. I mean, there are multiple points of sale, but the ultimate sale is determined at the point that the final sales price or the final settlement price is known, which could be months after the vessel ships.

265 Q. But you will agree with me that Cargill International is the buyer and Tacora is the seller under the Offtake Agreement?

A. Yeah. Yeah, that is right. Cargill International is the buyer, Tacora is the seller. That is correct. Although again, I have to point out that, with all due respect, that is a simplistic view because a piece of the sales price isn't known until ultimately that product is final-settled with the end customer.

So I think that has to be considered, certainly in the sale of that product and ultimately the determination of the final price.

266 Q. But it is true also that Cargill International actually buys from Tacora under the Stockpile Agreement. Correct?

A. That is correct.

267 Q. A provisional price is paid by Cargill International. Correct?

A. That is correct.

268 Q. And title and delivery of the product is taken by Cargill International, at that point?

A. Yeah, that is correct. Title does transfer at various -- actually title transfers when the product is delivered to the port, that is correct, to Cargill.

269 Q. So what I understand you to say, that Mr. Persampieri in his calculation of net revenues in the quarter of shipment is simply avoiding subsequent iron ore market pricing fluctuations because these could change in the subsequent quarter or quarters?

A. Well, in the context of the timing issue, yes. Obviously the price can go up or down in future periods.

270 Q. So that might have a net positive or a net negative benefit to Tacora in our structure, depending on whether the price of iron ore goes up or down?

A. Yeah, that is correct.

And I can cite examples of that, if you would like me to.

271 Q. No, that is fine, thank you. I understand the principle, I think.

But would you agree that the non-arm's length net revenues definition, that is clause J(ii) in the lease, it is not tied to delivery of iron ore products to anyone?

A. I would agree that that definition is not defined really at all to be able to make a -- it is difficult to make a calculation based on that definition.

272 Q. But there is nothing about delivery of iron ore products in that definition, is there?

MR. KOLERS: Wait a second, hang on. Doesn't it refer to net selling price?

MR. SEVIOUR: J(ii), J(ii), it is --

THE WITNESS: If it is okay, I would just like to read this. What it says is iron ore product -- at the top of page 4, I will jump in there:

"Metric tonne by reference to a standard industry publication or service containing prices or quotations of the price at which iron ore products of equivalent types and qualities are being sold or purchased at a specific point of delivery (an industry service)."

So, for example, the P62, Platts 62 per cent FE index, that is a price that is published FOB Qingdao, China. And in the context of Tacora, it is a delivered price. And in the context of any iron ore miner, it is a delivered price.

273 Q. Let me refer you to the same page, the last words in the definition, which say "calculated at FOB, the port." Do you see those?

A. Yeah. I see that, yes.

274 Q. And that means calculated free on board, the port, which is the relevant shipping port in the St. Lawrence Seaway as defined in J(i)?

A. Yes, that is correct.

275 Q. Doesn't that suggest that any calculation would be done at the port or at the time of shipment?

REF MR. KOLERS: You can make the legal argument. I don't think that is an appropriate question for Mr. Broking.

MR. SEVIOUR: Fair enough.

276 Q. Mr. Persampieri says in his report, and I can turn it up for you, it is paragraph 27(1).

A. Okay, we are there.

277 Q. And he says about quotation periods, and in this index average in his analysis, he says -- and it is better to go back to the beginning of paragraph 27, where he starts:

"With the demise of the annual benchmark pricing system in 2010, most LTC's..."

...which is long-term contracts...

"...adopted an index-linked pricing

mechanism to determine prices, especially for long-term contracts with durations of more than 1-2 years. Most of these mechanisms are based on the same basic formula for FOB contracts."

He cites it as FOB base price equals index average plus iron content adjustments minus freight. Then, in (1), he says:

"Index average is defined as the average of a specified index for a specified quotation period. While there are a variety of quotation periods used, my experience is that the use of the current-quarter quotation period is most common for sales under long-term contracts."

And so he is saying that what

he sees as conventional in these long-term contracts, where indexes are in use, is that quotation periods typically engage the current quarter as the appropriate quarter for calculation.

Do you have any reaction to that?

A. Yeah. I mean, my reaction is I think that in general from a high-level perspective, what the expert is summarizing in 27 is what I would call directionally correct.

With that being said, he does use the term "most of these mechanisms", not all, and I have seen multiple contracts where, including our existing Offtake Agreement with Cargill and the proposed new contract with Javelin, that are different than this. And the period by the way is not always in my experience a quarter. It can be a month. It can be whatever is defined based on that particular sale.

In a lot of instances, it can be dependent on what the ultimate end customer dictates. So it just depends. I think, like I said, from a high-level perspective, I think this is directionally correct, but there is always -- the devil is always in the details.

MR. KOLERS: And I am just going to add that he seems to be giving an opinion as to what -- either what the term means or how it should be interpreted. But it is not language that is in the provision itself.

I am noticing the time. I am wondering if we can maybe take another break and do a time check?

MR. SEVIOUR: Sure.

MR. KOLERS: Go off the record for a second?

--- Recess taken at 3:54 p.m.

--- Upon resuming at 4:02 p.m.

MR. SEVIOUR:

278 Q. Incidentally, Mr. Broking, I did want to ask you if you knew of David Persampieri before becoming involved in this?

A. No, I did not.

279 Q. Thank you. In your affidavit that we have been referring to, the critique of Persampieri, it is March 28. At paragraphs 14 through 16, you suggest that there

should be a deduction for court-related costs under the non-arm's length revenues branch of the definition. Do I have that right?

A. Yeah, that is correct. As agreed to by the parties when we renegotiated the lease, we agreed to deductible expenses.

280 Q. Okay. And they are fairly carefully defined in great detail in the definitions section?

A. That is correct.

281 Q. This lease is a product of the settlement agreement I think, that you said in your affidavit, between Tacora and the MFC interests at the time?

A. That is correct.

282 Q. So I didn't want to explore this as a matter of agreement, but let's be systematic about it: In clause J(i), which is the section that deals with the sales and bona fide arm's length contracts, there is provision for the deduction of deductible expenses. This is correct?

A. That is correct.

283 Q. And in J(ii), there is no provision for the deduction of deductible

expenses. Is that correct?

A. That is correct. Although, I would repeat what I said earlier, that it lacks -- J(ii) lacks definition. And the parties never intended to use that definition.

284 Q. But in terms of the definition such as it is and such as it appears in the Wabush lease, it does not provide for the deduction of deductible expenses as defined in the lease. Correct?

REF MR. KOLERS: The provision says what it says. I think you can read it as well as the witness, and he is not here to give a legal opinion. You have his evidence on the point.

MR. SEVIOUR:

285 Q. Is it possible that the exclusion of deductibility of deductible expenses under J(ii) was an inducement for Tacora to sell only under bona fide arm's length Offtake Agreements?

In other words, that if you sold under a bona fide Offtake Agreement, you would get deductible expenses deducted, but if you were into non-arm's length agreements, you wouldn't get them deducted?

MR. KOLERS: Have you heard anything like that?

THE WITNESS: Listen, what I would say is I don't recall that ever being a discussion between the parties. But, you know, the Cargill agreement is a bona fide arm's length agreement. And it was the intention of the parties, which was discussed, to sell under J(i).

MR. SEVIOUR: That is fine. Your counsel has said I shouldn't ask you anything further about J(ii) in terms of what it says because we can read it, and I am content to leave it on that basis. So we will move on.

286 Q. Respecting your paragraphs 17 to 21 in your affidavit, you have the general heading, "Mr. Persampieri overvalues Tacora's iron ore concentrate." And, as I understand it, you propose a $1.00 per dry metric tonne adjustment, the deduction from the Platts 65 index price in your calculation. Is that fair?

A. That is correct.

287 Q. This is to reflect what you believe to be the Tacora iron ore concentrate actual sale price in the market?

A. Yeah, that is correct, subject to certain market dynamics and negotiations amongst the parties. I think it is important to discuss this in a little bit of detail because the particular index that is being used, the P65 index, reflects a very specific product specification and size distribution.

And whether we are talking about Tacora products or any other iron ore product that is being sold on a P65 basis, these chemical characteristics and size distribution factors are ultimately used to determine the final negotiated selling price between a willing buyer and a willing seller.

And the context of Tacora concentrate, you know, we have sold anywhere from [redacted]. In this instance, we feel like we have chosen a [redacted].

288 Q. Thank you. And I think you explained that a bit in your affidavit, which is detailed. I did want to take you to paragraph 19 of the affidavit. Your first sentence is of an interest to me. You say:

"I do not disagree with

using the Platts 65 per
cent index and adjusting
the price upward to
account for the Fe
content."

That is the iron content. Correct?

A. That is correct.

289 Q. That is the approach that Mr. Persampieri took, isn't it?

A. Yes, that is correct. That is quite specifically the general approach that was taken, which I do agree with subject to what I just discussed, that there is an additional negotiation that ensues between a final sales party and an iron ore seller to determine whether there are additional premiums or discounts.

290 Q. Just to be clear on a few things, Tacora's iron ore concentrate always exceeds 65 per cent in iron content. Correct?

A. That is correct.

291 Q. And the Platts 65 per cent iron index is a recognized standard industry publication for high grade iron concentrate?

A. It is, with the specific

chemical characteristics of our Vale's centre-feed product with those specs. It is the Vale product and the product specifications of Vale's product that determine that price.

292 Q. It is also correct that Tacora produces and markets its concentrate as a premium product?

A. Correct.

293 Q. And I did want to make sure I have this right: I am going to take you back to your October 9 affidavit, which was filed at the outset of your CCAA proceedings. Paragraph 21 was very specific about the nature of products.

A. Okay. I am ready.

294 Q. Bear with me a second, while I find the -- okay. I did want to refer you to paragraph 21 of your October 9 affidavit. In the second part of paragraph 21, four lines down, you say:

"The iron ore concentrate produced at the Scully Mine has an average concentrate grade of 65.9 per cent iron and low impurities, which is a highly desirable quality product that commands a premium price in the market relevant to benchmarks due to its unique characteristics."

Do you recall that?

A. Yes, I do.

295 Q. And you stand by that?

A. I do stand by that, subject to, you know, what we have been discussing. We always -- I believe every single shipment that we have sold we have sold it at the Platts 65 price. And in every instance, we get paid for the additional iron content as suggested by the expert.

In some cases depending on our customer, as I said we do sell at a premium to the benchmark and we do get paid for our iron. There are instances though where, depending on certain market conditions -- for example, right now, where China steelmakers are experiencing a period of time where demand is down -- their margins are lower, and they are substituting high-grade iron ore for low-grade iron ore.

In these circumstances that are market driven, we strive to sell at a premium to the market. But in this instance, we are having to sell at a discount, specifically to Asia. I stand by the statement, but it -- subject to the details of each transaction.

296 Q. Hope Wilson is Tacora's chief accounting officer. Correct?

A. That is correct.

297 Q. Are you aware of her e-mail exchange with Sam Morrow of 1128349 in calculating net revenues on the basis of industry service under J(ii)?

A. I am not aware of the details but, yes, I am generally aware of the exchange.

298 Q. Yes. Were you aware that she -- when she did the math on the industry service branch of the net revenues definition, she used Platts 65?

A. Yes.

299 Q. That wouldn't surprise you?

A. No. No. Like I said, every single one of our shipments or our sales to end users have been sold on a P65 basis, adjusted for iron content and then adjusted for either a discount or a premium.

300 Q. And do you recall that Mr. Morrow made you aware of this exchange with Ms. Wilson back in late 2022? He sent you an e-mail?

A. Yes.

301 Q. Yeah. So you are aware that that dialogue was going on about non-arm's pricing back at that point?

A. Well, to be specific, it wasn't about non-arm's length pricing as much as a request that Sam made to smooth out his cash flows. So there was a call that came in from Sam, not disputing the use of the formula for calculating earned royalties, not saying that we were calculating incorrectly, but saying that his board and his investors are having a hard time and don't understand these timing-related swings. So would it be possible to look at smoothing out his cash flows. That is what I remember about the request from Sam.

302 Q. Okay. I wanted to talk briefly about your comment as to Tacora's

concentrate having a high manganese, which you say in paragraph 19(a).

A. Okay.

MR. KOLERS: We are back to the March 28 affidavit?

MR. SEVIOUR: March 28.

303 Q. At paragraph 19(a), you say that there is some market leverage issues because Tacora's concentrate is high in manganese, which is considered an impurity in the steelmaking process. Do you recall that?

A. Yes, I do.

304 Q. I am just going to flip up a piece from your website that Josh will show us here. So can we start with this page. Starting with the page that is "Our Product." Do you recognize this as your website?

A. Yes, I do.

305 Q. Okay.

MR. SEVIOUR: What number are we at?

MR. MERRIGAN: This will be 10.

MR. SEVIOUR: This will be Exhibit No. 10.

EXHIBIT NO. 10: Screenshot of "Our Product" web page from Tacora website.

MR. SEVIOUR:

306 Q. And so "Our Product", if we scroll through to the third page down, to iron ore premium concentrate, do you see that page?

A. Yes, I do.

307 Q. And it says:

"High quality: 65.5% Fe."

And then next, it says:

"Low Impurity: Low silica and manganese content."

Doesn't that indicate you are marketing this as low-manganese product?

A. No. I mean, this is a marketing page on a website, so that when prospective buyers of the product who may know the history of the Scully Mine understand that, what we have done to upgrade the product.

So I understand why you would read this that way, but I think it is important to understand the context of the history of this operation. As you know, I believe you know, this operation was shut down in 2014 by Cliff Natural Resources.

There were several factors that led to that decision by Cliff's, but one of them was the contained manganese within the ore body being too high to sell a marketable pellet. So this product sold from Scully Mine by Cliff's was known as really a non-saleable pellet product because -- partially because of the high manganese content.

The reason we are stating this as a low impurity in terms of manganese is to let the market know that we have installed manganese reduction circuits that allow us to reduce the manganese content within the geology of the iron ore body, down to an acceptable level for blending.

But our product is sold as a blending product, and none of our customers could consume 100 per cent of our concentrate in their burden at a blast furnace ultimately. They would have to blend it off because of the manganese content within the concentrate.

308 Q. And I understand the history, but I do understand that Tacora introduced manganese separation technology when it took over the mine. Is that correct?

A. That is correct.

309 Q. And I wanted to take you next to the May 5, 2021 offering memorandum which is Sam Morrow's exhibit J.

MR. MERRIGAN: Exhibit J.

THE WITNESS: Okay.

MR. SEVIOUR: Exhibit J.

310 Q. So this is the offering memorandum. And I want to go to page 2 of that document, which is the larger page.

A. Okay.

311 Q. Page 2. Okay. Can you just go down -- okay. So I have page 2 of this exhibit pulled up. And in the centre, which is the last bullet under the description of, among other things, high-quality ore, the bullet states:

"Appropriate manganese levels: The mine has historically produced a higher manganese content ore, which our customers can become accustomed with in their steelmaking processing. Through the start of the operations, we installed new technology for manganese reduction circuits to address the manganese content that had caused problems for past owners of the operation. To date, none of our end customers have indicated issues with the manganese levels in our product, as manganese is added in steelmaking alloys, and we have not realized any discount to sales price because of it. Some of the most reputable steelmaking companies in Europe, Middle East, North Africa and Asia form our customer base."

So doesn't this suggest that all is okay with manganese and that there was no price challenge because of its level?

A. The language does suggest that. You know, I mean, if you take this -- if you bifurcate this sentence:

"To date, none of our end customers have indicated issues with the manganese levels in our product as Mn is added in the steelmaking process."

The context here is that we are selling this concentrate as a blending concentrate to centre-feed producers and to pellet-feed producers. And if you blend at the appropriate levels, the Mn is acceptable.

Most blast furnaces would like their manganese spec on average to be approximately one per cent to half a per cent, and that is why they buy our -- "they" being pellet plant producers or centre-feed producers, buy our product. And they blend it down with other concentrates that really have no manganese in them, and that is why it is acceptable.

In terms of the second part of this sentence, I can only say that, you know, when the negotiations on our product -- when there is a negotiation on our product between Cargill and the end user, there are factors that play into ultimately determining the price.

And those factors that are pros are silica -- all the factors that are listed on page 2. So it would be silica, alumina and phos. Those are all positives to the Tacora iron ore concentrate product.

The negatives to the product are the manganese, which is not even listed here in this chart, and size distribution.

So I am only saying that there are detailed negotiations that occur for each shipment, and the positives are the elements listed on this page and the negatives are not listed here. They would be size, distribution and manganese.

312 Q. I think I understand; it is a multi-factored discussion. But it is true that the passage I referred to says that there have not been any discounted sales realized because of the manganese issues. That is correct?

A. I agree that that is what this says.

313 Q. Thank you. I did want to take you to one final document on this subject. It is in exhibit DD of Sam Morrow's affidavit, a conference call presentation for the first quarter of 2023.

A. Okay.

314 Q. I am at page 7 of that presentation. Do you have that?

A. I do.

MR. KOLERS: That is the page that says "Scully operations overview"?

MR. SEVIOUR: It does.

315 Q. My interest is in the third bullet, which says:

> "Product quality was excellent, with an average product iron of 65.4 per cent, an average SiO2 of 2.8 per cent and manganese at 1.7 per cent."

Do you see that?

A. Yes, I do.

316 Q. And doesn't that suggest that the manganese result of 1.7 per cent is an excellent result?

A. What it is saying is that, as you know, we have to what we call beneficiate our iron ore, to upgrade the iron, reduce the silica and reduce Mn and other impurities.

So what this is really implying is that the product is excellent based on the geology that we are dealing with at the Scully Mine. So the iron is acceptable or excellent. The silica is excellent based on reducing silica. And the manganese content, although high, is excellent relative to our ore body.

317 Q. Okay. I wanted to deal with your suggestion of a $1.00 dry metric tonne deduction from the Platts 65 per cent index price. I would refer you again to Sam Morrow's affidavit, his exhibit J. And this is the May 5, 2021 offering memorandum that we looked at a minute ago. It is the same page, page 2.

A. Okay.

318 Q. And I just wanted to begin at the top of the page, where it says under

"Wholly owned mine producing high grade and quality iron ore." And the offering memorandum goes on to say:

> "The 100 per cent owned Scully Mine produces high-grade and high-quality iron ore that is uniquely low in silica, alumina, phosphorous and loss on ignition (LOI), which are deleterious to iron ore steelmaking quality. In each of these areas, our iron ore measures better than the median quality specifications for Canadian, Brazilian and Australian iron ore. As a result of our outperformance in these key areas, we have consistently commanded a premium price in the market relative to

benchmarks."

And you go on to say in the next bullet:

"High iron ore content of 65.9 per cent compares to the industry standard benchmarks for 62 per cent and Platts 65 per cent fines."

So is this saying that, you know, the premium iron ore concentrate produced by Tacora commands a premium price relative to benchmarks like the Platts 62 and Platts 65 per cent.

A. Yeah. So first of all, we do produce an excellent premium high-quality product. And if you look at each one of these -- if you look at the chemistry of this product in each one of these compounds, silica, alumina and phos, and you think about the 65 benchmark price, we are higher than the 65 benchmark price in silica. We are lower, significantly lower and better in both alumina and phos, and also better as it relates to LOI. So there are some puts and takes relative to the 65 index. And, of course we get paid for our iron.

And I think I have discussed this in detail, so I apologize for repeating myself. But when you think about size, distribution and manganese, those are considered negatives. So I think as I said, we do achieve a premium to the 65 index by getting paid for our iron in excess of the 65 index.

But there is always a discussion on a customer-by-customer basis based on their needs about whether or not we sell at an additional premium or an additional discount to the 65 index. And that range has been anywhere from a [redacted] over the history of the operation.

319 Q. I am going to take you just further down the page, just again on this premium point. Continue to go down. Right there.

We are in the last paragraph. There is just a sentence that begins -- this is after graphically depicting the specs:

"Our concentrate has commanded a premium to the Platts 65 per cent iron benchmark in most instances, because of quality specifications highlighted above."

So that would tend to indicate that, in most cases, you are getting a premium to the Platts 65 per cent iron benchmark index?

MR. KOLERS: I think you have been over this and he has answered this question now, a few different times in a few different ways.

Obviously, this offering memorandum was prepared in 2021. And it speak from that date. And you have Mr. Broking's evidence as to what his selling experience is. He is not arguing with you that it is a premium product, and that the Platts 65 has been exceeded.

He has been very fair, but he has told you in his evidence what it is about the discounts in certain situations. I think you have covered this.

MR. SEVIOUR: Yes. I think we understand his qualifications to these statements in the Tacora materials.

MR. KOLERS: Yes. And he is not saying it is wrong. It also speaks from 2021.

It is three years ago.

MR. SEVIOUR:

320 Q. I am going to conclude in this area by suggesting to you, Mr. Broking, that in reading these statements about the premiums achieved, the 65 per cent index, they don't support the notion that there should be a [redacted]?

A. Well, I disagree.

321 Q. Okay.

A. Again, I think I have stated why I disagree. We get paid for the iron above 65, and that would be considered a premium above the 65 index. And then, for each sale, there is a negotiation that ensues. And typically we would get a discount on a sale. And on average, that would be I believe closer to [redacted].

322 Q. We will conclude it on that basis.

I did have questions about the winter freight costs that you raise in paragraphs 22 to 24. And, as I understand it, your suggestion is that although you have general agreement with Mr. Persampieri's use of an increase in the freight index by 24 per cent, you felt that there needed to be an additional adjustment for winter freight costs?

A. Yeah, that is correct. During the months of January through April, we incur what is called an ice class premium for all shipments.

323 Q. So this, in each year, it is a first quarter experience?

A. Yes, that is correct.

324 Q. You said the amount is [redacted]?

A. Yeah, that -- it is a range. It can -- again, depending on market circumstances, [redacted]

325 Q. Now, I talked about Hope Wilson before, and she is Tacora's chief accounting officer. She has been with the company for a number of years?

A. That is correct. She has been with the company since inception, just like me.

326 Q. So she knows the shipping

conditions and the winter freight issues, as well?

A. She sure should. Yes, I would say she does.

327 Q. The 24 per cent metric as an increase over the index freight costs was the one that she chose, before Mr. Persampieri got into that. So she did that knowing, based on what you have said, that there were these winter freight costs. Is that fair?

MR. KOLERS: Do you know what he is referring to?

THE WITNESS: Yeah. I don't recall what the basis of her selection of the 24 per cent was -- if you are referring to the Excel file exchange between Hope Wilson and Sam Morrow.

MR. SEVIOUR:

328 Q. That is right. If you wanted to have a look at it, you are welcome to, but she uses the 24 per cent metric. And I can tell you what she says; just give me two seconds.

And in her e-mail to Mr. Morrow, and I am looking at his affidavit -- which exhibit?

MR. MERRIGAN: JJ.

MR. SEVIOUR:

329 Q. JJ, it is an e-mail dated October 13 of 2022. It says:

"Hi, Sam, please see attached. For industry service, we use Platts 65, less the Platts freight rate. China-Brazil increased by 24 per cent to try to get a rate comparable to C3."

So that is where the 24 per cent metric came from in her exchange with Mr. Morrow. And the same as Mr. Persampieri landed on, after he did his analysis?

A. Yeah, just -- I agree with what you are saying. This is what she sent. But what the sentence says I think is critical here, beginning on the second line of that first paragraph. It says:

"By 24 per cent to try and get a freight rate comparable to C3."

The C3 rate is the rate from Brazil to China, only.

330 Q. Okay. I have nothing

further for you on that winter freight cost question.

A. Okay.

331 Q. The final area of adjustment and criticism you make of Mr. Persampieri is on the failure to deduct marketing costs. And I took it from your affidavit, and I am not sure if I got this correct, you seem to be suggesting that the delta between the arm's length net revenues calculated under the first branch of the definition and the non-arm's length net revenues is reflected at least in part by marketing costs. Have I got that right?

A. Sorry, can you repeat that?

332 Q. The delta between the arm's length net marketing revenues under the first branch of the definition and the non-arm's length net revenues under the second branch is reflected at least in part by marketing costs?

MR. KOLERS: I don't think that is a fair proposition.

MR. SEVIOUR: Well, I am asking him if that is right or wrong. And I am not sure it is a fair proposition. It is my understanding I am asking about, because that is what I got from the reading I did, but maybe I have it wrong.

MR. KOLERS: You are talking about the difference between the two definitions? Or you are talking about the difference between the two calculations?

MR. SEVIOUR:

333 Q. Where do the marketing costs fit into the two different calculations, is really where the issue goes.

MR. KOLERS: Okay. Thank you.

THE WITNESS: So, in the calculation of net revenue under any leading technical accounting standard, there would be a deduction for marketing costs. We do in fact make a deduction for marketing costs, today.

In this case, we are just pointing out that we do incur marketing costs, whether we have an offtake partner or at some point in the future we choose to implement our own sales and marketing team, we would have marketing costs that would be deducted from gross revenue to arrive at net revenue in the determination of earned royalties.

We didn't choose to deduct those expenses in our calculation. If we did, you know, this certainly would at least account for the delta between the two calculations.

MR. SEVIOUR:

334 Q. But you will agree with me that there is no provision for the deduction of marketing costs in clause J(ii)?

A. No. I don't agree. By definition, net revenue -- by definition net revenue would allow for the deduction of sales and marketing expenses.

MR. KOLERS: And he has addressed this in paragraph 28 of the affidavit.

MR. SEVIOUR: I didn't hear that?

MR. KOLERS: I said he has addressed this in paragraph 28 of the affidavit.

MR. SEVIOUR:

335 Q. And the more carefully defined deductible expenses definition, it doesn't refer to marketing costs. Correct?

A. I agree that the definition doesn't, but net -- it starts at the point of net revenue and, by definition, net revenue would deduct for sales and marketing expenses. And it is described in section 28 in my affidavit.

336 Q. I think I understand. That is your interpretation and that is your answer. We will leave it at that.

Before the CCAA proceedings, can you tell me, Mr. Broking, how frequently did the Tacora board meet?

A. Approximately six times per year.

337 Q. Okay. And that would be true for the period, 2017 to 2023?

A. Yes -- certainly 2017 to the middle part of 2022. I think the board meeting frequency would have increased. From memory, I think the board meeting frequency would have certainly increased, likely starting in the fourth quarter of 2022.

338 Q. Those meetings would have involved changes to the Offtake Agreement, the side letters we have talked about?

A. Well, they would have involved amendments to the Offtake Agreement, but not necessarily the side letters. The side letters get entered into on a normal course basis, for really every single shipment that happens. So it would depend on the specific details of the side letters.

339 Q. But would include Cargill investments in Tacora, and the advanced payment facility agreement, those types of things? Those would be board matters?

A. Yeah, that is correct, per the -- I mean, the Shareholders' Agreement defines what the board has to take a vote or a stance on.

340 Q. And these board meetings would have minutes and they would be circulated, finalized and gotten to the board members?

A. That is correct.

341 Q. Yeah. So, if we as counsel for 112 have received only the October 18, 2018 board minutes, which we looked at earlier this afternoon, there are board minutes out there that we haven't been provided with. Is that fair?

MR. KOLERS: The company does have more board minutes than you have been provided with. What you were provided with was the minutes -- I believe the full extent of the minutes that were responsive to your request.

MR. SEVIOUR: I am just trying to get a sense of what there may be.

342 Q. Mr. Broking, really a final question for you, and I thank you for your patience this afternoon with some of my questions, which I know are obtuse.

But we have this net revenues definition in the Wabush lease, with its two branches that we have talked about. And it refers, in branch 1, to an arm's length bona fide contract of sale. And then we have, on branch 2, transactions that are non-arm's length.

You know, is it fair to conclude from these, these uses of language, that the intent was that the royalty was to be paid on the basis of the market value of the Tacora iron ore concentrate?

A. Yes, that is correct.

343 Q. Thank you.

MR. SEVIOUR: I don't think we need to break. Counsel, I think we are concluded our questions. Thank you, and Mr. Broking, as witness for the answers this afternoon.

MR. KOLERS: Thank you. I may

have just a couple of questions in re-examination. And so I would like to take five minutes and just consult with my colleague and come back and possibly ask Mr. Broking a question or two.

MR. SEVIOUR: Sure.

MR. KOLERS: But we won't be long. But if we can just take a break, that would be great.

--- Recess taken at 4:49 p.m.

--- Upon resuming at 4:54 p.m.

RE-EXAMINATION BY MR. KOLERS:

344 Q. I have just, I think, three quick questions for you, Mr. Broking. The first, my recollection of your examination, in your examination, do you recall you were asked some questions about the Proterra nominees to Cargill's board?

A. Yes.

345 Q. And do you recall that you were asked a question about Cargill getting the right to nominate someone to the board? I think it was in late 2022, with one of the financing agreements at that time?

A. Yes.

346 Q. All right. Who was

Cargill's representative on the board, after they obtained the right to have a nominee on the board?
A. They only had one representative, which was Phil Mulvihill.
347 Q. Okay. So Mr. Mulvihill was a Proterra nominee previously, and then became Cargill's nominee?
A. He was a Proterra nominee, but I believe -- again, he was -- he is a Cargill employee. He is a Proterra nominee, but he was I believe a Cargill designee under the B.V.
348 Q. Okay. Have you ever had two -- have you ever had more than one Cargill employee as a board member?
A. No.
349 Q. Thank you. Okay.
Next I would like to just get one point of clarification. This is just a question of I might have misheard what you said. So if we could just look at your paragraph 22 of your affidavit from March 21?
A. Okay.
350 Q. In paragraph 22, you indicate that neither Matthew, Larry nor I had ever worked with Mr. Davies. Do you see that?

A. Yes.

351 Q. And that is Matthew Lehtinen and Larry Lehtinen?

A. That is correct.

352 Q. Okay. When you were asked about Mr. Davies at that time, I may have just misheard but you were asked whether or not the Lehtinens knew Mr. Davies before the involvement of Tacora. And can you just answer that question?

A. No.

353 Q. No, he didn't know?

A. Sorry. No, Matthew Lehtinen or Larry Lehtinen had never worked with Leon Davies, prior to Tacora.

354 Q. Okay. I wasn't sure if you had confirmed that, or if you had said something different in your examination. I just want to make that clarification on that point.

The last thing I would like to ask you is with respect to the questions you were asked about Mr. Morrow's affidavit. You will recall you were shown paragraph 31 of Mr. Morrow's affidavit. And specifically, you were taken to paragraph 31(e), which has an extract from

Mr. Lehtinen's affidavit. Do you recall that?

A. I do.

355 Q. All right. And do you remember that you were asked about the extract and specifically the references to the Offtake Agreement and the other key related agreements and arrangements with Tacora, including multiple working capital facilities to optimize operations that were referred to, and then also to provide the Wetcon Agreement. Do you remember you were asked about those?

A. Yes.

356 Q. All right. My question about those agreements is were they negotiated agreements?

A. Yes, they were.

357 Q. And who were they negotiated by, not necessarily specifically, but...?

A. Well, the management and the board would have negotiated those agreements with Cargill.

358 Q. Okay. And were those negotiations conducted at arm's length?

A. Yes.

359 Q. And did Tacora and Cargill have separate counsel?

A. Yes.

360 Q. For those negotiations?

A. Absolutely.

361 Q. Right. Thank you. Those are all my questions.

MR. KOLERS: We can go off the record.

--- Whereupon the proceeding concluded at 5:01 p.m.

TACORA RESOURCES INC.

Minutes of the Meeting of the Board of Directors

October 31, 2018

A meeting of the Board of Directors (the "Board") of Tacora Resources Inc. (the "Company") was held on October 31, 2018. Present at the meeting by telephone conference were the following members of the Board (along with the corresponding shareholder of the Company by which such individual was appointed pursuant to Section 6.1 of the Shareholders' Agreement dated July 17, 2017 among Proterra M&M MGCA B.V., MagGlobal LLC and the Company):

MagGlobal appointees:
Mr. Larry Lehtinen – Executive Chairman and Chief Executive Officer of the Company
Mr. Matthew Lehtinen – President and Chief Operating Officer of the Company
Proterra appointees:
Mr. Sam Byrd, Proterra Partners
Mr. David Durrett, Aequor Holdings, LLC
Mr. Torben Thordsen, Proterra Partners
Mr. James Warren, Proterra Partners

Also present at the meeting were Mr. Joseph Broking, Executive Vice President and Chief Financial Officer of the Company, Steven Bennett, outside legal counsel to the Company from Stikeman Elliott LLP, and Ms. Melodie Rose, outside legal counsel to the Company from Fredrikson & Byron, P.A. Mr. Larry Lehtinen chaired the meeting and Ms. Rose acted as secretary of the meeting. All members of the Board being present at the start of the meeting and notice of the meeting having been duly given, Mr. Larry Lehtinen called the meeting to order.

Budget Discussion

Acknowledging prior approval of the budget for October 2018, the Board reviewed the proposed budget for November and December 2018, noting the assumption of being fully funded, including execution of the credit facility with Stream Asset Financial and the equipment financing with Caterpillar Finance and Komatsu Finance, and the receipt of additional equity contributions. In reviewing the accrual and cash basis versions of the budget, the Board discussed the operating statement line items, key assumptions, the previous hiring of a general manager, professional fees related to financings, bonus payments that are yet to be finalized, cap ex related to mine startup post financing; reconciliations to prior budgets provided to board, key balance sheet items, and the headcount budget, among other related items. The Board then reviewed the proposed 2019 budget. Among the matters discussed were price assumptions (e.g., product, freight rates, Tacora and Cargill profit sharing terms, premiums); summary by month, income statements and balance sheet and related line items details, operating expenditures related to the mine, corporate expense, cap ex, cash flows, headcount and key hires, recovery of prepayments, startup plans and costs, classification of costs as inventory costs, variances from previously-approved budgets, travel costs and plans, equipment orders, implementation plan, and contingencies. The Board also discussed certain follow-up items to be discussed at the next meeting. Management reviewed with the Board the status of material agreements, including those related to off-take, utilities, rail transport,

port access, equipment financing, mineral lease, and others. Following this discussion, management confirmed with the Board that the material agreements were in full force and effect.

Financing Plan and Development Decision

The Board reviewed and discussed the Financing Plan related to the Scully Mine restart. Among the matters considered were the status of equity calls made and contemplated, the terms of which are set forth in a Subscription Agreement, related amendments to the Shareholders' Agreement and Executive Shareholder Agreement, and the related shareholders resolutions; the status of the debt facility with Stream Asset Financial, which transaction was previously approved by the Board; the status of the equipment financing; and the timing and logistics related to the closing of the equity and debt transactions.

The Board discussed the Development Decision related to proceeding with the development and restart of the Scully Mine in accordance with the proposed budgets for 2018 and 2019. The Board discussed the proposed Cargill Off-take Agreement amendment, noting the primary changes, which related to the cash payment timing, extension options and equity investment. The Board discussed the requirements under Section 6.9 of the Shareholders' Agreement for special consent of the shareholders to approve a Development Decision, including a related Financing Plan and Program and Budget, the 2018 and 2019 Budgets ("Approved Budgets"), and the amendment to the Cargill Off-take Agreement (collectively, the Proposed Transactions"). Capitalized terms not defined herein have the meaning set forth in the Shareholders' Agreement. The Board noted that such Special Consent of the Shareholders of the Proposed Transactions, to be dated October 31, 2018, is being obtained.

Following discussion, upon motion duly made, seconded and carried, the Board approved substantially as proposed (i) the equity cash call for US$77.5 million in support of the Approved Budgets, Financing Plan and Development Decision; (ii) the amendment to the Cargill Off-take Agreement with execution simultaneous with the equity call; (iii) the amendments to the Shareholders' Agreement and Executive Shareholder Agreement; and (iv) the Development Decision, including Financing Plan and Approved Budgets.

Miscellaneous

The Board commented on its next meeting, noting the need to include on the agenda a discussion of potential bonus payments and further Board appointments in accordance with the amended Shareholders' Agreement.

With respect to the matters approved by the Board during this meeting, all prior lawful actions that may have been taken or caused to be taken by the Board (or any members of the Board) and any officer of the Company prior to the date of these minutes, which action was in connection with or related to the matters contemplated by these minutes in the name and on behalf of the Company, are hereby ratified, approved and confirmed in all respects as the act and deed of the Company; and the officers of the Company are, and each hereby is, authorized, directed and empowered, in the name and on behalf of the Company, and attested by an appropriate officer, if desired, to execute, make oath to, acknowledge and deliver any and all additional documents, agreements, instruments, undertakings and certificates and take such additional actions and incur all such fees and expenses, in the name and on behalf of the Company, as such officers may deem necessary or appropriate to carry out and effect the purposes and intent of the matters approved in these minutes and effectuate the transactions contemplated thereby (as conclusively evidenced by the taking of such actions or the execution of such documents, agreements, instruments, undertakings or certificates, as the case may be, by or under the direction of any such officer).

Adjournment

There being no further matters to come before the Board, the Board, upon motion duly made and seconded, adjourned its meeting.

* * *

The foregoing is a true record of the proceedings described herein and has been reviewed and approved by the Board, which gave authority to the undersigned to so authenticate.

Melodie R Rose

Name: Melodie R. Rose, Secretary of the Meeting
Date Approved: 12-7-18

65298277.2

From: Sam Byrd
To: Joe Broking; phil_mulvihill@cargill.com
Cc: Torben Thordsen; Melodie Rose (mrose@fredlaw.com); Shea Small - McCarthy Tetrault (ssmall@mccarthy.ca)
Subject: RE: Ownership disclosure
Date: Thursday, April 22, 2021 4:26:06 PM
Attachments: image001.png
Proterra - Tacora Investment Structure Chart - 31-Mar-21.pdf

Joe,
As requested, please see attached.
Regards,
Sam

Sam Byrd
Managing Director | Metals & Mining | Proterra Investment Partners LLP
sbyrd@proterrapartners.com | Desk: +44 (0)20 8004 7682 | Mobile: +44 (0)7983 488173
Hudson House, 8 Tavistock Street | London | WC2E 7PP | United Kingdom
Registered in England and Wales No.: OC402462
Authorised and regulated by the Financial Conduct Authority

From: Joe Broking <joe.broking@tacoraresources.com>
Sent: 22 April 2021 03:10
To: phil_mulvihill@cargill.com
Cc: Sam Byrd <SByrd@proterrapartners.com>; Torben Thordsen <TThordsen@proterrapartners.com>; Melodie Rose (mrose@fredlaw.com) <mrose@fredlaw.com>; Shea Small - McCarthy Tetrault (ssmall@mccarthy.ca) <ssmall@mccarthy.ca>
Subject: Re: [External] Ownership disclosure

That is correct Phil. Doe to required related party disclosure the Cargill ownership will need to be disclosed.
Sam please provide this info.
Thanks guys.

Sent from my iPhone

On Apr 21, 2021, at 9:07 PM, Philip Mulvihill <Phil_Mulvihill@cargill.com> wrote:

Thanks Sam, believe the below was before Cargill invested directly in CoOp so agree it needs updating.
My layman's view (obviously do not have any good sense on what the SEC requirements are) would be that Cargill's equity interest in Tacora (albeit it indirect) would likely be material given the related party transaction on the offtake so I would think that it needs to be clear somewhere in the disclosures. As I filled out the D&O disclosures the steer I received from Cargill law was that this needs to be highlighted also.

From: Sam Byrd <SByrd@proterrapartners.com>
Sent: Wednesday, 21 April 2021 11:46 PM
To: Joe Broking <joe.broking@tacoraresources.com>
Cc: Philip Mulvihill <Phil_Mulvihill@cargill.com>; Torben Thordsen <TThordsen@proterrapartners.com>; 'Melodie Rose (mrose@fredlaw.com)' <mrose@fredlaw.com>; Shea Small - McCarthy Tetrault (ssmall@mccarthy.ca) <ssmall@mccarthy.ca>
Subject: RE: Ownership disclosure

[EXTERNAL] This email came from outside of Cargill. Do not click links or open attachments unless you recognize the sender. If you suspect this is spam, send this email as an attachment to spam@cargill.com

Joe,
For the prior IPO prospectus in 2018 we stated the following:
"Proterra is indirectly controlled and majority-owned by funds managed by an entity managed by Proterra Investment Partners LP, an investment advisor (''Proterra Investment Partners''). Proterra Investment Partners was formed as an independent investment firm in connection with a spin-off from Cargill effective in January 2016. Torben Thordsen, one of our directors, is a partner at Proterra Investment Partners, serves

as a member of its Management Committee and is also an investor in one of the said funds managed by Proterra Investment Partners. David Durrett, one of our directors, controls Aequor Holdings LLC, which is an indirect minority co-investor in Proterra. Each of Mr. Thordsen and Mr. Durrett expressly disclaims beneficial ownership of the Common Shares held by Proterra. Cargill remains a passive minority investor in funds managed by Proterra."

I would think that Shea at McCarthy (cc'd) would advise us to update the above wording for the purposes of the OM (the main point remains intact that the two Proterra entity shareholders in Tacora are indirectly controlled and majority owned by funds managed by entities managed by Proterra Inv Partners LP), but in advance of this perhaps Melodie/Fredlaw can let us know if there is a legal obligation for additional disclosure in this OM compared to the prior prospectus doc.

Regards,
Sam

Sam Byrd
Managing Director | Metals & Mining | Proterra Investment Partners LLP
sbyrd@proterrapartners.com | Desk: +44 (0)20 8004 7682 | Mobile: +44 (0)7983 488173
Hudson House, 8 Tavistock Street | London | WC2E 7PP | United Kingdom
Registered in England and Wales No.: OC402462
Authorised and regulated by the Financial Conduct Authority
<image002.png>

From: Joe Broking <joe.broking@tacoraresources.com>
Sent: 21 April 2021 16:03
To: Sam Byrd <SByrd@proterrapartners.com>
Cc: phil_mulvihill@cargill.com; Torben Thordsen <TThordsen@proterrapartners.com>; 'Melodie Rose (mrose@fredlaw.com)' <mrose@fredlaw.com>
Subject: [External] Ownership disclosure

Sam,

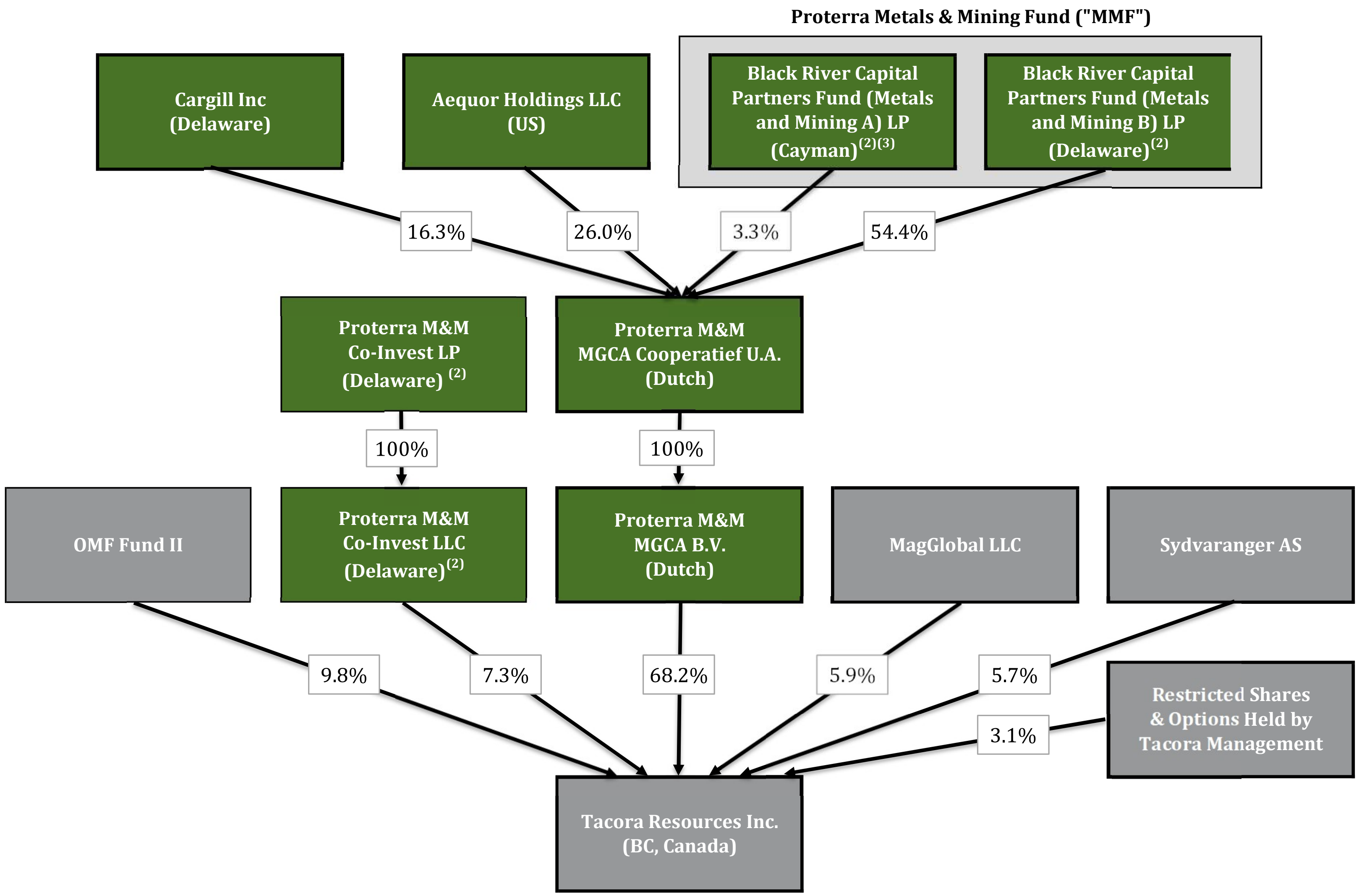
As part of the OM disclosures we need to disclose the Proterra Holdco ownership related to the Netherland company and the US company. Please provide a couple of slides that show the owners and their respective ownership percentages.

Regards,

Joe Broking
Executive Vice President and Chief Financial Officer
Tacora Resources Inc.
102 NE Third Street
Suite 120
Grand Rapids, MN 55744
<image003.jpg>
Mobile: (218) 398-0079
Email: joe.broking@tacoraresources.com
Website: www.tacoraresources.com [tacoraresources.com]

Proterra - Tacora Investment Structure Chart[1]

March 31, 2021



Notes:

(1) Ownership percentages stated in chart reflects ownership on a fully diluted basis.

(2) Fund entities managed by Proterra Investment Partners LP, an investment advisor.

(3) Cargill, Inc. is a passive investor in this entity.

From: Joe Broking <joe.broking@tacoraresources.com>
Sent: Monday, October 22, 2018 11:46 AM
To: Philip Mulvihill; Leon Davies
Subject: Tacora Ownership Schedule
Attachments: Tacora Resources Ownership as of 30Sep2018.xlsx

Phil and Leon,
Please find attached the Tacora ownership schedule as of September 30, 2018.
Regards,
Joe Broking
Chief Financial Officer
Tacora Resources Inc.
102 NE Third Street
Suite 120
Grand Rapids, MN 55744
TACORA RESOURCES
Mobile: (218) 398-0079
Email: joe.broking@tacoraresources.com
Website: www.tacoraresources.com

System: 8/11/2017 9:33:37 AM
User Date: 8/11/2017

Tacora Resources Inc.
RECONCILIATION POSTING JOURNAL
Bank Reconciliation

User ID: hopew

Audit Trail Code: CMADJ00000002
Checkbook ID: USDCHECKING
Description: USD Checking

Bank Statement Ending Balance: $8,512,570.47
Bank Statement Ending Date: 7/31/2017
Cutoff Date: 7/31/2017

Statement Ending Balance	$8,512,570.47
Outstanding Checks (-)	$0.00
Deposits in Transit (+)	$0.00
Adjusted Bank Balance	$8,512,570.47
Checkbook Balance as of Cutoff	$8,512,570.47
Adjustments	$0.00
Adjusted Book Balance	$8,512,570.47
Difference	$0.00

System: 8/11/2017 9:33:38 AM
User Date: 8/11/2017

Tacora Resources Inc.
BANK ADJUSTMENTS POSTING JOURNAL
Bank Reconciliation

User ID: hopew

Audit Trail Code: CMADJ00000002
Checkbook ID: USDCHECKING
Description: USD Checking

Type	Number	Date	Posting Date	Checkbook Amount

Total Adjustments: 0

System: 8/11/2017 9:33:39 AM
User Date: 8/11/2017

Tacora Resources Inc.
CLEARED TRANSACTIONS JOURNAL
Bank Reconciliation

User ID: hopew

Audit Trail Code: CMADJ00000002
Checkbook ID: USDCHECKING
Description: USD Checking
Sorted By: Type

Type	Number	Date	Paid To/Rcvd From	Trx Amount	Cleared Amount
WDL	7/21/17 STIKEMAN	7/21/2017	Stikeman Elliott LLP	($79,599.72)	
WDL	7/26/17 DELTA DENTAL	7/26/2017	Delta Dental of MN	($1,228.85)	
WDL	WDL000000012	7/28/2017	Check Printing	($92.52)	
WDL	WDL000000014	7/19/2017	Proterra	($579,766.00)	
IAJ	IAJ000000006	7/17/2017	Proterra	$2,795,675.70	
IAJ	IAJ000000007	7/17/2017	Proterra	$27,956,755.38	
IAJ	IAJ000000008	7/17/2017	Proterra	$10,853,829.33	
IAJ	IAJ000000009	7/17/2017	Proterra	$393,740.01	
IAJ	IAJ000000010	7/17/2017	Restricted Stock Payments	$547.80	
IAJ	IAJ000000015	7/17/2017	MagGlobal	$67,045.86	
XFR	XFR000000001	7/21/2017	Transfer To CADCHECKING	($5,541.13)	
XFR	XFR000000003	7/17/2017	Transfer To CADBLOCKED	($182,728.21)	
XFR	XFR000000011	7/21/2017	Transfer To CADCHECKING	($98.08)	
XFR	XFR000000013	7/18/2017	Transfer To CADCHECKING	($32,705,969.10)	

14 Transaction(s)

Totals:

Number of Payments	8
Amount of Payments	$33,555,023.61
Number of Deposits	6
Amount of Deposits	$42,067,594.08

System: 8/11/2017 9:33:41 AM	Tacora Resources Inc.	Page: 1
User Date: 8/11/2017	OUTSTANDING TRANSACTIONS REPORT	User ID: hopew
	Bank Reconciliation	

Audit Trail Code:
Checkbook ID: USDCHECKING
Description: USD Checking
Sorted By: Type

Type	Number	Date	Paid To/Rcvd From	Trx Amount

0 Transaction(s)

Totals:

Number of Payments	0
Amount of Payments	$0.00
Number of Deposits	0
Amount of Deposits	$0.00

Your branch address:

100 KING ST. W - MAIN FLOOR
TORONTO, ON M5X1A3

Business Banking

Your Branch
FST CDN PLACE TORONTO ONT
Transit number: 0002

For questions about your statement call
(416) 867-5050

Visit our web site at
www.bmo.com

TACORA RESOURCES INC.
ATTN. HOPE WILSON
102 NE 3RD STREET, SUITE 120
GRAND RAPIDS MN 55744
UNITED STATES

Business Banking statement

For the period ending July 31, 2017

Summary of account

Account	Opening balance ($)	-	Total amounts debited ($)	+	Total amounts credited ($)	=	Closing balance ($) on Jul 31, 2017
US$ Business Current Account # 0002 4635-560	0.00		33,555,023.61		42,067,594.08		8,512,570.47

Transaction details

US$ Business Current Account # 0002 4635-560

Business name:
TACORA RESOURCES INC.

Date	Description	Amounts debited from your account ($)	Amounts credited to your account ($)	Balance ($)
Apr 21	**Opening balance**			**0.00**
Jul 17	Incoming Wire Payment, US, BLACK RIVER CAPITAL P		2,795,675.70	2,795,675.70
Jul 17	Incoming Wire Payment, US, BLACK RIVER CAPITAL P		27,956,755.38	30,752,431.08
Jul 17	US $ Transfer, USD TFR 1810-678, AT1.2587 HC $0.00, CAD EQUIV $230000.00	182,728.21		30,569,702.87
Jul 17	Incoming Wire Payment, US, MAGGLOBAL LLC		67,045.86	30,636,748.73
Jul 17	Deposit, VALUE DATE 18JUL		547.80	30,637,296.53
Jul 17	Incoming Wire Payment, US, AEQUOR HOLDINGS LLC		10,853,829.33	41,491,125.86
Jul 18	Incoming Wire Payment, US, STIKEMAN ELLIOTT LLP		393,740.01	41,884,865.87

continued

BMO Bank of Montreal

A member of BMO Financial Group

15130E (09/02)

Transaction details (continued)

Date	Description	Amounts debited from your account ($)	Amounts credited to your account ($)	Balance ($)
	US$ Business Current Account # 0002 4635-560			**(continued)**
Jul 18	US $ Transfer, USD TFR 1803-574, AT1.261 HC $0.00, CAD EQUIV $41242227.04	32,705,969.10		9,178,896.77
Jul 19	Outgoing Wire Payment, US, PROTERRA INVESTMENT P	579,766.00		8,599,130.77
Jul 21	Outgoing Wire Payment, US, STIKEMAN ELLIOTT	79,599.72		8,519,531.05
Jul 21	US $ Transfer, USD TFR 1803-574, AT1.225 HC $0.00, CAD EQUIV $120.15	98.08		8,519,432.97
Jul 21	US $ Transfer, USD TFR 1803-574, AT1.225 HC $0.00, CAD EQUIV $6787.88	5,541.13		8,513,891.84
Jul 26	Outgoing Wire Payment, US, DELTA DENTAL OF MINNE	1,228.85		8,512,662.99
Jul 28	Cheque	92.52		8,512,570.47
Jul 31	**Closing totals**	**33,555,023.61**	**42,067,594.08**	

Number of items processed 8 6

Number of cheques or related items enclosed in your statement........ 1

Please check this statement and report any errors or omissions within 30 days of delivery.

Trade-marks

TM/® Trade-marks / registered trade-marks of Bank of Montreal.

®† Trademarks of AIR MILES International Trading B.V. Used under license by LoyaltyOneInc. and Bank of Montreal.

®‡ Registered trademark of Mastercard International Incorporated.

®** ADP is a registered trade-mark of ADP North America, Inc.
NOTE: ADP Services referred to above are provided by ADP. ADP is not a member of BMO Financial Group.

®++ Moneris, and the Moneris Solutions logo are registered trade-marks of Moneris Solutions Corporation.

Registration numbers
GST - R100390095   QST - 1000042494

A member of BMO Financial Group 5001816 (08/03)

Business Banking statement

TACORA RESOURCES INC.
For the period ending July 31, 2017

Business Banking

ISN: 4318176547
Cheque # **92.52**

BMO BANK OF MONTREAL 4635560
FIRST CANADIAN PLACE BRANCH - MAIN FLOOR 100 KING ST. W.
TORONTO, ON
M5X1A3

DATE 2017 07 21
YYYY MM DD

Pay to the order of: D+H Cheque Services Corporation $ 120.16 CDN

TACORA RESOURCES INC.

102 NE 3RD STREET, SUITE 120
GRAND RAPIDS MN 55744

DRAFT NO	DTD072140300001
ORDER NO.	70717439928293
STOCK/QUANTH-G105	50
BASE PRICE	98.07
SHIPPING	22.09
GHST #712957323	0.00
PST	0.00
TOTAL CDN$	120.16
.7700 TOTAL US$	92.52

THE AUTHORITY TO DEDUCT THIS CHARGE
FROM YOUR ACCOUNT WAS GRANTED
WHEN THE ORDER WAS PLACED.

⑆00022⑉001⑆ 4635⑉560⑈ 45 ⑈0000009252⑈

Printer ID/ 1021-M
ID d'imprimeur 1021-M

Endorsement - Signature or Stamp
Endossement - Signature ou étampe

TDCT 20170728 3498
3402330952

TDCT SGO SBR 02711 TOR
20170728 ISN: 0143335925

BACK/VERSO

BMO Bank of Montreal
A member of BMO Financial Group

15130E (09/02)

TAB 1-E

SEE NATIVE EXCEL FOR EXHIBIT 5

Exhibit 6 to Joe Broking Transcript Subject to Sealing Order

Stikeman Elliott

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

Main: 416 869 5500
Fax: 416 947 0866
www.stikeman.com

December 19, 2022

PRIVATE AND CONFIDENTIAL

BY E-MAIL

Proterra M&M MGCA B.V.
Strawinskylaan 1457, Toren Tien
1077 XX Amsterdam

Attention: The Board of Directors
Email: Heino.Ulbrich@maples.com
Yuri.Schuurman@maples.com
Dirk.Slob@maples.com
Jwarren@proterrapartners.com
Sbyrd@proterrapartners.com
Phil_mulvihill@cargill.com

Counsel: Baker & McKenzie
Attention: Koen Bos Esq
Email: koen.bos@bakermckenzie.com

Dear Sirs and Mesdames:

Re: Consent to additional financing pursuant to the term sheet between Tacora and Cargill International Trading Pte Ltd. (the "Cargill Term Sheet") and the financing, transactions and steps contemplated thereby (the "Cargill Financing")

We are counsel to Tacora Resources Inc. ("**Tacora**" or the "**Company**").

We are writing to you, Proterra M&M MGCA B.V. ("**Proterra BV**"), in your capacity as the majority shareholder of Tacora. Other shareholders of Tacora include Proterra M&M Co-Invest LLC, MagGlobal LLC, OMF Fund II (BE) Ltd ("**Orion**"), Cargill, Incorporated ("**Cargill**"), and Titlis Mining AS (collectively with Proterra BV, the "**Shareholders**").

We understand that Proterra M&M MGCA Coöperatief U.A. ("**Proterra Coop**") holds all the shares in Proterra BV. We further understand that the members of Proterra Coop include Cargill, Aequor Holdings ("**Aequor**") and two funds controlled by Proterra Investment Partners LP: Black River Capital Partners fund (Metals and Mining A) LP and Black River Capital Partners Fund (Metals and Mining B) LP (together, "**Proterra Funds**", and together with Cargill and Aequor, the "**Members**").

As you are aware, Tacora operates a large iron ore mine and processing facility located in Newfoundland and Labrador, Canada (the "**Scully Mine**"). Tacora employs approximately 425 people at the Scully Mine and represents an important part of the local economy.

We are writing on behalf of Tacora in an attempt to find a solution to the Company's imminent liquidity crisis and request consent for Tacora to proceed with the Cargill Financing pursuant to the Amended and Restated Shareholders' Agreement (2022) dated November, 2022 by and among Tacora and the Shareholders.

As discussed below, there is no alternative proposal available to address Tacora's financial position in the time available. If Proterra BV does not consent to the Cargill Term Sheet and the steps contemplated therein, Tacora will be forced to commence proceedings pursuant to the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"). If Tacora commences CCAA proceedings, all of Tacora's stakeholders will be negatively affected; the Shareholders will likely lose their entire investment.

All references to currency in this letter are references to United States dollars, unless otherwise indicated.

I. Tacora is in financial distress

Tacora maintains a weekly cash flow forecast, the latest version of which was provided on December 15, 2022 (the "**December 15 Forecast**"). Tacora has recently been working with FTI Consulting Canada Inc. ("**FTI**") in respect of the December 15 Forecast. The December 15 Forecast forecasts that Tacora will exhaust its remaining cash by the week ending January 8, 2023. The December 15 Forecast includes significant payments in the week ended January 8, 2023, to suppliers of critical logistics services, without which services Tacora would be unable to ship any product. Absent additional financing and significant deferrals of the amounts scheduled to be paid to those logistics suppliers, Tacora would at that time be unable to meet its liabilities as they become due and would be unable to continue operations.

These recent financial difficulties are due to a variety of factors, including, among other things, (i) the low market prices of iron ore due to a drop in demand globally; (ii) Tacora producing significantly lower volumes of iron ore than anticipated due to production difficulties, despite very significant investments having been made on improvement, maintenance, and new facilities; and (iii) increased costs of production and transportation.

II. Tacora has no alternative proposal to the Cargill Term Sheet

As a result of its reduced revenues, Tacora was unable to meet the semi-annual installment payment of approximately $9.3 million due under its approximately $213.8 million secured notes which mature in 2026 (the "**Senior Secured Notes**").

Since early September 2022, Tacora has been exploring a variety of options to access additional liquidity and capital for its business. In order to avoid payment default on the Senior Secured Notes, Tacora sought financial assistance from the Shareholders. Tacora was able to secure $15 million from Cargill in the form of a convertible preferred equity financing, which funds were used to make the payment under the Senior Secured Notes and fund operations.

In October 2022, Tacora and Orion entered into an indicative term sheet, pursuant to which Orion proposed $50 million in financing in exchange for a life-time royalty on production from the Scully Mine (the "**Orion Royalty Investment**"). However, during the week of December 5, 2022, Orion advised Tacora that its investment committee did not approve the Orion Royalty Investment.

Since Orion's withdrawal from the Orion Royalty Investment, Tacora has negotiated a term sheet with Cargill (the "**Cargill Term Sheet**") pursuant to which Cargill International Trading Pte Ltd. (an affiliate of Cargill) will make an advance payments facility of up to $35 million available to Tacora (the "**PP Facility**").

The PP Facility provides Tacora with accelerated receipt of future cash revenues due to Tacora under the existing Offtake Agreement between Tacora and Cargill. Further, the commercial terms of the Offtake Agreement will be amended to Tacora's benefit to protect Tacora against fluctuations in the price of iron ore and the costs for ocean freight transportation as it contemplates amendments to the Offtake Agreement which (i) provide a price floor in respect of iron ore deliveries; and (ii) amends the delivery point under the Offtake Agreement.

No interest will be charged to Tacora under the PP Facility. Its primary consideration consists of warrants being issued to Cargill exercisable into common shares of Tacora representing a 10% equity ownership in Tacora on a fully diluted basis. The Cargill Term Sheet also provides that 10% of warrants may be provided to Tacora's employees, which is intended to retain and incentivize key employees. A copy of the Cargill Term Sheet is enclosed.

Alternative options to provide Tacora with additional liquidity in the near term have been exhausted. Tacora has commenced discussions with its key logistics suppliers in an effort to secure certain financial accommodations. However, it is not expected that such accommodations will be sufficient to address Tacora's funding gap by themselves. To date, the other Shareholders besides Cargill have declined to provide additional capital, no proposal has been forthcoming from holders of the Senior Secured Notes, and it is considered extremely unlikely that any third-party investor would be willing to provide emergency financing on terms permitted under the Senior Secured Notes.

Moreover, there is insufficient time left to implement a third-party transaction considering the imminent nature of the liquidity crisis that Tacora is facing and the likely diligence requirements of a third-party investor. Accordingly, the only proposal available to Tacora to address its imminent financial crisis is the Cargill Term Sheet and PP Facility.

The Board of Directors of Tacora (the "**Board**") is comprised of representatives of equity holders of Tacora. In making decisions, the applicable corporate statutes in Canada require the Board to: (i) act honestly and in good faith with a view to the best interests of the Company; and (ii) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

After the terms of the Cargill Term Sheet were carefully considered by the Board with the benefit of input and advice from management at Tacora, FTI as financial advisor to Tacora, and Tacora's legal counsel, the Cargill Term Sheet was unanimously approved by the Board on December 13, 2022 as the Board believes the Cargill Term Sheet is in the best interest of the Company and beneficial to Tacora's stakeholders. Directors of the Board who are not at arm's length with Cargill recused themselves from all discussions related to the Cargill Term Sheet and did not vote on same.

III. The Shareholders stand to lose the most in a CCAA

For the reasons set out above, if Tacora cannot secure the necessary consents from its Shareholders in order to proceed with the Cargill Term Sheet, Tacora will be unable to continue operating outside of CCAA proceedings. If Tacora is forced to file for CCAA protection, the Shareholders will most likely lose all of their investment. If Tacora is unable to secure debtor-in-possession financing in the CCAA proceedings, it will cease operating.

Shareholders of corporations subject to CCAA proceedings are subordinated to the claims of all creditors in the CCAA proceedings. Under the CCAA, equity investors are prohibited from sharing in a corporation's assets until all creditor claims have been met in full. In the vast majority of CCAA proceedings shareholders receive little or no value following a restructuring or sale of the business. Senior secured creditors and other significant creditors typically drive the CCAA process.[1]

In 2009, the CCAA was amended to codify the subordination of equity claims generally with the introduction of section 6(8). Also important was the inclusion of a broad definition describing an equity claim as including a:

(a) claim for a dividend;

(b) return of capital;

(c) redemption or retraction obligation; or

(d) monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission of a purchase or sale of an equity interest.

Pursuant to section 6(8) of the CCAA, plans of compromise or arrangement that provide for the payment of an equity claim may not be sanctioned unless it provides that creditor claims are to be paid in full before any equity claim is to be paid.

Below are some examples of how courts have treated equity claims and which types of claims were held to be equity claims as defined in the CCAA.

(a) *In Les Boutiques San Francisco Inc.*[2], the Québec Superior Court found that shareholders did not have an economic interest remaining in an insolvent company and hence did not have the right to veto a proposed plan to sell all or substantially all of the assets. The proposed sale did not require approval of shareholders, given their lack of interest remaining in the corporation.

(b) In *Re Stelco Inc.*[3], the debtor corporation negotiated a plan and the arrangement acknowledged that the reorganization would in essence eliminate the existing shareholders based on the shares having no value. Despite various shareholders' objections, the Ontario Superior Court of Justice sanctioned the plan as reasonable as it was approved by the required double-majority of affected creditors.

[1] J. P. Sarra, *Rescue! The Companies' Creditors Arrangement Act* 2nd ed. (2013), at p. 3 and 472; *CannTrust Holdings Inc. v Ernst & Young Inc.*, 2022 ONSC 6720 at para. 52 citing *Re Canadian Airlines Corp*, 2000 ABQB 442 at paras. 143-145.
[2] 2004 CarswellQue 10918 (Que. S.C.).
[3] 2006 CarswellOnt 406 (Ont. Sup. Ct. J.).

(c) In *Re JED Oil Inc.*[4], the Alberta Court of Queen's Bench determined that dividend claims relating to preferred shares should be excluded from the unsecured creditors' class in a vote on a CCAA plan.

(d) In *Re Sino-Forest Corp.*[5], the Ontario Superior Court of Justice held that indemnity claims against a debtor company were "equity claims" within the definition of the CCAA because they were claims for contribution or indemnity in respect of equity claims.

(e) In *Re U.S. Steel Canada Inc.*[6], the Ontario Superior Court of Justice stated that the definition of "equity claim" in the CCAA addressed circumstances of shareholders pursuing securities misrepresentation or oppression actions against a debtor company. It prevents recovery of claims by such shareholders for the value paid for their shares prior to the satisfaction of claims of debtholders of the debtor company.

(f) In *Re Lydian International Limited*[7], despite the concerns raised by numerous shareholders of the debtor company, the Ontario Superior Court of Justice sanctioned a plan in which the shareholders were to receive no compensation. The Court noted that while the fact that shareholders would receive no compensation was unfortunate, it was a reflection of reality which does not preclude a finding that the plan was fair and reasonable given the subordinated position afforded to shareholders by the CCAA.

Copies of the above-cited authorities are enclosed.

It is clear that if Tacora is forced to commence CCAA proceedings due to Proterra BV withholding its consent to the Cargill Financing, all Shareholders will be at significant risk of losing any remaining chance to receive any recovery in respect of their investments. The Cargill Term Sheet currently represents the only viable option for Tacora to access necessary financing and likely the only chance for Proterra BV and other Shareholders to maintain the possibility of receiving any recovery in respect of its equity investment in Tacora.

Given the imminent liquidity needs of Tacora, we request that Proterra BV immediately execute the enclosed special consent providing approval for Tacora to proceed with the Cargill Term Sheet and execute the definitive documents contemplated by the Cargill Term Sheet. Proterra BV may also be required to execute other documentation necessary to implement the Cargill Financing as contemplated by the Cargill Term Sheet.

If required consents and other documentation of Proterra BV are not received in time for Tacora to receive the additional liquidity and it is forced to seek protection under the CCAA, Tacora will take any steps that it deems necessary to protect its and its stakeholders' interests. Tacora expressly reserves all its rights and remedies, including seeking damages in respect of any Shareholder or the Members which unreasonably withhold their consent to the Cargill Financing in a manner that is unfair, prejudicial or oppressive to Tacora and its other Shareholders.

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[4] 2010 CarswellAlta 861 (Alta. Q.B.).
[5] 2012 ONSC 4377, affirmed 2012 CarswellOnt 14701 (Ont. C.A.).
[6] 2016 ONSC 569, affirmed 2016 ONCA 662.
[7] 2020 ONSC 4006.

Yours truly,

Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP

CONSENT

TO: Tacora Resources Inc. (the "**Corporation**")

RE: Amended and Restated Shareholders' Agreement (2022) dated as of November 10, 2022, among the Company, Proterra M&M MGCA B.V., MagGlobal LLC, Proterra M&M Co-Invest LLC, OMF Fund II (Be) Ltd., Cargill, Incorporated and Titlis Mining AS (the "**Shareholders' Agreement**")

RECITALS:

A. Pursuant to Section 6.9 of the Shareholders' Agreement, decisions in relation to certain specified matters require the Special Consent of Shareholders of the Corporation who, together with its Affiliates, have an Ownership Interest of at least 15% in the Corporation (or, in the case of Orion and Cargill, having an Ownership Interest of at least 5% in the Corporation).

B. Pursuant to Section 23.5 of the Shareholders' Agreement, in addition to Special Consent being required under Section 6.9 of the Shareholders' Agreement, consent of the founding shareholder, MagGlobal, is required to effect any proposed amendment of the Shareholders' Agreement together with any party to the Shareholders' Agreement that may be disproportionately affected in a material or adverse manner.

C. Cargill International Trading Pte Ltd. ("**Cargill**") has presented the Corporation with a non-binding indicative outline, which is attached hereto as Schedule "A" (the "**Term Sheet**"), providing for the terms and conditions on which Cargill or an affiliate thereof proposes to make available for the benefit of the Corporation an advance payment facility of up to US$35,000,000 (the "**Advance Facility**"), which conditions include, among other things, certain corporate actions to be taken, certain agreements to be amended or entered into and transactions to be consummated by the Corporation, as are further detailed in the Term Sheet (collectively, the "**Proposed Transactions**").

D. The Proposed Transactions contemplate, among other things, (i) the Corporation incurring debt for new borrowed money in excess of US$10,000,000 (by virtue of the Advance Facility) and providing perfected senior security against its existing assets similar to those provided under its existing senior secured notes, (ii) an amendment to or amendment and restatement of the Corporation's existing off-take agreement with Cargill, (iii) an amendment of the existing share terms attached to the Corporation's preferred shares designated as "Class C Non-Voting, Redeemable, Convertible Preferred Shares", (iv) an amendment to or amendment and restatement of the Shareholders' Agreement in the manner contemplated by the Term Sheet, (v) issuance of certain Share purchase warrants to Cargill or an affiliate thereof, (vi) issuance of certain incentive awards to directors, officers, employees or consultants of the Corporation, (vii) appointment of a chief transaction officer by the Corporation, (viii) continuance of the Corporation from British Columbia to Ontario, and (ix) certain other corporate actions to be taken and transactions to be consummated by the Corporation.

E. The Board wishes to approve the Term Sheet and the transactions contemplated thereby including, for greater certainty, the Proposed Transactions, which are to be effected pursuant to such definitive and binding agreements, documents or instruments as any officer or director of the Corporation deems necessary or advisable in order to give effect to the foregoing (the "**Documents**").

F. The Proposed Transactions constitute matters that require consent from all holders of common shares and preferred shares in the capital of the Corporation (together, the "**Consenting Shareholders**") pursuant to Section 6.9 and Section 23.5 of the Shareholders' Agreement.

Capitalized terms used but not defined herein have the meaning given to such terms in the Shareholders' Agreement.

CONSENT

Now therefore, in consideration of the foregoing and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), each of the undersigned, being all of the Consenting Shareholders, hereby irrevocably provides its consent to:

(i) the Proposed Transactions;
(ii) the Corporation entering into the Documents in connection with, related to or to facilitate the Proposed Transactions; and
(iii) the Corporation making such filings as are necessary or desirable in order to effect the Proposed Transactions.

This Consent may be executed in counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by facsimile, email or other electronic means is as effective as a manually executed counterpart of this Consent.

This Consent shall be governed by and interpreted and enforced in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein.

[Remainder of page left intentionally blank]

DATED this ______ day of ______________, _______.

MAGGLOBAL LLC

By:________________________________
Name:
Title:

OMF FUND II (BE) LTD.

By:________________________________
Name:
Title:

TITLIS MINING AS

By:________________________________
Name:
Title:

PROTERRA M&M CO-INVEST LLC

By:________________________________
Name:
Title:

PROTERRA M&M MGCA B.V.

By:________________________________
Name:
Title:

By:________________________________
Name:
Title:

CARGILL, INCORPORATED

By:________________________________
Name:
Title:

ACKNOWLEDGED AND AGREED this ______ day of ______________, _______.

TACORA RESOURCES INC.

By: ________________________________
Name:
Title:

Schedule "A"
Term Sheet

See attached.

Schedule "A" of Exhibit 7 to Joe Broking Transcript Subject to Sealing Order

Most Negative Treatment: Distinguished

Most Recent Distinguished: Shermag Inc., Re | 2009 QCCS 537, 2009 CarswellQue 2487, [2009] R.J.Q. 1289, EYB 2009-156550, J.E. 2009-897, 51 C.B.R. (5th) 95 | (C.S. Qué., Mar 26, 2009)

2004 CarswellQue 10918
Cour supérieure du Québec

Boutiques San Francisco Inc., Re

2004 CarswellQue 10918, 142 A.C.W.S. (3d) 917, 7 C.B.R. (5th) 189, EYB 2004-54720

Les Boutiques San Francisco incorporées (Requérante) et Les Ailes de la mode incorporées et Les Éditions San Francisco incorporées (Débitrices) c. Richter & Associés inc. (Contrôleur) et Boutique Marie Claire inc. (Mise en cause)

Gascon, J.C.S

Audience: 13 février 2004
Jugement: 13 février 2004
Motifs oraux: 13 février 2004
Motifs écrits: 26 février 2004
Dossier: C.S. Montréal 500-11-022070-037

Avocat: Me Serge Guérette, Me Stéphanie Lapierre pour les débitrices
Me Denis Ferland pour le contrôleur

Sujet: Insolvency; Contracts; Corporate and Commercial; Property

Classifications d'Abridgment connexes

Bankruptcy and insolvency
XIX Companies' Creditors Arrangement Act
XIX.3 Arrangements
XIX.3.b Approval by court
XIX.3.b.iv Miscellaneous
Bankruptcy and insolvency
XIX Companies' Creditors Arrangement Act
XIX.3 Arrangements
XIX.3.d Effect of arrangement
XIX.3.d.i General principles
Bankruptcy and insolvency
XIX Companies' Creditors Arrangement Act
XIX.5 Miscellaneous

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Groupe B inc., qui regroupait diverses chaînes de magasins et qui était sous la protection de la Loi sur les arrangements avec les créanciers des compagnies, a accepté une offre d'achat de B inc. pour une de ses chaînes de magasins — Groupe B inc. a présenté une requête visant à obtenir l'autorisation de procéder à la vente — Requête accueillie — Transaction était approuvée par le syndicat bancaire et par le contrôleur, qui la jugeait satisfaisante et la recommandait — Vente incluait 33 des 36 magasins de la chaîne et tous les employés de ceux-ci conserveraient leur emploi — Prix de la transaction était adéquat et acceptable et

constituait le meilleur résultat possible dans le processus suivi pour vendre les boutiques — Vente rapide aurait un impact positif et immédiat sur les flux monétaires de l'entreprise — Locateurs des boutiques ont consenti à la transaction — Fournisseurs connus ont été avisés et ne s'y sont pas opposés — Transaction apparaissait donc bonne pour les flux monétaires du Groupe B inc., pour les employés, pour les locateurs et les fournisseurs qui verraient 33 boutiques continuer à opérer et pour le syndicat bancaire qui récupérerait une partie de ses créances garanties — Vente était autorisée.

Faillite et insolvabilité --- Proposition — Loi sur les arrangements avec les créanciers des compagnies — Arrangements — Effet de l'arrangement — Principes généraux

Groupe B inc., qui regroupait diverses chaînes de magasins et qui était sous la protection de la Loi sur les arrangements avec les créanciers des compagnies, a accepté une offre d'achat de B inc. pour une de ses chaînes de magasins — Groupe B inc. a présenté une requête visant à obtenir l'autorisation de procéder à la vente — Groupe B inc. a aussi demandé que soient purgés les droits réels affectant les actifs visés par la transaction — Requête accueillie — Seules parties qui avaient des droits réels sur les actifs en question étaient le syndicat bancaire et les locateurs des magasins, et ceux-ci ont tous consenti à la requête et aux conclusions recherchées — Prévoir dans l'ordonnance sollicitée qu'elle a l'effet d'une vente de contrôle sous justice permettait au Groupe B inc. de fournir à B inc. des biens qui étaient libres de toute hypothèque et de tout droit réel en faveur des tiers pour que la transaction soit finalisée ce jour même — Aucun tiers ne serait préjudicié, puisque ceux qui détenait des droits réels dans les actifs vendus avaient consenti à la requête et que ceux qui avaient des droits réels dans les actifs se trouvant sur les lieux des magasins n'étaient pas préjudiciés non plus, car ces actifs n'étaient pas vendus dans la transaction — Vente faite dans le contexte de la Loi présente par ailleurs certaines analogies avec une vente forcée en vertu du droit civil québécois — Vente était déclarée avoir l'effet d'une vente sous contrôle de justice et les droits réels étaient purgés.

Faillite et insolvabilité --- Proposition — Loi sur les arrangements avec les créanciers des compagnies — Questions diverses

Groupe B inc., qui regroupait diverses chaînes de magasins et qui était sous la protection de la Loi sur les arrangements avec les créanciers des compagnies, a accepté une offre d'achat de B inc. pour une de ses chaînes de magasins — Groupe B inc. a présenté une requête visant à obtenir l'autorisation de procéder à la vente — Groupe B inc. a aussi demandé une déclaration que la vente n'avait pas à être approuvée par les actionnaires du Groupe B inc. — Requête accueillie — Vente des magasins d'une des bannières du Groupe B inc. ne concernait pas la quasi-totalité des biens de l'entreprise — Ni la Loi canadienne sur les sociétés par actions ni les lois corporatives provinciales ne soumettent au vote des actionnaires la vente des biens dans le cadre d'un arrangement en vertu de la Loi — Actionnaires n'ont pas d'intérêt économique en jeu dans le cadre d'une compagnie insolvable et ne peuvent donc avoir de droit de veto dans le cadre de la réorganisation de celle-ci, y compris lorsque cela implique la vente de tout ou d'une partie de ses actifs — Vente pouvait donc procéder sans avoir été approuvée par les actionnaires.

Bankruptcy and insolvency --- Proposal — Companies' Creditors Arrangement Act — Arrangements — Approval by court — Miscellaneous issues

Group B Inc., which included various retail chains and was under protection of Companies' Creditors Arrangement Act, accepted purchase offer made by B inc. for one retail chain — Group B Inc. brought motion for authorization to proceed with sale — Motion allowed — Transaction was approved by banking syndicate and by monitor, who found transaction satisfactory and recommended transaction — 33 out of 36 stores of chain would be sold and employees of 33 stores would remain employed — Transaction price was adequate and acceptable and was best possible result of process followed to sell stores — Quick sale would have positive and immediate effect on cash flow of business — Stores' landlords consented to transaction — Known suppliers were notified and none opposed transaction — Transaction appeared good for cash flow of Group B Inc., for employees, for suppliers as 33 stores would continue to operate and for banking syndicate that would recuperate part of secured claims — Sale was authorized.

Bankruptcy and insolvency --- Proposal — Companies' Creditors Arrangement Act — Arrangements — Effect of arrangement — General principles

Group B Inc., which included various retail chains and was under protection of Companies' Creditors Arrangement Act, accepted purchase offer made by B inc. for one retail chain — Group B Inc. brought motion for authorization to proceed with sale — Groupe B Inc. also applied for purge of real rights affecting assets concerned by transaction — Motion allowed — Only parties who had real rights on concerned assets were banking syndicate and stores' landlords and all of them consented to motion and to conclusions sought — Including in requested order that order has effect of sale by judicial authority allowed Group B Inc. to provide B Inc. with property free of any hypothec and of any real right in favour of third parties so that transaction could be finalized on same day — No third parties would sustain loss as third parties who had real rights on assets sold consented

to motion and because third parties who held real rights in assets found on stores' premises would not suffer any loss either as those assets were not included in transaction — Sale made in context of Act has some similarities with forced sale under Quebec civil law — Sale was declared to have effect of sale by judicial authority and real rights were purged.
Bankruptcy and insolvency --- Proposal — Companies' Creditors Arrangement Act — Miscellaneous issues
Group B Inc., which included various retail chains and was under protection of Companies' Creditors Arrangement Act, accepted purchase offer made by B inc. for one retail chain — Group B Inc. brought motion for authorization to proceed with sale — Group B Inc. also applied for declaration that sale did not need to be approved by shareholders of Group B Inc. — Motion allowed — Sale of stores of one of Group B inc.'s retain chains did not concern substantial part of business' assets — Neither Canada Business Corporations Act nor provincial legislation governing corporations required shareholders' vote for sale of assets within context of arrangement under Act — Shareholders have no economic interest at stake in insolvent corporation and can thus not have right of veto in corporation's reorganization, including when reorganization requires sale of all or part of corporation's assets — Sale could proceed without being approved by shareholders.

Table des précédents

Cases considered by *Gascon, J.C.S*:

Cogeco Câble Inc. c. CFCF Inc. (1996), (sub nom. *Cogeco Câble Inc. c. C.F.C.F. Inc.)* [1996] R.J.Q. 278, 136 D.L.R. (4th) 243, 1996 CarswellQue 110 (C.A. Que.) — considered

Loewen Group Inc., Re (2001), 2001 CarswellOnt 4910, 32 C.B.R. (4th) 54, 22 B.L.R. (3d) 134 (Ont. S.C.J. [Commercial List]) — considered

Pangeo Pharma Inc. c. Ernst & Young Inc. (August 14, 2003), Doc. 500-11-012037-037 (C.S. Que.) — referred to

Ralfor Plus inc., Re (October 18, 2002), Doc. C.S. Terrebonne 700-11-005626-025 (C.S. Que.) — referred to

Syndicat des Employés de Métal Sigodec (CSN) c. St-Arnaud (1986), 1986 CarswellQue 537 (C.A. Que.) — referred to

Statutes considered:

Code de procédure civile, L.R.Q., c. C-25

en général — referred to

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Generally — referred to

REQUÊTE de la compagnie afin d'obtenir l'autorisation de procéder à la vente de certains de ses actifs dans le cadre de son plan d'arrangement en vertu de la *Loi sur les arrangements avec les créanciers des compagnies*.

***Gascon, J.C.S*:**

1 Le Tribunal est saisi d'une requête pour être autorisée à aliéner certains actifs (procédure nº 61) dans le cadre du plan d'arrangement du Groupe BSF en vertu de la *Loi sur les arrangements avec les créanciers des compagnies* (*LACC*) [1] .

2 La requête concerne la vente de la vaste majorité des boutiques de la bannière San Francisco. L'offre d'achat acceptée reçue de Boutique Marie Claire inc. a été produite comme pièce RSF-1 au soutien de la requête. L'autorisation du Tribunal est requise en vertu du paragraphe 48.1 de l'ordonnance initiale amendée du 15 janvier 2004.

3 Le Tribunal note ceci du dossier relativement à cette offre d'achat acceptée :

> 1) Le syndicat bancaire, dont l'approbation est requise selon le paragraphe 48.1 de l'ordonnance initiale amendée, est d'accord avec la transaction.
>
> 2) Le contrôleur juge également cette offre d'achat acceptée satisfaisante et la recommande au paragraphe 54 de son deuxième rapport du 12 février 2004. Entre autres, dans ce rapport, le contrôleur note qu'aucune autre offre pour la bannière Boutique San Francisco n'a été reçue (paragraphe 10), que cette offre de Boutique Marie Claire est nettement supérieure à la valeur nette de liquidation estimée (paragraphe 29) et qu'il s'agit d'une offre qui est plus avantageuse que la liquidation des éléments d'actifs (paragraphe 35).

3) Selon la clause 1.1.2 de l'offre d'achat acceptée, la vente inclut 33 des 36 boutiques opérant sous la bannière San Francisco, lesquelles vont conséquemment continuer à opérer sous l'égide de Boutique Marie-Claire.

4) Tous les employés des 33 boutiques concernées vont conserver leur emploi auprès de Boutique Marie Claire, tel que le souligne la clause 2.1.3 de l'offre d'achat acceptée.

5) Tant le contrôleur et le syndicat bancaire que monsieur Frigon considèrent le prix de la transaction adéquat et acceptable. Le Tribunal comprend qu'il s'agit du meilleur résultat possible dans le processus qui a été suivi pour vendre les boutiques opérant sous cette bannière.

6) La vente rapide a un impact positif immédiat sur les flux monétaires de l'entreprise. Le rapport du contrôleur du 12 février 2004 l'explique de façon claire aux paragraphes 48 et 49 et à l'annexe C.

7) Les nombreux locateurs impliqués ont tous donné leur accord à la transaction, tel qu'en fait foi le paragraphe 12 de la requête et surtout les consentements produits comme pièce RSF-7.

4 Bref, la transaction apparaît bonne au niveau des flux monétaires du Groupe BSF, bonne pour les employés visés, bonne pour les locateurs affectés, bonne pour les fournisseurs qui verront 33 des 36 boutiques continuer à opérer et bonne pour le syndicat bancaire qui récupère ainsi une partie de ses créances garanties.

5 Tous les intervenants intéressés ont aussi été avisés de la requête. D'une part, le syndicat bancaire et les locateurs ne s'y opposent pas. D'autre part, tous les avocats des fournisseurs connus, soit Me Kandestin, Me Sirois, Me Plourde et Me Wittlin, en ont été informés (pièce RSF-4) et aucun ne s'y oppose non plus.

6 Dans ce contexte, il y a donc lieu pour le Tribunal d'autoriser la vente.

7 Reste deux questions dont le Tribunal doit traiter. La première touche la purge des droits réels qui est demandée, la seconde concerne la nécessité de l'approbation des actionnaires du Groupe BSF.

8 Quant à la question de la purge des droits réels, on demande une déclaration voulant que l'ordonnance ait l'effet d'une vente sous contrôle de justice des actifs vendus et purge ainsi les droits réels, dans la mesure prévue au *Code de procédure civile*.

9 Tel que le confirment les pièces RSF-5 et RSF-6, le Tribunal note que les seules parties qui ont des droits réels sur les actifs vendus sont, d'une part, le syndicat bancaire et, d'autre part, les locateurs. Or, tous consentent à la requête et aux conclusions recherchées.

10 L'avocat de la débitrice requérante fait valoir ceci. Déclarer que l'ordonnance a l'effet d'une vente sous contrôle de justice présente une certaine analogie avec le « vesting order » qui est émis à l'occasion dans ce genre de situations, comme le juge Guibault l'a fait récemment dans l'affaire *Pangeo Pharma inc.* [2]

11 Il est vrai que la validité de ces « vesting orders » en droit québécois soulève des questions fort intéressantes. Cela dit, le Tribunal ne juge pas nécessaire d'en traiter ici et accepte l'argument de l'avocat de la débitrice requérante voulant que prévoir dans l'ordonnance sollicitée qu'elle a l'effet d'une vente sous contrôle de justice permet de solutionner une question pratique importante qui découle de l'offre d'achat acceptée. En effet, Groupe BSF doit fournir à Boutique Marie Claire des biens qui soient libres de toute hypothèque et de tout droit réel en faveur de tiers pour que la transaction soit finalisée ce jour même.

12 Le Tribunal est d'avis qu'en procédant ainsi, aucun tiers n'est préjudicié. Ceux qui détiennent des droits réels dans les actifs vendus ont tous consenti à la requête et aux conclusions recherchées. Les autres parties qui pourraient avoir des droits réels dans les autres actifs se trouvant sur les lieux, comme, par exemple, dans des biens sujets à vente à tempérament ou à crédit-bail, ne sont pas préjudiciées non plus puisqu'il ne s'agit pas d'actifs vendus dans la transaction, tel que le prévoit d'ailleurs précisément la clause 4.1.3 de l'offre d'achat acceptée.

13 Le Tribunal ajoute que la vente faite dans le contexte de la *LACC* présente à n'en pas douter des analogies certaines avec une vente forcée. À ce chapitre, les arguments que l'avocat de la débitrice requérante tire des décisions de la Cour d'appel dans *Syndicat des Employés de Métal Sigodec (CSN) c. St-Arnaud* [3] et de la Cour supérieure dans l'affaire *Ralfor Plus inc., Re* [4] sont valables et suffisants.

14 Quant à la deuxième question touchant les actionnaires de la débitrice requérante, on demande une déclaration voulant que la vente ne requière pas leur approbation.

15 Le Tribunal est loin d'être convaincu qu'il s'agit ici d'une vente qui concerne la quasi-totalité des biens de l'entreprise. Que ce soit selon le critère qualitatif ou le critère quantitatif auxquels réfère l'arrêt *Cogeco Câble Inc. c. CFCF Inc.* [5] , il semble loin d'être acquis que ce soit le cas dans les circonstances de la vente des boutiques de la bannière San Francisco.

16 À tout événement, le Tribunal fait siens les propos des auteurs Martel et Martel dans leur ouvrage connu sur les aspects juridiques de la compagnie au Québec [6] :

> Le transfert de propriété des biens d'une société à l'occasion d'un arrangement sous l'autorité de la *Loi sur les arrangements avec les créanciers des compagnies* ou à l'occasion de sa faillite n'est pas soumis au vote des actionnaires tant en vertu de la *Lois canadienne sur les sociétés par actions* que des lois corporatives provinciales.

17 Dans cet extrait, ces auteurs réfèrent au jugement rendu dans l'affaire *Loewen Group Inc., Re* [7] . Essentiellement, le juge Farley y a mentionné que les actionnaires n'avaient pas un intérêt économique en jeu dans le cadre d'une compagnie insolvable. Ils ne devraient donc pas avoir de droit de veto dans le cadre de la réorganisation de cette compagnie, y compris dans les situations où cette réorganisation implique la vente de la totalité ou d'une partie substantielle de ses actifs.

18 Le Tribunal considère qu'il s'agit là d'appuis suffisants pour procéder à la vente sans que l'approbation des actionnaires ne soit obtenue. Encore une fois, afin de faciliter le processus de la vente, le Tribunal est disposé à émettre la déclaration recherchée à cet égard.

19 PAR CES MOTIFS, LE TRIBUNAL :

20 ACCUEILLE la requête de la débitrice requérante, Les Boutiques San Francisco incorporées, pour être autorisée à aliéner certains actifs;

21 DÉCLARE valables et suffisants les significations faites et le préavis donné de la présentation de cette requête;

22 AUTORISE la débitrice requérante, Les Boutiques San Francisco incorporées, à conclure une convention de vente avec Boutique Marie Claire inc. donnant suite et effet à l'offre d'achat acceptée, pièce RSF-1, et à souscrire à tout document et à poser tout geste nécessaire ou simplement utile pour parfaire la transaction prévue par cette offre d'achat acceptée;

23 AUTORISE la débitrice requérante à payer au syndicat bancaire constitué de la Banque Nationale du Canada, de la Banque Royale du Canada, de la Banque Canadienne Impériale de Commerce et de la Banque Laurentienne du Canada la somme de *trois millions de dollars (3 000 000 $)* à même le produit de la vente en paiement pour autant de leurs créances garanties;

24 DÉCLARE et ORDONNE que la vente d'actifs à Boutique Marie Claire inc. en conformité de l'ordonnance présentement sollicitée a l'effet d'une vente sous contrôle de justice et purge les droits réels dans la mesure prévue au *Code de procédure civile du Québec* quant à l'effet du décret d'adjudication;

25 DÉCLARE que la vente autorisée aux termes de l'ordonnance sollicitée ne requiert pas l'approbation des actionnaires de la débitrice requérante;

26 ORDONNE l'exécution provisoire de l'ordonnance sollicitée, nonobstant appel;

27 LE TOUT SANS FRAIS.

Requête accueillie.

Notes de bas de page

1 L.R.C. (1985), c. C-36.

2 *Pangeo Pharma inc., Re* (August 14, 2003), Doc. C.S. 500-11-021037-037 (C.S. Que.).

3 [1986 CarswellQue 537 (C.A. Que.)] J.E. 83-346 (C.A. Que.).

4 *Ralfor Plus inc., Re* (October 18, 2002), Doc. C.S. Terrebonne 700-11-005626-025 (C.S. Que.) j. Chaput.

5 [1996] R.J.Q. 278 (C.A. Que.), 289.

6 Maurice MARTEL et Paul MARTEL, *La compagnie au Québec : les aspects juridiques*, Volume 1, Montréal, Wilson & Lafleur, Martel Ltée, 2003, p. 19-84.

7 *Loewen Group Inc., Re* (2001), 32 C.B.R. (4th) 54 (Ont. S.C.J. [Commercial List]).

Most Negative Treatment: Distinguished
Most Recent Distinguished: Shermag Inc., Re | 2009 QCCS 537, 2009 CarswellQue 2487, [2009] R.J.Q. 1289, EYB 2009-156550, J.E. 2009-897, 51 C.B.R. (5th) 95 | (C.S. Qué., Mar 26, 2009)

2006 CarswellOnt 406
Ontario Superior Court of Justice [Commercial List]

Stelco Inc., Re

2006 CarswellOnt 406, [2006] O.J. No. 276, 14 B.L.R. (4th) 260, 17 C.B.R. (5th) 78

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

AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO STELCO INC. AND THE OTHER APPLICANTS LISTED IN SCHEDULE "A"

APPLICATION UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

Farley J.

Heard: January 17, 18, 20, 2006
Judgment: January 20, 2006
Docket: 04-CL-5306

Counsel: Michael Barrack, James D. Gage, Geoff R. Hall for Applicants
Robert Thornton, Kyla Mahar for Monitor
Peter Jervis, George Glezos, Karen Kiang for Equity Holders
John Varley for Salaried Employees
David Jacobs for USW Locals 8782, 5328
Aubrey Kauffman for Tricap Management Ltd.
Kevin Zych, Rick Orzy for 8% and 10.4% Stelco Bondholders
Lawrence Thacker for Directors of Stelco
Sharon White for USW Local 1005
Ken Rosenberg for USW International
Kevin McElcheran for GE
Gale Rubenstein, Fred Myers for Superintendent of Financial Services
Derrick Tay for Mittal
David R. Byers, Sean Dunphy for CIT Business Credit as DIP and ABL Lender
V. Gauthier for BABC Global Finance
L. Edwards for EDS Canada Inc.
Peter Jacobsen for Globe & Mail
Paul Macdonald, Andy Kent for Sunrise, Appalloosa
Murray Gold, Andrew Hatnay for Salaried Retirees
Flaviano Stanc for himself

Subject: Corporate and Commercial; Insolvency; Civil Practice and Procedure
Related Abridgment Classifications
Bankruptcy and insolvency

XIX Companies' Creditors Arrangement Act
XIX.3 Arrangements
XIX.3.b Approval by court
XIX.3.b.i "Fair and reasonable"
Business associations
VI Changes to corporate status
VI.3 Arrangements and compromises
VI.3.a With shareholders
VI.3.a.ii Reorganization

Headnote

Business associations --- Changes to corporate status — Arrangements and compromises — With shareholders — Reorganization

Corporation negotiated plan of arrangement and reorganization to present to shareholders for approval — Arrangement acknowledged that subsequent reorganization could result in cancellation of reorganized corporation's shares based on those shares' having no value — Shareholder group claimed that sufficient value in corporation existed to fully satisfy claims of affected and unaffected creditors and to provide some additional value to shareholders — All shareholders and creditors voted on and approved arrangement in excess of statutory two-thirds requirements — Corporation brought application for order sanctioning and approving arrangement — Group brought cross-motion for adjournment of approval of arrangement for 60 days — Motion dismissed — Plan was fair, reasonable and equitable regarding existing equity — Group had not presented credible evidence that existing equity had any value independent of proposed arrangement — Despite very comprehensive capital raising and asset sale process and with market well canvassed, no interested party had come forward to conclude another deal — Significant majority of shareholders had approved of arrangement with large quorum present — No creditor opposition to arrangement existed — Creditors were accounted for and had been involved in negotiations to create arrangement.

Bankruptcy and insolvency --- Proposal — Companies' Creditors Arrangement Act — Arrangements — Approval by court — "Fair and reasonable"

Corporation negotiated plan of arrangement and reorganization to present to shareholders for approval — Arrangement acknowledged that subsequent reorganization could result in cancellation of reorganized corporation's shares based on those shares' having no value — Shareholder group claimed that sufficient value in corporation existed to fully satisfy claims of affected and unaffected creditors and to provide some additional value to shareholders — All shareholders and creditors voted on and approved arrangement in excess of statutory two-thirds requirements — Corporation brought application for order sanctioning and approving arrangement — Group brought cross-motion for adjournment of approval of arrangement for 60 days — Motion dismissed — Plan was fair, reasonable and equitable regarding existing equity — Group had not presented credible evidence that existing equity had any value independent of proposed arrangement — Despite very comprehensive capital raising and asset sale process and with market well canvassed, no interested party had come forward to conclude another deal — Significant majority of shareholders had approved of arrangement with large quorum present — No creditor opposition to arrangement existed — Creditors were accounted for and had been involved in negotiations to create arrangement.

Table of Authorities

Cases considered by *Farley J.*:

Algoma Steel Inc., Re (2001), 2001 CarswellOnt 4640, 30 C.B.R. (4th) 1 (Ont. S.C.J. [Commercial List]) — considered

Beatrice Foods Inc., Re (1996), 43 C.B.R. (4th) 10, 1996 CarswellOnt 5598 (Ont. Gen. Div. [Commercial List]) — referred to

Cable Satisfaction International Inc. v. Richter & Associés inc. (2004), 48 C.B.R. (4th) 205, 2004 CarswellQue 810 (C.S. Que.) — considered

Canadian Airlines Corp., Re (2000), 2000 ABQB 442, 2000 CarswellAlta 662, [2000] 10 W.W.R. 269, 20 C.B.R. (4th) 1, 84 Alta. L.R. (3d) 9, 9 B.L.R. (3d) 41, 265 A.R. 201 (Alta. Q.B.) — considered

Canadian Airlines Corp., Re (2000), 2000 ABCA 238, 2000 CarswellAlta 919, [2000] 10 W.W.R. 314, 20 C.B.R. (4th) 46, 84 Alta. L.R. (3d) 52, 9 B.L.R. (3d) 86, 266 A.R. 131, 228 W.A.C. 131 (Alta. C.A. [In Chambers]) — referred to

Laidlaw, Re (2003), 2003 CarswellOnt 787, 39 C.B.R. (4th) 239 (Ont. S.C.J.) — referred to

New Quebec Raglan Mines Ltd. v. Blok-Andersen (1993), 9 B.L.R. (2d) 93, 1993 CarswellOnt 173 (Ont. Gen. Div. [Commercial List]) — considered

Olympia & York Developments Ltd. v. Royal Trust Co. (1993), 17 C.B.R. (3d) 1, (sub nom. *Olympia & York Developments Ltd., Re)* 12 O.R. (3d) 500, 1993 CarswellOnt 182 (Ont. Gen. Div.) — referred to

Royal Bank v. Soundair Corp. (1991), 7 C.B.R. (3d) 1, 83 D.L.R. (4th) 76, 46 O.A.C. 321, 4 O.R. (3d) 1, 1991 CarswellOnt 205 (Ont. C.A.) — considered

Sammi Atlas Inc., Re (1998), 1998 CarswellOnt 1145, 3 C.B.R. (4th) 171 (Ont. Gen. Div. [Commercial List]) — referred to

Stelco Inc., Re (2004), 48 C.B.R. (4th) 299, 2004 CarswellOnt 1211 (Ont. S.C.J. [Commercial List]) — considered

Stelco Inc., Re (2004), 2004 CarswellOnt 2936 (Ont. C.A.) — referred to

Stelco Inc., Re (2004), 338 N.R. 196 (note), 2004 CarswellOnt 5200, 2004 CarswellOnt 5201 (S.C.C.) — referred to

T. Eaton Co., Re (1999), 1999 CarswellOnt 4661, 15 C.B.R. (4th) 311 (Ont. S.C.J. [Commercial List]) — referred to

Statutes considered:

Business Corporations Act, R.S.A. 2000, c. B-9

Generally — referred to

Canada Business Corporations Act, R.S.C. 1985, c. C-44

Generally — referred to

s. 191 — considered

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Generally — referred to

CROSS-MOTION by shareholder group for adjournment of arrangement implementation for 60 days.

***Farley J.*:**

1 The Applicants (collectively "Stelco") moved for:

(a) a declaration that Stelco has complied with the provisions of the *Companies' Creditors Arrangement Act* ("CCAA") and the orders of this court made in this CCAA proceeding;

(b) a declaration that the Stelco plan of arrangement pursuant to the CCAA and the reorganization of Stelco Inc. ("S") under the *Canada Business Corporations Act* ("CBCA") (collectively the "Plan") as voted on by the affected creditors of Stelco is fair and reasonable;

(c) an order sanctioning and approving the Plan; and

(d) an order extending the Stay Period and Stay Date in the Initial Order until March 31, 2006.

2 This relief was unopposed by any of the stakeholders except for various existing shareholders of S (who may also be employees or retirees of Stelco). In particular there was organized objection to the Plan, especially as in essence the Plan would eliminate the existing shareholders, by a group of shareholders (AGF Management Ltd., Stephen Stow, Pollitt & Co., Levi Giesbrecht, Joe Falco and Phil Dawson) who have styled themselves as "The Equity Holders" ("EH"). On December 23, 2005 the EH brought in essence a cross motion seeking the following relief:

(a) An order extending the powers of the Monitor, Ernst & Young, in order to conduct a sale of the entire Stelco enterprise as a going concern through a sale of the common shares or assets of Stelco on such terms and conditions as are considered fair;

(b) An order authorizing and directing the Monitor to implement and to take all steps necessary to complete and fulfill all requirements, terms, conditions and steps of such a sale;

(c) An order authorizing and directing the Monitor to conduct the sale process in accordance with a plan for the sale process approved by the court;

(d) An order directing the Monitor to retain such fully independent financial advisors and other advisors as necessary to conduct this sale process;

(e) An order confirming that the powers granted herein to the Monitor supersede any provision of any prior Order of this Court made in the within proceedings to the extent that such provision of any prior order is inconsistent with or contradictory to this order, or would otherwise limit or hinder the power and authority granted to the Monitor;

(f) An order directing Stelco and its directors, officers, counsel, agents, professional advisors and employees, and its Chief Restructuring Officer, to cooperate fully with the Monitor with regard to this sale process, and to provide the Monitor with such assistance as may be requested by the Monitor or its independent advisors;

(g) In the alternative, an order suspending the sanctioning of the Proposed Plan of Arrangement, approved by the creditors on December 9, 2005, for a period of two months from the date of such order, so that the Monitor may conduct the independent sale process that may result in a more profitable outcome for all stakeholders, including the Equity Holders;

(h) In the further alternative, an order lifting the *Companies' Creditors Arrangement Act* stay of proceedings in respect of Stelco without approving the Plan of Arrangement, as approved by the creditors on December 9, 2005, pursuant to such terms as are just and are directed by court; and

(i) Such further and other relief as counsel may advise and this Honourable Court may permit.

3 In its factum, the EH requested that the court adjourn approval of the Plan for 60 days and direct the Monitor to conduct an independent sale process for the shares of S. In the attendances on January 17 and 18, 2006, the EH then asked that approval of the Plan be adjourned for 30 days in order to see if there were expressions of interest for the shares of S forthcoming in the interim.

4 I indicated that I would defer my consideration of the adjournment request until after I had had submissions on the motions before me as set out above. I also indicated that while there did not appear to be any concern by anyone including the EH as to the first two elements concerning CCAA plan sanctioning as discussed in *Algoma Steel Inc., Re* (2001), 30 C.B.R. (4th) 1 (Ont. S.C.J. [Commercial List]) at p. 3:

> In a sanction hearing under the *Companies' Creditors Arrangement Act* ("CCAA") the general principles to be applied in the exercise of the court's discretion are:
>
> (a) There must be strict compliance with all statutory requirements and adherence to the previous orders of the court;
>
> (b) All materials filed and procedures carried out must be examined to determine if anything has been done or purported to be done which is not authorized by the CCAA; and
>
> (c) The Plan must be fair and reasonable.
>
> See *Northland Properties Ltd., Re* (1988), 73 C.B.R. (N.S.) 175 (B.C. S.C.), affirmed *Northland Properties Ltd. v. Excelsior Life Insurance Co. of Canada* (1989), 73 C.B.R. (N.S.) 195 (B.C. C.A.) at p. 201; *Campeau Corp., Re* (1992), 10 C.B.R. (3d) 104 (Ont. Gen. Div.) at p. 109; *Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), 12 O.R. (3d) 500 (Ont. Gen. Div.) at p. 506; *Sammi Atlas Inc., Re* (1998), 3 C.B.R. (4th) 171 (Ont. Gen. Div. [Commercial List]), at pp. 172-3; *Canadian Airlines Corp., Re*, [2000] 10 W.W.R. 269 (Alta. Q.B.), leave to appeal dismissed, [2000] 10 W.W.R. 314 (Alta. C.A. [In Chambers]).

it would not be sufficient to only deal in this hearing with the third test of whether the Plan was fair and reasonable (including the aspect of "fair, reasonable and equitable" as discussed in *Sammi Atlas Inc., Re* [1998 CarswellOnt 1145 (Ont. Gen. Div. [Commercial List])]). Rather the court also had to be concerned as to whether the Plan was implementable. In other words, it would be futile and useless for the court to approve a plan which stood no reasonable prospect of being implemented. That concern of the court had been raised by my having been alerted by the Monitor in its 46 th Report at paragraphs 8-9:

> 8. The Monitor has had discussions with the proposed ABL lenders, Tricap, the Province and Stelco regarding the status of the ABL Loan and the Bridge Loan. The Monitor has been advised that the parties are continuing to work at resolving issues that are outstanding as at the date of this Forty-Sixth Report. However, all of the parties remain optimistic that acceptable solutions to the outstanding issues will be found and implemented.
>
> 9. In the Monitor's view, the principal issues to be resolved include:
>
>> (a) the corporate structure of Stelco, which could involve the transfer of assets of some of the operations or divisions of the Applicants to new affiliates; and
>>
>> (b) satisfying the ABL lenders and Tricap as to the priority of the new financing.
>
> These issues need to be resolved primarily among the proposed ABL lenders, Tricap and Stelco and will also involve the Province insofar as they affect pension and related liabilities.

5 I was particularly disquieted by the lack of progress in dealing with these outstanding matters despite the passage of 39 days since the Plan was positively voted on December 9, 2005. I do appreciate that Christmas, Hanukkah and New Year's were celebrated in this interval and that there had been a certain "negotiation fatigue" leading up to the December 9 th revisions to the Plan and that I have advocated that counsel, other professionals and litigation participants balance their lives and pay particular attention to family and health. However I find it unfortunate that there would appear to have been such a lengthy hiatus, especially when the workers at Stelco continued (as they have for the past two years while Stelco has been under CCAA protection) to produce steel in record amounts. I therefore demanded that evidence be produced forthwith to demonstrate to my satisfaction that progress was real and substantial so that I could be satisfied about implementability. As a side note I would observe that in the "normal" case, sanction orders are typically sought within two or three days of a positive creditor vote so that it is not unusual for documentation to be sorted out for a month before a plan is implemented with a closing.

6 The EH filed material to support its submission that the Plan is not fair, reasonable and equitable because it is alleged that there is currently sufficient value in Stelco to fully satisfy the claims of affected and unaffected creditors and to provide at least some value to current shareholders. The EH prefers to have a search for some entity to take out the current shareholders for "value". Fabrice Taylor, a chartered financial analyst with Pollit & Co. swore an affidavit on the eve of this hearing which was sent electronically to the service list on January 16, 2006 at approximately 7:30 p.m. In that affidavit, he states:

> 2. The Dofasco bidding war has highlighted a crucial fact about steel asset valuations, notably that strategic buyers place a much higher value on them than public market investors. Attached as Exhibit "1" is an article entitled "Restructuring of steel industry revives investors' interest", published in the Financial Times on December 14, 2005.
>
> 3. I, along with Murray Pollitt and a number of Stelco shareholders, have spent the past three months attempting to attract strategic buyers and/or equity investors in Stelco. These strategic buyers and equity investors are mostly international. Some had already considered buying Stelco or had made bids for the company but had stopped following the story some months ago. Others were not very familiar with Stelco.
>
> 4. Three factors hindered our efforts. First, Stelco is under CCAA protection, a complicated situation involving multiple players and interests (unions, politics, pensions) that is difficult to understand, particularly for foreigners. Second, there has not been enough time for these strategic buyers or equity investors to deepen their understanding or to perform due diligence. Finally, the Dofasco bid process, while providing emphatic evidence that steel assets are increasingly valuable, hinders certain strategic buyers and financial institutions interested in participating in Stelco because they are distracted and/or conflicted by the Dofasco sale. I have been advised by some of the participants in the Dofasco negotiations that they would be willing to carefully consider a Stelco transaction once the Dofasco sale has been resolved.

5. The Forty Fifth Report of the Monitor confirmed that Stelco had not received any offers in the last several months. The report does not answer the question of whether the company or its financial advisors have in fact attempted to attract any offers. I believe that Stelco would have received expressions of interest had the company made efforts to attract offers, or had the Dofasco sale been resolved earlier. I believe that the Monitor should be authorized, for a period of at least 60 days, to canvas interest in a sale of Stelco before the approval of the proposed plan of restructuring.

7 No satisfactory explanation was forthcoming as to why this affidavit, if it needed to be filed at all, was not served and filed by December 23, 2005, in accordance with the timetable which the EH and the other stakeholders agreed to. Certainly there is nothing in the affidavit which is such late breaking news that this deadline could not have been met, let alone that it was served mere hours before the hearing commenced on January 17, 2006. Aside from the fact that the financing arrangements forming the basis of the Plan contained "no shop" covenants which would make it inappropriate and a breach to try to attract other offers, the foregoing excerpts from the Taylor affidavit clearly illustrate that despite apparently diligent efforts by the EH, no one has shown any real or realistic interest in Stelco. Reading between the lines and without undue speculation, it would appear that the efforts of the EH were merely politely rebuffed.

8 Certainly Stelco is not Dofasco, nor is it truly a comparable (as opposed to a contrastor). Stelco has been a wobbly company for a long time. Further as I indicated in my October 3, 2005 endorsement, in the preceding 20 months under the CCAA protection, Stelco has become "shopped worn". The unusual elevation of steel prices in the past two years has helped Stelco avoid the looming liquidity crisis which it anticipated in its CCAA filing on January 29, 2004. However even this financial transfusion has not allowed it to become a healthy company or truly given it a burgeoning war chest to weather bad times the way that other steel companies (including some in Canada) have so benefited. The redness of the visage of Stelco is not a true indication of health and well being; rather it seems that it is rouge to mask a deep pallor.

9 I am satisfied on the evidence of Hap Stephen, the Chief Restructuring Officer of Stelco and of the Monitor that there has been compliance with all statutory requirements and adherence to previous orders of the court and further that nothing has been done or purported to be done that is not authorized by the CCAA.

10 The next question to be dealt with is whether the Plan is fair, reasonable and equitable. I was advised that creditors of the affected creditor classes representing approximately 90% in value of each class voted on the Plan. The Monitor reported at para. 19 of its 44 th Report as to the results of the vote held December 9 th as follows:

Class of Affected Creditors	**Percentage in favour by Number**	**Percentage in favour by Dollar Value**
Stelco	78.4%	87.7%
Stelwire	89.01%	83.47%
Stelpipe	94.38%	86.71%
CHT Steel	100%	100%
Welland Pipe	100%	100%

11 This favourable vote by the affected creditors is substantially in excess of the statutory two-thirds requirement. By itself that type of vote, particularly with such a large quorum present, would ordinarily be very convincing for a court not interfering with the informed decisions of business people. With that guideline, plus the aspect that a plan need not be perfect, together with the lack of any affected creditor opposition to the Plan being sanctioned and the fact that the Plan including its ingredients and nature and amount of compromise compensation to be given to affected creditors having been exhaustively negotiated in hard bargaining by the larger creditor groups who are recognized as generally being sophisticated and experienced in this area, and the consideration of the elements in the next paragraph, it would seem to me that the Plan is fair, reasonable and equitable vis-à-vis the affected creditors and I so find. See *Sammi Atlas Inc., Re*, at p. 173; *T. Eaton Co., Re* (1999), 15 C.B.R. (4th) 311 (Ont. S.C.J. [Commercial List]) at p. 313; *Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), 12 O.R. (3d) 500 (Ont. Gen. Div.) at p. 510.

12 I also think it helpful to examine the situation pursuant to the analysis which Paperny J. did in *Canadian Airlines Corp., Re* (2000), 20 C.B.R. (4th) 1 (Alta. Q.B.), leave to appeal refused (2000), 20 C.B.R. (4th) 46 (Alta. C.A. [In Chambers]). That proceeding also involved an application pursuant to the corporate legislation, the *Business Corporations Act* (*Alberta*), concerning the shares and shareholders of Canadian Airlines. In that case, Paperny J. found the following factors to be relevant:

> (a) the composition of the vote: claims must have been properly classified, with no secret arrangements to give an advantage to a creditor or creditors; approval of the plan by the requisite majority of creditors is most important (in the case before me of Stelco: the challenge to classification was dismissed; there was no suggestion of secret arrangements; and, as discussed above, the quorum and size of the positive vote were very high);
>
> (b) anticipated receipts in liquidation or bankruptcy: it is helpful if the Monitor or other disinterested person has prepared a liquidation analysis (in Stelco, the Monitor determined that on liquidation, affected creditor recovery would likely range from 13 to 28 cents on the dollar; it should also be observed that Stelco has engaged in extensive testing of the market as to possible capital raising or sale with the aid of established firms and professionals of great experience and had come up dry.);
>
> (c) alternatives to the proposed plan: it is significant if other options have been explored and rejected as unworkable (in Stelco; see comment in (b));
>
> (d) oppression of the rights of certain creditors (in Stelco, this was not a live issue as nothing of this sort was alleged);
>
> (e) unfairness to shareholders (in Stelco, this will be dealt with later in my reasons; however allow me to observe that the interests of shareholders becomes engaged if they are not so far underwater that there is a reasonable prospect in the foreseeable future that the fortunes of a company would otherwise likely be turned around so that they would not continue to be submerged); and
>
> (f) the public interest: the retention of jobs for employees and the support of the plan by the company's unions is important (in Stelco, the Plan does not call for reductions in employment; there is provision for continuation of the capital expenditure program and its funding; an important enterprise for the municipal and provincial levels of government would be preserved with continuing benefits for those communities; an important customer and supplier would continue in the industry and maintain competition; the USW International Union and its locals (except for local 1005) supported the Plan and indeed were instrumental in bringing Tricap Management Limited to the table (local 1005's position was that it did not wish to engage in the CCAA process in any meaningful way as it was content to rely upon its existing collective agreement which now still has several months to go before expiring).

However that is not the end of that issue: what of the shareholders?

13 Is the Plan fair, reasonable and equitable for the existing shareholders of S? They will be wiped out under the Plan and their shares eliminated. New equity will be created in which the existing shareholders will not participate. They have not been allowed to vote on the Plan.

14 It is well established that a reorganization pursuant to s. 191 of the CBCA may be made in conjunction with a sanction order under the CCAA and that such a reorganization may result in the cancellation of existing shares of the reorganized corporation based on those shares/equity having no present value (in the sense of both value "now" and the likelihood of same having value in the reasonably foreseeable future, absent the reorganization including new debt and equity injections and permitted indulgences or other considerations and adjustments). See *Beatrice Foods Inc., Re* (1996), 43 C.B.R. (4th) 10 (Ont. Gen. Div. [Commercial List]) at para. 10-15; *Laidlaw, Re* (2003), 39 C.B.R. (4th) 239 (Ont. S.C.J.); *Algoma Steel Inc., Re* at para. 7; *Cable Satisfaction International Inc. v. Richter & Associés inc.* (2004), 48 C.B.R. (4th) 205 (C.S. Que.) at p. 217. The Dickenson Report, which articulated the basis for the reform of corporate law that resulted in the enactment of the CBCA, described the object of s. 191 as being:

to enable the court to effect any necessary amendment to the articles of the corporation in order to achieve the objective of the reorganization without having to comply with all the formalities of the Draft Act, particularly shareholder approval of the proposed amendment (emphasis added): R.W.V. Dickenson, J.L. Howard, L. Getz, *Proposals for a New Business Corporations Law for Canada*, vol. 1 (Ottawa: Information Canada. 1971) at p. 124.

15 The fairness, reasonableness and equitable aspects of a plan must be assessed in the context of the hierarchy of interests recognized by insolvency legislation and jurisprudence. See *Canadian Airlines Corp., Re* at pp. 36-7 where Paperny J. stated:

Where a company is insolvent, only the creditors maintain a meaningful stake in its assets. Through the mechanism of liquidation or insolvency legislation, the interests of shareholders are pushed to the bottom rung of the priority ladder. The expectations of creditors and shareholders must be viewed and measured against an altered financial and legal landscape. Shareholders cannot reasonably expect to maintain a financial interest in an insolvent company where creditors' claims are not being paid in full. It is through the lens of insolvency that the court must consider whether the acts of the company are in fact oppressive, unfairly prejudicial or unfairly disregarded. CCAA proceedings have recognized that shareholders may not have "a true interest to be protected" because there is no reasonable prospect of economic value to be realized by the shareholders given the existing financial misfortunes of the company: *Royal Oak Mines Ltd.*, *supra*, para. 4., *Re Cadillac Fairview Inc.* (March 7, 1995), Doc. B28/95 (Ont. Gen. Div. [Commercial List]), and *T. Eaton Company*, *supra*.

To avail itself of the protection of the CCAA, a company must be insolvent. The CCAA considers the hierarchy of interests and assesses fairness and reasonableness in that context. The court's mandate not to sanction a plan in the absence of fairness necessitates the determination as to whether the complaints of dissenting creditors and shareholders are legitimate, bearing in mind the company's financial state. The articulated purpose of the Act and the jurisprudence interpreting it, "widens the lens" to balance a broader range of interests that includes creditors and shareholders and beyond to the company, the employees and the public, and tests the fairness of the plan with reference to its impact on all of the constituents.

It is through the lens of insolvency legislation that the rights and interests of both shareholders and creditors must be considered. The reduction or elimination of rights of both groups is a function of the insolvency and not of oppressive conduct in the operation of the CCAA. The antithesis of oppression is fairness, the guiding test for judicial sanction. If a plan unfairly disregards or is unfairly prejudicial it will not be approved. However, the court retains the power to compromise or prejudice rights to effect a broader purpose, the restructuring of an insolvent company, provided that the plan does so in a fair manner.

16 The question then is does the equity presently existing in S have true value at the present time independent of the Plan and what the Plan brings to the table? If it does then the interests of the EH and the other existing shareholders must be considered appropriately in the Plan. This is fairly put in K.P. McElcheran, *Commercial Insolvency in Canada* (Toronto, Lexis Nexis Canada Inc.: 2005) at p. 290 as:

If, at the time of the sanction hearing, the business and assets of the debtor have a value greater than the claims of the creditors, a plan of arrangement would not be fair and reasonable if it did not offer fair consideration to the shareholders.

17 However if the shareholders truly have no economic interest to protect (keeping in mind that insolvency and the depth of that insolvency may vary according to which particular test of insolvency is applied in respect of a CCAA proceeding: as to which, see *Stelco Inc., Re*, [2004] O.J. No. 1257 (Ont. S.C.J. [Commercial List]), leave to appeal dismissed [2004] O.J. No. 1903 (Ont. C.A.), leave to appeal dismissed [2004 CarswellOnt 5200 (S.C.C.)] No. 30447). In *Cable Satisfaction*, Chaput J. at p. 218 observed that when shareholders have no economic interest to protect, then they have no claim to a right under the proposed arrangement and the "[m]ore so when, as in the present case, the shareholders are not contributing to any of the funding required by the Plan." I do note in the case of the Stelco Plan and the events leading up to it, including the capital raising and sale processes, that despite talk of an equity financing by certain shareholders, including the EH, no concrete offer ever surfaced.

18 If the existing equity has no true value at present, then what is to be gained by putting off to tomorrow (the ever present and continuous problem in these proceedings of manãna — which never comes) what should be done today. The EH

speculate, with no concrete basis for foundation as demonstrably illustrated by the eve of hearing Taylor affidavit discussed above, that something good may happen. I am of the view that that approach was accurately described in court by one counsel as a desperation Hail Mary pass and the willingness of someone, without any of his own chips, in the poker game willing to bet the farm of someone else who does have an economic interest in Stelco.

19 I also think it fair to observe that in the determination of whether someone has an economic value, that analysis should be conducted on a reasonable and probable basis. In a somewhat different but applicable context, I observed in *New Quebec Raglan Mines Ltd. v. Blok-Andersen*, [1993] O.J. No. 727 (Ont. Gen. Div. [Commercial List]) at p. 3:

> The "highest price" is not the price which could be derived on the basis of the most optimistic and risky assumptions without any regard as to their likelihood of being realized. It also seems to me that prudence would involve a consideration that there be certain fall back positions. Even in betting on horses, the most savvy and luckiest punter will not continue to stake all his winnings of the previous race on the next (and so on). If he does, he will go home wearing the barrel before the last race is run.

Alternatively there is a saying: "If wishes were horses, then beggars would ride."

20 Unless I were to now dismiss the motion for sanctioning and approving the Plan because I found that it was not implementable and/or that it was not fair, reasonable and equitable to the existing shareholders (based upon the proviso that I did determine that the existing shareholders did have a valid present material equity of value), then I see no reason not to dismiss the motion of the EH concerning its request for an adjournment and its request for a further sale (or other related disposition) process. Allow me to observe that no matter how well intentioned the motion of the EH in that regard, I find that that request to be lacking in any valid substance. Rather, the evidence presented was in essence a chimera. I think it fair to observe that, with all the capital raising and sales processes to date which Stelco has undertaken in conjunction with its experienced and well placed professional advisers together with its Chief Restructuring Officer and the Monitor, the bushes have been exhaustively and well beaten as to any real possible interest. Despite three months of what one must presume to be diligent efforts, the EH have come up with nothing concrete. I do not find that the three factors mentioned by Taylor in his late-blooming affidavit of January 16th to be remotely close to convincing. The first two, if taken at face value, would lead one to the conclusion that no one has the time, interest or ability to take an interest in Stelco in any meaningful timeframe. The third presumes that the losing bidder for Dofasco, be it Arcelor or ThyssenKrupp, will almost automatically want Stelco — and at a price and upon terms which would result in present equity being attributed value. I must say in fairness that this is wishful thinking as neither of these warring bidders pursued any interest in Stelco during the previous processes. It is neither clear nor obvious why mere municipal proximity of Dofasco to Stelco's Hilton Works in Hamilton would now ignite any interest in Stelco.

21 I also think it fair to observe that not proceeding with the sanction hearing now and indeed starting a brand new search for someone who will think Stelco so worthwhile that it will offer such a large amount (with or without onerous conditions) is akin to someone coming into court when a receiver is seeking court approval on a sale — and that someone being allowed to know the price and conditions — and then being able to make an offer for a price somewhat higher. (I reiterate that here we do not even have an offer or a price.) I do not see that such a procedure would be consistent with the principles laid out in *Royal Bank v. Soundair Corp.* (1991), 7 C.B.R. (3d) 1 (Ont. C.A.). Given that the affected creditors have rather resoundingly voted in favour of the Plan, all in accordance with the provisions of the CCAA and the Court orders affecting the sanction, I would be of the view that if the existing equity has no value, then the EH's request in this respect would, if granted, be of significant detriment to the integrity of the insolvency system and regime. I would find that inappropriate to attempt to justify proceeding along that line.

22 Allow me to return to the pivotal point concerning the question of whether the Plan is fair, reasonable and equitable, vis-à-vis the existing equity. The EH retained Navigant Consulting which relied upon the views of Metal Bulletin Research ("MBR") which, *inter alia*, predicted a selling spot price of hot roll steel at $525 U.S. per ton. Navigant's conclusion in its December 8, 2005 report was that the value of residual shareholder equity was between $1.1 to $1.3 billion or a per share value of between $10.76 and $12.71. However, when Stelco pointed out certain deficiencies in this analysis, Navigant took some of these into account and reduced its assessment of value to between $745 million to $945 million for residual shareholder value on per share value of $7.29 to $9.24, using a discounted cash flow ("DCF") approach. Navigant tested the DCF approach against the

EBITDA approach. It is interesting to note that on the EBITDA analysis approach Navigant only comes up to a conclusion that the equity is valued at $8 million to $83 million or $0.09 to $0.81 per share. If the Court were to accept that as an accurate valuation, or something at least of positive value even if not in that neighbourhood, then I would have to take into account existing shareholder interests in determining whether the Plan was fair, reasonable and equitable — and not only vis-à-vis the affected creditors but also vis-à-vis the interests of the existing shareholders given that at least some of their equity would be above water. I understand the pain and disappointment of the existing shareholders, particularly those who have worked hard and long with perhaps their life savings tied up in S shares, but regretfully for them I am not able to come to a conclusion that the existing equity has a true positive value.

23 The fight in the Stelco CCAA proceedings has been long and hard. No holds have been barred as major affected creditors have scrapped to maximize their recovery. There were direct protracted negotiations between a number of major affected creditors and the new equity sponsors under the Plan, all of whom had access to the confidential information of Stelco pursuant to Non Disclosure Agreements. These negotiations established a value of $5.50 per share for the *new* common shares of a *restructured* Stelco. That translates into an enterprise value (not an equity value since debt/liabilities must be taken into consideration) of $816.6 million for Stelco, or a recovery of approximately 65% for affected creditors. The parties engaged in these negotiations are sophisticated experienced enterprises. There would be no particular reason to believe that in the competition involved here that realistic values were ignored. Further, the affected creditors generally were rather resoundingly of the view by their vote that an anticipated 65% recovery was as good as they could reasonably expect.

24 The 45th Report of the Monitor had a chart of calculations to determine the level of recovery of affected creditors at various assumed enterprise values up to and including the top end of Navigant's range of enterprise value (as contrasted with residual equity value). At the high end of Navigant's range of revised enterprise value, $1.6 billion, the Monitor calculated that affected creditors would still not receive full recovery of their claims.

25 The EH cited the sale of the EDS Canada claim to Tricap as being at a premium as evidence in support of Navigant's conclusion. However, the fact was that this claim was purchased not at a premium, but rather at a discount. That would be confirmation of the opposite of which the EH has been contending.

26 Despite a very comprehensive capital raising and asset sale process, with the market alerted and well canvassed, and with the ability to conduct due diligence, no interested party came forwarded to conclude a deal. Even since the December 9, 2005 vote when the terms of the Plan were available, no interested party has come forward with any expression of interest which would attribute value to the existing shareholders.

27 Stelco's experts, UBS and BMO Nesbit Burns, both have given opinions that there is no value to the existing equity. Their expert opinions were not challenged by cross-examination. Both these advisors are large sophisticated institutions; both have extensive experience in the steel industry.

28 UBS calculated the enterprise value of Stelco as being in the range of $550 million to $750 million; BMO Nesbitt Burns at $650 million to $850 million. On that basis the unsecured creditors would receive less than full recovery of their claims, which would lead to the conclusion that there is no value for the existing shareholders. The Monitor commissioned an independent estimate of the enterprise value from its affiliate, Ernst & Young Orenda Corporate Finance Inc's Valuation Group. That opinion came in at $635 million to $785 million.

29 I would note that Farley Cohen, the principal author of the Navigant report, does not have experience in dealing with integrated steel companies. I find it unusual that he would have customized his approach in calculating equity value by not deducting the Asset Based Lenders loan. Brad Fraser of BMO Nesbitt Burns stated that such customization was contrary to the practice at his firms both present and past and that the Navigant's approach was internally inconsistent with respect thereto as to 2005 to 2009 cash flows as contrasted with terminal value. The Navigant report appears to have forecasted a high selling price for steel combined with low costs for imports such as coal and scrap, which would be contrary to historical complementary movements between steel prices and these inputs.

30 Navigant relies on an average price of $525 US per ton as provided by MBR. This is a single source as to this forecast. While a single analyst may come up with a forecast which is shown by the passage of time to be dead on accurate, it would seem to me to be more realistic and prudent to rely on the consensus approach of considering the views of a greater number of "representative" analysts, especially when prices appear volatile for the foreseeable future. That consensus approach allows for consideration of the way that each analyst looks at the market and the factors and weights to be given. The UBS opinion reviewed the pricing forecast of eight analysts and BMO Nesbitt Burns' ten analysts. Interestingly, MBR's choice of a price at the top of the band would seem at odds as the statements on the MBR website foreseeing downward pressure on steel prices in 2006 because of falling prices in China; although this inconsistency was pointed out, there was no response forthcoming.

31 Navigant estimated Stelco's financial performance for the last quarter of 2005 and made a significant upward adjustment. However, the actual experience would appear to indicate that such an adjustment would overstate Stelco's results by $124 million.

32 Navigant's DCF approach involved a calculation of Stelco's enterprise value by adding the present value of a stream of cash flow from the present to 2009 and the present value of the terminal value determined as at 2009 so that the terminal value represents the majority (60% approximately) of enterprise value as calculated by Navigant. MBR chose a 53-year average steel price despite significant changes over that time in the industry. However, coal and scrap costs were determined as at 2009. This produced the anomalous result that steel prices are rising while costs are falling. This would imply great structural difficulties (economically and functionally) in the steel industry generally and a lack of competition. A terminal value EBITDA margin for Stelco would then be implied at approximately 26% or some 11% higher than the EBITDA margin actually achieved by Stelco in the first quarter of 2005, the most profitable quarter in the history of Stelco.

33 Interestingly, since Navigant's approach in fact would decrease calculated value, UBS and BMO Nesbitt Burns used a weighted average cost of capital ("WACC") for Stelco in the range of 10% to 14%; Navigant used 24%. A higher WACC will result, all other things being equal, in a lower enterprise value. Navigant considered that there should be a 10% to 15% company-specific premium because of the risks associated with Stelco vis-à-vis the higher steel prices forecast by MBR. This would appear to imply that there was recognition that either MBR was aggressive in its forecasting or that price volatility would caution one to use consensus forecasting. Colin Osborne, a senior executive of Stelco, with considerable experience in the steel industry provided direct evidence on the substantial differences between each of Stelco, AK Steel, U.S. Steel and Algoma. Mr. Cohen acknowledged in cross-examination that these differences made Dofasco a more valuable company than Stelco. As set out at para. 74 of the Stelco Factum:

> 74. The specific difference identified by Mr. Osborne which made Dofasco unique include but are not limited to:
>
> (a) non-union, flexible work environment (vs. Stelco, Algoma, AK Steel and U.S. Steel);
>
> (b) legacy costs which are very low due to non-conventional profit sharing, which limits liability (vs. Stelco, AK Steel, Algoma and U.S. Steel);
>
> (c) high historical cap-ex spend per ton (vs. Stelco, Algoma and U.S. Steel);
>
> (d) a flexible steelmaking stream in terms of a hybrid EAF and blast furnace BOF stream in Hamilton and a mini-mill operation in the U.S. (vs. Stelco, Algoma, U.S. Steel and AK Steel which are all blast furnace based steel makers);
>
> (e) a value added product mix focused on coated products and tubing (vs. Stelco and Algoma which focus on hot roll); and
>
> (f) a strong raw material position with excess iron ore and self-sufficiency in coke (Algoma, Stelco and AK Steel all have dependence to various degrees on either iron ore or coke or both).

Dofasco and Stelco are not in my view fungible. There are incredible differences between these two enterprises, to the disadvantage of Stelco.

34 The reply affidavit of Mr. Fraser of BMO Nesbitt Burns calculated the effect of all of the acknowledged corrections to the initial Navigant report and other adjustments. The result of this exercise was a conclusion by him that there was no value available for existing shareholders. This, along with all the other affidavits provided on the Stelco side, was not cross-examined on.

35 While not referred to in the Factum of EH, there were a number of quite serious allegations raised in material filed by the EH against management of Stelco concerning bias and manipulation. Mr. Osborne responded to each of these allegations; he was not cross-examined. I find it unfortunate that such allegations appear to have been made on an unsubstantiated shotgun approach.

36 The position of the EH is that certain of the features of the Plan should be assumed as transportable directly and without change into a scenario where some insolvency rescuer emerges on the scene as the equivalent of a White Knight, one it would seem which has been awakened from slumber. I am of the view that presumes too much. For example, I take it that the Province would not automatically accept this potential newcomer without question; nor would it likely relish the resumption of weeks of hard bargaining. I would think it unwise, impudent and high stakes poker (with other peoples' money) to speculate as did Taylor in para. 41 of his December 23, 2005 affidavit:

> 41. Were Stelco to emerge from CCAA protection and were the province to carry out its threat to revoke Stelco's entitlement to the benefit of section 5.1 the end result would likely be a liquidation of the company. The Province would be responsible for a substantial portion of Stelco's pension promise. It would clearly not be in the Province's self-interest to force Stelco into liquidation. It was, in other words, an obvious bluff. Yet the notion of calling this bluff does not appear to have crossed management's mind.

This should be contrasted with the views of the Monitor in its 44 th Report at para. 61:

> 61. It should also be noted that the Pension Plan Funding Arrangements and the $150 million New Province Note embodied in the Approved Plan were agreed to by the Province only in the context of the terms of the Approved Plan and, in particular, the capital structure, liquidity and other elements contemplated therein. The Province has advised that its proposed financing and the Pension Plan Funding Arrangements should not be assumed to be available if any of the elements of the Approved Plan are changed.

37 The end result is that given the above analysis, I have no hesitation in concluding that it would be preferable to rely upon the analysis of UBS, BMO Nesbitt Burns and Ernst & Young Orenda, both as to their direct views as to the enterprise value of existing Stelco and as to their criticism of the Navigant and MBR reports concerning Stelco. Therefore, I conclude that the existing shareholders cannot lay claim to there being any existing equity value. Given that conclusion, it would be inappropriate to justify cutting in these existing shareholders for any piece of the emergent restructured Stelco. If that were to happen, especially given the relative values and the depth of submersion of existing equity, then it would be unfair, unreasonable and inequitable for the affected creditors.

38 That then leaves the remaining question: Does it appear likely that the Plan will be implementable? I have been advised on Wednesday, January 18 th that I would receive executed term sheets (which would address the issues raised by the Monitor discussed above) by 5 p.m., Friday, January 20 th .

39 The motion and adjournment request of the EH is dismissed.

40 There was a request to extend the stay to March 31, 2006. I am of the view that it would be sufficient and desirable to extend the stay (subject, of course, to further extension) to March 3, 2006.

41 I have received the term sheets together with the Monitor's 48 th Report by the 5 p.m. January 20 th deadline and find them satisfactory as demonstrating to my analysis and satisfaction that the Plan is implementable as discussed above, subject to

a comeback provision if anyone wishes to dispute the implementability issue (the onus remaining on Stelco). My decision today re: implementability should in no way be taken as deciding any corporate reorganization issue or anything of that or related nature. I therefore sanction and approve the Plan.

Motion dismissed.

2010 ABQB 295
Alberta Court of Queen's Bench

JED Oil Inc., Re

2010 CarswellAlta 861, 2010 ABQB 295, [2010] A.W.L.D. 2552, 188 A.C.W.S. (3d) 336, 68 C.B.R. (5th) 115

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, C. C-36, as Amended

And In the Matter of the Business Corporations Act, R.S.A. 2000 C. B-9

And In the Matter of a Plan of Compromise or Arrangement of JED Oil Inc. and its Subsidiaries JED Production Inc. and JED Oil (USA) Inc.

C.A. Kent J.

Heard: April 21, 2010
Judgment: May 3, 2010
Docket: Calgary 0801-09492

Counsel: Trevor A. Batty for Certain Creditors
Marcia L. Johnston, Q.C. for Series B Preferred Shares

Subject: Insolvency; Corporate and Commercial
Related Abridgment Classifications
Bankruptcy and insolvency
XIII Dividends
XIII.2 Distribution of dividends
Headnote
Bankruptcy and insolvency --- Dividends — Distribution of dividends
Preferred shares — J Inc. was granted relief under Companies' Creditors Arrangement Act — J Inc. created plan that provided for four classes of creditors; plan provided that unsecured creditors class would receive Class B Special Shares — Creditors brought application to exclude preferred shareholders from unsecured creditor class, as divided claims constituted equity, not debt — Application granted — Preferred shareholders excluded from unsecured creditors class — Substance of relationship between shareholders and corporation at time they purchased their shares was not that of creditor and debtor — Shareholders were risk takers, not creditors — In order for them to have become creditors from time they were issued shares would have required more explicit wording than what was contained in shares.
Table of Authorities
Cases considered by *C.A. Kent J.*:
Central Capital Corp., Re (1996), 132 D.L.R. (4th) 223, 27 O.R. (3d) 494, (sub nom. *Royal Bank v. Central Capital Corp.)* 88 O.A.C. 161, 1996 CarswellOnt 316, 38 C.B.R. (3d) 1, 26 B.L.R. (2d) 88 (Ont. C.A.) — followed
Statutes considered:
Business Corporations Act, R.S.A. 2000, c. B-9
s. 43 — considered
Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36
Generally — referred to

APPLICATION by creditors to exclude preferred shareholders from unsecured creditor class.

***C.A. Kent J.*:**

1 On August 13, 2008, I granted an order giving JED Oil Inc. and related companies relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 as amended. About 100 holders of Series B Preferred Shares of JOI submitted proofs of claim in respect of dividends that they said were payable from January, 2008 until August 12, 2008.

2 On September 3, 2009, JED obtained an order to hold a meeting of JED's creditors to consider its Amended and Restated Plan of Arrangement. The Plan provided for four classes of affected creditors. One of those classes was Unsecured Creditors. The Monitor and JED accepted the dividend claims of the preferred shareholders as being unsecured claims and included them in the Unsecured Creditors class. The Plan was approved and sanctioned by the Court, but subject to this application.

3 The Plan provided that the Unsecured Creditors class would receive Class B Special Shares of the restructured JED in proportion to their claims. The creditors who bring this application argue that the dividend claims are not debt and should not rank equally with the unsecured creditors. They seek a declaration that the dividend claims are a return on equity so that they are excluded from the Unsecured Creditors class both with respect to voting and participation under the Plan.

4 The issue is whether the dividend claims are debt or equity.

5 The relevant terms of the Series B Preferred Shares reads as follows:

> **(4) Entitlement to Dividends**
>
> ***(a) Entitlement***
>
> Holder of Series B Preferred Shares shall be entitled to receive dividends calculated at the rate of ten percent (10%) per annum of the Redemption Amount per share for the number of Series B Preferred Shares so held, accruing from the date of issuance through the date each such Series B Preferred Share is converted to a Common Share or redeemed by the Corporation.
>
> ***(b) Quarterly Payments***
>
> Dividends shall be paid quarterly, to the holder of record of the Series B Preferred Shares on the last day of each calendar quarter, commencing September 30, 2006. Payments shall be issued on the fifteenth day of the month following the end of each such calendar quarter.

6 Some facts and some legal principles that are not in dispute. Specifically, it is agreed that as of February 1, 2008, JED was insolvent. Both sides agree that debt ranks ahead of equity and that dividends are equity until they are declared at which time they become debt.

7 *Central Capital Corp., Re* (1996), 132 D.L.R. (4th) 223 (Ont. C.A.) is instructive for the issues before me. McCutcheon and SYH were holders of preferred shares with a right to have their shares redeemed on a specific date at a specific value. McCutcheon had acquired his shares through the sale of shares in another company for which he received cash and the redeemable shares. SYH sold its shares in insurance companies for the redeemable shares.

8 The majority of the court found that the relationship between McCutcheon and SYH on one hand and Central Capital on the other was one of equity, not debt, for two reasons. One was the wording of the Articles which contained none of the indicia of debt. Second was the nature of the relationship of the shares to the structure of the corporation. McCutcheon and SYH continued to have the rights attached to their shares. Thus the nature of the relationship - equity, not debt -did not change. Because the dividends had not been declared, the majority also found no debt created.

9 Laskin, J.A., in his reasons, set out the challenge when dealing with the characterization of preferred shares. At para. 117, he says:

> Preferred shares have been called "compromise securities" and even "financial mongrels": Grover and Ross, *Materials and Corporate Finance* (1975), at p. 49. Invariably the conditions attaching to preferred shares contain attributes of equity and, at least in an economic sense, attributes of debt. Over the years financiers and corporate lawyers have blurred the distinction between equity and debt by endowing preferred shareholders with rights analogous to the rights of creditors.

And, at para. 119, he says:

> If the certificate or instrument contains features of both equity and debt - in other words if it is hybrid in character - then the Court must determine the "substance" of the relationship between the holder of the certificate and the company. This is the lesson of Justice Iacobucci's judment in *Canada Deposit Insurance Corp. v. Canadian Commercial Bank*, [1992] 3 S.C.R. 558.

10 In this case, the Applicants rely heavily on *Central Capital* in making five points. First, they say that on the date that the shares were issued, there was no debt because dividends had not been declared. Only on the last calendar day of each quarter would the company have sufficient information including the identity of the payee to declare the dividends. Secondly, the board would not know the status of the company until the end of each quarter so they could not declare the dividends until then.

11 Third, the corporation cannot issue shares that in effect make the shareholders creditors. In Grover and Ross, *Materials and Corporate Finance*, cited in *Central Capital* at para. 132:

> On the other hand, the company cannot issue "secured" preferred shares in the sense that shares cannot have a right to a return of capital which is equal or superior to the rights of creditors. Preferred shareholders are risk-takers who are required to invest capital in the business and who can look only to what is left after creditors are fully provided for. Thus, in the absence of statutory authorization, the claims of shareholders cannot be secured by a lien on the corporate assets. They rank behind creditors but before common shareholders (if specified) on a voluntary or involuntary dissolution of the company.

12 Fourth, given s. 43 of the *Business Corporations Act*, any share term which purports to make an advance declaration of dividends would be *ultra vires* the corporation. S. 43 reads:

> **Dividends**
>
> 43 A corporation shall not declare or pay a dividend if there are reasonable grounds for believing that
>
> (a) the corporation is, or would after the payment be, unable to pay its liabilities as they become due, or
>
> (b) the realizable value of the corporation's assets would thereby be less than the aggregate of its liabilities and stated capital of all classes.

13 Finally, they argue that even if the dividend has been declared, if there are no funds to pay it, the declaration is a nullity. In *Corporate Finance and Canadian Law*, (Toronto: *Thomson Canada Ltd.*, 2000), Professor Nicholls says at p. 24:

> While the matter is not entirely free from doubt, it would appear that the better view of the law is that - in jurisdictions which CBCA-type dividend payment restrictions - when dividends have been lawfully declared, but cannot be lawfully paid, shareholders do not have an enforceable debt claim against the corporation. The contractual right of shareholders to sue for the payment of declared dividends appears, at common law, not to have arisen until the directors had determined that dividends could lawfully be paid. It may be that it is appropriate for that determination to be made once only, at the time of the declaration, if the governing corporate statute - such as the B.C. *Company Act* - does not expressly mandate that the solvency tests be satisfied, first, before declaration and again before payment. But the CBCA does expressly refer both to declaration and payment.

14 In response, the preferred shareholders argue s. 43 makes a distinction between declaring and paying a dividend. There is no reason why shares cannot be set up so that dividends are declared in advance but not paid until the payment date when the

company knows if it is able to pay. At the date the shares were issued, all the information was available to declare the dividend. Furthermore, at the end of each quarter, shareholders can elect to take cash or shares. At the end of the first quarter of 2008, although the directors did not pay any cash because JED was insolvent, they did pay in shares until such time as it was realized that issuing those many shares would change control of the company. The act of issuing the shares shows that the board had already declared a dividend.

15 In answer to several of the unsecured creditors' arguments, they argue that *Central Capital*is of little assistance since it was dealing with retraction of shares rather than the declaration of a dividend.

16 The issue I must decide is whether the dividends were declared before February 1, 2008. The only way that I can so find is if I find that the wording of shares means that the dividends were declared as of the date of issuance of the shares, with the result that the shareholders became creditors of the company from the day that they were issued their shares. The substance of the relationship between the shareholders and the corporation at the time they purchased their shares is not that of creditor and debtor. They are risk-takers, not creditors. For them to become creditors from the time they are issued the shares would require more explicit wording than is contained in these shares.

17 In the result, the application is granted. The preferred shareholders are excluded from the Unsecured Creditors class and they are not entitled to any distribution within that class.

Application granted.

End of Document

2012 ONSC 4377
Ontario Superior Court of Justice [Commercial List]

Sino-Forest Corp., Re

2012 CarswellOnt 9430, 2012 ONSC 4377, 218 A.C.W.S. (3d) 489, 92 C.B.R. (5th) 99

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 Sino-Forest Corporation (Applicant)

Morawetz J.

Heard: June 26, 2012
Judgment: July 27, 2012
Docket: CV-12-9667-00CL

Counsel: Robert W. Staley, Jonathan Bell for Applicant
Jennifer Stam for Monitor
Kenneth Dekker for BDO Limited
Peter Griffin, Peter Osborne for Ernst & Young LLP
Benjamin Zarnett, Robert Chadwick, Brendan O'Neill for Ad Hoc Committee of Noteholders
James Grout for Ontario Securities Commission
Emily Cole, Joseph Marin for Allen Chan
Simon Bieber for David Horsley
David Bish, John Fabello, Adam Slavens for Underwriters Named in the Class Action
Max Starnino, Kirk Baert for Ontario Plaintiffs
Larry Lowenstein for Board of Directors

Subject: Insolvency
Related Abridgment Classifications
Bankruptcy and insolvency
XIX Companies' Creditors Arrangement Act
XIX.5 Miscellaneous
Headnote
Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Miscellaneous
Applicant SFC was granted stay under Companies' Creditors Arrangement Act (CCAA) in March 2012 and on same date sales process order was granted — June 20, 2012 was established as claims bar date — SFC support of 72 per cent of noteholders for intended to plan of compromise or arrangement — Class actions had been commenced against SFC in both Ontario, Quebec, Saskatchewan, and New York State for damages resulting to purchase of shares in SFC at inflated prices — Applicant brought application for declaration that claims against it which resulted from ownership, purchase, or sale of equity interest in SFC, and related indemnity claims, were equity claims as defined in s. 2 of CCAA — Application granted — Basis for differentiation flowed from fundamentally different nature of debt and equity investments; shareholders had unlimited upside potential when purchasing shares, while creditors had no corresponding upside potential — Claims advanced in shareholder claims were clearly equity claims — Shareholder claims underlay related indemnity claims — Plain language in definition of equity claim in CCAA did not focus on identity of claimant, rather, it focused on nature of claim — It would be totally inconsistent to arrive at conclusion that would enable either auditors or underwriters, through claim for indemnification, to be treated as creditors when underlying actions of shareholders could not achieve same status.
Table of Authorities
Cases considered by *Morawetz J.*:

Blue Range Resource Corp., Re (2000), 2000 CarswellAlta 12, 259 A.R. 30, 76 Alta. L.R. (3d) 338, [2000] 4 W.W.R. 738, 2000 ABQB 4, 15 C.B.R. (4th) 169 (Alta. Q.B.) — referred to

Central Capital Corp., Re (1996), 132 D.L.R. (4th) 223, 27 O.R. (3d) 494, (sub nom. *Royal Bank v. Central Capital Corp.)* 88 O.A.C. 161, 1996 CarswellOnt 316, 38 C.B.R. (3d) 1, 26 B.L.R. (2d) 88 (Ont. C.A.) — referred to

EarthFirst Canada Inc., Re (2009), 2009 ABQB 316, 2009 CarswellAlta 1069, 56 C.B.R. (5th) 102 (Alta. Q.B.) — referred to

Nelson Financial Group Ltd., Re (2010), 71 C.B.R. (5th) 153, 75 B.L.R. (4th) 302, 2010 ONSC 6229, 2010 CarswellOnt 8655 (Ont. S.C.J. [Commercial List]) — referred to

Return on Innovation Capital Ltd. v. Gandi Innovations Ltd. (2011), 2011 CarswellOnt 8590, 2011 ONSC 5018, 83 C.B.R. (5th) 123 (Ont. S.C.J. [Commercial List]) — followed

Return on Innovation Capital Ltd. v. Gandi Innovations Ltd. (2012), 2012 ONCA 10, 2012 CarswellOnt 103, 90 C.B.R. (5th) 141 (Ont. C.A.) — referred to

Stelco Inc., Re (2006), 2006 CarswellOnt 407, 17 C.B.R. (5th) 95 (Ont. S.C.J. [Commercial List]) — referred to

Statutes considered:

Bankruptcy Code, 11 U.S.C. 1982

s. 510(b) — referred to

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Generally — referred to

s. 2(1) — considered

s. 2(1) "equity claim" — considered

s. 2(1) "equity claim" (d) — considered

s. 2(1) "equity claim" (e) — considered

s. 2(1) "equity interest" — considered

s. 2(1) "equity interest" (a) — referred to

s. 6(8) — referred to

s. 22(1) — referred to

Securities Act, R.S.O. 1990, c. S.5

Generally — referred to

APPLICATION by insolvent company for declaration that certain claims against it were equity claims pursuant to Companies' Creditors Arrangement Act.

***Morawetz J.*:**

Overview

1 Sino-Forest Corporation ("SFC" or the "Applicant") seeks an order directing that claims against SFC, which result from the ownership, purchase or sale of an equity interest in SFC, are "equity claims" as defined in section 2 of the *Companies' Creditors Arrangement Act* ("CCAA") including, without limitation: (i) the claims by or on behalf of current or former shareholders asserted in the proceedings listed in Schedule "A" (collectively, the "Shareholder Claims"); and (ii) any indemnification claims against SFC related to or arising from the Shareholder Claims, including, without limitation, those by or on behalf of any of the other defendants to the proceedings listed in Schedule "A" (the "Related Indemnity Claims").

2 SFC takes the position that the Shareholder Claims are "equity claims" as defined in the CCAA as they are claims in respect of a monetary loss resulting from the ownership, purchase or sale of an equity interest in SFC and, therefore, come within the

definition. SFC also takes the position that the Related Indemnity Claims are "equity claims" as defined in the CCAA as they are claims for contribution or indemnity in respect of a claim that is an equity claim and, therefore, also come within the definition.

3 On March 30, 2012, the court granted the Initial Order providing for the CCAA stay against SFC and certain of its subsidiaries. FTI Consulting Canada Inc. was appointed as Monitor.

4 On the same day, the Sales Process Order was granted, approving Sales Process procedures and authorizing and directing SFC, the Monitor and Houlihan Lokey to carry out the Sales Process.

5 On May 14, 2012, the court issued a Claims Procedure Order, which established June 20, 2012 as the Claims Bar Date.

6 The stay of proceedings has since been extended to September 28, 2012.

7 Since the outset of the proceedings, SFC has taken the position that it is important for these proceedings to be completed as soon as possible in order to, among other things, (i) enable the business operated in the Peoples Republic of China ("PRC") to be separated from SFC and put under new ownership; (ii) enable the restructured business to participate in the Q4 sales season in the PRC market; and (iii) maintain the confidence of stakeholders in the PRC (including local and national governmental bodies, PRC lenders and other stakeholders) that the business in the PRC can be successfully separated from SFC and operate in the ordinary course in the near future.

8 SFC has negotiated a Support Agreement with the Ad Hoc Committee of Noteholders and intends to file a plan of compromise or arrangement (the "Plan") under the CCAA by no later than August 27, 2012, based on the deadline set out in the Support Agreement and what they submit is the commercial reality that SFC must complete its restructuring as soon as possible.

9 Noteholders holding in excess of $1.296 billion, or approximately 72% of the approximately $1.8 billion of SFC's noteholders' debt, have executed written support agreements to support the SFC CCAA Plan as of March 30, 2012.

Shareholder Claims Asserted Against SFC

(i) Ontario

10 By Fresh as Amended Statement of Claim dated April 26, 2012 (the "Ontario Statement of Claim"), the Trustees of the Labourers' Pension Fund of Central and Eastern Canada and other plaintiffs asserted various claims in a class proceeding (the "Ontario Class Proceedings") against SFC, certain of its current and former officers and directors, Ernst & Young LLP ("E&Y"), BDO Limited ("BDO"), Poyry (Beijing) Consulting Company Limited ("Poyry") and SFC's underwriters (collectively, the "Underwriters").

11 Section 1(m) of the Ontario Statement of Claim defines "class" and "class members" as:

> All persons and entities, wherever they may reside who acquired Sino's Securities during the Class Period by distribution in Canada or on the Toronto Stock Exchange or other secondary market in Canada, which securities include those acquired over the counter, and all persons and entities who acquired Sino's Securities during the Class Period who are resident of Canada or were resident of Canada at the time of acquisition and who acquired Sino's Securities outside of Canada, except the Excluded Persons.

12 The term "Securities" is defined as "Sino's common shares, notes and other securities, as defined in the OSA". The term "Class Period" is defined as the period from and including March 19, 2007 up to and including June 2, 2011.

13 The Ontario Class Proceedings seek damages in the amount of approximately $9.2 billion against SFC and the other defendants.

14 The thrust of the complaint in the Ontario Class Proceedings is that the class members are alleged to have purchased securities at "inflated prices during the Class Period" and that absent the alleged misconduct, sales of such securities "would

have occurred at prices that reflected the true value" of the securities. It is further alleged that "the price of Sino's Securities was directly affected during the Class Period by the issuance of the Impugned Documents".

(ii) Quebec

15 By action filed in Quebec on June 9, 2011, Guining Liu commenced an action (the "Quebec Class Proceedings") against SFC, certain of its current and former officers and directors, E&Y and Poyry. The Quebec Class Proceedings do not name BDO or the Underwriters as defendants. The Quebec Class Proceedings also do not specify the quantum of damages sought, but rather reference "damages in an amount equal to the losses that it and the other members of the group suffered as a result of purchasing or acquiring securities of Sino at inflated prices during the Class Period".

16 The complaints in the Quebec Class Proceedings centre on the effect of alleged misrepresentations on the share price. The duty allegedly owed to the class members is said to be based in "law and other provisions of the *Securities Act*", to ensure the prompt dissemination of truthful, complete and accurate statements regarding SFC's business and affairs and to correct any previously-issued materially inaccurate statements.

(iii) Saskatchewan

17 By Statement of Claim dated December 1, 2011 (the "Saskatchewan Statement of Claim"), Mr. Allan Haigh commenced an action (the "Saskatchewan Class Proceedings") against SFC, Allen Chan and David Horsley.

18 The Saskatchewan Statement of Claim does not specify the quantum of damages sought, but instead states in more general terms that the plaintiff seeks "aggravated and compensatory damages against the defendants in an amount to be determined at trial".

19 The Saskatchewan Class Proceedings focus on the effect of the alleged wrongful acts upon the trading price of SFC's securities:

> The price of Sino's securities was directly affected during the Class Period by the issuance of the Impugned Documents. The defendants were aware at all material times that the effect of Sino's disclosure documents upon the price of its Sino's [sic] securities.

(iv) New York

20 By Verified Class Action Complaint dated January 27, 2012, (the "New York Complaint"), Mr. David Leapard and IMF Finance SA commenced a class proceeding against SFC, Mr. Allen Chan, Mr. David Horsley, Mr. Kai Kit Poon, a subset of the Underwriters, E&Y, and Ernst & Young Global Limited (the "New York Class Proceedings").

21 SFC contends that the New York Class Proceedings focus on the effect of the alleged wrongful acts upon the trading price of SFC's securities.

22 The plaintiffs in the various class actions have named parties other than SFC as defendants, notably, the Underwriters and the auditors, E&Y, and BDO, as summarized in the table below. The positions of those parties are detailed later in these reasons.

	Ontario	**Quebec**	**Saskatchewan**	**New York**
E&Y LLP	X	X	-	X
E&Y Global	-	-	-	X
BDO	X	-	-	-
Poyry	X	X	-	-
Underwriters	11	-	-	2

Legal Framework

23 Even before the 2009 amendments to the CCAA dealing with equity claims, courts recognized that there is a fundamental difference between shareholder equity claims as they relate to an insolvent entity versus creditor claims. Essentially, shareholders cannot reasonably expect to maintain a financial interest in an insolvent company where creditor claims are not being paid in full. Simply put, shareholders have no economic interest in an insolvent enterprise: *Blue Range Resource Corp., Re*, [2000] 4 W.W.R. 738 (Alta. Q.B.) [*Blue Range Resources*]; *Stelco Inc., Re* [2006 CarswellOnt 407 (Ont. S.C.J. [Commercial List])], (2006) CanLII 1773 [*Stelco*]; *Central Capital Corp., Re* (1996), 27 O.R. (3d) 494 (Ont. C.A.).

24 The basis for the differentiation flows from the fundamentally different nature of debt and equity investments. Shareholders have unlimited upside potential when purchasing shares. Creditors have no corresponding upside potential: *Nelson Financial Group Ltd., Re*, 2010 ONSC 6229 (Ont. S.C.J. [Commercial List]) [*Nelson Financial*].

25 As a result, courts subordinated equity claims and denied such claims a vote in plans of arrangement: *Blue Range Resource Corp., Re*, *supra*; *Stelco Inc., Re*, *supra*; *EarthFirst Canada Inc., Re* (2009), 56 C.B.R. (5th) 102 (Alta. Q.B.) [*EarthFirst Canada*]; and *Nelson Financial*, *supra*.

26 In 2009, significant amendments were made to the CCAA. Specific amendments were made with the intention of clarifying that equity claims are subordinated to other claims.

27 The 2009 amendments define an "equity claim" and an "equity interest". Section 2 of the CCAA includes the following definitions:

> "Equity Claim" means a claim that is in respect of an equity interest, including a claim for, among others, (...)
>
> > (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or
> >
> > (e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d);
>
> "Equity Interest" means
>
> > (a) in the case of a company other than an income trust, a share in the company — or a warrant or option or another right to acquire a share in the company — other than one that is derived from a convertible debt,

28 Section 6(8) of the CCAA prohibits a distribution to equity claimants prior to payment in full of all non-equity claims.

29 Section 22(1) of the CCAA provides that equity claimants are prohibited from voting on a plan unless the court orders otherwise.

Position of Ernst & Young

30 E&Y opposes the relief sought, at least as against E&Y, since the E&Y proof of claim evidence demonstrates in its view that E&Y's claim:

> (a) is not an equity claim;
>
> (b) does not derive from or depend upon an equity claim (in whole or in part);
>
> (c) represents discreet and independent causes of action as against SFC and its directors and officers arising from E&Y's direct contractual relationship with such parties (or certain of such parties) and/or the tortious conduct of SFC and/or its directors and officers for which they are in law responsible to E&Y; and
>
> (d) can succeed independently of whether or not the claims of the plaintiffs in the class actions succeed.

31 In its factum, counsel to E&Y acknowledges that during the periods relevant to the Class Action Proceedings, E&Y was retained as SFC's auditor and acted as such from 2007 until it resigned on April 5, 2012.

32 On June 2, 2011, Muddy Waters LLC ("Muddy Waters") issued a report which purported to reveal fraud at SFC. In the wake of that report, SFC's share price plummeted and Muddy Waters profited from its short position.

33 E&Y was served with a multitude of class action claims in numerous jurisdictions.

34 The plaintiffs in the Ontario Class Proceedings claim damages in the aggregate, as against all defendants, of $9.2 billion on behalf of resident and non-resident shareholders and noteholders. The causes of action alleged are both statutory, under the *Securities Act (Ontario)* and at common law, in negligence and negligent misrepresentation.

35 In its factum, counsel to E&Y acknowledges that the central claim in the class actions is that SFC made a series of misrepresentations in respect of its timber assets. The claims against E&Y and the other third party defendants are that they failed to detect these misrepresentations and note in particular that E&Y's audit did not comply with Canadian generally accepted accounting standards. Similar claims are advanced in Quebec and the U.S.

36 Counsel to E&Y notes that on May 14, 2012 the court granted a Claims Procedure Order which, among other things, requires proofs of claim to be filed no later than June 20, 2012. E&Y takes issue with the fact that this motion was then brought notwithstanding that proofs of claim and D&O proofs of claim had not yet been filed.

37 E&Y has filed with the Monitor, in accordance with the Claims Procedure Order, a proof of claim against SFC and a proof of claim against the directors and officers of SFC.

38 E&Y takes the position that it has contractual claims of indemnification against SFC and its subsidiaries and has statutory and common law claims of contribution and/or indemnity against SFC and its subsidiaries for all relevant years. E&Y contends that it has stand-alone claims for breach of contract and negligent and/or fraudulent misrepresentation against the company and its directors and officers.

39 Counsel submits that E&Y's claims against Sino-Forest and the SFC subsidiaries are:

(a) creditor claims;

(b) derived from E&Y retainers by and/or on behalf of Sino-Forest and the SFC subsidiaries and E&Y's relationship with such parties, all of which are wholly independent and conceptually different from the claims advanced by the class action plaintiffs;

(c) claims that include the cost of defending and responding to various proceedings, both pre- and post-filing; and

(d) not equity claims in the sense contemplated by the CCAA. E&Y's submission is that equity holders of Sino-Forest have not advanced, and could not advance, any claims against SFC's subsidiaries.

40 Counsel further contends that E&Y's claim is distinct from any and all potential and actual claims by the plaintiffs in the class actions against Sino-Forest and that E&Y's claim for contribution and/or indemnity is not based on the claims against Sino-Forest advanced in the class actions but rather only in part on those claims, as any success of the plaintiffs in the class actions against E&Y would not necessarily lead to success against Sino-Forest, and vice versa. Counsel contends that E&Y has a distinct claim against Sino-Forest independent of that of the plaintiffs in the class actions. The success of E&Y's claims against Sino-Forest and the SFC subsidiaries, and the success of the claims advanced by the class action plaintiffs, are not co-dependent. Consequently, counsel contends that E&Y's claim is that of an unsecured creditor.

41 From a policy standpoint, counsel to E&Y contends that the nature of the relationship between a shareholder, who may be in a position to assert an equity claim (in addition to other claims) is fundamentally different from the relationship existing between a corporation and its auditors.

Position of BDO Limited

42 BDO was auditor of Sino-Forest Corporation between 2005 and 2007, when it was replaced by E&Y.

43 BDO has a filed a proof of claim against Sino-Forest pursuant to the Claims Procedure Order.

44 BDO's claim against Sino-Forest is primarily for breach of contract.

45 BDO takes the position that its indemnity claims, similar to those advanced by E&Y and the Underwriters, are not equity claims within the meaning of s. 2 of the CCAA.

46 BDO adopts the submissions of E&Y which, for the purposes of this endorsement, are not repeated.

Position of the Underwriters

47 The Underwriters take the position that the court should not decide the equity claims motion at this time because it is premature or, alternatively, if the court decides the equity claims motion, the equity claims order should not be granted because the Related Indemnity Claims are not "equity claims" as defined in s. 2 of the CCAA.

48 The Underwriters are among the defendants named in some of the class actions. In connection with the offerings, certain Underwriters entered into agreements with Sino-Forest and certain of its subsidiaries providing that Sino-Forest and, with respect to certain offerings, the Sino-Forest subsidiary companies, agree to indemnify and hold harmless the Underwriters in connection with an array of matters that could arise from the offerings.

49 The Underwriters raise the following issues:

(i) Should this court decide the equity claims motion at this time?

(ii) If this court decides the equity claims motion at this time, should the equity claims order be granted?

50 On the first issue, counsel to the Underwriters takes the position that the issue is not yet ripe for determination.

51 Counsel submits that, by seeking the equity claims order at this time, Sino-Forest is attempting to pre-empt the Claims Procedure Order, which already provides a process for the determination of claims. Until such time as the claims procedure in respect of the Related Indemnity Claims is completed, and those claims are determined pursuant to that process, counsel contends the subject of the equity claims motion raises a merely hypothetical question as the court is being asked to determine the proper interpretation of s. 2 of the CCAA before it has the benefit of an actual claim in dispute before it.

52 Counsel further contends that by asking the court to render judgment on the proper interpretation of s. 2 of the CCAA in the hypothetical, Sino-Forest has put the court in a position where its judgment will not be made in the context of particular facts or with a full and complete evidentiary record.

53 Even if the court determines that it can decide this motion at this time, the Underwriters submit that the relief requested should not be granted.

Position of the Applicant

54 The Applicant submits that the amendments to the CCAA relating to equity claims closely parallel existing U.S. law on the subject and that Canadian courts have looked to U.S. courts for guidance on the issue of equity claims as the subordination of equity claims has long been codified there: see e.g. *Blue Range Resources*, *supra*, and *Nelson Financial*, *supra*.

55 The Applicant takes the position that based on the plain language of the CCAA, the Shareholder Claims are "equity claims" as defined in s. 2 as they are claims in respect of a "monetary loss resulting from the ownership, purchase or sale of an equity interest".

56 The Applicant also submits the following:

(a) the Ontario, Quebec, Saskatchewan and New York Class Actions (collectively, the "Class Actions") all advance claims on behalf of shareholders.

(b) the Class Actions also allege wrongful conduct that affected the trading price of the shares, in that the alleged misrepresentation "artificially inflated" the share price; and

(c) the Class Actions seek damages relating to the trading price of SFC shares and, as such, allege a "monetary loss" that resulted from the ownership, purchase or sale of shares, as defined in s. 2 of the CCAA.

57 Counsel further submits that, as the Shareholder Claims are "equity claims", they are expressly subordinated to creditor claims and are prohibited from voting on the plan of arrangement.

58 Counsel to the Applicant also submits that the definition of "equity claims" in s. 2 of the CCAA expressly includes indemnity claims that relate to other equity claims. As such, the Related Indemnity Claims are equity claims within the meaning of s. 2.

59 Counsel further submits that there is no distinction in the CCAA between the source of any claim for contribution or indemnity; whether by statute, common law, contractual or otherwise. Further, and to the contrary, counsel submits that the legal characterization of a contribution or indemnity claim depends solely on the characterization of the primary claim upon which contribution or indemnity is sought.

60 Counsel points out that in *Return on Innovation Capital Ltd. v. Gandi Innovations Ltd.*, 2011 ONSC 5018 (Ont. S.C.J. [Commercial List]), leave to appeal denied, 2012 ONCA 10 (Ont. C.A.) [*Return on Innovation*] this court characterized the contractual indemnification claims of directors and officers in respect of an equity claim as "equity claims".

61 Counsel also submits that guidance on the treatment of underwriter and auditor indemnification claims can be obtained from the U.S. experience. In the U.S., courts have held that the indemnification claims of underwriters for liability or defence costs constitute equity claims that are subordinated to the claims of general creditors. Counsel submits that insofar as the primary source of liability is characterized as an equity claim, so too is any claim for contribution and indemnity based on that equity claim.

62 In this case, counsel contends, the Related Indemnity Claims are clearly claims for "contribution and indemnity" based on the Shareholder Claims.

Position of the Ad Hoc Noteholders

63 Counsel to the Ad Hoc Noteholders submits that the Shareholder Claims are "equity claims" as they are claims in respect of an equity interest and are claims for "a monetary loss resulting from the ownership, purchase or sale of an equity interest" per subsection (d) of the definition of "equity claims" in the CCAA.

64 Counsel further submits that the Related Indemnity Claims are also "equity claims" as they fall within the "clear and unambiguous" language used in the definition of "equity claim" in the CCAA. Subsection (e) of the definition refers expressly and without qualification to claims for "contribution or indemnity" in respect of claims such as the Shareholder Claims.

65 Counsel further submits that had the legislature intended to qualify the reference to "contribution or indemnity" in order to exempt the claims of certain parties, it could have done so, but it did not.

66 Counsel also submits that, if the plain language of subsection (e) is not upheld, shareholders of SFC could potentially create claims to receive indirectly what they could not receive directly (*i.e.*, payment in respect of equity claims through the Related Indemnity Claims) — a result that could not have been intended by the legislature as it would be inconsistent with the purposes of the CCAA.

67 Counsel to the Ad Hoc Noteholders also submits that, before the CCAA amendments in 2009 (the "CCAA Amendments"), courts subordinated claims on the basis of:

(a) the general expectations of creditors and shareholders with respect to priority and assumption of risks; and

(b) the equitable principles and considerations set out in certain U.S. cases: see e.g. *Blue Range Resource Corp., Re*, *supra*.

68 Counsel further submits that, before the CCAA Amendments took effect, courts had expanded the types of claims characterized as equity claims; first to claims for damages of defrauded shareholders and then to contractual indemnity claims of shareholders: see *Blue Range Resources*, *supra* and *EarthFirst Canada*, *supra*.

69 Counsel for the Ad Hoc Noteholders also submits that indemnity claims of underwriters have been treated as equity claims in the United States, pursuant to section 510(b) of the U.S. Bankruptcy Code. This submission is detailed at paragraphs 20-25 of their factum which reads as follows:

> 20. The desire to more closely align the Canadian approach to equity claims with the U.S. approach was among the considerations that gave rise to the codification of the treatment of equity claims. Canadian courts have also looked to the U.S. law for guidance on the issue of equity claims where codification of the subordination of equity claims has been long-standing.
>
> Janis Sarra at p. 209, Ad Hoc Committee's Book of Authorities, Tab 10.
>
> Report of the Standing Senate Committee on Banking, Trade and Commerce, "Debtors and Creditors Sharing the Burden: A Review of the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement act*" (2003) at 158, [...]
>
> *Blue Range* [*Resources*] at paras. 41-57 [...]
>
> 21. Pursuant to § 510(b) of the *U.S. Bankruptcy Code*, all creditors must be paid in full before shareholders are entitled to receive any distribution. § 510(b) of the *U.S. Bankruptcy Code* and the relevant portion of § 502, which is referenced in § 510(b), provide as follows:
>
> § 510. Subordination
>
> (b) For the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under 502 on account of such a claim, shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as common stock.

§ 502. Allowance of claims or interests

(e) (1) Notwithstanding subsections (a), (b) and (c) of this section and paragraph (2) of this subsection, the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that

. . .

(B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution; or

. . .

(2) A claim for reimbursement or contribution of such an entity that becomes fixed after the commencement of the case shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) of this section, the same as if such claim had become fixed before the date of the filing of the petition.

22. U.S. appellate courts have interpreted the statutory language in § 510(b) broadly to subordinate the claims of shareholders that have a nexus or causal relationship to the purchase or sale of securities, including damages arising from alleged illegality in the sale or purchase of securities or from corporate misconduct whether predicated on pre or post-issuance conduct.

Re Telegroup Inc. (2002), 281 F. 3d 133 (3rd Cir. U.S. Court of Appeals)

[...]

American Broadcasting Systems Inc. v. Nugent, U.S. Court of Appeals for the Ninth Circuit, Case Number 98-17133 (24 January 2001) [...]

23. Further, U.S. courts have held that indemnification claims of underwriters against the corporation for liability or defence costs when shareholders or former shareholders have sued underwriters constitute equity claims in the insolvency of the corporation that are subordinated to the claims of general creditors based on: (a) the plain language of § 510(b), which references claims for "reimbursement or contribution" and (b) risk allocation as between general creditors and those parties that play a role in the purchase and sale of securities that give rise to the shareholder claims (i.e., directors, officers and underwriters).

In re Mid-American Waste Sys., 228 B.R. 816, 1999 Bankr. LEXIS 27 (Bankr. D. Del. 1999) [*Mid-American*] [...]

In re Jacom Computer Servs., 280 B.R. 570, 2002 Bankr. LEXIS 758 (Bankr. S.D.N.Y. 2002) [...]

24. In *Mid-American*, the Court stated the following with respect to the "plain language" of § 510(b), its origins and the inclusion of "reimbursement or contribution" claims in that section:

... I find that the plain language of § 510(b), its legislative history, and applicable case law clearly show that § 510(b) intends to subordinate the indemnification claims of officers, directors, and underwriters for both liability and expenses incurred in connection with the pursuit of claims for rescission or damages by purchasers or sellers of the debtor's securities. The meaning of amended § 510(b), specifically the language "for reimbursement or contribution ... on account of [a claim arising from rescission or damages arising from the purchase or sale of a security]," can be discerned by a plain reading of its language.

... it is readily apparent that the rationale for section 510(b) is not limited to preventing shareholder claimants from improving their position vis-a-vis general creditors; *Congress also made the decision to subordinate based on risk* *allocation. Consequently, when Congress amended § 510(b) to add reimbursement and contribution claims, it was not radically departing from an equityholder claimant treatment provision, as NatWest suggests; it simply added to the subordination treatment new classes of persons and entities involved with the securities transactions giving rise to the rescission and damage claims*. The 1984 amendment to § 510(b) is a logical extension of one of the rationales for the original section — *because Congress intended the holders of securities law claims to be subordinated, why not also subordinate claims of other parties (e.g., officers and directors and underwriters) who play a role in the purchase and sale transactions which give rise to the securities law claims?* As I view it, in 1984 Congress made a legislative judgment that claims emanating from tainted securities law transactions should not have the same priority as the claims of general creditors of the estate.

[emphasis added]

[...]

25. Further, the U.S. courts have held that the degree of culpability of the respective parties is a non-issue in the disallowance of claims for indemnification of underwriters; the equities are meant to benefit the debtor's direct creditors, not secondarily liable creditors with contingent claims.

In re Drexel Burnham Lambert Group, 1992 Bankr. LEXIS 2023 (Bankr. S.D.N.Y. 1992) [...]

70 Counsel submits that there is no principled basis for treating indemnification claims of auditors differently than those of underwriters.

Analysis

Is it Premature to Determine the Issue?

71 The class action litigation was commenced prior to the CCAA Proceedings. It is clear that the claims of shareholders as set out in the class action claims against SFC are "equity claims" within the meaning of the CCAA.

72 In my view, this issue is not premature for determination, as is submitted by the Underwriters.

73 The Class Action Proceedings preceded the CCAA Proceedings. It has been clear since the outset of the CCAA Proceedings that this issue — namely, whether the claims of E&Y, BDO and the Underwriters as against SFC, would be considered "equity claims" — would have to be determined.

74 It has also been clear from the outset of the CCAA Proceedings, that a Sales Process would be undertaken and the expected proceeds arising from the Sales Process would generate proceeds insufficient to satisfy the claims of creditors.

75 The Claims Procedure is in place but, it seems to me that the issue that has been placed before the court on this motion can be determined independently of the Claims Procedure. I do not accept that any party can be said to be prejudiced if this threshold issue is determined at this time. The threshold issue does not depend upon a determination of quantification of any claim. Rather, its effect will be to establish whether the claims of E&Y, BDO and the Underwriters will be subordinated pursuant to the provisions of the CCAA. This is independent from a determination as to the validity of any claim and the quantification thereof.

Should the Equity Claims Order be Granted?

76 I am in agreement with the submission of counsel for the Ad Hoc Noteholders to the effect that the characterization of claims for indemnity turns on the characterization of the underlying primary claims.

77 In my view, the claims advanced in the Shareholder Claims are clearly equity claims. The Shareholder Claims underlie the Related Indemnity Claims.

78 In my view, the CCAA Amendments have codified the treatment of claims addressed in pre-amendment cases and have further broadened the scope of equity claims.

79 The plain language in the definition of "equity claim" does not focus on the identity of the claimant. Rather, it focuses on the nature of the claim. In this case, it seems clear that the Shareholder Claims led to the Related Indemnity Claims. Put another way, the inescapable conclusion is that the Related Indemnity Claims are being used to recover an equity investment.

80 The plain language of the CCAA dictates the outcome, namely, that the Shareholder Claims and the Related Indemnity Claims constitute "equity claims" within the meaning of the CCAA. This conclusion is consistent with the trend towards an expansive interpretation of the definition of "equity claims" to achieve the purpose of the CCAA.

81 In *Return on Innovation*, Newbould J. characterized the contractual indemnification claims of directors and officers as "equity claims". The Court of Appeal denied leave to appeal. The analysis in *Return on Innovation* leads to the conclusion that the Related Indemnity Claims are also equity claims under the CCAA.

82 It would be totally inconsistent to arrive at a conclusion that would enable either the auditors or the Underwriters, through a claim for indemnification, to be treated as creditors when the underlying actions of the shareholders cannot achieve the same status. To hold otherwise would indeed provide an indirect remedy where a direct remedy is not available.

83 Further, on the issue of whether the claims of E&Y, BDO and the Underwriters fall within the definition of equity claims, there are, in my view, two aspects of these claims and it is necessary to keep them conceptually separate.

84 The first and most significant aspect of the claims of E&Y, BDO and the Underwriters constitutes an "equity claim" within the meaning of the CCAA. Simply put, but for the Class Action Proceedings, it is inconceivable that claims of this magnitude would have been launched by E&Y, BDO and the Underwriters as against SFC. The class action plaintiffs have launched their actions against SFC, the auditors and the Underwriters. In turn, E&Y, BDO and the Underwriters have launched actions against SFC and its subsidiaries. The claims of the shareholders are clearly "equity claims" and a plain reading of s. 2(1)(e) of the CCAA leads to the same conclusion with respect to the claims of E&Y, BDO and the Underwriters. To hold otherwise, would, as stated above, lead to a result that is inconsistent with the principles of the CCAA. It would potentially put the shareholders in a position to achieve creditor status through their claim against E&Y, BDO and the Underwriters even though a direct claim against SFC would rank as an "equity claim".

85 I also recognize that the legal construction of the claims of the auditors and the Underwriters as against SFC is different than the claims of the shareholders against SFC. However, that distinction is not, in my view, reflected in the language of the CCAA which makes no distinction based on the status of the party but rather focuses on the substance of the claim.

86 Critical to my analysis of this issue is the statutory language and the fact that the CCAA Amendments came into force after the cases relied upon by the Underwriters and the auditors.

87 It has been argued that the amendments did nothing more than codify pre-existing common law. In many respects, I accept this submission. However, I am unable to accept this submission when considering s. 2(1) of the CCAA, which provides clear and specific language directing that "equity claim" means a claim that is in respect of an equity interest, including a claim for, among other things, "(e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d)".

88 Given that a shareholder claim falls within s. 2(1)(d), the plain words of subsections (d) and (e) lead to the conclusions that I have set out above.

89 I fail to see how the very clear words of subsection (e) can be seen to be a codification of existing law. To arrive at the conclusion put forth by E&Y, BDO and the Underwriters would require me to ignore the specific words that Parliament has recently enacted.

90 I cannot agree with the position put forth by the Underwriters or by the auditors on this point. The plain wording of the statute has persuaded me that it does not matter whether an indemnity claim is seeking no more than allocation of fault and contribution at common law, or whether there is a free-standing contribution and indemnity claim based on contracts.

91 However, that is not to say that the full amount of the claim by the auditors and Underwriters can be characterized, at this time, as an "equity claim".

92 The second aspect to the claims of the auditors and underwriters can be illustrated by the following hypothetical: if the claim of the shareholders does not succeed against the class action defendants, E&Y, BDO and the Underwriters will not be liable to the class action plaintiffs. However, these parties may be in a position to demonstrate that they do have a claim against SFC for the costs of defending those actions, which claim does not arise as a result of "contribution or indemnity in respect of an equity claim".

93 It could very well be that each of E&Y, BDO and the Underwriters have expended significant amounts in defending the claims brought by the class action plaintiffs which, in turn, could give rise to contractual claims as against SFC. If there is no successful equity claim brought by the class action plaintiffs, it is arguable that any claim of E&Y, BDO and the Underwriters may legitimately be characterized as a claim for contribution or indemnity but not necessarily in respect of an equity claim. If so, there is no principled basis for subordinating this portion of the claim. At this point in time, the quantification of such a claim cannot be determined. This must be determined in accordance with the Claims Procedure.

94 However, it must be recognized that, by far the most significant part of the claim, is an "equity claim".

95 In arriving at this determination, I have taken into account the arguments set forth by E&Y, BDO and the Underwriters. My conclusions recognize the separate aspects of the Related Indemnity Claims as submitted by counsel to the Underwriters at paragraph 40 of their factum which reads:

> ...it must be recognized that there are, in fact, at least two different kinds of Related Indemnity Claims:
>
> (a) indemnity claims against SFC in respect of Shareholder Claims against the auditors and the Underwriters; and
>
> (b) indemnity claims against SFC in respect of the defence costs of the auditors and the Underwriters in connection with defending themselves against Shareholder Claims.

Disposition

96 In the result, an order shall issue that the claims against SFC resulting from the ownership, purchase or sale of equity interests in SFC, including, without limitation, the claims by or on behalf of current or former shareholders asserted in the proceedings listed in Schedule "A" are "equity claims" as defined in s. 2 of the CCAA, being claims in respect of monetary losses resulting from the ownership, purchase or sale of an equity interest. It is noted that counsel for the class action plaintiffs did not contest this issue.

97 In addition, an order shall also issue that any indemnification claim against SFC related to or arising from the Shareholders Claims, including, without limitation, by or on behalf of any of the other defendants to the proceedings listed in Schedule "A" are "equity claims" under the CCAA, being claims for contribution or indemnity in respect of a claim that is an equity claim. However, I feel it is premature to determine whether this order extends to the aspect of the Related Indemnity Claims that corresponds to the defence costs of the Underwriters and the auditors in connection with defending themselves against the Shareholder Claims.

98 A direction shall also issue that these orders are made without prejudice to SFC's rights to apply for a similar order with respect to (i) any claims in the statement of claim that are in respect of securities other than shares and (ii) any indemnification claims against SFC related thereto.

Application granted.

Schedule"A" — Shareholder Claims

1. *Trustees of the Labourers' Pension Fund of Central and Eastern Canada et al. v. Sino-Forest Corporation et al.* (Ontario Superior Court of Justice, Court File No. CV-11-431153-00CP)

2. *Guining Liu v. Sino-Forest Corporation et al.* (Quebec Superior Court, Court File No.: 200-06-000132-111)

3. *Allan Haigh v. Sino-Forest Corporation et al.* (Saskatchewan Court of Queen's Bench, Court File No. 2288 of 2011)

4. *David Leapard et al. v. Allen T.Y. Chan et al.* (District court of the Southern District of New York, Court File No. 650258/2012)

2012 ONCA 816
Ontario Court of Appeal

Sino-Forest Corp., Re

2012 CarswellOnt 14701, 2012 ONCA 816, 114 O.R. (3d) 304, 225 A.C.W.S. (3d) 601, 299 O.A.C. 107, 98 C.B.R. (5th) 20

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 Sino-Forest Corporation

S.T. Goudge, Alexandra Hoy, S.E. Pepall JJ.A.

Heard: November 13, 2012
Judgment: November 23, 2012
Docket: C56115, C56118, C56125

Proceedings: affirming *Sino-Forest Corp., Re* (2012), 92 C.B.R. (5th) 99, 2012 CarswellOnt 9430, 2012 ONSC 4377 (Ont. S.C.J. [Commercial List])

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Benjamin Zarnett, Robert Chadwick, Julie Rosenthal for Respondent, Ad Hoc Committee of Noteholders
Clifton Prophet for Monitor, FTI Consulting Canada Inc.
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Emily Cole for Respondent, Allen Chan
Erin Pleet for Respondent, David Horsley
David Gadsden for Respondent, Pöyry (Beijing)
Larry Lowenstein, Edward A. Sellers for Respondent, Board of Directors

Subject: Insolvency
Related Abridgment Classifications
Bankruptcy and insolvency
XIX Companies' Creditors Arrangement Act
  XIX.5 Miscellaneous
Headnote
Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Miscellaneous
In class actions, shareholders alleged that corporation misrepresented assets and financial situation, and that auditors and underwriters failed to detect misrepresentations — Corporation obtained protection under Companies' Creditors Arrangements Act (CCAA) — As yet uncertified class actions were stayed — Supervising judge granted claims procedure order — Auditors and underwriters filed individual proofs of claims against corporation for contribution and indemnity for any amounts they were ordered to pay under class actions — Corporation applied successfully for order that auditors' and underwriters' claims were equity claims under CCAA — Auditors and underwriters appealed — Appeal dismissed — Claims for contribution and indemnity were equity claims under s. 2(1)(e) of CCAA — Parliament intended that monetary loss suffered by shareholder not

diminish assets available to general creditors — "Equity claim" was not confined by its definition, or by definition of "claim", to claim advanced by holder of equity interest — Parliament could have but did not include language restricting claims for contribution or indemnity to those made by shareholders — Logic of s. 2(1)(a) to (e) supported notion that s. 2(1)(e) referred to claims for contribution or indemnity not by shareholders, but by others — Definition of "equity claim" was sufficiently clear to alter pre-existing common law — If shareholder sued auditors and underwriters for loss, and they claimed contribution or indemnity against debtor, assets available to general creditors would be diminished by amount of claims for contribution and indemnity.

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s. 2(1) "equity claim" (a)-(e) — referred to

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Words and phrases considered:

equity claim

This appeal considers the definition of "equity claim" in s. 2(1) of the CCAA [*Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36]. More particularly, the central issue is whether claims by auditors and underwriters against the respondent debtor . . . for contribution and indemnity fall within that definition. The claims arise out of proposed shareholder class actions for misrepresentation.

. . . . .

We agree with the supervising judge that the definition of equity claim focuses on the nature of the claim, and not the identity of the claimant. In our view, the appellants' claims for contribution and indemnity are clearly equity claims.

. . . . .

"Equity claim" is not confined by its definition, or by the definition of "claim", to a claim advanced by the holder of an equity interest. Parliament could have, but did not, include language in paragraph (e) restricting claims for contribution or indemnity to those made by shareholders.

APPEAL by auditors and underwriters from judgment reported at *Sino-Forest Corp., Re* (2012), 92 C.B.R. (5th) 99, 2012 CarswellOnt 9430, 2012 ONSC 4377 (Ont. S.C.J. [Commercial List]) granting application by corporation for order that auditors' and underwriters' claims were equity claims under statute.

***Per curiam*:**

I Overview

1 In 2009, the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("CCAA"), was amended to expressly provide that general creditors are to be paid in full before an equity claim is paid.

2 This appeal considers the definition of "equity claim" in s. 2(1) of the CCAA. More particularly, the central issue is whether claims by auditors and underwriters against the respondent debtor, Sino-Forest Corporation ("Sino-Forest"), for contribution and indemnity fall within that definition. The claims arise out of proposed shareholder class actions for misrepresentation.

3 The appellants argue that the supervising judge erred in concluding that the claims at issue are equity claims within the meaning of the CCAA and in determining the issue before the claims procedure established in Sino-Forest's CCAA proceeding had been completed.

4 For the reasons that follow, we conclude that the supervising judge did not err and accordingly dismiss this appeal.

II The Background

(a) The Parties

5 Sino-Forest is a Canadian public holding company that holds the shares of numerous subsidiaries, which in turn own, directly or indirectly, forestry assets located principally in the People's Republic of China. Its common shares are listed on the Toronto Stock Exchange. Sino-Forest also issued approximately $1.8 billion of unsecured notes, in four series. Trading in Sino-Forest shares ceased on August 26, 2011, as a result of a cease-trade order made by the Ontario Securities Commission.

6 The appellant underwriters [1] provided underwriting services in connection with three separate Sino-Forest equity offerings in June 2007, June 2009 and December 2009, and four separate Sino-Forest note offerings in July 2008, June 2009, December 2009 and October 2010. Certain underwriters entered into agreements with Sino-Forest in which Sino-Forest agreed to indemnify the underwriters in connection with an array of matters that could arise from their participation in these offerings.

7 The appellant BDO Limited ("BDO") is a Hong Kong-based accounting firm that served as Sino-Forest's auditor between 2005 and August 2007 and audited its annual financial statements for the years ended December 31, 2005 and December 31, 2006.

8 The engagement agreements governing BDO's audits of Sino-Forest provided that the company's management bore the primary responsibility for preparing its financial statements in accordance with Generally Accepted Accounting Principles ("GAAP") and implementing internal controls to prevent and detect fraud and error in relation to its financial reporting.

9 BDO's Audit Report for 2006 was incorporated by reference into a June 2007 prospectus issued by Sino-Forest regarding the offering of its shares to the public. This use by Sino-Forest was governed by an engagement agreement dated May 23, 2007, in which Sino-Forest agreed to indemnify BDO in respect of any claims by the underwriters or any third party that arose as a result of the further steps taken by BDO in relation to the issuance of the June 2007 prospectus.

10 The appellant Ernst & Young LLP ("E&Y") served as Sino-Forest's auditor for the years 2007 to 2012 and delivered Auditors' Reports with respect to the consolidated financial statements of Sino-Forest for fiscal years ended December 31, 2007 to 2010, inclusive. In each year for which it prepared a report, E&Y entered into an audit engagement letter with Sino-Forest in which Sino-Forest undertook to prepare its financial statements in accordance with GAAP, design and implement internal controls to prevent and detect fraud and error, and provide E&Y with its complete financial records and related information. Some of these letters contained an indemnity in favour of E&Y.

11 The respondent Ad Hoc Committee of Noteholders consists of noteholders owning approximately one-half of Sino-Forest's total noteholder debt. [2] They are creditors who have debt claims against Sino-Forest; they are not equity claimants.

12 Sino-Forest has insufficient assets to satisfy all the claims against it. To the extent that the appellants' claims are accepted and are treated as debt claims rather than equity claims, the noteholders' recovery will be diminished.

(b) The Class Actions

13 In 2011 and January of 2012, proposed class actions were commenced in Ontario, Quebec, Saskatchewan and New York State against, amongst others, Sino-Forest, certain of its officers, directors and employees, BDO, E&Y and the underwriters. Sino-Forest is sued in all actions. [3]

14 The proposed representative plaintiffs in the class actions are shareholders of Sino-Forest. They allege that: Sino-Forest repeatedly misrepresented its assets and financial situation and its compliance with GAAP in its public disclosure; the appellant auditors and underwriters failed to detect these misrepresentations; and the appellant auditors misrepresented that their audit reports were prepared in accordance with generally accepted auditing standards ("GAAS"). The representative plaintiffs claim that these misrepresentations artificially inflated the price of Sino-Forest's shares and that proposed class members suffered damages when the shares fell after the truth was revealed in 2011.

15 The representative plaintiffs in the Ontario class action seek approximately $9.2 billion in damages. The Quebec, Saskatchewan and New York class actions do not specify the quantum of damages sought.

16 To date, none of the proposed class actions has been certified.

(c) CCAA Protection and Proofs of Claim

17 On March 30, 2012, Sino-Forest sought protection pursuant to the provisions of the CCAA. Morawetz J. granted the initial order which, among other things, appointed FTI Consulting Canada Inc. as the Monitor and stayed the class actions as against Sino-Forest. Since that time, Morawetz J. has been the supervising judge of the CCAA proceedings. The initial stay of the class actions was extended and broadened by order dated May 8, 2012.

18 On May 14, 2012, the supervising judge granted an unopposed claims procedure order which established a procedure to file and determine claims against Sino-Forest.

19 Thereafter, all of the appellants filed individual proofs of claim against Sino-Forest seeking contribution and indemnity for, among other things, any amounts that they are ordered to pay as damages to the plaintiffs in the class actions. Their proofs of claim advance several different legal bases for Sino-Forest's alleged obligation of contribution and indemnity, including breach of contract, contractual terms of indemnity, negligent and fraudulent misrepresentation in tort, and the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1.

(d) Order under Appeal

20 Sino-Forest then applied for an order that the following claims are equity claims under the CCAA: claims against Sino-Forest arising from the ownership, purchase or sale of an equity interest in the company, including shareholder claims

("Shareholder Claims"); and any indemnification claims against Sino-Forest related to or arising from the Shareholder Claims, including the appellants' claims for contribution or indemnity ("Related Indemnity Claims").

21 The motion was supported by the Ad Hoc Committee of Noteholders.

22 On July 27, 2012, the supervising judge granted the order sought by Sino-Forest and released a comprehensive endorsement.

23 He concluded that it was not premature to determine the equity claims issue. It had been clear from the outset of Sino-Forest's CCAA proceedings that this issue would have to be decided and that the expected proceeds arising from any sales process would be insufficient to satisfy the claims of creditors. Furthermore, the issue could be determined independently of the claims procedure and without prejudice being suffered by any party.

24 He also concluded that both the Shareholder Claims and the Related Indemnity Claims should be characterized as equity claims. In summary, he reasoned that:

• The characterization of claims for indemnity turns on the characterization of the underlying primary claims. The Shareholder Claims are clearly equity claims and they led to and underlie the Related Indemnity Claims;

• The plain language of the CCAA, which focuses on the nature of the claim rather than the identity of the claimant, dictates that both Shareholder Claims and Related Indemnity Claims constitute equity claims;

• The definition of "equity claim" added to the CCAA in 2009 broadened the scope of equity claims established by pre-amendment jurisprudence;

• This holding is consistent with the analysis in *Return on Innovation Capital Ltd. v. Gandi Innovations Ltd.*, 2011 ONSC 5018, 83 C.B.R. (5th) 123 (Ont. S.C.J. [Commercial List]), which dealt with contractual indemnification claims of officers and directors. Leave to appeal was denied by this court, 2012 ONCA 10, 90 C.B.R. (5th) 141 (Ont. C.A.); and

• "It would be totally inconsistent to arrive at a conclusion that would enable either the auditors or the underwriters, through a claim for indemnification, to be treated as creditors when the underlying actions of shareholders cannot achieve the same status" (para. 82). To hold otherwise would run counter to the scheme established by the CCAA and would permit an indirect remedy to the shareholders when a direct remedy is unavailable.

25 The supervising judge did not characterize the full amount of the claims of the auditors and underwriters as equity claims. He excluded the claims for defence costs on the basis that while it was arguable that they constituted claims for indemnity, they were not necessarily in respect of an equity claim. That determination is not appealed.

III Interpretation of "Equity Claim"

(a) Relevant Statutory Provisions

26 As part of a broad reform of Canadian insolvency legislation, various amendments to the CCAA were proclaimed in force as of September 18, 2009.

27 They included the addition of s. 6(8):

> No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

Section 22.1, which provides that creditors with equity claims may not vote at any meeting unless the court orders otherwise, was also added.

28 Related definitions of "claim", "equity claim", and "equity interest" were added to s. 2(1) of the CCAA:

> In this Act,
>
> . . . . .
>
> "claim" means any indebtedness, liability or obligation of any kind that would be a claim provable within the meaning of section 2 of the *Bankruptcy and Insolvency Act*;
>
> . . . . .
>
> "equity claim" means a claim that is in respect of an equity interest, including a claim for, among others,
>
> (a) a dividend or similar payment,
>
> (b) a return of capital,
>
> (c) a redemption or retraction obligation,
>
> (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or
>
> (e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d); [Emphasis added.]
>
> "equity interest" means
>
> (a) in the case of a company other than an income trust, a share in the company — or a warrant or option or another right to acquire a share in the company — other than one that is derived from a convertible debt, and
>
> (b) in the case of an income trust, a unit in the income trust — or a warrant or option or another right to acquire a unit in the income trust — other than one that is derived from a convertible debt;

29 Section 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("BIA") defines a "claim provable in bankruptcy". Section 121 of the BIA in turn specifies that claims provable in bankruptcy are those to which the bankrupt is subject.

> 2. "claim provable in bankruptcy", "provable claim" or "claim provable" includes any claim or liability provable in proceedings under this Act by a creditor;
>
> 121. (1) All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act. [Emphasis added.]

(b) The Legal Framework Before the 2009 Amendments

30 Even before the 2009 amendments to the CCAA codified the treatment of equity claims, the courts subordinated shareholder equity claims to general creditors' claims in an insolvency. As the supervising judge described:

> [23] Essentially, shareholders cannot reasonably expect to maintain a financial interest in an insolvent company where creditor claims are not being paid in full. Simply put, shareholders have no economic interest in an insolvent enterprise.
>
> [24] The basis for the differentiation flows from the fundamentally different nature of debt and equity investments. Shareholders have unlimited upside potential when purchasing shares. Creditors have no corresponding upside potential.
>
> [25] As a result, courts subordinated equity claims and denied such claims a vote in plans of arrangement. [Citations omitted.] [4]

(c) The Appellants' Submissions

31 The appellants essentially advance three arguments.

32 First, they argue that on a plain reading of s. 2(1), their claims are excluded. They focus on the opening words of the definition of "equity claim" and argue that their claims against Sino-Forest are not claims that are "in respect of an equity interest" because they do not have an equity interest in Sino-Forest. Their relationships with Sino-Forest were purely contractual and they were arm's-length creditors, not shareholders with the risks and rewards attendant to that position. The policy rationale behind ranking shareholders below creditors is not furthered by characterizing the appellants' claims as equity claims. They were service providers with a contractual right to an indemnity from Sino-Forest.

33 Second, the appellants focus on the term "claim" in paragraph (e) of the definition of "equity claim", and argue that the claims in respect of which they seek contribution and indemnity are the shareholders' claims against them in court proceedings for damages, which are not "claims" against Sino-Forest provable within the meaning of the BIA, and, therefore, not "claims" within s. 2(1). They submit that the supervising judge erred in focusing on the characterization of the underlying primary claims.

34 Third, the appellants submit that the definition of "equity claim" is not sufficiently clear to have changed the existing law. It is assumed that the legislature does not intend to change the common law without "expressing its intentions to do so with irresistible clearness": *Parry Sound (District) Welfare Administration Board v. O.P.S.E.U., Local 324*, 2003 SCC 42, [2003] 2 S.C.R. 157 (S.C.C.), at para. 39, citing *Goodyear Tire & Rubber Co. of Canada Ltd. v. T. Eaton Co.*, [1956] S.C.R. 610 (S.C.C.), at p. 614. The appellants argue that the supervising judge's interpretation of "equity claim" dramatically alters the common law as reflected in *National Bank of Canada v. Merit Energy Ltd.*, 2001 ABQB 583, 294 A.R. 15 (Alta. Q.B.) , aff'd 2002 ABCA 5, 299 A.R. 200 (Alta. C.A.). There the court determined that in an insolvency, claims of auditors and underwriters for indemnification are not to be treated in the same manner as claims by shareholders. Furthermore, the Senate debates that preceded the enactment of the amendments did not specifically comment on the effect of the amendments on claims by auditors and underwriters. The amendments should be interpreted as codifying the pre-existing common law as reflected in *National Bank of Canada v. Merit Energy Ltd*.

35 The appellants argue that the decision of *Return on Innovation Capital Ltd. v. Gandi Innovations Ltd.* is distinguishable because it dealt with the characterization of claims for damages by an equity investor against officers and directors, and it predated the 2009 amendments. In any event, this court confirmed that its decision denying leave to appeal should not be read as a judicial precedent for the interpretation of the meaning of "equity claim" in s. 2(1) of the CCAA.

(d) Analysis

(i) Introduction

36 The exercise before this court is one of statutory interpretation. We are therefore guided by the following oft-cited principle from Elmer A. Driedger, *Construction of Statutes*, 2d ed. (Toronto: Butterworths, 1983), at p. 87:

> [T]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

37 We agree with the supervising judge that the definition of equity claim focuses on the nature of the claim, and not the identity of the claimant. In our view, the appellants' claims for contribution and indemnity are clearly equity claims.

38 The appellants' arguments do not give effect to the expansive language adopted by Parliament in defining "equity claim" and read in language not incorporated by Parliament. Their interpretation would render paragraph (e) of the definition meaningless and defies the logic of the section.

(ii) The expansive language used

39 The definition incorporates two expansive terms.

40 First, Parliament employed the phrase "*in respect of*" twice in defining equity claim: in the opening portion of the definition, it refers to an equity claim as a "claim that is *in respect of* an equity interest", and in paragraph (e) it refers to "contribution or indemnity *in respect of* a claim referred to in any of paragraphs (a) to (d)" (emphasis added).

41 The Supreme Court of Canada has repeatedly held that the words "in respect of" are "of the widest possible scope", conveying some link or connection between two related subjects. In *CanadianOxy Chemicals Ltd. v. Canada (Attorney General)*, [1999] 1 S.C.R. 743 (S.C.C.), at para. 16, citing *Nowegijick v. R.*, [1983] 1 S.C.R. 29 (S.C.C.), at p. 39, the Supreme Court held as follows:

> The words "in respect of" are, in my opinion, words of the widest possible scope. They import such meanings as "in relation to", "with reference to" or "in connection with". The phrase "in respect of" is probably the widest of any expression intended to convey some connection between two related subject matters. [Emphasis added in *CanadianOxy*.]

That court also stated as follows in *Markevich v. Canada*, 2003 SCC 9, [2003] 1 S.C.R. 94 (S.C.C.), at para. 26:

> The words "in respect of" have been held by this Court to be words of the broadest scope that convey some link between two subject matters. [Citations omitted.]

42 It is conceded that the Shareholder Claims against Sino-Forest are claims for "a monetary loss resulting from the ownership, purchase or sale of an equity interest", within the meaning of paragraph (d) of the definition of "equity claim". There is an obvious link between the appellants' claims against Sino-Forest for contribution and indemnity and the shareholders' claims against Sino-Forest. The legal proceedings brought by the shareholders asserted their claims against Sino-Forest together with their claims against the appellants, which gave rise to these claims for contribution and indemnity. The causes of action asserted depend largely on common facts and seek recovery of the same loss.

43 The appellants' claims for contribution or indemnity against Sino-Forest are therefore clearly connected to or "in respect of" a claim referred to in paragraph (d), namely the shareholders' claims against Sino-Forest. They are claims in respect of equity claims by shareholders and are provable in bankruptcy against Sino-Forest.

44 Second, Parliament also defined equity claim as "including a claim for, among others", the claims described in paragraphs (a) to (e). The Supreme Court has held that this phrase "including" indicates that the preceding words - "a claim that is in respect of an equity interest" - should be given an expansive interpretation, and include matters which might not otherwise be within the meaning of the term, as stated in *National Bank of Greece (Canada) c. Katsikonouris*, [1990] 2 S.C.R. 1029 (S.C.C.), at p. 1041:

> [T]hese words are terms of extension, designed to enlarge the meaning of preceding words, and not to limit them.
>
> ... [T]he natural inference is that the drafter will provide a specific illustration of a subset of a given category of things in order to make it clear that that category extends to things that might otherwise be expected to fall outside it.

45 Accordingly, the appellants' claims, which clearly fall within paragraph (e), are included within the meaning of the phrase a "claim that is in respect of an equity interest".

(iii) What Parliament did not say

46 "Equity claim" is not confined by its definition, or by the definition of "claim", to a claim advanced by the holder of an equity interest. Parliament could have, but did not, include language in paragraph (e) restricting claims for contribution or indemnity to those made by shareholders.

(iv) An interpretation that avoids surplusage

47 A claim for contribution arises when the claimant for contribution has been sued. Section 2 of the *Negligence Act* provides that a tortfeasor may recover contribution or indemnity from any other tortfeasor who is, or would if sued have been, liable in

respect of the damage to any person suffering damage as a result of a tort. The securities legislation of the various provinces provides that an issuer, its underwriters, and, if they consented to the disclosure of information in the prospectus, its auditors, among others, are jointly and severally liable for a misrepresentation in the prospectus, and provides for rights of contribution. [5]

48 Counsel for the appellants were unable to provide a satisfactory example of when a holder of an equity interest in a debtor company would seek contribution under paragraph (e) against the debtor in respect of a claim referred to in any of paragraphs (a) to (d). In our view, this indicates that paragraph (e) was drafted with claims for contribution or indemnity by non-shareholders rather than shareholders in mind.

49 If the appellants' interpretation prevailed, and only a person with an equity interest could assert such a claim, paragraph (e) would be rendered meaningless, and as Lamer C.J. wrote in *R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61 (S.C.C.), at para. 28:

> It is a well accepted principle of statutory interpretation that no legislative provision should be interpreted so as to render it mere surplusage.

(v) The scheme and logic of the section

50 Moreover, looking at s. 2(1) as a whole, it would appear that the remedies available to shareholders are all addressed by ss. 2(1)(a) to (d). The logic of ss. 2(1)(a) to (e) therefore also supports the notion that paragraph (e) refers to claims for contribution or indemnity not by shareholders, but by others.

(vi) The legislative history of the 2009 amendments

51 The appellants and the respondents each argue that the legislative history of the amendments supports their respective interpretation of the term "equity claim". We have carefully considered the legislative history. The limited commentary is brief and imprecise. The clause by clause analysis of Bill C-12 comments that "[a]n equity claim is defined to include any claim that is related to an equity interest". [6] While, as the appellants submit, there was no specific reference to the position of auditors and underwriters, the desirability of greater conformity with United States insolvency law to avoid forum shopping by debtors was highlighted in 2003, some four years before the definition of "equity claim" was included in Bill C-12.

52 In this instance the legislative history ultimately provided very little insight into the intended meaning of the amendments. We have been guided by the plain words used by Parliament in reaching our conclusion.

(vii) Intent to change the common law

53 In our view the definition of "equity claim" is sufficiently clear to alter the pre-existing common law. *National Bank of Canada v. Merit Energy Ltd.*, an Alberta decision, was the single case referred to by the appellants that addressed the treatment of auditors' and underwriters' claims for contribution and indemnity in an insolvency before the definition was enacted. As the supervising judge noted, in a more recent decision, *Return on Innovation Capital Ltd. v. Gandi Innovations Ltd.*, the courts of this province adopted a more expansive approach, holding that contractual indemnification claims of directors and officers were equity claims.

54 We are not persuaded that the practical effect of the change to the law implemented by the enactment of the definition of "equity claim" is as dramatic as the appellants suggest. The operations of many auditors and underwriters extend to the United States, where contingent claims for reimbursement or contribution by entities "liable with the debtor" are disallowed pursuant to § 502(e)(1)(B) of the U.S. Bankruptcy Code, 11 U.S.C.S. [7]

(viii) The purpose of the legislation

55 The supervising judge indicated that if the claims of auditors and underwriters for contribution and indemnity were not included within the meaning of "equity claim", the CCAA would permit an indirect remedy to the shareholders when a direct remedy is not available. We would express this concept differently.

56 In our view, in enacting s. 6(8) of the CCAA, Parliament intended that a monetary loss suffered by a shareholder (or other holder of an equity interest) in respect of his or her equity interest *not* diminish the assets of the debtor available to general creditors in a restructuring. If a shareholder sues auditors and underwriters in respect of his or her loss, in addition to the debtor, and the auditors or underwriters assert claims of contribution or indemnity against the debtor, the assets of the debtor available to general creditors would be diminished by the amount of the claims for contribution and indemnity.

IV Prematurity

57 We are not persuaded that the supervising judge erred by determining that the appellants' claims were equity claims before the claims procedure established in Sino-Forest's CCAA proceeding had been completed.

58 The supervising judge noted at para. 7 of his endorsement that from the outset, Sino-Forest, supported by the Monitor, had taken the position that it was important that these proceedings be completed as soon as possible. The need to address the characterization of the appellants' claims had also been clear from the outset. The appellants have not identified any prejudice that arises from the determination of the issue at this stage. There was no additional information that the appellants have identified that was not before the supervising judge. The Monitor, a court-appointed officer, supported the motion procedure. The supervising judge was well positioned to determine whether the procedure proposed was premature and, in our view, there is no basis on which to interfere with the exercise of his discretion.

V Summary

59 In conclusion, we agree with the supervising judge that the appellants' claims for contribution or indemnity are equity claims within s. 2(1)(e) of the CCAA.

60 We reach this conclusion because of what we have said about the expansive language used by Parliament, the language Parliament did not use, the avoidance of surplusage, the logic of the section, and what, from the foregoing, we conclude is the purpose of the 2009 amendments as they relate to these proceedings.

61 We see no basis to interfere with the supervising judge's decision to consider whether the appellants' claims were equity claims before the completion of the claims procedure.

VI Disposition

62 This appeal is accordingly dismissed. As agreed, there will be no costs.

Appeal dismissed.

Footnotes

1 Credit Suisse Securities (Canada) Inc., TD Securities Inc., Dundee Securities Corporation (now known as DWM Securities Inc.), RBC Dominion Securities Inc., Scotia Capital Inc., CIBC World Markets Inc., Merrill Lynch Canada Inc., Canaccord Financial Ltd. (now known as Canaccord Genuity Corp.), Maison Placements Canada Inc., Credit Suisse Securities (USA) LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated, successor by merger to Banc of America Securities LLC.

2 Noteholders holding in excess of $1.296 billion, or 72%, of Sino-Forest's approximately $1.8 billion in noteholders' debt have executed written support agreements in favour of the Sino-Forest CCAA plan as of March 30, 2012. These include noteholders represented by the Ad Hoc Committee of Noteholders.

3 None of the appellants are sued in Saskatchewan and all are sued in Ontario. E&Y is also sued in Quebec and New York and the appellant underwriters are also sued in New York.

4 The supervising judge cited the following cases as authority for these propositions: *Blue Range Resource Corp., Re*, 2000 ABQB 4, 259 A.R. 30 (Alta. Q.B.); *Stelco Inc., Re* (2006), 17 C.B.R. (5th) 78 (Ont. S.C.J. [Commercial List]); *Central Capital Corp.*

(Re) (1996), 27 O.R. (3d) 494 (Ont. C.A.); *Nelson Financial Group Ltd., Re*, 2010 ONSC 6229, 71 C.B.R. (5th) 153 (Ont. S.C.J. [Commercial List]); *EarthFirst Canada Inc., Re*, 2009 ABQB 316, 56 C.B.R. (5th) 102 (Alta. Q.B.).

5 *Securities Act*, R.S.O. 1990, c. S.5, s. 130(1), (8); *Securities Act*, R.S.A. 2000, c. S-4, s. 203(1), (10); *Securities Act*, R.S.B.C. 1996, c. 418, s. 131(1), (11); *The Securities Act*, C.C.S.M. c. S50, s. 141(1), (11); *Securities Act*, S.N.B. 2004, c. S-5.5, s. 149(1), (9); *Securities Act*, R.S.N.L. 1990, c. S-13, s. 130(1), (8); *Securities Act*, R.S.N.S. 1989, c. 418, s. 137(1), (8); *Securities Act*, S.Nu. 2009, c. 12, s. 111(1), (12); *Securities Act*, S.N.W.T. 2008, c. 10, s. 111(1), (12); *Securities Act*, R.S.P.E.I. 1988, c. S-3.1, s. 111(1), (12); *Securities Act*, R.S.Q. c. V-1.1, ss. 218, 219, 221; *The Securities Act, 1988*, S.S. 1988-89, c. S-42.2, s. 137(1), (9); *Securities Act*, S.Y. 2007, c. 16, s. 111(1), (13).

6 We understand that this analysis was before the Standing Senate Committee on Banking, Trade and Commerce in 2007.

7 The United States Bankruptcy Court for the District of Delaware in *In Re: Mid-American Waste Systems, Inc.* 228 B.R. 816 (1999), indicated that this provision applies to underwriters' claims, and reflects the policy rationale that such stakeholders are in a better position to evaluate the risks associated with the issuance of stock than are general creditors.

2016 ONSC 569
Ontario Superior Court of Justice

U.S. Steel Canada Inc., Re

2016 CarswellOnt 3816, 2016 ONSC 569, 265 A.C.W.S. (3d) 297, 34 C.B.R. (6th) 226, 5 P.P.S.A.C. (4th) 157

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

In the Matter of a Proposed Plan of Compromise or Arrangement with Respect to U.S. Steel Canada Inc.

H. Wilton-Siegel J.

Heard: January 14-15, 20-22, 25-27, 2016
Judgment: February 29, 2016
Docket: CV-14-10695-00CL

Counsel: Michael E. Barrack, Robert Thornton, Jeff Galway, Kiran Patel, Max Shapiro, for United States Steel Corporation
Alan Mark, Peter Ruby, Tamryn Jacobson, Logan Willis, Jesse-Ross Cohen, for Province of Ontario
Gordon Capern, Kris Borg-Olivier, Denise Cooney, for USW and Locals 1005 and 8782
Andrew Hatnay, Barbara Walancik, Adrian Scotchmer, for Non-unionized Active Employees and Retirees
Sharon Kour, for Applicant, U.S. Steel Canada Inc.
Robert Staley, Jonathan Bell, William Bortolin, for Monitor Ernst & Young Inc.

Subject: Contracts; Corporate and Commercial; Evidence; Insolvency; International; Torts
Related Abridgment Classifications
Bankruptcy and insolvency
XIX Companies' Creditors Arrangement Act
XIX.5 Miscellaneous
Headnote
Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Miscellaneous
Proof of claims — USSC Inc. was indirect wholly-owned subsidiary of USS Inc. — As result of its financial difficulties, USSC Inc. applied for relief under Companies' Creditors Arrangement Act (CCAA) and was granted CCAA protection pursuant to initial order — Pursuant to claims process order, creditors of company were required to file proofs of claim in respect of affected claims with monitor — USS Inc. and its subsidiaries and affiliates filed 14 proofs of claim with monitor including non-contingent secured claims, unsecured claims and contingent secured claims — USS Inc. brought motion to have secured claims and unsecured claims approved by court as proven claims pursuant to claims process order — All claims except one remaining secured claim were confirmed by court as proven claims — Objecting parties had burden of proof that USS Inc.'s debt claims were properly characterized as equity claims under CCAA — To extent any advances from USS Inc. and its subsidiaries and affiliates constituted contribution to capital of USSC Inc., any claim for such amounts as proven claims in CCAA proceedings would constitute equity claim — Determination of whether particular claim was to be treated as debt or equity had to address not just expressed intentions of parties but also manner in which transaction was implemented and economic reality of surrounding circumstances — Outstanding term loan constituted debt claim rather than equity claim for purposes of CCAA proceeding — At time of term loan, USS Inc. expected that USSC Inc. would repay interest on term loan in accordance with terms of term loan agreement and would repay principal on or prior to maturity date of term loan — Objecting parties did not satisfy onus of demonstrating that USS Inc.'s expectation of repayment with interest of principal of term loan was unreasonable — With regards to revolver loan, USS Inc. had reasonable expectation of repayment with interest of advances comprising first and second tranche indebtedness at time such advances were made and claims constituted debt claims rather than equity claims — Security for two remaining secured claims was not unenforceable for lack of consideration or void as fraudulent preference —

Determination of issues pertaining to final secured claim could not be addressed until threshold issue of whether USS Inc.'s subrogation rights at issue qualified as secured obligations.

Table of Authorities

Cases considered by *H. Wilton-Siegel J.*:

Alternate Fuels Inc., Re (2015), 789 F.3d 1139 (U.S. C.A. 10th Cir.) — considered

Autostyle Plastics, Inc., Re (2001), 269 F.3d 726 (U.S. C.A. 6th Cir.) — considered

Bul River Mineral Corp., Re (2014), 2014 BCSC 1732, 2014 CarswellBC 2702, 16 C.B.R. (6th) 173 (B.C. S.C.) — followed

Canada Deposit Insurance Corp. v. Canadian Commercial Bank (1992), 5 Alta. L.R. (3d) 193, (sub nom. *Canada Deposit Insurance Corp. v. Canadian Commercial Bank (No. 3))* 131 A.R. 321, (sub nom. *Canada Deposit Insurance Corp. v. Canadian Commercial Bank (No. 3))* 25 W.A.C. 321, [1992] 3 S.C.R. 558, 16 C.B.R. (3d) 154, 7 B.L.R. (2d) 113, 97 D.L.R. (4th) 385, (sub nom. *Canada Deposit Insurance Corp. v. Canadian Commercial Bank (No. 3))* 143 N.R. 321, 1992 CarswellAlta 298, 1992 CarswellAlta 790, 16 C.B.R. (3d) 14 (S.C.C.) — considered

Fedders North America, Inc., Re (2009), 405 B.R. 527 (U.S. Bankr. D. Del.) — followed

Fulton (No. 2), Re (1926), 7 C.B.R. 213, 58 O.L.R. 400, [1926] 2 D.L.R. 277, 1926 CarswellOnt 6 (Ont. C.A.) — considered

McAsphalt Industries Ltd. v. Six Paws Investments Ltd. (1995), 34 C.B.R. (3d) 147, 85 O.A.C. 155, 1995 CarswellOnt 342 (Ont. C.A.) — followed

Metropolitan Toronto Police Widows & Orphans Fund v. Telus Communications Inc. (2005), 2005 CarswellOnt 2297, 5 B.L.R. (4th) 251, 12 C.B.R. (5th) 251, 75 O.R. (3d) 784 (Ont. C.A.) — considered

Metropolitan Toronto Police Widows & Orphans Fund v. Telus Communications Inc. (2006), 2006 CarswellOnt 435, 2006 CarswellOnt 436, 350 N.R. 398 (note), 216 O.A.C. 399 (note) (S.C.C.) — referred to

Sino-Forest Corp., Re (2012), 2012 ONSC 4377, 2012 CarswellOnt 9430, 92 C.B.R. (5th) 99 (Ont. S.C.J. [Commercial List]) — referred to

Sino-Forest Corp., Re (2012), 2012 ONCA 816, 2012 CarswellOnt 14701, 98 C.B.R. (5th) 20, 299 O.A.C. 107, 114 O.R. (3d) 304 (Ont. C.A.) — considered

Submicron Systems Corp., Re (2006), 432 F.3d 448 (U.S. C.A. 3rd Cir.) — considered

U.S. Steel Canada Inc., Re (2015), 2015 ONSC 5990, 2015 CarswellOnt 15634, 31 C.B.R. (6th) 319, 28 C.C.E.L. (4th) 156 (Ont. S.C.J.) — considered

Statutes considered:

Bankruptcy Code, 11 U.S.C.

s. 105(a) — considered

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

s. 95 — considered

s. 95(1) — considered

s. 95(1)(b) — considered

s. 95(2) — considered

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Generally — referred to

s. 2(1) "claim" — considered

s. 2(1) "equity claim" — considered

s. 2(1) "equity interest" — considered

s. 6(8) — considered

s. 11 — considered

s. 36.1 [en. 2007, c. 36, s. 78] — considered

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.)
Generally — referred to
Internal Revenue Code, 26 U.S.C.
Generally — referred to
Personal Property Security Act, R.S.O. 1990, c. P.10
Generally — referred to

s. 1(1) "security agreement" — considered
Authorities considered:

McCamus, John D., *The Law of Contracts* (Toronto: Irwin Law, 2005)

p. 222 — referred to
Words and phrases considered:

equity claim

[T]he definition of an "equity claim" [under s. 2 of the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (CCAA)] must extend to a contribution to capital by a sole shareholder unaccompanied by a further issue of shares . . . [A] payment by a sole shareholder of a debtor company on account of a capital contribution constitutes a payment in respect of a share of the debtor company. Such a payment would therefore constitute an "equity interest" and a claim in respect of such payment in a CCAA proceeding would be a claim for a return of such capital and therefore an "equity claim".

MOTION by company to have secured and unsecured claims approved by court as proven claims pursuant to claims process order under *Companies' Creditors Arrangement Act*.

***H. Wilton-Siegel J.*:**

1 In this proceeding, United States Steel Corporation ("USS") seeks a determination of 14 Proofs of Claim (the "USS Claims") filed in these proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA") regarding U.S. Steel Canada Inc. ("USSC").

2 Objections to the treatment of certain of these Claims as debt rather than as "equity claims" for the purposes of the CCAA, and to the enforceability of the security asserted in respect of certain of these Claims, have been filed by each of: (1) the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the "USW") on its own behalf and on behalf of USW Local 1005 and USW Local 8782 (collectively, the "Union"); (2) Her Majesty the Queen in Right of Ontario and the Superintendent of Financial Services (Ontario) in his capacity as administrator of the Pension Benefits Guarantee Fund (collectively, the "Province"); and (3) Representative Counsel to all non-USW active employees and retirees of USSC (collectively, the "Objecting Parties").

3 This motion principally addresses the objections filed by the Objecting Parties (the "Objections"). The following are the USS Claims in respect of which Objections have been made:

Claim Reference #	*Description of Claim*	*Amount of Claim*
9	Unsecured Term Loan	$1,847,169,934
10	Unsecured Revolver Loan	U.S. $120,150,928
11	Secured Revolver Loan	U.S. $72,938,390
11(a)	Secured Cliffs LRD Transaction	U.S. $14,538,463
11(b)	Secured Credit Support Payments	U.S. $3,742,479
11(c)	Secured Intercompany Trade	U.S. $31,252,193

The Claim numbers above, and amounts reflected in this table, are taken from the Third Supplementary Seventh Report of the Monitor dated July 29, 2015 (the "Third Supplementary Monitor's Report") at para. 11.

4 In these Reasons, Claims #9 and #10 are referred to as the "USS Unsecured Claims" and Claims #9, #10 and #11 are referred to collectively as the "USS Debt Claims". In addition, Claims #11, #11(a), #11(b) and #11(c) are referred to as the "USS Secured Claims", and Claims #11(a), #11(b) and #11(c) are referred to as the "USS Remaining Secured Claims".

Background

5 The following is a brief summary of the background to this proceeding. Further detail regarding the relationship between USS and USSC and the USS Claims that have given rise to the Objections is set out below.

USSC

6 USSC is an integrated steel manufacturer that conducts most of its business from two large steel plants located in Ontario: the Hamilton Works located in Hamilton, Ontario and the Lake Erie Works located in Nanticoke, Ontario.

7 USSC is an indirect wholly-owned subsidiary of USS. Prior to its acquisition by USS in 2007, USSC was known as Stelco Inc. ("Stelco").

8 As a result of its financial difficulties, USSC applied for relief under the CCAA and was granted CCAA protection pursuant to an Initial Order dated September 16, 2014 (the "Filing Date") (as amended and restated from time to time, the "Initial Order").

The USS Parties

9 USS is an integrated steel producer with major operations in North America and Central Europe. USS is a publicly-traded, Delaware corporation and its shares are listed for trading on the New York Stock Exchange.

10 1344973 Alberta ULC ("ABULC") was an Alberta corporation incorporated on August 22, 2007 to be the acquisition vehicle for the purposes of the USS acquisition of Stelco.

11 U.S. Steel Canada Limited Partnership ("Canada LP") is a limited partnership formed under the laws of Alberta. Canada LP is an indirect wholly-owned subsidiary of USS. At the time of the USS acquisition of Stelco, Canada LP owned all the outstanding shares of ABULC and was, therefore, ABULC's direct parent. As a result of the amalgamation of ABULC and USSC on December 31, 2007 described below, Canada LP has become the direct parent of USSC.

12 United States Steel Credit Corporation ("Credit Corp") was a Delaware corporation that was a wholly-owned subsidiary of USS. Credit Corp was merged into another wholly-owned subsidiary of USS on December 20, 2013.

13 U.S. Steel Kosice s.r.o. ("USS Kosice") is a Slovakian corporation that is an indirect wholly-owned subsidiary of USS.

The USS Acquisition of Stelco Inc. in 2007

14 On August 26, 2007, the USS board of directors approved the USS acquisition of Stelco, and USS, Stelco and ABULC entered into an arrangement agreement giving effect to the proposed transaction. The plan of arrangement by which the acquisition was implemented was subsequently approved by the Ontario Superior Court of Justice on October 30, 2007, and the acquisition transaction closed on October 31, 2007 (the "Acquisition").

Financing the Acquisition and the Flow of Funds

15 The total amount spent by USS in connection with the Stelco acquisition was approximately $1.939 billion, or U.S. $2.056 billion at then prevailing exchange rates. The relevant corporate structure and the flow of funds are shown on the Funds

Flow Chart attached as Schedule A to these Reasons. In these Reasons, all dollar amounts are denominated in Canadian dollars unless otherwise specifically indicated.

16 ABULC was the acquisition vehicle that directly acquired Stelco. ABULC was financed by the following loans and capital contributions:

(a) Canada LP loaned ABULC $700 million pursuant to a loan agreement dated October 29, 2007 described below (the "Term Loan");

(b) Canada LP provided ABULC with equity in the amount of $600 million; and

(c) Credit Corp loaned ABULC approximately U.S. $744 million pursuant to a loan agreement dated October 29, 2007 described below (the "Credit Corp Loan").

17 ABULC used the funds received from Canada LP and Credit Corp as follows: (1) ABULC used $1.046 billion to purchase the outstanding shares of Stelco; (2) ABULC loaned Stelco approximately $741 million, which Stelco used to pay out its third party debt (other than a loan from the Province of Ontario); (3) ABULC loaned Stelco approximately $59 million, which Stelco used to pay out its option holders; (4) ABULC loaned Stelco approximately $61 million, which Stelco used to pay out its warrant holders; (5) ABULC loaned Stelco $32.5 million, which Stelco used to make a payment to its four main pension plans; and (6) ABULC loaned Stelco $40 million to fund Stelco's working capital.

18 The funds used to acquire Stelco were derived from multiple sources. First, USS obtained new debt financing in the principal amount of U.S. $900 million in the form of facilities provided by a banking syndicate led by J.P. Morgan Chase Bank, N.A. These facilities comprised an unsecured three-year term loan in the principal amount of U.S. $500 million and an unsecured one-year term loan in the amount of U.S. $400 million. The one-year term loan was subsequently refinanced by USS as part of a larger offering of ten-year bonds in the public market. Second, USS obtained approximately U.S. $400 million by drawing on an existing receivables purchase facility. Third, USS utilized approximately U.S. $153 million of cash on hand at the USS level and 434,415,519.56, or $597,860,287.50, of cash on hand in USS Kosice.

19 The source of the financing for the Acquisition, the structure of the Acquisition and the flow of funds to ABULC for such purposes was developed by USS between the date of the Arrangement Agreement and the date of the Acquisition. The principal consideration in the development of this structure was tax-efficiency from the perspective of USS. With respect to ABULC, the amounts received by it as debt and equity were driven by the "thin capitalization" rules under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.). In addition, the amount of the funding reflected a USS policy of avoiding any secured third party indebtedness at the level of any subsidiary. As a result, it was necessary to fund Stelco with the amount necessary to repay all outstanding third party debt at the date of the Acquisition, other than a loan from the Province.

Post-Acquisition Corporate Reorganization & Refinancing

20 On November 1, 2007, immediately following the Acquisition, Stelco was renamed U.S. Steel Canada Inc.

21 Between October 31, 2007 and the year-end, the Credit Corp Loan was repaid in full. Certain of the repayments were made from additional advances under the Term Loan which are described in greater detail below.

22 Following such additional advances by Canada LP to ABULC under the Term Loan in 2007, the outstanding principal amount outstanding under the Term Loan on December 31, 2007 was $1,227,363,149.82. The total amount outstanding on that date including accrued interest was $1,240,009,143.

23 ABULC and USSC amalgamated on December 31, 2007 to continue as USSC (the "Amalgamation"). As a result of the Amalgamation, the obligations of ABULC under the Term Loan became obligations of the amalgamated entity, USSC.

The History of the Credit Corp Loan

24 As described above, pursuant to the Credit Corp Loan, Credit Corp advanced U.S. $744,463,605 to ABULC on or about October 31, 2007. The funds provided by the Credit Corp Loan were notionally intended to fund Stelco's third party debt at the date of acquisition that was denominated in U.S. dollars. USS intended the facility to be a short-term facility that would be repaid within two months. Larry Brockway, the Senior Vice-President, Chief Financial Officer and Chief Risk Officer of USS ("Brockway"), testified that the "purpose of the agreement was to help stair-step the structure into a more permanent structure as part of the ultimate steps between the acquisition and year end".

25 Consistent with this objective, the Credit Corp Loan was repaid by means of: (1) a repayment of approximately U.S. $26 million in November 2007; (2) a repayment of approximately U.S. $41 million on December 4, 2007, which was funded by an advance to ABULC under the Term Loan on the same day described below; (3) a U.S. $87 million repayment by ABULC on December 21, 2007, comprised of U.S. $10 million presumably funded out of a U.S. $20 million equity injection from Credit Corp to ABULC on the same day and application of U.S. $77 million out of the $470 Million Advance described below; and (4) a reduction in the amount of approximately U.S. $595 million pursuant to the SHC Transaction described below.

The SHC Transaction

26 The following summarizes the description of the SHC Transaction set out in the Third Supplementary Monitor's Report.

27 At the time of the Acquisition, Stelco indirectly owned all of the outstanding shares of Stelco Holding Company ("SHC"), a corporation incorporated under the laws of Delaware. SHC's principal assets were interests in two mining joint ventures — Hibbing Taconite Company ("Hibbing") and Tilden Mining Company ("Tilden").

28 At the time of the Acquisition, SHC had a liability to Stelco in the amount of approximately U.S. $393 million. This amount principally represented the excess of the amount owing by Stelco to SHC for iron-ore pellets produced by Hibbing and Tilden and shipped to Stelco, representing SHC's *pro rata* share of such production, less the amount of annual cash calls on SHC in respect of Hibbing and Tilden, which were paid by Stelco on behalf of SHC. This liability was booked as an advance from SHC to Stelco, and had increased in each year prior to 2007. The liability also included legacy liabilities of Stelco to certain other subsidiaries of SHC that were dormant. Stelco had not repaid any amount on account of these advances, and had no intention of doing so prior to the Acquisition, due to the adverse tax consequences of dividending the amount of any such payment back to Canada.

29 The Acquisition presented an issue of tax inefficiency for USS, referred to as a "tax sandwich", that would result if distributions from SHC (as dividends or interest) were made to USSC in Canada and, in turn, distributed to USS in the United States. To address this issue, USS caused ABULC, USSC and SHC to enter into certain transactions which were effected by book entries in the financial accounts of the relevant corporations pursuant to a payment direction agreement dated December 21, 2007 (the "Payment Direction") (collectively, the "SHC Transaction").

30 The SHC Transaction involved the following steps:

(1) ABULC loaned USSC the amount of U.S. $393 million out of the $470 Million Advance (defined below);

(2) USSC repaid the outstanding advance to SHC in the same amount;

(3) USSC sold its equity interest in SHC to USS for consideration in the form of a promissory note dated December 31, 2007 in the principal amount of U.S. $595 million payable to the wholly-owned subsidiary of USSC that owned the shares of SHC. The face amount of the promissory note of U.S. $595 million represented USS' estimation of the fair market value of SHC at the time of the sale; and

(4) The promissory note was distributed by such wholly-owned subsidiary to USSC on December 31, 2007 which, in turn, assigned the note to Credit Corp in reduction of the remaining principal amount outstanding under the Credit Corp Loan, which was slightly less than U.S. $593 million.

31 The effect of the SHC Transaction was to transfer ownership of SHC from USSC to USS by way of satisfaction of the remaining amount outstanding under the Credit Corp Loan as of December 31, 2007.

The Term Loan

32 The following summarizes the provisions of the Term Loan that are relevant for the issues in this proceeding and the history of draws and accrued interest under the Term Loan resulting in the USS claim in respect of the Term Loan.

The Relevant Provisions of the Term Loan

33 The Term Loan is an unsecured loan facility having a term of 30 years repayable by USSC at any time without premium or penalty. The full amount of the outstanding principal is therefore due on October 31, 2037, to the extent it is not repaid before that date. USS says that it selected a 30-year term for the Term Loan because it viewed its investment in Stelco as a long-term one. The 30-year term was also the maximum term countenanced for U.S. tax purposes.

34 Interest on the Term Loan accrued daily and compounded semi-annually at an interest rate of 9.03% per annum. USS obtained and relied upon advice from an independent, third-party consultant regarding an acceptable interest rate for a company with a similarly rated risk for 30-year debt. Interest is payable on the last business day of the year on the second anniversary after the year in which it accrues. As a result, interest under the Term Loan was payable from 24 to 36 months after the date it began to accrue.

35 The Term Loan was denominated in Canadian dollars. The Term Loan originally allowed for a maximum borrowing of $1 billion. The maximum availability under the Term Loan was increased from $1 billion to $1.5 billion on December 21, 2007. As mentioned, the amount of $700 million was initially advanced on October 31, 2007. The Term Loan provided that further advances could be obtained "with prior written notice ... pursuant to a request for advance" set out in a form similar to a scheduled document to the Term Loan.

36 The loan agreement contains certain representations and covenants of ABULC/USSC and events of default. The events of default include an event of default if the borrower is "unable to meet debts". Upon the occurrence of an event of default, the maturity date is accelerated and Canada LP has the right to demand repayment.

History of Advances and Repayments under the Term Loan

37 As mentioned above, Canada LP advanced $700 million to ABULC on October 31, 2007 in connection with the Acquisition. This amount became a direct obligation of USSC after the Amalgamation. In addition, during the period from the Acquisition to the Amalgamation, ABULC recorded three additional advances. On December 4, 2007, ABULC recorded two advances totaling approximately U.S. $61 million, of which U.S. $41 million was applied to reduce the Credit Corp Loan and the balance was advanced to USSC for working capital purposes. On December 22, 2007, ABULC recorded an advance of U.S. $470 million under the Term Loan pursuant to the Payment Direction (the "$470 Million Advance"). The foregoing advances under the Term Loan are collectively referred to as the "initial advances".

38 During 2008, USSC made interest payments to Canada LP under the Term Loan totalling approximately $113 million. Of this amount, $99,940,908 was paid in October and November 2008. Such payments were made in advance of their due date under the Term Loan Agreement, which provided that such interest was not payable until December 31, 2010. In addition, USSC made a principal repayment of $19 million in January 2008. The only additional funding provided to USSC by USS or any of its affiliates in 2008 was an equity injection of approximately $55 million in October 2008.

39 In 2009, USSC received additional advances from Canada LP under the Term Loan totalling $211.2 million. These advances were made during the months of February, June, September, November and December 2009. No interest or principal was paid during 2009. In addition, as set out in the table above, USS provided equity injections totalling $61 million during 2009. These capital contributions were made in February, July and October 2009.

40 There were no further advances under the Term Loan after 2009. At the end of 2010, USS decided to waive the remaining interest that was due under the Term Loan in respect of interest accrued during 2008. Since there had been substantial interest payments made in 2008, the accrued interest that was waived in December 2010 was only $10.5 million. USS says that, given USSC's other funding needs at the time, the interest payment could only have been made if USSC received additional funding. Further, due to taxation on interest payments, it did not make economic sense to fund USSC with additional debt or equity in order to enable USSC to repay interest on the Term Loan. USS says that this was the first time that USS considered waiving interest due under the Term Loan. In other words, it asserts that it did not have such expectation at the time that it entered into the Term Loan.

41 USS continued the practice of waiving interest in each year after 2010. Accordingly, in each of the years 2010 to 2013, USS waived approximately one-half of the accrued and unpaid interest due in that year. In total, USS has waived interest obligations of USSC totaling approximately $428 million and has accrued interest under the Term Loan in approximately the same amount.

42 As of the Filing Date, the total amount outstanding under the Term Loan, including accrued interest, was $1,847,169,934.

The Revolver Loan

43 Pursuant to an agreement dated May 11, 2010 between USSC and Credit Corp (as amended from time to time, the "Revolver Loan Agreement"), Credit Corp established a Revolver Loan to provide working capital to USSC to support its operating activities. The Revolver Loan Agreement was subsequently amended successively by an agreement dated July 31, 2012 (the "First Revolver Amendment"), an agreement dated January 28, 2013 (the "Second Revolver Amendment") and an agreement dated October 30, 2013 (the "Third Revolver Amendment") in the circumstances described below. In these Reasons, the loan outstanding under the Revolver Loan Agreement, as so amended from time to time, is herein referred to as the "Revolver Loan" and the Term Loan and the Revolver Loan are collectively referred to as the "Loans" and individually are referred to as a "Loan".

44 USS has filed two proofs of claim in respected of the Revolver Loan. The first claim is an unsecured claim (being Claim #10) in the amount of U.S. $120,150,928, representing the outstanding loan on October 30, 2013, together with accrued interest since that date. The second claim is a secured claim (being Claim #11) in the amount of U.S. $72,938,390, representing the loan advances since October 30, 2013 plus accrued interest. The following sets out the principal terms of the Revolver Loan, including the related security, and the history of advances and payments in respect of the Revolver Loan.

Terms of the Revolver Loan

45 The Revolver Loan was originally an unsecured loan having a fifteen-year term. Accordingly, all outstanding advances are due on May 11, 2025. As mentioned, the Revolver Loan originally provided for a maximum availability of U.S. $350 million.

46 Advances under the Revolver Loan accrued interest at the applicable federal interest rate for the month in which the advance was drawn and compounded interest semi-annually. The applicable interest rate as of the date of the Revolver Loan was 4.42% per annum.

47 The loan agreement contains certain representations and covenants of USSC, including originally, a solvency representation, and events of default. The events of default include an event of default in the event that the borrower is "unable to meet debts". Upon the occurrence of an event of default, the maturity date is accelerated and Credit Corp had the right to demand repayment. The loan agreement is governed by the laws of the Commonwealth of Pennsylvania.

The History of Advances and Repayments Under the Revolver Loan

48 Credit Corp advanced a total of U.S. $120 million under the Revolver Loan from its establishment in May 2010 through the third quarter of 2011. Of this amount, U.S. $75 million was advanced in May 2010, U.S. $25 million was provided in two advances in August 2010, and a further U.S. $20 million was advanced in June 2011.

49 In the period from November 2011 to April 2012, USSC had somewhat more stable cash flows. Credit Corp advanced approximately U.S. $136 million under the Revolver Loan during this period. During the same period, USSC made interest payments totaling almost U.S. $9 million and principal repayments of approximately U.S. $61.8 million under the Revolver Loan. Thereafter, the outstanding balance began to grow with additional advances in each month in 2012, other than October.

50 By July 31, 2012, the outstanding principal balance of the Revolver Loan was, however, approaching the cap of U.S. $350 million. On that date, Credit Corp and USSC executed the First Revolver Amendment, which increased the maximum availability under the Revolver Loan to U.S. $500 million. Apart from removal of the solvency representation of USSC, the First Revolver Amendment did not otherwise amend the provisions of the Revolver Loan Agreement, including the events of default. The solvency representation of USSC was removed at the request of USSC's management, which had a concern about USSC's solvency given its recent losses and the level of its debt. The circumstances pertaining to this action are addressed further below.

51 By January 28, 2013, however, after additional advances to USSC under the Revolver Loan, the outstanding principal balance of the Revolver Loan had again reached the maximum availability. USSC's business plan for 2013 indicated that it would need substantial additional financing during that year in order to finance its operations. Accordingly, on that date Credit Corp and USSC executed the Second Revolver Amendment, which increased the maximum availability under the Revolver Loan from U.S. $500 million to U.S. $600 million, on the condition that USSC grant a security interest in favour of USS in respect of its inventory of iron ore pellets sold to it by SHC. The Second Revolver Amendment did not otherwise amend the provisions of the Revolver Loan Agreement as it existed on January 28, 2013, including the events of default and consequences of a default.

52 In furtherance of the provisions of the Second Revolver Amendment, USSC granted a security interest in favour of Credit Corp over all of its inventory of iron ore pellets sold to USSC by SHC, and related proceeds, pursuant to a security agreement dated January 28, 2013 executed by USSC and USS (the "Security Agreement").

53 In February 2013, USS determined that the foreign currency exchange fluctuations on the Revolver Loan, which was a U.S. dollar-denominated loan, had become unacceptable as a result of the volatility of USSC's revenues, and accordingly of its quarterly earnings, due to fluctuations in the Canadian dollar. Over a period of several months thereafter, Canada LP injected significant amounts of equity into USSC to provide for USSC's working capital funding needs and to allow USSC to pay down the Revolver Loan.

54 Between February and September 2013, as set out above, equity injections provided to USSC totaled over $680 million. Payments of principal and interest on the Revolver Loan over the same period totaled over U.S. $390 million. As of October 30, 2013, the amount outstanding under the Revolver Loan had been reduced to $116,969,996.

55 On October 30, 2013, Credit Corp and USSC executed the Third Revolver Amendment. The Third Revolver Amendment contains a recital to the effect that the parties wish to amend and restate the Revolver Loan "in order to permit the Borrower to access the remainder of the [Revolver] Loan." The Third Revolver Amendment continued the availability under the Revolver Loan in the amount of U.S. $600 million. However, it divided borrowings under the facility into two tranches: (1) the "First Tranche Indebtedness", being the outstanding amount of $116,969,996, which was entitled to the security interest over iron-ore pellets constituted by the Security Agreement; and (2) the "Second Tranche Indebtedness", being any advances after October 30, 2013, which were entitled to the general security interest constituted by the October Security Agreement (as defined below). The Third Revolver Amendment did not otherwise amend the provisions of the Revolver Loan as it existed on October 30, 2013, including the events of default and consequences of a default.

56 Concurrently with the execution of the Third Revolver Amendment, USSC and Credit Corp executed an amendment and restatement of the Security Agreement pursuant to an agreement also dated October 30, 2013 (the "October Amendment"). Pursuant to the October Amendment, USSC granted a general security interest over all of its personal property in favour of Credit Corp. The October Amendment contained a recital to the effect that Credit Corp "is willing to continue to provide Loans pursuant to [the Revolver Loan], only if [USSC] enters into this Amendment". The General Security Agreement, as amended by the October Amendment, is herein referred to as the "October Security Agreement". Apart from broadening the security interest

granted in favour of Credit Corp, the October Amendment did not otherwise amend the provisions of the Security Agreement as it existed as of October 30, 2013.

57 USS has acknowledged that, as of October 30, 2013, although USSC was meeting its obligations as they fell due, the total liabilities of USSC exceeded the market value of its assets and, accordingly, USSC was otherwise "insolvent", including for the purposes of section 95 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA").

58 After the execution of the Third Revolver Amendment and the October Security Agreement, Credit Corp advanced loans to USSC under the Revolver Loan totaling U.S. $71 million. These loans were outstanding at the Filing Date. USSC did not make any payments of either principal or interest after October 30, 2013 in respect of the First Tranche Indebtedness under the Revolver Loan outstanding as of October 30, 2013.

59 Accordingly, at the Filing Date, the total amount outstanding under the Revolver Loan, including accrued interest, was U.S. $193,089,318. The portion of this balance attributable to advances made prior to October 30, 2013, i.e., to the First Tranche Indebtedness plus accrued and unpaid interest thereon since that date, was U.S. $120,150,928. This is the amount of the USS unsecured claim in respect of the Revolver Loan. The portion attributable to advances made after October 30, 2013, i.e., to the Second Tranche Indebtedness, was U.S. $72,938,390, representing U.S. $71 million of advances plus interest. This is the amount of the USS secured claim in respect of the Revolver Loan.

Internal Procedure for Additional Draws and Equity Capital Contributions

60 In order to request funding under the Term Loan after December 31, 2007 and under the Revolver Loan, USSC would prepare and submit to USS a cash flow forecast setting out its anticipated cash requirements for the following 13-week period. The submission of these weekly cash flow forecasts, and the related correspondence and discussions between USS and USSC, constituted USSC's formal request for funding.

61 USS would review the forecast and determine whether funds would be advanced, and if so whether they would be advanced as debt under the Loans or as an equity injection. Typically the funds would be advanced as debt unless additional debt would cause USSC to go offside the "thin capitalization" tax rules under the *Income Tax Act*.

62 There is no dispute that all advances made under the Term Loan were documented and recorded by both Canada LP and USSC as debt and that all advances made under the Revolver Loan were similarly documented and recorded by both Credit Corp and USSC as debt. It is also not disputed that all contributions to equity by Canada LP were recorded by both Canada LP and USSC as equity. In this regard, the Monitor has noted that USSC's books and records relating to these intercompany transactions are well organized and documented, including with respect to each specific advance of cash in the form of equity or debt.

63 The following table summarizes the equity capital injections by USS into USSC between October 31, 2007 and the Filing Date:

Equity Contributions (CAD $Millions)

Period	Original Contribution	Equity Advances	Total
Oct 31, 2007	600		600
Nov 30, 2007	-	-	600
Dec 31, 2007	-	20	620
2008	-	55	675
2009	-	61	736
2010	-	612	1,347
2011	-	213	1,561
2012	-	-	1,561
2013	-	764	2,325
Sept 15, 2014	-	-	2,325

Total	**600**	**1,725**	**2,325**

Source: USSC Share Consideration Registry

64 The Remaining USS Secured Claims USS has asserted the following three Claims, which it says are secured pursuant to the November Security Agreement (as defined below):

Claim	*Amount (USD)*	*Claim Reference #*
Secured Cliffs Transaction	$14,538,462.95	11(a)
Secured Credit Support Payments	$3,742,478.78	11(b)
Secured Intercompany Goods & Services	$31,252,193.05	11(c)

As mentioned, these Claims are collectively referred to as the "USS Remaining Secured Claims". It is my understanding that the Objecting Parties do not challenge the quantum of these Claims but assert that the security for these Claims is unenforceable on the grounds described later in these Reasons.

Secured Cliffs Transaction (Claim #11(a))

65 USS filed a secured claim for U.S. $14,538,462.95 with respect to the amount of a payment made by USS to Cliffs Natural Resources and Cliffs Sales Company (collectively, "Cliffs") for certain iron ore delivered by Cliffs to USSC, which iron ore was, in turn, resold by USS to USSC under the following circumstances.

66 Cliffs and USS are parties to an agreement dated January 1, 2008 for the supply of iron ore (the "Cliffs Agreement"). The iron ore delivered by Cliffs to USSC was sourced by the USS Procurement Department as part of the raw materials services arrangement between USS and USSC that was provided for in the "Limited Risk Distributor Agreement" referred to below.

67 The Claim relates to four shipments of iron ore, and associated screening charges, totaling U.S. $14.1 million, which were delivered by Cliffs to USSC in August 2014, prior to the Filing Date and outstanding obligations in the amount of U.S. $0.4 million for screening charges incurred in January and May 2014 for which Cliffs had not previously issued invoices.

68 On September 16, 2014, pursuant to an agreement between USS and USSC (the "Iron Ore Agreement"), in order to avoid an interruption of the supply of a critical raw material under the Cliffs Agreement, USS agreed to make the payment to Cliffs and to transfer title of the iron ore pellets to USSC provided that USSC confirmed the corresponding obligation of USSC to USS in payment of such iron ore would be secured under the November Security Agreement.

69 The Monitor has confirmed that USSC received delivery of the iron ore prior to the Filing Date and that USS made the payment of $14.1 million to Cliffs on October 2014. The Monitor has also confirmed that, under the Cliffs Agreement, title to the iron ore did not pass to USS until USS paid for the iron ore after the Filing Date. At that time, USS effectively took title to the iron ore and re-sold it to USSC pursuant to the Limited Risk Distributor Agreement described below.

70 Accordingly, this Claim is a claim of USS for the payment of goods sold by USS to USSC after the Filing Date pursuant to arrangements set out in the Iron Ore Agreement that were entered into prior to the commencement of these proceedings under the CCAA.

Secured Credit Support Payments - Claim #11(b)

71 USS filed a secured Claim for U.S. $3,703,450 for contribution and indemnity as guarantor of certain USSC obligations as follows:

Vendor	*Amount (USD)*
Independent Electricity System Operator ("IESO")	$2,616,156.27

Union Gas Limited ("Union Gas")	$669,109.87
Norfolk Southern Corporation ("Norfolk")	$457,212.64

72 USS received demands subsequent to the Filing Date from IESO, Union Gas and Norfolk pursuant to existing guarantee agreements between USS in favour of each of such parties in respect of goods and services supplied to USSC prior to the Filing Date. USS made payments to these vendors pursuant to these guarantees subsequent to the Filing Date. This Claim is therefore an aggregation of USS' rights of subrogation which arose on payment of these three obligations of USSC after the Filing Date pursuant to the USS guarantees in favour of the third parties.

Secured Intercompany Goods & Services - Claim #11(c)

73 In the ordinary course of business, the USS Affiliates provided raw materials and other goods as well as various services to USSC both informally and under several intercompany agreements. Invoices relating to the intercompany goods and services received by USSC in a calendar month were typically paid on a gross basis on or about the 15th day of the following month as part of a normal reconciliation process between USSC and USS.

74 USS filed a secured claim totaling U.S. $31,252,193.05 in respect of the sale of goods and the provision of services on an intercompany basis after the date of the November Security Agreement.

75 As stated above, the sale of goods and the provision of services by USS to USSC took place both informally and under several intercompany agreements. The relevant intercompany agreements include the following: (1) two Marketing, Distributorship and Supply Agreements, dated March 1, 2009 and December 1, 2008, which governed cross-border sales within the USS group, i.e., the sale of steel produced in the U.S. or Canada and sold to a customer in the other country; (2) a Limited Risk Distributor Agreement, dated February 1, 2008, between USS and USSC under which USSC purchased significant quantities of raw material on an as-needed basis from USS; (3) an ERP Cost Sharing Agreement, amended January 1, 2011, that governed the costs of an enterprise-wide financial and operational software solution known as "Oracle"; (4) a Corporate Services Agreement, dated November 1, 2007, pursuant to which USS provided, among other things, financial and accounting, corporate strategic planning, tax planning and audit services to USSC; and (5) a Business Services Agreement, dated January 1, 2014, among USS, USSC and USS Kosice that related to certain IT and financial transaction processing services.

76 The claims that are aggregated as Claim #11(c) are therefore contractual claims of USS for payment of the goods and services provided pursuant to these agreements prior to the Filing Date.

Procedural History of this Proceeding

77 Pursuant to a claims process order of the Court in these CCAA proceedings dated November 13, 2014 (the "Claims Process Order"), creditors of USSC were required to file Proofs of Claim (as defined in the Claims Process Order) in respect of affected Claims with the Monitor by December 22, 2014.

Actions of the Monitor under the Claims Process Order

78 With respect to any claims filed by USS, U.S. Steel Holdings, Inc., Canada LP or any affiliates of USS (other than USSC or any of USSC's subsidiaries), paragraph 28 of the Claims Process Order ordered:

(a) the Monitor to prepare a report to be served on the Service List and filed with the Court, detailing its review of all USS claims and recommendations it has, if any, with respect to the determination of such claims;

(b) the Monitor to seek a scheduling appointment before the Court, on notice to the Service List, to schedule a hearing of a motion to determine the USS claims; and

(c) that the USS claims shall not be accepted or determined as Proven Claims without approval of this Court.

79 USS and its subsidiaries and affiliates filed 14 Proofs of Claim with the Monitor, being the "USS Claims".

80 On March 10, 2015, the Monitor issued its Seventh Report in these CCAA proceedings dated March 9, 2015 (the "Monitor's Seventh Report").

81 As described at paragraph 8 of Monitor's Seventh Report, the USS Claims may be summarized and aggregated into the following three categories:

(a) non-contingent Secured Claims (as defined in the Claims Process Order), which total U.S. $122,432,496.11 (being the "USS Secured Claims");

(b) unsecured Claims, which total U.S. $127,805,815.36 (being Claims #1 to 8, #10 and an unsecured portion of Claim #11) and $1,847,169,934.04 (being Claim #9); and

(c) contingent Secured Claims, which total $78,761,395.00 (which are not addressed in these Reasons).

82 The review process undertaken by the Monitor (and in certain cases by the Monitor's counsel) of the USS Claims is described at paragraphs 36-40 of the Monitor's Seventh Report. Based on its review of the USS Claims, the Monitor recommended to the Court that:

(a) USS bring a motion to approve the USS Secured Claims and the USS Unsecured Claims; and

(b) the USS Secured Claims and the USS Unsecured Claims be found to be Proven Claims in their entirety as filed by USS.

83 Based on the Monitor's recommendations to the Court, USS commenced this proceeding by a notice of motion dated March 13, 2015. Pursuant to this motion, USS seeks to have the USS Secured Claims and the USS Unsecured Claims approved by the Court as Proven Claims pursuant to the Claims Process Order.

The Objections of the Province, the Union and Representative Counsel

84 The following briefly summarizes the claims set out in the Objections of the Objecting Parties that have given rise to this trial. In addition, an objection was filed by Robert and Sharon Milbourne (collectively, the "Milbournes"). However, the Milbournes chose not to participate in the hearing of this motion. The Court has therefore treated their objection as withdrawn.

The Objection of the Province of Ontario

85 On April 14, 2015, an Objection was filed on behalf of the Province.

86 The Province submitted that the facts of this case raise significant issues with respect to the validity and enforceability of the security interests underlying the secured portions of the USS Claims as well as the proper characterization of the USS Claims. It argued that, in light of these issues, there was an insufficient basis on which to accept the USS Claims as Proven Claims. It argued that a hearing was required to evaluate these issues, which evaluation should include a consideration of whether the security claimed by USS was valid and enforceable given, among other matters, that the adequacy of consideration received by USSC in exchange for the grant of security has not been established. The Province also submitted that the Court should consider whether the USS Claims constitute *bona fide* indebtedness, or whether they are properly characterized as equity contributions from a controlling parent company.

87 The Objection of the Province was supplemented by a clarification dated August 21, 2015, which set out in greater detail the bases upon which the Province asserts that the Term Loan and the Revolver Loan should be re-characterized as "equity claims" and that the security for the USS Secured Claims should be declared to be a fraudulent preference or otherwise unenforceable. As these arguments are addressed below in the Court's analysis, I do not propose to repeat them in this section.

The Objection of the Union

88 On April 14, 2015, an Objection was filed by the Union. By way of overview, the Union submitted that USS, as the shareholder of USSC, directed the operations of USSC in a manner that has caused USSC to significantly underperform, thereby incurring substantial losses and requiring it to incur significant debt. In addition, the Union submitted that such actions undermined the ability of USSC to meet its on-going funding obligations to the USW pension plans of USSC. The Union argued that, as a result, USS has diluted the potential recoveries of the Union members and the USW pension plan beneficiaries in this CCAA proceeding.

89 The Union broadly categorized its objections as follows:

(a) an objection to the granting of security interests on the assets of USSC;

(b) an objection to the characterization of most of the USS Claims as debt when they are properly characterized as equity; and

(c) an objection grounded in USS' conduct in relation to its Canadian plants, unionized pensioners, pension plan members and beneficiaries, which gives rise to claims of oppression and breaches of fiduciary duty.

90 With respect to the objection in (a), the Union submitted that USS' secured claim is based on security interests effectively granted by USS to itself, at a time when there was no independent board of directors or advisors, for insufficient consideration, and in a manner which amounted to an improper preference and/or fraudulent conveyance. With respect to the objection in (b), the Union submitted that a significant portion of USS' debt is really in the nature of equity and should be re-characterized as such based on, among other factors, the fact that (i) much of the debt was incurred to acquire Stelco; (ii) USS completely controlled USSC; (iii) USS was the sole source of USSC's financing; (iv) USS provided commercially unreasonable interest and repayment terms; (v) USS had no reasonable expectation of repayment on the purported loans; and (vi) USSC was significantly undercapitalized throughout the years following its acquisition by USS.

91 The first two claims of the Union overlap significantly, if not completely, with the arguments raised by the Province in its Objection. The remaining claims are not being addressed on this motion. The process for addressing such claims was the subject of an earlier hearing and the Court's endorsement that was released as *U.S. Steel Canada Inc., Re*, 2015 ONSC 5990 (Ont. S.C.J.).

The Objection of Representative Counsel

92 On April 14, 2015, an Objection was filed also filed by Representative Counsel for all non-USW active employees and retirees of USSC. In its Objection and at the trial in this proceeding, Representative Counsel adopted the particulars of the Objections filed by the Province and the Union as applicable to the non-USW active employees and retirees of USSC.

The Disputed USS Claims

93 For completeness, the Objections that were made in respect of Claims #1-5 in the Monitor's Seventh Report, which are unsecured claims in the aggregate amount of U.S. $3,085,746, have now been withdrawn by the Objecting Parties. Further, no Objections have been made in respect of Claims #6-8 in such Report, which are unsecured claims in the aggregate amount of U.S. $338,169. Therefore, based on the Monitor's Seventh Report, Claims #1-8 inclusive should be confirmed as Proven Claims. The USS Claims which are the subject of this motion, and in respect of which the Objections are maintained, are the following:

Claim Reference #	***Description of Claim***	***Amount of Claim***
9	Unsecured Term Loan	$1,847,169,934
10	Unsecured Revolver Loan	U.S. $120,150,928
11	Secured Revolver Loan	U.S. $72,938,390
11(a)	Secured Cliffs LRD Transaction	U.S. $14,538,463
11(b)	Secured Credit Support Payments	U.S. $3,742,479

11(c)	Secured Intercompany Trade	U.S. $31,252,193

94 For clarity, none of the parties object to the quantum of the USS Claims which are the subject of the present motion.

95 The USS motion and the Objections were addressed collectively at a trial conducted over eight days. The evidence adduced at the trial consisted of affidavit evidence and oral testimony, the relevant portions of which are described below.

Applicable Statutory Law

96 The following provisions of the CCAA are relevant for the Objections that the USS Claims should be re-characterized as "Equity Claims" for the purposes of these CCAA proceedings:

> 2. In this Act,
>
> "Claim" means any indebtedness, liability or obligation of any kind that would be a claim provable within the meaning of section 2 of the *Bankruptcy and Insolvency Act*;
>
> "Equity Claim" means a claim that is in respect of an equity interest, including a claim for, among others,
>
> > (a) a dividend or similar payment,
> >
> > (b) a return of capital,
> >
> > (c) a redemption or retraction obligation,
> >
> > (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or
> >
> > (e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d);
>
> "Equity Interest" means
>
> > (a) in the case of a corporation other than an income trust, a share in the corporation — or a warrant or option or another right to acquire a share in the corporation — other than one that is derived from a convertible debt, and
> >
> > (b) in the case of an income trust, a unit in the income trust — or a warrant or option or another right to acquire a unit in the income trust — other than one that is derived from a convertible debt;
>
> 6. (8) No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.
>
> 11. Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

97 The following provisions of the CCAA are relevant to the Objections that the security for the secured USS Claims, being the general security interest granted by USSC in favour of Credit Corp in the October Security Agreement and in favour of USS, United States Steel International, Inc. and SHC in the November Security Agreement, should be invalidated on the grounds of a fraudulent preference:

36.1 (1) Sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act* apply, with any modifications that the circumstances require, in respect of a compromise or arrangement unless the compromise or arrangement provides otherwise.

(2) For the purposes of subsection (1), a reference in sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act*

(a) to *"date of the bankruptcy"* is to be read as a reference to *"day on which proceedings commence under this Act"*;

(b) to *"trustee"* is to be read as a reference to *"monitor"*; and

(c) to *"bankrupt"*, *"insolvent person"* or *"debtor"* is to be read as a reference to *"debtor company"*.

98 Section 95 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA") provides as follows:

(1) A transfer of property made, a provision of services made, a charge on property made, a payment made, an obligation incurred or a judicial proceeding taken or suffered by an insolvent person

(a) in favour of a creditor who is dealing at arm's length with the insolvent person, or a person in trust for that creditor, with a view to giving that creditor a preference over another creditor is void as against — or, in Quebec, may not be set up against — the trustee if it is made, incurred, taken or suffered, as the case may be, during the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy; and

(b) in favour of a creditor who is not dealing at arm's length with the insolvent person, or a person in trust for that creditor, that has the effect of giving that creditor a preference over another creditor is void as against — or, in Quebec, may not be set up against — the trustee if it is made, incurred, taken or suffered, as the case may be, during the period beginning on the day that is 12 months before the date of the initial bankruptcy event and ending on the date of the bankruptcy.

(2) If the transfer, charge, payment, obligation or judicial proceeding referred to in paragraph (1)(a) has the effect of giving the creditor a preference, it is, in the absence of evidence to the contrary, presumed to have been made, incurred, taken or suffered with a view to giving the creditor the preference — even if it was made, incurred, taken or suffered, as the case may be, under pressure — and evidence of pressure is not admissible to support the transaction.

The Issues for Determination in This Proceeding

99 There are two principal categories of Objections addressed in this proceeding: (1) that the USS Debt Claims are, in substance, "equity claims" for the purposes of the CCAA; and (2) that the security for the USS Secured Claims is either unenforceable for lack of consideration or void as a fraudulent preference under section 95 of the BIA, as incorporated into these proceedings by virtue of section 36.1 of the CCAA. These two issues will be addressed in order after first describing certain expert evidence adduced at trial by the parties.

Expert Financial Evidence

100 The Province and USS introduced expert evidence from three financial experts who testified at trial. The following briefly summarizes the principal issues addressed in the reports and testimony of these experts. The significance of such evidence is considered below in the Court's analysis of the characterization of the Term Loan and the Revolver Loan.

The Finnerty Report

101 The Province introduced into evidence a report dated August 21, 2015 of Dr. John Finnerty (the "Finnerty Report"). Dr. Finnerty was qualified as an expert in financial economics. Among other things, the Finnerty Report analyzed the Term Loan and the Revolver Loan against fifteen factors, described later in these Reasons and referred to as the "*AutoStyle* factors", that are used in American courts in debt re-characterization cases. It was Dr. Finnerty's opinion that, from the perspective of

financial economics, the terms of the Term Loan and the Revolver Loan, and the manner in which they were implemented, are suggestive of equity rather than debt.

102 The Finnerty Report concluded that, in respect of the Term Loan, eight of the *AutoStyle* factors are more consistent, from a financial economics perspective, with a characterization of equity, one, being the maturity date provisions and the schedule of debt service payments, is more consistent with a characterization of debt, and the remaining six factors are "indeterminate" from a financial economics perspective.

103 The eight factors identified in the Finnerty Report as being more consistent with an equity characterization of the Term Loan are the following: (1) the interest rate provisions and the history of interest payments; (2) the inadequacy of capitalization of ABULC at the date of the acquisition; (3) the absence of security for the advances; (4) the inability of USSC to obtain similar financing from outside institutions, based upon the Hall Report described below; (5) the extent to which advances under the Term Loan were effectively subordinated to claims of outside creditors; (6) the absence of a sinking fund to provide debt repayments; (7) the "hollow" right of USS to enforce principal and interest obligations; and (8) the failure of USSC to repay the Term Loan on the due date or to seek a postponement thereof.

104 The Finnerty Report reached a similar opinion in respect of the Revolver Loan. The Finnerty Report concludes that ten of the *AutoStyle Plastics* factors are more consistent with equity. These are the eight factors enumerated above as being more consistent with equity in respect of the Term Loan, plus: (9) the source of the debt repayments; and (10) the lengthy fixed maturity date and the schedule of debt service payments. The Finnerty Report concludes that the extent to which the advances under the Revolver Loan were used for working capital, rather than to acquire capital assets, is more consistent with a debt characterization and the remaining two factors are "indeterminate".

The Hall Report

105 The Province also introduced into evidence a report dated August 21, 2014 of Brad Hall (the "Hall Report"), a director of Alix Partners LLC, who was qualified as an expert in institutional lending.

106 The Hall Report concludes that a third-party lender in an arm's length transaction would not have provided financing to ABULC/USSC in the amounts and on the terms provided by USS pursuant to the Term Loan and pursuant to the Revolver Loan. The Hall Report was incorporated into, and relied upon, by Dr. Finnerty in the preparation of the Finnerty Report.

107 These conclusions in the Hall Report are based on an assessment of the terms of the Term Loan and the Revolver Loan against the standard of a bank or other institutional lender offering unsecured term loans and unsecured revolving loans (herein referred to as a "third-party lender").

108 In the opinion of Mr. Hall, a third-party lender would have based any term loan granted to USSC in 2007 on the historical financial performance of Stelco, rather than on the projections relied upon by USS for the purposes of the Acquisition, and would have disregarded any of the synergies projected by USS. In addition, a third-party lender would not have granted a term loan on an unsecured basis, nor would it have been prepared to accept the provisions of the Term Loan in respect of the maturity date, principal repayments or interest payments.

109 Similarly, Mr. Hall was of the view that a third-party lender would not have granted an unsecured loan in the amount of the Revolver Loan in 2010 nor would it have accepted the provisions of the Revolver Loan respecting the maturity date or interest payments. In addition, the Hall Report addresses the financial performance covenants that a third-party lender would typically require, principally debt/equity, Debt/EBITDA and EBITDA/interest tests, and observed that, given USSC's financial performance after 2008, USSC would not have complied with the latter two tests as typically applied at the time of advances under the Revolver Loan.

110 The Hall Report also concluded that the terms of the Term Loan were not comparable with the loans provided by the prior arm's length lenders to Stelco or by the arm's length lenders that provided financing at or about the same time to USS. I do not find these opinions of assistance with respect to the issues in this proceeding.

The Austin Smith Report

111 USS introduced into evidence a report dated September 4, 2015 of Yvette R. Austin Smith (the "Austin Smith Report"), a principal of the Brattle Group, which addressed certain features of the Finnerty Report and the Hall Report. For present purposes, the Austin Smith Report reached three principal conclusions, aspects of which are relevant for the determinations below in these Reasons.

112 First, the Austin Smith Report says that the conclusions in the Finnerty Report — that, from a financial economics perspective, the terms of the Term Loan and the Revolver Loan, and the manner of their administration, are strongly suggestive of an equity investment — relies too heavily on hindsight to be credible. The Report suggests that, as a result, the application of the *AutoStyle* factors does not assist in establishing the substance of these transactions or the intent of the parties at the time of the establishment of the Loans.

113 Second, the Austin Smith Report concludes that the opinion in the Hall Report that USSC could not have financed the Term Loan and the Revolver Loan "in the amounts and on the terms as provided by USS" relies on a flawed credit analysis of USSC that, therefore, does not address USSC's debt capacity after the Acquisition.

114 Third, the Austin Smith Report suggests that the opinions in the Hall Report, and therefore in the Finnerty Report, ignore the reality of diverse corporate debt markets in their concentration on the third-party lender market.

Observations Regarding the Expert Financial Evidence

115 I do not propose to make any finding regarding the differences of opinion expressed in the Finnerty Report and in the Austin Smith Report on the particular issues raised in the latter as it is not necessary to do so for the purposes of the determinations herein. However, the following three observations regarding the matters addressed in the expert evidence relied upon by the Objecting Parties are relevant to the approach set out below in these Reasons.

116 First, in respect of most of the *AutoStyle* factors to which Dr. Finnerty refers as suggestive of equity rather than debt, Dr. Finnerty expressly or implicitly measures the Term Loan and the Revolver Loan against the standard of a bank or other institutional lender offering unsecured term loans and unsecured revolving loans, that is, against the standard of a third-party lender offering such loans.

117 At the risk of some oversimplification, Dr. Finnerty's logic is as follows. The Term Loan and the Revolver Loan purport on their face to be an unsecured term loan and an unsecured revolver loan. The market for such loans is the third-party lender market. However, the terms and conditions of the Term Loan and the Revolver Loan are not terms and conditions that would be acceptable to a third-party lender nor were the Loans administered in certain respects in the manner that would be expected of a third-party lender. Therefore, from the perspective of financial economics, the Loans must be equity. It is the validity of the last proposition in this chain that is at issue in this proceeding. The conclusions of Dr. Finnerty are more or less relevant in this proceeding depending upon whether a third-party lender standard is appropriate in addressing financial arrangements between a parent corporation and its wholly-owned subsidiary. This issue is addressed below.

118 Second, as Dr. Finnerty testified, of the fifteen *AutoStyle* factors, three principal factors inform his conclusions that the Loans are more suggestive of equity rather than debt. These factors are: (1) the absence of available financing from third-party lenders on the terms and in the amount of the Term Loan and the Revolver Loan; (2) the waiver of interest payments under the Term Loan in 2010 and thereafter; and (3) the "fungibility of debt and equity", which refers to the payment of interest and repayment of principal by USSC out of equity injections received from USS, principally in respect of the Revolver Loan. It is therefore appropriate to focus on the evidentiary value of these three considerations, rather than on the larger list which effectively repeats the same considerations.

119 Lastly, I would observe that, while Dr. Finnerty was qualified as an expert in financial economics, substantially all of his expert evidence related to his view of third-party lender behaviour in various circumstances, rather than to any more formal analysis that was informed by the analytical framework of financial analysis.

Expert Legal Evidence

120 USS and the Province also introduced expert legal evidence from two lawyers who testified at trial regarding a specific issue of Pennsylvania law. The following briefly summarizes the issue of law and the testimony of these experts. The issue is significant for the analysis of the validity of the security for the USS Secured Claims.

The Issue

121 The Revolver Loan Agreement contained an event of default in section 11c as follows: "Borrower consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its assets, is unable to meet debts, or files bankruptcy". The same event of default was continued after each of the First Revolver Amendment, which removed the solvency representation, the Second Revolver Amendment and the Third Revolver Amendment.

122 The expert testimony addressed the meaning of the phrase "unable to meet debts" as a matter of contractual interpretation under the laws of Pennsylvania. Both experts testified that the principles of contractual interpretation under Pennsylvania law are substantially similar to the principles under Ontario law with, based on USS' expert, a tendency toward somewhat greater emphasis on the strict construction of contracts.

123 I would observe that, while the expert testimony was tendered in respect of this provision in the Revolver Loan Agreement, the same event of default appears in section 13(c) of the Term Loan Agreement which is governed by the laws of Alberta.

The McMichael Report

124 USS introduced into evidence a report dated August 21, 2015 of Lawrence McMichael (the "McMichael Report"). It was Mr. McMichael's opinion that the phrase "unable to meet debts" connoted a balance sheet solvency test which, under Pennsylvania law, would be performed on a market value basis. Accordingly, Mr. McMichael was of the opinion that the contractual interpretation of clause 11c of the Revolver Loan Agreement resulted in an event of default in the circumstances in which the aggregate liabilities of USSC exceeded the fair market value of its assets.

The Di Massa Report

125 The Province introduced into evidence a report dated September 4, 2014 of Rudolf Di Massa, Jr. (the "Di Massa Report"). It was Mr. Di Massa's opinion that the phrase "unable to meet debts" did not connote an insolvency test as such, whether on a balance sheet basis or on a going concern basis. Mr. Di Massa was of the view that the correct statutory interpretation of this phrase meant "unable to satisfy or manage its obligations relating to operating activities on an on-going basis given its financial resources from all available sources". He described this event of default as essentially a direction from USS to USSC to manage its financial obligations by obtaining credit from all available sources, including from trade creditors through an extension of payment terms and from USS itself by drawing up to the maximum availability under the Revolver Loan Agreement.

126 An important feature of Mr. Di Massa's interpretation is his view of the operation of the Revolver Loan Agreement, which is significant in three respects. Mr. Di Massa's opinion implies that an event of default would not arise unless and until USSC had drawn the maximum availability under the Revolver Loan Agreement and was unable to foresee obtaining credit from any other possible sources on a prospective basis. It also implies that, under the Revolver Loan Agreement, USS was obligated to continue to advance funds until such maximum availability was reached, subject to the occurrence of one of the other events of default in the Agreement. Lastly, as the phrase "unable to meet debts" is the only event of default that appears to address the state of insolvency, and, as Mr. Di Massa is of the view that this phrase does not serve as an insolvency event of default, his interpretation has the result that the Revolver Loan Agreement lacks an express insolvency event of default.

The Findings of the Court

127 The Court finds that, under the laws of Pennsylvania, the words "unable to meet debts" in the Revolver Loan Agreement mean that the fair market value of the assets of USSC are less than the total of its liabilities, that is, that the words connote a balance sheet solvency test. I reach this conclusion for the following four reasons.

128 First, this interpretation is more consistent with the plain meaning of the words "unable to meet debts" than the interpretation proposed by Mr. Di Massa. In particular, it recognizes the absence of the additional words "when due", or words to a similar effect. Such words appear in the events of default in sections 11a and 11b of the Revolver Loan Agreement. If they had been incorporated into the "unable to meet debts" event of default, I think it is clear that they would have indicated an intention to apply an event of default in the event of an inability to meet USSC's obligations as they fell due, i.e. a going concern event of default. Their absence indicates an intention that the event of default would relate to the alternative definition of insolvency under the laws of Pennsylvania, being the extent of assets relative to liabilities. For this reason, while it is true that the parties could have used more specific language if they had intended a balance sheet insolvency event of default, instead of the rather archaic phrase that appears, I do not think that such words connote a going concern event of default or the approach proposed in the Di Massa Report.

129 Second, as a related matter, the interpretation proposed in the Di Massa Report requires reading in language that is neither present nor customary. Such an interpretation should be rejected in favour of an interpretation that gives effect to the plain meaning of the language of the event of default.

130 Third, even assuming an ambiguity in the language of the event of default, the Di Massa Report relies heavily on an inference based on the removal of the solvency representation from the Revolver Loan agreement by the First Revolver Agreement. The solvency representation spoke to both balance sheet solvency and solvency on a going concern basis. It is suggested that it would have been illogical for USS and USSC to have removed the solvency representation and maintained a balance sheet event of default. It is also suggested that interpretation of the event of default as a balance sheet solvency event of default would have resulted in a continuing state of default under the Revolver Loan Agreement, with automatic acceleration of the Revolver Loan, which could not have been intended.

131 As discussed later in these Reasons, I do not think that any conclusion can be drawn regarding the intention of the parties in respect of the removal of the solvency representation. In particular, I do not think that there is any evidence regarding the surrounding circumstances in which the First Revolver Amendment was negotiated and executed that bears on the interpretation of the event of default.

132 Fourth, an important principle of contractual interpretation is that, in the case of ambiguity, a court should prefer the more commercially reasonable interpretation. In my view, for the following reasons, the interpretation proposed by Mr. Di Massa results in an unreasonable result from a commercial perspective.

133 In this case, while the interpretation in the McMichael Report may have had the result that USSC was in default as of the execution of the Third Revolver Amendment, if not before, I do not see a particular difficulty in this. Unlike a third-party lender, there is no evidence that USS had a particular concern with the occurrence of a balance sheet event of default under the Revolver Loan. It could always choose to waive any event of default and advance further funds notwithstanding the occurrence of an event of default. In this respect, the evidence of Mr. Di Massa that a commercial lender would not engage in such behaviour is not a relevant consideration.

134 On the other hand, USS would have had a significant concern with any renunciation of its ability to control the extent, if any, of future advances of funds. As Mr. McMichael testified, lenders, including parents of wholly-owned subsidiaries, do not intend to be bound to lend money that they do not believe will be repaid. This is particularly important with respect to the operation of the Revolver Loan Agreement in October 2013 given the amount of the undrawn facility — being approximately U.S. $383 million — and the cash burn of USSC in 2013, including the anticipated cash burn for the rest of the year. In addition,

USS would not have intended the availability under the Revolver Loan to extend beyond what was absolutely necessary, having just completed a significant de-leveraging exercise for other reasons.

135 Further, as noted above, the interpretation in the Di Massa Report has the result that there is no balance sheet event of default in the Revolver Loan Agreement. As a parent corporation controls the advance of funds to a subsidiary, and thereby its ability to meets its obligations on an on-going basis, a parent corporation would not necessarily need an event of default for a failure to meet on-going obligations. It would, however, require a balance sheet event of default for protection against third parties in the event of an insolvency of its subsidiary.

136 Given the foregoing considerations, I consider that the interpretation proposed by Mr. Di Massa produces a commercial unreasonable result while the interpretation of Mr. McMichael results in a commercially viable loan arrangement.

The Debt Re-Characterization Claims

137 I propose to address the debt re-characterization claims of the Objecting Parties in the following order. First, I will deal with two threshold issues. Next, I will address the test to be applied by the Court in the analysis of the characterization of both the Term Loan and the Revolver Loan. I will then address the debt characterization claims of the Objecting Parties in two parts. The first part addresses certain general considerations raised by the Objecting Parties that are common to both the Term Loan and the Revolver Loan. The second part sets out my analysis of each of the Term Loan and the Revolver Loan in turn in light of the Court's determinations regarding these general considerations.

Threshold Issues

138 The two threshold questions to be addressed are: (1) the onus of proof; and (2) the test to be applied in the evaluation of the debt re-characterization claims respecting the USS Debt Claims. I will address each issue in turn.

The Onus of Proof

139 As would be expected, USS argues that the burden of proof lies with the Objecting Parties and the Objecting Parties argue that it lies with USS. I will deal separately with the burden of proof pertaining to the debt re-characterization claims of the Objecting Parties and the claims that the security for the USS Secured Claims is invalid or otherwise unenforceable.

140 The issue of the burden of proof in respect of the debt re-characterization claims appears to be a matter of first impression as the parties have been unable to find any case law on this issue. I conclude that the Objecting Parties have the burden of proof that the USS Debt Claims are properly characterized as "equity claims" under the CCAA for the following three reasons.

141 First, in a claims process under the CCAA, a creditor bears the onus of proving the validity and amount of its debt claim. It is not required to go further and prove the negative. In other words, it does not have to demonstrate that a claim is not an "equity claim". If another creditor chooses to assert such an argument, I think it must bear the onus of proving that an otherwise proven debt claim is more properly characterized in substance as an "equity claim".

142 Second, put in procedural terms, the motion of the creditor, in this case USS, is limited to a determination of the validity and amount of its debt claim in order to establish a "Proven Claim" under the Claims Process Order. The objection of any other creditor, in this case the Objecting Parties, is in substance a cross-motion for a declaration that the debt claim, if accepted, constitutes in substance an "equity claim" for the purposes of the CCAA. I do not agree with the Objecting Parties that the motion of the objecting creditor should be regarded as the substantive equivalent of a statement of defence which must be addressed to establish the validity and amount of a moving party's debt claim.

143 Lastly, an important consideration is that the debt re-characterization claims of the Objecting Parties are based on the underlying substantive reality of the Term Loan and the Revolver Loan. These are factual matters, rather than matters based on allegations of inequitable behavior on the part of USS. I accept that there may be an argument for a reversal of the onus of proof in the circumstances of a *bona fide* allegation of bad faith or inequitable conduct on the part of an insider or a controlling

shareholder of a debtor company that could engage an equitable remedy in favour of the injured party or an analogous statutory remedy. However, as mentioned, that is not the basis of the claims of the Objecting Parties on this motion.

144 The Objecting Parties' argument that the security for the USS Secured Claims is invalid or, in the alternative, unenforceable raises two issues, although I conclude that the Objecting Parties bear the onus of proof in either case.

145 With respect to the claim that the October Security Agreement and the November Security Agreement are unenforceable for lack of consideration, I think the same principles govern the issue of onus as apply with respect to the issue of onus regarding the treatment of the USS Debt Claims as "equity claims". A creditor asserting a Secured Claim must move for a determination that the security is valid. To such end, the creditor must establish that the security was delivered by the debtor company, that the security is expressed to cover the creditor's claim, and that any necessary registrations were effected under applicable legislation. An objection of any other creditor that such security is invalid or otherwise unenforceable on any other basis would involve a cross-motion by such objecting creditor seeking a declaration to such effect.

146 With respect to the claim that the October Security Agreement and the November Security Agreement constitute fraudulent preferences for purposes of section 95 of the BIA, the Objecting Parties acknowledge that the case law establishes that they bear the onus of proof.

The Test to Be Applied

147 The more difficult threshold issue is identification of the test to be applied to determine whether the USS Debt Claims are debt obligations or "equity claims".

148 The Term Loan and the Revolver Loan are, on their own terms, loans rather than equity contributions. The terms and conditions of the Term Loan Agreement and the Revolver Loan Agreement unequivocally evidence loan agreements. The Term Loan and Revolver Loan are both documented as loans in contracts entitled "Loan Agreement" in which the parties are described as lender and borrower. Each loan agreement prescribes a term and an interest rate, requires repayment, and has no terms expressly tying any payments to the financial performance of USSC. USS and USSC also had very different processes for approval and transmission of loan advances and equity contributions. The financial accounts of Canada LP or Credit Corp, as applicable, and USSC accurately recorded the loan advances separately from equity contributions.

149 The form of the documentation for the Loans, and the foregoing actions, are the point of departure. USS says it intended the outstanding advances under the Term Loan and the Revolver Loan to be loans rather than capital contributions. Accordingly, USS says that the USS Debt Claims are in respect of loans and are not "equity claims". The issue for the Court on this motion is, therefore, whether the foregoing actions and documentation are determinative. USS argues that there is no further issue for the Court for two alternative reasons based, respectively, in the language of the CCAA and in the pre-2009 Canadian case law. I will address these two arguments in turn.

The Provisions of the CCAA

150 USS argues that the most recent amendments to the CCAA, which introduced the definition of "equity claims", comprehensively codified the treatment of "equity claims" with the result that the issue of whether a particular claim is to be treated as debt or equity is solely a matter of statutory interpretation. It relies on *Sino-Forest Corp., Re*, 2012 ONCA 816, 114 O.R. (3d) 304 (Ont. C.A.), at paras. 30 and 36, for this proposition.

151 In the circumstances of this case, USS argues that the USS Debt Claims are not claims in respect of a share of USSC, or a warrant or option or another right to acquire a share of USSC. It submits that, accordingly, the USS Debt Claims are not claims in respect of an "equity interest" and, therefore, are not "equity claims". USS says that, as a result, the USS Debt Claims are claims in respect of loans.

152 I agree that the issue of whether a particular claim is to be treated as debt or equity is a matter of statutory interpretation. I also agree that the USS Debt Claims do not fall within paragraph (d) of the definition of "equity claim" which refers to "a

monetary loss resulting from the ownership, purchase or sale of an equity interest". This provision addresses the circumstances of shareholders pursuing securities misrepresentation or oppression actions against a debtor company. It prevents recovery of claims by such shareholders for the value paid for their shares prior to the satisfaction of claims of debt-holders of the debtor company: see *Sino-Forest Corp., Re*, 2012 ONSC 4377 (Ont. S.C.J. [Commercial List]), at paras. 71, 80, 96, aff'd 2012 ONCA 816, 114 O.R. (3d) 304 (Ont. C.A.).

153 However, I do not read the definitions of "equity claim" and "equity interest" as narrowly as USS. The USS argument relies implicitly on the need for the demonstration of the issuance of shares as a requirement of an "equity claim". In doing so, USS ignores the reality of a sole shareholder situation and reaches an unreasonable conclusion.

154 In the circumstances of a sole shareholder, there is no practical difference for present purposes between a shareholding of a single share and a shareholding of multiple shares. Accordingly, for the purposes of the definition of an "equity claim", there should be no difference between a payment to a debtor company on account of the issuance of new shares and a payment to a debtor company by way of a contribution to capital in respect of the existing shares.

155 On this basis, I conclude that, as a matter of statutory interpretation, the definition of an "equity claim" must extend to a contribution to capital by a sole shareholder unaccompanied by a further issue of shares. Put another way, I conclude that a payment by a sole shareholder of a debtor company on account of a capital contribution constitutes a payment in respect of a share of the debtor company. Such a payment would therefore constitute an "equity interest" and a claim in respect of such payment in a CCAA proceeding would be a claim for a return of such capital and therefore an "equity claim".

156 Further, I conclude that there is no reason why the reference to "a return of capital" in paragraph (b) of the definition of "equity claim" should be limited a claim in respect of an express contribution to capital by a shareholder. A transaction can be a contribution to capital in substance even if it expressed to be otherwise.

157 Accordingly, I conclude that the issue for the Court in this proceeding is whether the USS Debt Claims constitute claims for a return of capital in respect of the shares in USSC owned by USS. In order to decide that issue, the Court must decide whether the advances made under the Term Loan and the Revolver Loan constituted loans to USSC or contributions to the capital of USSC in respect of the outstanding shares of USSC owned by USS. To the extent any of such advances constituted a contribution to capital, any claim for such amounts as Proven Claims in these CCAA proceedings would constitute a claim for a return of capital and, therefore, an "equity claim".

Pre-2009 Canadian Case Law

158 USS makes an alternative submission in the event the Court finds that the definition of "equity claim" does not preclude a determination of whether the USS Debt Claims are be treated as debt or equity. USS says that the applicable Canadian case law regarding debt re-characterization issues, which pre-dates the recent amendments to the CCAA, requires that a court have regard solely to the intention of the parties as a matter of the contractual interpretation of the relevant documentation in determining whether any transaction gave rise to an "equity interest".

159 In this case, as mentioned above, USS says that the relevant documentation consists of the Term Loan Agreement, the Revolver Loan Agreement and the documentation pertaining to the advances and payments thereunder. USS submits that the intention of both parties at the time of execution of the Term Loan Agreement and the Revolver Loan Agreement, and at the time of all advances thereunder, is manifest on the face of such documents. It submits that, as a matter of contractual interpretation, it is clear that USS and USSC intended that such transactions would constitute debt obligations of USSC rather than capital contributions by USS to USSC. USS says that Canadian case law provides no basis for going beyond the exercise of contractual interpretation to evaluate whether the USS Debt Claims should be characterized as "equity claims" on some other basis.

160 In making this argument, USS relies, in particular, on the decision of the Supreme Court in *Canada Deposit Insurance Corp. v. Canadian Commercial Bank*, [1992] 3 S.C.R. 558 (S.C.C.). In that decision, the issue was whether certain monies provided to the Canadian Commercial Bank (the "CCB") had been provided by way of a loan or a capital investment. At paragraph 51, the Court approached the issue before it as a matter of contractual interpretation as follows:

> As in any case involving contractual interpretation, the characterization issue facing this Court must be decided by determining the intention of the parties to the support agreements. This task, perplexing as it sometimes proves to be, depends primarily on the meaning of the words chosen by the parties to reflect their intention. When the words alone are insufficient to reach a conclusion as to the true nature of the agreement, or when outside support for a particular characterization is required, a consideration of admissible surrounding circumstances may be appropriate.

161 The Supreme Court concluded that the transaction in that case was a loan, noting that: (1) there was nothing in the express terms of the agreements in question which supported a conclusion that the money was advanced as an investment; and (2) there were express provisions supporting a characterization of the advance as a loan, including provisions for repayment, for an indemnity should full repayment not be made from the sources contemplated, and for equal ranking with the ordinary creditors of CCB: see *Canada Commercial Bank*, supra at para. 63.

162 In *Bul River Mineral Corp., Re*, 2014 BCSC 1732, 16 C.B.R. (6th) 173 (B.C. S.C.), Fitzpatrick J. summarized the principles in *Canadian Commercial Bank* in the following manner, which I find helpful in the present case:

> (a) the fact that a transaction contains both debt and equity features does not, in itself, determine its characterization as either debt or equity;
>
> (b) the characterization of a transaction under review requires the determination of the intention of the parties;
>
> (c) it does not follow that each and every aspect of a "hybrid" debt and equity transaction must be given the exact same weight when addressing a characterization issue; and
>
> (d) a court should not too easily be distracted by aspects of a transaction which are, in reality, only incidental or secondary in nature to the main thrust of the agreement.

This summary demonstrates that the issue before the court in *Canadian Commercial Bank* was the characterization of an instrument that had characteristics of both debt and equity.

163 I do not find the decision of *Canadian Commercial Bank* helpful in the present circumstances for the reason that the present circumstances differ in two important respects.

164 First, the subject-matter in *Canadian Commercial Bank* was, as mentioned, a hybrid security, i.e., a security having characteristics of both debt and equity. Therefore the issue was whether the security in question should be characterized as a debt obligation or a capital investment. The present proceeding does not involve a hybrid security. As mentioned above, the relevant documentation unequivocally evidences loan transactions on their face.

165 Second, the parties to the transaction in *Canadian Commercial Bank* were at arm's length and the transaction documentation represented the outcome of arm's length negotiations between the parties. The parties to the Term Loan Agreement and the Revolver Loan Agreement were not at arm's length. As a result, the form of the documentation, including the characterization of the transaction as debt rather than equity, was determined by USS in its sole discretion, subject only to satisfaction of any applicable Canadian legal considerations raised by USSC.

166 In such circumstances, the task of a court is qualitatively different from that in *Canadian Commercial Bank*. In that decision, given the hybrid nature of the security under consideration, the issue was whether the parties intended that the institutions providing financial support to the CCB were making a capital investment in the bank or were making a loan to it. In other words, the intentions of the parties were unclear without a contractual analysis to determine the substance of the transaction that had been agreed upon. At the same time, given the arm's length relationship between the parties, the language of the agreements could be relied upon as an accurate reflection of the intentions of the parties regarding the substantive reality of the transaction.

167 Where, however, as in the present circumstances, the parties are not at arm's length, the issue is not what the parties say they intended regarding the substance of the transaction as a matter of contractual interpretation. The expressed intention of the parties is clear. However, given the absence of any arm's length relationship, there can be no certainty that the language of the agreements reflects the underlying substantive reality of the transaction. Accordingly, the issue for a court is whether, as actually implemented, the substance of the transaction is, in fact, different from what the parties expressed it be in the transaction documentation.

168 In other words, the task of a court is to determine whether the transaction in substance constituted a contribution to capital notwithstanding the expressed intentions of the parties that the transaction be treated as a loan. It is therefore not appropriate to limit the inquiry into the intentions of the parties to a review of the form of the transaction documentation. Such an exercise reduces to a "rubber stamping" of the determination of a single party to the transaction, i.e., the sole shareholder, and it does not address the substance of the transaction as it was actually implemented. In such circumstances, the determination of whether a particular claim is to be treated as debt or equity must address not just the expressed intentions of the parties as reflected in the transaction documentation but also the manner in which the transaction was implemented and the economic reality of the surrounding circumstances.

169 USS also refers to the decision of the Court of Appeal in *Metropolitan Toronto Police Widows & Orphans Fund v. Telus Communications Inc.*, [2005] O.J. No. 2309 (Ont. C.A.), leave to appeal to S.C.C. denied, (2006), [2005] S.C.C.A. No. 379 (S.C.C.), at paras. 38-40. In these paragraphs, the Court of Appeal stated that: (1) the determination of the legal character of a transaction is not a simple mechanical exercise of assessing and tallying up a list of factors and then deciding whether they net out to one or the other; and (2) that a court must give legal effect to the intention of the parties as expressed in the language of an agreement. In that case, the Court of Appeal also recognized that the respective needs of the parties to an agreement are an indication of their intention and that parties are entitled to structure their contractual relationships as they see fit, absent a sham or public policy considerations dictating otherwise.

170 I do not find this decision to be helpful in the present circumstances for the same reasons as the decision in *Canadian Commercial Bank* does not address the issues in the present proceeding. *Metropolitan Toronto Police Widows and Orphans Fund* involved the characterization of a securitization transaction as either a sale or a loan. In that context, the issue before the Court of Appeal was a matter of contractual interpretation. The transaction was an arm's length commercial transaction. Accordingly, the documentation before the court in that case could be relied upon to accurately reflect the intentions of the parties regarding the underlying economic reality of the transaction. I do agree, however, with the statement of the Court of Appeal in that decision that determination of the substantive nature of a transaction is not conducted by means of a simple "scorecard" of factors.

171 I would observe, however, that in large measure the difference between the parties in this proceeding — which appears to reduce to the significance to be attached to the manner in which the Loans were administered — is perhaps more semantic than real. The Objecting Parties proposed, and USS accepted, that a useful summary of the appropriate approach to be taken in the present proceeding was set out in a non-binding, American decision, *Fedders North America, Inc., Re*, 405 B.R. 527 (U.S. Bankr. D. Del. 2009), U.S. Bankruptcy Court, D. Delaware, at para. 59, as follows:

> The law regarding recharacterization is well-settled in this jurisdiction. The Third Circuit has held that the overarching inquiry with respect to recharacterizing debt as equity is whether the parties to the transaction in question intended the loan to be a disguised equity contribution. *In re SubMicron Systems Corp.*, 432 F.3d 448, 455-56 (3d Cir.2006). This intent may be inferred from what the parties say in a contract, from what they do through their actions, and from the economic reality of the surrounding circumstances. *Id.* at 456. Recharacterization has nothing to do with inequitable conduct, however. *See In re AutoStyle Plastics, Inc.*, 269 F.3d 726 at 748-49 (6th Cir. 2001) (discussing the differences between equitable subordination and recharacterization)

172 On this basis, the parties do not dispute the process so much as the result. They have fundamentally different views on the intentions of USS and USSC regarding the substance of the transaction which I think can be summarized as follows.

173 The Objecting Parties say that the Term Loan Agreement and the Revolving Loan Agreement reflect arrangements under which USS intended, at all times, on the one hand, to return excess cash to USS when it became available, and, on the other hand, to write off the principal or interest to the extent that payments of either were due and sufficient cash was not available.

174 USS acknowledges that the Term Loan and subsequently the Revolver Loan were established with the intention of constituting the principal vehicles by which cash would be advanced to USSC, initially for the purposes of the Acquisition and subsequently for working capital purposes, and by which excess cash in USSC from any source would be repatriated to USS. USS says, however, that, at all times, it extended advances and made payments under the Term Loan and the Revolver Loan in accordance with their terms. USS argues that nothing in the manner in which it established or operated the Term Loan and the Revolver Loan reflected, in substance, a contribution to the capital of USSC, and that the only contributions to capital were made outside the loan arrangements in the form of the equity injections set out in Exhibit "O" to the Monitor's Seventh Report.

175 These two competing views of the substance of the Term Loan and the Revolver Loan frame the debt re-characterization issues addressed in these Reasons.

The American Multi-Factor Analysis

176 Given these competing views of the Term Loan and the Revolver Loan, it is necessary to determine an appropriate test for the determination of whether the USS Debt Claims are in substance claims in respect of loans or are "equity claims". The Objecting Parties urge the Court to adopt the multi-factor analysis prevailing in American courts under which courts evaluate a long list of factors drawing conclusions about what factors are most determinative in any given fact scenario.

177 As referenced above, a leading case in this area is *Autostyle Plastics, Inc., Re*, 269 F.3d 726 (U.S. C.A. 6th Cir. 2001) at 749-50, in which the court articulated the following eleven factors:

> (1) the names given to the instruments, if any, evidencing the indebtedness; (2) the presence or absence of a fixed maturity date and schedule of payments; (3) the presence or absence of a fixed rate of interest and interest payments; (4) the source of repayments; (5) the adequacy or inadequacy of capitalization; (6) the identity of interest between the creditor and the stockholder; (7) the security, if any, for the advances; (8) the corporation's ability to obtain financing from outside lending institutions; (9) the extent to which the advances were subordinated to the claims of outside creditors; (10) the extent to which the advances were used to acquire capital assets; and (11) the presence or absence of a sinking fund to provide repayments.

In addition, courts in other American circuits have considered the following additional factors: (1) the right to enforce payment of principal and interest; (2) participation in management flowing as a result; (3) the failure of the debtor to repay on the due date or to seek a repayment postponement; and (4) the intent of the parties: see *Submicron Systems Corporation, Re*, 432 F.3d 448 (U.S. C.A. 3rd Cir. 2006), at 455-456. In the interest of simplicity, in these Reasons I refer to the fifteen factors enumerated in this paragraph as the "*AutoStyle* factors", although I acknowledge this is technically inaccurate.

178 The Objecting Parties refer to the following description of the multi-factor analysis from *Submicron Systems Corporation, Re*, at 455-456, which appears to restate the approach set out above in *Fedders North America, Inc., Re*:

> In defining the re-characterization inquiry, courts have adopted a variety of multi-factor tests borrowed from non-bankruptcy case law. While these tests undoubtedly include pertinent factors, they devolve to an overarching inquiry: the characterization as debt or equity is a court's attempt to discern whether the parties called an instrument one thing when in fact they intended it as something else. That intent may be inferred from what the parties say in their contracts, from what they do through their actions, and from the economic reality of the surrounding circumstances. Answers lie in facts that confer context case-by-case.

179 There does not appear to be any reported Canadian or Commonwealth cases in which courts have purported to apply the multi-factor, re-characterization tests relied upon by the Objecting Parties prevailing in American courts. The Objecting Parties urge the Court to formally adopt the foregoing eleven or fifteen factors in making a determination in this proceeding.

180 American courts find authority for this approach in the general equitable powers granted to a bankruptcy court under the provisions of section 105(a) of the United States *Bankruptcy Code*, 11 U.S.C 1982, which is the equivalent of section 11 of the CCAA. USS says the Court lacks similar authority under the CCAA on the basis that the recent amendments to the CCAA in this area have limited the scope of a court's authority under section 11. USS relies on the earlier decision of the Court in *U.S. Steel Canada Inc., Re*, 2015 ONSC 5990 (Ont. S.C.J.), at para. 51, as follows:

> ... I consider that the language of the definition of an 'Equity Claim" and of the provisions of section 36.1 operates as a "restriction set out in the Act" for the purposes of section 11 of the CCAA which has the effect of limiting the authority of the Court in any determination regarding an "Equity Claim" or in any proceedings brought under section 36.1.

However, that decision does not address the extent of the Court's authority under the CCAA in the evaluation of whether a security or a transaction expressed to be a debt claim is, in substance, an "equity interest". At a minimum, any such evaluation requires consideration of a number of the factors considered by American courts in the multi-factor analysis and by Canadian courts in evaluating the underlying substance of a transaction.

181 The more immediate, and more important, issue for the Court is a framework for identification of the specific considerations or factors to be applied in the context of the present proceeding. The American cases evidence the obvious reality that, in any given situation, different factors or considerations will be more or less persuasive. Insofar as the American cases suggest a "scorecard" approach, however, I have rejected such an approach in favour of an evaluation of the substantive reality of the USS Debt Claims. In the end, in this proceeding, the *AutoStyle* factors constituted no more than the starting point, in the form of a list of factors upon which the parties drew to support their characterization of the USS Debt Claims. In short, it is not necessary to adopt the American, multi-factor analysis as a formal matter in the determination of the issues before the Court, and I therefore decline to do so.

The Approach of the Court

182 As a first step in the identification of the specific considerations that should inform the determination of the substance of the USS Debt Claims, I propose to start with a conceptual understanding of the dividing line between debt and equity.

183 An appropriate starting point is the definition of debt and equity for financial purposes set out in paragraphs 32 and 34 of the Finnerty Report:

> At its heart, the difference between equity and debt lies in the fundamental nature of their respective claims on the assets and cash flow of the company. Debt involves borrowing funds subject to a legal commitment to repay the borrowed money with interest at an agreed rate by a stated maturity date. This commitment is embodied in a contract, and this contract is implemented by the borrower. Lenders receive a contractually agreed set of cash flows, typically through periodic interest payments and one or more principal repayments, the last of which occur on the maturity date. ... In contrast to debt, an equity claim entitles the holder to a share of the company's profits and residual cash flows after the company has made all the contractually required debt service payments. That is, the debt ranks senior to the equity with respect to the company's cash flows. Similarly, the debt ranks senior to the equity in the event the company must be liquidated and its assets sold to repay its debt obligations. The equityholders get what is left after the holders of the debt have been paid in full; if the debtholders can't get paid in full, then the equityholders get nothing.

184 With this definition in mind, the Province suggests that the Court should address the substance of the Term Loan and the Revolver Loan from the perspective of whether the evidence is more consistent with an intention and a practice of repayment of principal plus interest under these Loans, or the payment of the residual cash flow and assets of USSC. I think this is a helpful approach, even if at a general level.

185 Therefore, in the context of a parent-subsidiary relationship, the fundamental consideration in assessing whether a transaction is a loan is whether a holder of the instrument expects at the outset to be repaid the principal amount of the loan with interest out of cash flows of the company. The definition above implies a belief on the part of a lender that its debtor has the financial capacity to generate cash flow sufficient to pay interest and repay principal over the term of the loan, regardless of the profitability of the debtor from time to time in the course of that term.

186 This approach suggests that the issue of whether the Term Loan and the Revolver Loan should be characterized as debt or equity can best be addressed by considering two issues: (1) the expectation of USS regarding repayment of principal with interest of the Term Loan and the Revolver Loan out of cash flows of USSC over the term of these Loans; and (2) the reasonableness of such expectation.

187 The first of these questions addresses a subjective issue - the expectations of USS. Obviously, if, at the time of making advances under a Loan, USS had no expectation that USSC would honour any payment obligation under the Loan when due in the absence of available cash at such time and, for example, intended from the outset to waive all interest as it became payable and to forgive the principal indebtedness when it became due, the Court would disregard the form of the documentation as, in effect, a sham.

188 The second question addresses a more objective issue assuming the existence of an expectation of repayment with interest of the Loan - the reasonableness of such expectation. This question engages, among other issues, the adequacy of capitalization of a wholly-owned subsidiary and the debt capacity of the subsidiary. If USSC were only nominally capitalized, this might be relatively easy to disprove. In this proceeding, as in most cases, however, this issue will involve, among other things, expert evidence regarding the availability of financing in capital markets generally.

189 It is important for present purposes to note that, given that the burden of proof rests with the party asserting that a purported loan is, in substance, a capital contribution, the onus lies on the Objecting Parties, as the parties seeking to re-characterize the Loans as equity, to demonstrate that there was no reasonable basis for USS's expectations. There are good policy reasons for such a standard.

190 Any determination of the reasonableness of a lender's expectations at the time of the making of a loan, or an advance under a loan, is prospective in nature and therefore highly speculative. It necessarily involves consideration of a borrower's financial capacity under a variety of possible future economic scenarios. A court should be cautious in reaching a conclusion that there was no reasonable expectation in the absence of a detailed consideration of such scenarios and compelling evidence that there was no basis for the lender's expectations under any of such scenarios. In addition, a determination that a lender acting in good faith nevertheless had no reasonable basis for believing that its subsidiary had the financial capacity to generate cash flow sufficient to pay interest and repay principal over the term of the loan will inevitably rely heavily on the opinion of financial experts. Any expert opinion on such an issue, however, is at least as much a matter of judgment as it is of fact, except perhaps in exceptional circumstances. Accordingly, a court must have a very high degree of confidence in any such expert financial evidence before it finds that a lender acting in good faith nevertheless had no reasonable basis for believing that its subsidiary had the financial capacity to generate cash flow sufficient to pay interest and repay principal over the term of the loan.

191 Given the foregoing considerations, I conclude that, in order to find that the USS Debt Claims are "equity claims", the Court must be satisfied that either: (1) at the time of making an advance under the Term Loan or the Revolver Loan, USS did not believe that USSC would be able to repay such advance with interest out of USSC's cash flows over the term of the Term Loan or the Revolver Loan, as applicable; or (2) that, at the time of such advance, there was no reasonable basis on which USS could have expected USSC to generate cash flow sufficient to pay interest on, and repay the principal of, such advance over the term of the Term Loan and the Revolver Loan, as the case may be.

192 Three related principles are also important for the analysis of the character of the USS Debt Claims.

193 First, while the Term Loan and later the Revolver Loan constituted a significant part of USS' investment in USSC, the Loans do not represent all of that investment. As described above, USS has also made a significant investment that has

been expressly treated as equity. This distinction is important. In this proceeding, the issue is limited to the characterization of the debt component of that investment. Clearly, the return on the equity portion of USS' investment will be dependent on the residual cash flow from USSC after payment of trade creditors as well as repayment with interest of the Term Loan and the Revolver Loan. However, the fact that these Loans form part of USS' total investment in USSC does not automatically mean that USS' expectation of repayment of these Loans is the same as its expectation of receiving a return on its equity investment.

194 A parent corporation is able to divide its investment in an acquired corporation between debt and equity as it chooses. Such allocation of its investment is not determinative for the reasons discussed above. However, equally, such allocation must be respected unless it is demonstrated that the parent corporation did not have a reasonable expectation of repayment with interest of the portion of the investment which has been treated as debt when the loan was advanced. There is no basis in the CCAA for an automatic re-characterization into equity of a portion of an investment that has been structured as debt merely because the entire investment is, in a general sense, dependent for a return on the success of the investment. Put another way, a parent corporation can loan money to a wholly-owned subsidiary without that loan being treated automatically as part of the parent corporation's equity investment in the subsidiary.

195 Second, the characterization of the USS Debt Claims must be analysed as of the date of the advances under each of the Term Loan and the Revolver Loan. Subsequent behaviour of either or both of the parties to the Term Loan Agreement or the Revolver Loan Agreement may be relevant, but only to the extent that such behaviour illuminates the intentions of the parties regarding the Term Loan or the Revolver Loan as of the date of the advances thereunder. Behaviour subsequent to any advance cannot, on its own, justify a re-characterization of such advance.

196 Third, the characterization of the advances under each of the Term Loan and the Revolver Loan cannot be viewed in isolation from the economic circumstances in which the advances were made.

197 In this respect, the economic backdrop to the advances under the Term Loan and the Revolver Loan during the period 2008 to 2013 can be summarized as follows. The advances under the Term Loan between October 31, 2007 and December 31, 2007 were made in the context of a buoyant steel market. Economic conditions changed dramatically in the autumn of 2008 after the collapse of Lehman Brothers and the onset of the financial crisis in that year. Worsening conditions prevailed throughout 2009 and into early 2010. Thereafter, in each of 2010, 2011 and 2012, USS and USSC experienced mini-cycles consisting of one or two encouraging quarters succeeded by a weak performance for the remainder of these years. In 2013, USS and USSC experienced a weak market throughout the year with the result that matters reached a critical stage. Under a new chief executive officer and a new chief financial officer, who assumed their offices effective September 1, 2013, USS commenced a review of its operations which revealed, among other difficulties, that while USSC represented 10% of USS' revenues, it contributed 50% of its operating losses.

General Considerations Regarding Determination of the Debt Re-characterization Issues

198 Although the exercise of evaluation of the character of the Term Loan and the Revolver Loan ultimately requires a consideration of each of the advances individually, the issue is best addressed initially on a collective basis. As the Objecting Parties suggested, consideration of the characterization of the Term Loan and the Revolver Loan together recognizes, or perhaps more appropriately starts, from the position that the Term Loan and the Revolver Loan were used and administered by USS in the same manner and that the difference in their terms principally reflected tax and accounting considerations rather than any significant substantive difference in function. In this section, I propose to consider the probative value of the factors upon which the Objecting Parties principally rely as evidence that the Term Loan and the Revolver Loan were, in substance, equity contributions by USS to USSC.

199 The Objecting Parties identified the following principal considerations or factors which, in their view, demonstrated that advances under the Term Loan and the Revolver Loan were equity contributions rather than loans for USSC: (1) the absence of any arm's length negotiation regarding the terms and conditions of the Loans; (2) the deferred interest payment dates and the long maturity dates of both the Term Loan and the Revolver Loan; (3) the history of interest payments and waivers under the Term Loan; (4) the absence of any security; (5) the extent of USS' control over the business, operations and financial performance

of USSC; (6) the fact, as acknowledged by USS, that USSC would not have been able to obtain financing from a third-party bank or institutional lender in the amount and on the terms and conditions of either of the Term Loan or the Revolver Loan; and (7) their view that payments on account of the Term Loan and the Revolver Loan were effectively subordinated to payment of trade creditors.

200 The Objecting Parties argue that, collectively, these considerations establish that USS had no expectation of repayment with interest of the advances under the Term Loan and the Revolver Loan out of cash flow from USSC. They say these factors demonstrate that, in substance, the Term Loan and the Revolver Loan were financial instruments under which USS was intended to receive the residual cash flow and assets of USSC as, and to the extent, available without an expectation of repayment with interest of either Loan, and were therefore capital contributions.

201 Significantly, the Objecting Parties argue that each of the foregoing factors has probative value when measured against the standard of behavior that would be expected of a third-party lender. As mentioned above, this position reflects the approach in the Finnerty Report. USS argues that such a standard is inappropriate and, accordingly, that the factors upon which the Objecting Parties rely are not indicative of "equity interests".

202 I propose to assess the submissions of the Objecting Parties respecting these general considerations in the following order. First, I will address in greater detail my understanding of the purposes and the administration of the Term Loan and the Revolver Loan. Then, I propose to address the issue of the significance of third-party lender behaviour in the context of a wholly-owned subsidiary relationship. Lastly, I will consider the probative value of the principal considerations relied upon by the Objecting Parties in light of the conclusions regarding the third-party lender standard.

The Purposes and Administration of the Term Loan and the Revolver Loan and the Differing Perspectives of the Parties

203 As mentioned, USS established the Term Loan, and subsequently the Revolver Loan, with the intention that they would be the principal vehicles by which cash flows could be moved between USS and USSC and, in particular, surplus cash in USSC could be repatriated to USS. Additional equity injections were also made from time to time by USS, but only to the extent that USSC required additional capital to stay onside the "thin capitalization" rules under the *Income Tax Act* and for the purposes of the "de-leveraging" exercise described above.

204 The initial advances of the Term Loan were directed to ABULC for the purpose of the Acquisition. Subsequent advances prior to and including December 31, 2007 were used by USS to repay the Credit Corp Loan, repay USSC's liabilities to SHC and, in a lesser amount, for working capital purposes. The advances in 2009 totaling $211.2 million were also used for working capital purposes. A substantial portion of the interest under the Term Loan in 2008 was paid in that year, two years before its due date. Such interest was paid out of surplus cash on hand as a result of the strong financial performance of USSC in 2008 prior to the slowdown that began in the fourth quarter of that year.

205 USS then established the Revolver Loan in 2010 as a more tax-efficient means of moving cash between USS and USSC after withholding tax was eliminated on interest payments from USSC to USS, permitting tax-free interest payments from USSC to Credit Corp, which was an American corporation. For that reason, the Revolver Loan was denominated in U.S. dollars. Prior to the "de-leveraging" exercise in 2013, the outstanding balance under the Revolver Loan slightly exceeded the maximum availability of U.S. $500 million. In 2013, payments of principal and interest totaling approximately U.S. $390 million, that were funded out of equity injections aggregating over U.S. $680 million, reduced the outstanding balance to the amount of the First Tranche Indebtedness.

206 In order to maximize its flexibility for such cash management purposes, USS structured both the Term Loan and the Revolver Loan to provide for the most generous maturity dates and interest payment dates possible given constraints imposed by tax legislation. Further, both the Term Loan Agreement and the Revolver Loan Agreement contained minimal representations and warranties and very basic events of default. In addition, until the Second Revolver Amendment, both the Term Loan and the Revolver Loan were unsecured facilities. The Second Revolver Amendment in January 2013 provided for security on iron-ore pellets pursuant to the Security Agreement for the principal, if not the sole, purpose of maintaining the intended tax treatment

for payments in respect of the Revolver Loan, given the interest waivers granted under the Term Loan in 2010, 2011 and 2012. As mentioned, with the arrival of a new chief financial officer effective as of September 1, 2013, USS began to evaluate its investment in USSC more closely. As of the end of October 2013, USS determined that it would only advance funds to USSC that it believed USSC would be able to repay. As a result, all subsequent advances were secured under the October Security Agreement and the November Security Agreement.

207 There is, however, no suggestion that USS and USSC disregarded the debt character of the Term Loan and the Revolver Loan in moving cash between USSC and USS. Accordingly, all advances under the Term Loan and the Revolver Loan were documented as such and were distinguished, both in terms of documentation and accounting, from equity injections. All interest payments on the Loans were similarly documented by both parties and treated accordingly for tax and accounting purposes. Principal payments were similarly documented by both parties. There is no evidence that the payments made in respect of the Term Loan or the Revolver Loan failed to satisfy the requirements under Canadian and American tax legislation for treatment as debt and, in particular, that any payments were deemed to be dividends.

208 On the other hand, there is no doubt that the Term Loan and the Revolver Loan were provided by USS to USSC on terms and conditions that USSC could not have obtained from third party banks and other non-bank institutional providers of term financing and operating credit facilities. In particular, the payment provisions respecting interest and principal, and the absence of security, would not have been available to USSC.

209 USS says that both the documentation and the manner of administration of the Loans reflect debt obligations. USS says that there is nothing in the cash management arrangements described above between a parent and a wholly-owned subsidiary that can justify re-characterization of the Loans as capital contributions for the purposes of the CCAA. In particular, USS argues that nothing in these financing arrangements suggests that it did not expect to receive repayment with interest of the funds advanced under the Loans. It also says that the fact that the Term Loan and the Revolver Loan were provided to USSC on terms that were not available to USSC from third parties is irrelevant.

210 The Objecting Parties argue that USS established and administered the Term Loan and the Revolver Loan in the manner of, and using its rights as, a shareholder rather than a lender. They say that USS' actions are collectively more consistent with an intention to receive the residual cash flow and assets of USSC, as and when available, without any expectation of repayment with interest of the advances under the Loans. A more precise expression of their position is that the Term Loan Agreement and the Revolving Loan Agreement reflect arrangements under which USS intended at all times to return excess cash to USS when available and to write off the principal or interest in respect of the Loans to the extent that payments were due and sufficient cash was not available. I have excerpted below certain passages from the written submissions of the Union and the Province that I think capture the essential approach of these parties and which also assist in clarifying the positions of these parties.

The Relevance of the Third-Party Lender Standard

211 Clearly, a significant fact in this proceeding is that, at all relevant times, ABULC and USSC, as applicable, were wholly-owned subsidiaries of USS. In addition, unlike many parent-subsidiary relationships in which the subsidiary carries on a business independently of the parent, USSC was very closely integrated into the business of USS. After the Acquisition, all management and operational functions previously conducted by Stelco were effectively centralized within USS. USSC became a part of the North American flat-rolled steel division of USS. This relationship is significant in two related respects.

212 The Objecting Parties argue that the USS control of USSC is an important factor in assessing whether, in substance, the Term Loan and the Revolver Loan were debt instruments or contributions to capital. They say that USS had a significant ability to influence the profitability of USSC through such control. They say that such control is, in some way, an indication of an equity contribution. I will address this below in the next section.

213 The issue of control is also significant for present purposes as a gateway to the related issue of the relevance of a third-party lender standard as a basis for evaluation of the terms and conditions, as well as the administration, of the Term Loan and the Revolver Loan. As mentioned, USS provided financing to USSC that would not have been available to USSC from banks

and other institutional lenders. The Objecting Parties place great weight on this factor as demonstrating that the Term Loan and the Revolver Loan were not real loan transactions, but rather were disguised equity contributions. Equally important, most, if not all, of the *AutoStyle* factors identified above upon which the Objecting Parties rely are informed, in whole, or in part, by a comparison of USS' actions against a standard of a typical third-party lender.

214 The Objecting Parties suggest the Court should look to a third-party lender standard in two principal respects - in order to assess the terms and conditions of the Term Loan and the Revolver Loan and in order to assess the actions of USS and USSC in the administration of these Loans including payments thereunder. As these are significant factors in the analysis proposed by the Objecting Parties, I propose to address these two issues in some detail.

215 It is important to recognize at the outset that there is no necessary reason why a parent corporation would act in the same manner as a third-party lender in the provision of financing facilities to its wholly-owned subsidiary. In particular, the terms and conditions of lending arrangements between a wholly-owned subsidiary and its parent will, in many if not most cases, depart from typical lending arrangements between a third-party lender and a borrower.

216 As a practical matter, compliance with tax regulations in order to ensure favourable tax treatment will be a significant, if not the main, driver regarding these matters. In this case, USS determined the relative amounts of loans and equity injections based principally on tax considerations to the USS group of companies considered as a whole. Generally, these considerations dictated maximization of debt to obtain interest deductibility under the United States *Internal Revenue Code*, 26 U.S.C., subject to compliance with the "thin capitalization" rules under the *Income Tax Act*, which established a maximum debt/equity structure.

217 In addition, in a wholly-owned subsidiary relationship, there is no need for extensive documentation, nor is there a need for the types of contractual protections typically found in commercial loan agreements. Given the parent's ability to control the subsidiary's actions as its sole shareholder, there is also no need for a strict schedule of repayment of principal. Further, there is no reason why a parent corporation would enforce any rights of default that may arise in the course of a loan so long as the parent corporation believes that the subsidiary has value. Such rights are asserted only as required to protect the parent corporation in the event that a third party asserts its rights as a creditor against the subsidiary or to terminate the parent corporation's support of the subsidiary. Similarly, it is not realistic to expect that a wholly-owned subsidiary will conduct its affairs pursuant to a corporate governance structure that includes independent directors until such time as the interests of the parent corporation and the subsidiary diverge.

218 There is nothing improper in any of the foregoing arrangements. To be clear, the Objecting Parties do not suggest that there is. They submit that a parent corporation can choose to structure its arrangements however it chooses for tax and other purposes. However, they say that such arrangements should not govern the determination of whether such loans give rise to "equity claims" for the purposes of the CCAA. On their approach, the determination of the treatment of such claims under the CCAA should be made on the basis of a different test than that which satisfied tax and other regulatory rules and regulations prior to an insolvency.

219 The dispute between the parties, and a principal issue on this motion, is therefore whether there are any consequences, in the context of CCAA proceedings, to a parent corporation that has structured its investment in a wholly-owned subsidiary in the manner of the Loans, that is, in a manner that complies with all applicable tax and other regulations but is not consistent with how a third-party lender would have structured any loan facilities in favour of USSC and how any such lender would have acted in the circumstances of USSC's subsequent financial performance.

220 A comparison of the relationship between USS and USSC against a notional relationship between USSC and a third-party lender provides a helpful clarification of certain factors that are relevant for present purposes, as is discussed below. However, I find that a comparison between the behavior of USS and the behavior of a notional third-party lender is not an appropriate test in the evaluation of whether the advances under the Term Loan and the Revolver Loan were capital contributions to USSC. I reach this conclusion for the following reasons.

221 First, the Loans were structured, and excess cash was moved between USSC and USS, in the manner described above for legitimate business reasons and in accordance with all applicable legal requirements. There is no express authority in the CCAA for disregarding these arrangements in such an evaluation apart from the very general language in the definition of "equity claim" referring to a return of capital. In particular, there is no express authority for disregarding the business purpose of financing arrangements in the evaluation of whether loan instruments are, in substance, "equity interests" giving rise to "equity claims".

222 Second, the Objecting Parties assert that the USS Debt Claims constitute claims for a return of capital. In the absence of any statutory definition of capital, or guidance regarding the determination of capital, for the purposes of the definition of an "equity claim", considerable weight should be given to the accounting and tax determination of capital of the debtor company in any CCAA proceedings. In this case, there is no suggestion that the Term Loan or the Revolver Loan were treated as capital for such purposes.

223 Third, the Objecting Parties submit, as an operating principle, that the less the Term Loan and the Revolver Loan resembled financing available from a third-party lender, and the less the actions of USS in the administration of the Loans resembled those that would have been expected of a third-party lender, the more the advances under the Loans resemble equity contributions. I do not accept this principle for the reason that I do not see a necessary connection between a failure to adhere to the third-party lender standard and an absence of an expectation of repayment with interest of a loan in the circumstances where the departure from the third-party lender standard reflects a valid business purpose.

224 I accept that there may be circumstances where the departure from a third-party lender standard may not serve any valid business purpose related to a parent-subsidiary relationship. In such circumstances, it may well be that such actions would suggest an equity contribution, that is, that the only explanation for the parent corporation's actions is that the loan transaction was in fact a capital contribution. However, that is not the case in the present circumstances. As mentioned above, the interest payment terms, the maturity dates of the Loans and the absence of a schedule for principal repayments provided USS and USSC with a certain amount of flexibility to align the payment of interest and the repayment of principal with the economic performance of USSC against the backdrop of a highly cyclical industry. In particular, it provided USSC with the ability to defer payments of interest and principal for a period of time in the event of adverse economic performance without triggering default provisions or a reversal of income expense for tax purposes.

225 Fourth, as a related matter, the third-party lender standard ignores the very real business purposes that a parent corporation could have for departing from a third-party lender standard in the administration of financing established in favour of a wholly-owned subsidiary.

226 The Objecting Parties submit that the less a parent corporation acts to enforce its rights in an insolvent situation in the manner that would be expected of a third-party lender, the more it demonstrates that the financing arrangements between the parent corporation and the subsidiary are in fact equity contributions rather than loans. This submission ignores the reality that a parent corporation which believes that there is value remaining in a subsidiary, even if the subsidiary is technically insolvent, will not act to enforce its security in the manner that would be expected of a third-party lender whose objective is necessarily limited to maximizing the prospects for the immediate recovery of its principal and interest. Nor would a parent corporation seek to negotiate some further benefit such as fees or additional equity in such circumstances. The subsidiary has no additional benefit to give when the parent already owns 100% of the benefit of its enterprise. Given such considerations, the actions of a parent corporation in departing from a third-party lender standard do not evidence the absence of an expectation of repayment with interest of a loan to its subsidiary when the loan was made. Moreover, in this respect, the position of the Objecting Parties contradicts the purposes of the CCAA, which should encourage efforts that seek to continue the operations of a distressed subsidiary.

227 Fifth, more generally, the premise underlying the position of the Objecting Parties, as is demonstrated by the foregoing discussion, is that a parent corporation is acting as a shareholder to the extent that it fails to act in a manner that would be expected of a third-party lender. They express this argument by saying that, to the extent a parent corporation is not looking at a

loan to its subsidiary through the lens of a third-party lender, it must be looking at the loan from the perspective of a shareholder and, as such, in reality, the loan must be equity. In short, a parent corporation cannot wear two hats at the same time.

228 I do not think this is correct. A parent corporation lending to its wholly-owned subsidiary can have regard to the existence of its rights as a shareholder in structuring and administering a loan to its subsidiary without ceasing to be a lender. The issue to be considered is whether the actions of the parent corporation demonstrate that it had no expectation of repayment with interest of the loan. There is no necessary connection between a parent corporation lending to a subsidiary on a basis that departs from a third-party lender standard and the absence of such an expectation.

229 Sixth, there is also a significant issue with the definition of a third-party lender proposed as the standard by the Objecting Parties. The Objecting Parties propose the standard of a bank or an institutional lender providing unsecured term or operating facilities on the basis of their expert financial evidence regarding an appropriate proxy for the Term Loan and the Revolver Loan. This is an unduly restrictive standard given the purpose of the test for an "equity claim", which is to assist in determining whether USS had a reasonable expectation of repayment with interest at the time it extended advances under the Term Loan and the Revolver Loans. While the willingness of a third-party to lend on the terms provided by a parent corporation could support such a conclusion, the absence of third-party lender financing is not sufficient to establish that no other financing would have been available to the subsidiary on a viable basis. Where a party seeks to disprove the alleged reasonableness of an expectation of repayment of a loan with interest, or the absence of any debt capacity of a borrower, it is necessary to canvas the availability of viable financing across capital markets more broadly.

230 Lastly, the Objecting Parties acknowledge that the standard that they propose would apply solely for purposes of proceedings under the CCAA and, perhaps, the BIA. There are three difficulties with this result.

231 First, as mentioned, a court should give considerable weight to the characterization of payments to the extent that third parties, such as the Canadian and American tax authorities, have accepted the treatment of such payments in the past in the absence of any express authority in the CCAA to do otherwise. In this case, there is a history of characterization of payments consistent with loan transactions that includes not only the loan documentation but also interest payments, principal repayments and interest waivers under the Term Loan. There is no evidence that either the Canadian or the American tax authorities have raised any issue with the treatment of any such payments for tax purposes.

232 Second, while tax treatment cannot be determinative, these tax regimes represent another third-party standard that has some independent validity in evaluating the substantive reality of loan instruments.

233 Third, as a policy matter, I see no policy benefit in having separate rules in the tax and accounting domain, on the one hand, and in the CCAA domain on the other. It is important for stakeholders in a corporation to have rules that yield reasonable certainty for planning purposes. A consequence of the approach proposed by the Objecting Parties would be that a parent corporation seeking such certainty in respect of the treatment of a loan to its subsidiary would have to limit its financing arrangements to those which an independent consultant considers to be comparable to financing facilities that would be provided by a notional third-party lender. There are a number of difficulties with this approach from a policy perspective for which there is no obvious corresponding benefit. The principal difficulty is the overriding of valid business purposes by the imposition of a restrictive standard for the purposes of any future CCAA proceedings. In addition, there would be additional costs associated with such a policy, a need for updates as advances are made over time in changing market conditions, and a potentially inefficient limitation of financing options from a financial perspective.

234 Based on the foregoing considerations, I am not persuaded that the third-party lender standard proposed by the Objecting Parties, and which underlies many of the specific factors upon which the Objecting Parties rely, is appropriate in the present context for determining whether the Loans were, in substance, capital contributions. This conclusion has the following implications in respect of the manner in which the factors identified above are to be applied in the evaluation of the Term Loan and the Revolver Loan as debt obligations or capital contributions.

235 First, with respect to factors (1) to (4), such factors are relevant to the issue of the expectations of USS at the time of advances under the Loans. However, these considerations must be evaluated in terms of what they indicate about the expectations of USS without regard to any comparison with any notional third-party lender. In other words, it is not a relevant consideration in determining whether USS had an expectation of repayment with interest that a notional third-party lender would not have provided financing arrangements to USSC having these features.

236 Second, the fact that a notional third-party lender would not have extended financing facilities to USSC on the terms and conditions of the Term Loan and the Revolver Loan is also not determinative of whether USSC had the debt capacity to service the advances under the Term Loan and under the Revolver Loan when they were made. It is therefore not determinative of the reasonableness of USS' expectation of repayment with interest of the Loan.

237 The foregoing conclusion does not, however, foreclose entirely the relevance of the availability of financing from independent sources. As discussed above, I accept that a test based on the availability of financing from an external source of financing, not limited to a third-party lender, could be a means of evaluating the debt capacity of a wholly-owned subsidiary. Framed in such terms, such a test would bear on the reasonableness of a parent corporation's expectations of repayment of the principal with interest of a particular loan or advance based on the debt-capacity of the subsidiary. However, there is no reason to narrow consideration of such debt capacity to the availability of third-party lender financing, unless the evidence clearly establishes that no other financing facilities would have been available to the subsidiary had it sought external financing.

238 Third, in the analysis below, I do not accord any significant weight to the test suggested by the Objecting Parties — that the less the Term Loan and the Revolver Loan reflect the characteristics of a third party loan from a bank or other institutional lender, the more such Loans resemble equity. In my opinion, to the extent that such Loans depart from the third-party lender standard for reasons that have a legitimate business purpose that is related to the wholly-owned subsidiary relationship or its business, the Court cannot disregard the legitimacy of such arrangements in its analysis. Given a legitimate business purpose for departing from the standard of behavior of a third-party lender, there is no necessary reason why a parent corporation could not also have had an expectation of repayment with interest of any loan advance at the time of such advance notwithstanding that it did not act in the same manner as a third-party lender. As discussed above, there is no necessary reason why a parent corporation cannot be both a lender and a shareholder even if, as a lender, it does not conform in all respects to the standard of a third-party lender.

Analysis of the Principal Considerations Relied Upon by the Objecting Parties

239 I turn then to a consideration of the probative value of the general factors relied upon by the Objecting Parties in the analyses below of the Term Loan and the Revolver Loan. As set out above, the Objecting Parties say that the Term Loan Agreement and the Revolver Loan Agreement reflect arrangements under which USS intended at all times to return excess cash to USS when available and to write off the principal or interest in respect of the Loans to the extent that payments of either were due and sufficient cash was not available.

240 In this section, I will address, in order, the extent to which the seven principal factors relied upon by the Objecting Parties are of assistance in the analysis of the Term Loan and the Revolver Loan in light of the conclusions reached above. The seven principal factors are the following: (1) the absence of any arm's length negotiation regarding the terms and conditions of the Term Loan or the Revolver Loan; (2) the deferred interest payment dates and the long maturity dates of both the Term Loan and the Revolver Loan; (3) the history of interest payments and waivers under the Term Loan; (4) the absence of any security; (5) the extent of USS' control over the business operations and financial performance of USSC; (6) the fact, as acknowledged by USS, that USSC would not have been able to obtain financing from a third-party bank or institutional lender in the amount and on the terms and conditions of either the Term Loan or the Revolver Loan; and (7) the view of the Objecting Parties that payments on account of the Term Loan and the Revolver Loan were effectively subordinated to payment of trade creditors.

241 First, the Objecting Parties suggest that the lack of any negotiation between USS and ABULC regarding the Term Loan, and the absence of any substantive negotiations between USS and USSC regarding the Revolver Loan, suggest that the advances

under the Loans were in the nature of equity injections rather than *bona fide* debt. I do not consider these circumstances to be of any value in addressing the issues on this motion. The limited negotiations between these parties is a reflection of the wholly-owned subsidiary relationship that is the starting point for such issues, but it is a neutral fact that does not bear in any way on the reasonableness of the expectations of USS regarding repayment with interest of the advances under the Term Loan and the Revolver Loan.

242 Second, the Objecting Parties submit that the two-year interest payment provision in the Term Loan and the Revolver Loan, and the lengthy maturity dates for the Loans, suggest these arrangements were capital contributions. However, the terms and conditions of the Term Loan and the Revolver Loan make express provision for the payment of interest on fixed dates and the repayment of principal by a fixed maturity date. While these terms were acknowledged to be generous, the fact remains that each Loan fixed the maximum amount payable thereunder as interest and principal and provided fixed dates for the payment of accruing interest and the repayment of the principal amount of the Loans. In particular, the interest payment dates were time-limited. Setting aside any comparison with the terms expected in third-party lender arrangements for the reasons set out above, there is nothing in the terms of the Loans, on their own, that would support an inference that USS did not expect to receive repayment with interest of all advances made under the Loans. In particular, the existence of a long maturity date and the absence of a schedule of repayments is not a basis for inferring that USS did not expect USSC to repay the Term Loan. The Term Loan did not prevent earlier repayment of principal. In addition, USS was in a position to require USSC to repay principal without a contractual schedule of repayments.

243 Accordingly, on their face, neither the Term Loan nor the Revolver Loan is more consistent with receipt of the residual cash flow and assets of USSC as the Objecting Parties suggest. Any such inference must be based on the actions of USS and USSC in the administration of the Loans.

244 Third, accordingly, the Objecting Parties argue that the Court should infer from the manner in which interest payments were treated under the Term Loan that the Loans were intended to be capital contributions rather than debt, i.e., that there was never any expectation of repayment with interest of the Loans. There are two aspects of the interest payment history in respect of the Term Loan that will be addressed separately — the accelerated payment of interest in 2008 and the interest waivers commencing in 2010.

245 The Objecting Parties argue that the acceleration of the interest payments under the Term Loan in 2008 evidences an intention to treat the Term Loan as a capital contribution. In making this argument, the Objecting Parties rely on the testimony of Dr. Finnerty who suggested that the payment of interest under the Term Loan in 2008 ahead of the due date in 2010 exhibited behavior that was more characteristic of the payment of dividends rather than interest.

246 I accept that it is possible that the payment of interest could resemble a dividend in circumstances in which there is no reasonable explanation for the timing or amount of payments made outside the provisions of a loan agreement, for example, a payment in excess of accrued interest by way of an alleged pre-payment of interest. However, where the timing of interest payments is consistent with a legitimate business purpose and in accordance with the provisions of a loan agreement, the Court cannot disregard such circumstances in assessing the expectations of the parent corporation regarding the loan.

247 In this case, the Term Loan permitted, but did not require, a deferral of interest payments for a period of time. The argument based on Dr. Finnerty's evidence proceeds on the unrealistic premise that, given such a provision in a loan agreement, a subsidiary would not pay interest to its parent corporation until the end of the permitted interest deferral period even if an earlier payment would be more efficient financially. In other words, the argument relies on a third-party lender standard which is rejected for the reasons discussed above. More generally, where there is a legitimate business reason for the flexibility provided in the loan agreement, I do not see any necessary connection between the availment of that flexibility and either the characterization of the payment as a dividend or the expectation of the parent corporation regarding repayment of the loan with interest.

248 In the present circumstances, the accelerated interest payments reflected very favourable financial results of USSC during the first three quarters of 2008. There was no legitimate reason for USSC to defer payment of interest, which was compounding

while outstanding, to the interest payment date if it had cash available for such purpose. The Term Loan Agreement permitted a deferral of interest payments for a period of time to accommodate an adverse financial performance from time to time. However, it did not require such a deferral in the event of a favourable economic performance. The presence of this provision does not evidence an intention of USS and USSC that USSC would hold on to excess cash at its own cost in such circumstances.

249 Accordingly, I am not persuaded that the acceleration of interest payments in 2008 is indicative of an intention on the part of USS to treat the Term Loan as a capital contribution rather than as a debt obligation.

250 The Objecting Parties also argue that the interest payment waivers granted in favour of USSC commencing in 2010 evidence the absence of any expectation of repayment with interest of the Term Loan. Insofar as the Objecting Parties urge the Court to draw such an inference from the existence of the interest waivers without having regard to a third-party lender standard, this issue is addressed later in these Reasons.

251 I note, however, that Dr. Finnerty's opinion was based on a somewhat different approach. He suggested that, from the perspective of financial economics, USS' actions in respect of the interest waivers reflected the behavior of a shareholder rather than a lender. The position of Dr. Finnerty and the Objecting Parties is that, in the circumstances of non-payment of interest, third-party lenders will obtain some value in negotiations with borrowers as a condition of granting such waivers. As evidence of an equity interest, they point to the absence of any enforcement proceedings on the part of USS to protect its interest as a lender, and of any negotiations to obtain a *quid pro quo* for, in particular, the grant of such waivers of interest.

252 Given the finding above regarding the appropriateness of the third-party lender standard, the Court does not draw any inference from the absence of any enforcement proceedings or other actions on the part of USS in respect of the interest waivers. In this case, the application of such a standard also reflects an unrealistic premise upon which the argument for equity treatment is based. As mentioned above, in wholly-owned situations, enforcement proceedings are counter-productive so long as the parent corporation believes the subsidiary still has value. It is also axiomatic that the subsidiary cannot give the parent any additional value as a *quid pro quo* for obtaining a waiver of its interest obligations since the parent already owns all of the subsidiary's equity value. The probative value of the interest waivers is discussed further below.

253 Fourth, the Objecting Parties submit that the absence of security for the Term Loan or the First Tranche Indebtedness is probative of the expectations of USS at the time it extended advances under the Loans. This argument also relies implicitly on a comparison with a third-party lender standard. If such a comparison is disregarded, I conclude that the absence of security is not indicative of a capital contribution for the following reasons.

254 As discussed above, and as the history of the Revolver Loan demonstrates, as the sole shareholder of USSC, USS had no need to require security for its loans to USSC until it became concerned about the ability of USSC to repay any funds advanced to it. As such, the fact that USS required security for advances made after October 2013 is more significant as evidence of the expectations of USS in October 2013 than the absence of any security for advances made prior to that date. In short, the Objecting Parties have not demonstrated a necessary connection between an absence of security for the Term Loan or the First Tranche Indebtedness and an absence of any expectation of repayment with interest of the Term Loan or the First Tranche Indebtedness.

255 Moreover, the implication of the position of the Objecting Parties is that, to protect itself in possible insolvency proceedings, a sole shareholder must lend on an asset-backed basis, i.e., take security on the assets of the enterprise, to avoid characterization of its loan as equity. This cannot have been the intention of the definition of "equity claims" under the CCAA insofar as such an implication would, among other things, encourage a parent corporation to take a priority over claims of trade creditors and thereby make a restructuring of an enterprise in an insolvency situation more difficult.

256 Fifth, for the following reasons, I am not persuaded that the extent of USS' control of USSC is a factor to be taken into account in assessing whether the Term Loan and the Revolver Loan were, in substance, equity contributions by USS.

257 As a polar case, I accept that there may be circumstances in which a parent corporation's expectation from the outset is that it will sacrifice a subsidiary's profitability over the long-term for the benefit of the consolidated enterprise. In such circumstances, a court could find that the parent corporation had no intention of causing the subsidiary to repay with interest

any financing extended to the subsidiary or, more precisely, no expectation that the subsidiary would generate sufficient cash flow to enable it to make such payments based on the parent's anticipated business plan for it. In such circumstances, a court could also find that the entire amount of the financing extended by the parent corporation to the subsidiary was, in reality, an equity contribution.

258 However, the Objecting Parties have expressly advised the Court that they do not take that position in this proceeding. In any event, the evidence is not sufficient to justify such a conclusion in the present circumstances. In particular, among other considerations, the history of the Term Loan and the Revolver Loan is too short, and the impact on the entire USS business of the recessionary environment after late 2008 was too significant, to enable the Court to draw such a conclusion.

259 This leaves the question of whether control of a wholly-owned subsidiary that does not go so far as to render the profitability of the subsidiary a matter entirely in the sole discretion of the parent corporation can constitute a consideration to be taken into account in the analysis of whether loans made by the parent corporation are debt or are, instead, equity contributions. I accept that such control requires a court to take a "good hard look" at the substantive reality of any such loans, in this case being the advances under the Term Loan and the Revolver Loan. Beyond that, however, in this case, I think that USS' control is the point of departure, rather than an independent factor, for the following reasons.

260 First, and foremost, as mentioned, there is no overriding authority in the CCAA to disregard entirely the manner in which parties, including related parties, have structured their affairs. As set out above, I think a court must give effect to such structure unless and until, in the case of a loan from a parent corporation to a subsidiary, there is other evidence establishing that the parent did not reasonably expect to receive repayment of the loan with interest at the time of the making of the loan. In other words, the existence of control is not a basis for such an inference on its own.

261 Second, the submission of the Objecting Parties that USS' control is an independent factor demonstrating an equity contribution proceeds on the basis of a distinction between a lender's rights and a shareholder's rights that is untenable in the present circumstances. The Objecting Parties argue, in effect, that USS acted in its capacity as a shareholder, rather than as a lender, in causing USSC to repay monies to it and, therefore, such payments should be treated as dividends.

262 This argument is based on a false dichotomy. No lender has a right to compel the repayment of principal or the payment of interest. The lender's rights are restricted to enforcement in the event of non-payment. The debtor alone decides whether to pay principal or interest. The implication of this argument is that a parent corporation must renounce its rights as a shareholder to cause payments under a loan agreement. This is not only unrealistic but also counter to the conclusion that a parent corporation can have regard to its rights as a shareholder while acting as a lender. Accordingly, the fact that USS instructed USSC with respect to the payments to be made cannot on that account result in a characterization of such payments as dividends, or of the Loans as capital contributions.

263 Sixth, for the reasons set out above, I conclude that the fact that USSC could not have obtained financing from a third-party lender on the terms and in the amounts of the Loans is not an independent factor that assists in evaluating USS' expectations regarding repayment with interest of the advances under these Loans at the time that they were made.

264 Seventh, the remaining consideration is the view of the Objecting Parties that USS effectively subordinated its position to the other creditors of USS by paying interest on the Term Loan and the Revolver Loan only after such other creditors were satisfied on an on-going basis. In doing so, the Objecting Parties say USS acted like a shareholder rather than a lender, thereby evidencing the absence of any expectation of repayment with interest of the Loans.

265 As a factual matter, it is correct that USSC paid interest on the Term Loan and the Revolver Loan only after its arm's length creditors were satisfied on an on-going basis. From 2007 until shortly prior to the Filing Date, USS funded USSC with debt or equity in order to permit USSC to pay its trade creditors on an ongoing basis. Moreover, as mentioned, USS waived a significant amount of interest that accrued and became due under the Term Loan and made no interest payments on the remaining accrued interest.

266 This raises the question of whether such evidence demonstrates that USS intended that the Term Loan and the Revolver Loan would be subordinated to payment of USSC's other obligations and, if so, whether such arrangements demonstrate that USS did not expect to receive repayment with interest of the Loans. There are a number of issues bound up in this argument that need to be separated.

267 First, it is important to note that there is no suggestion that USS intended a legal subordination of its claims in respect of either the Term Loan or the Revolver Loan to claims of third party creditors of USSC. Indeed, after October 2013, all fresh advances under the Revolver Loan were secured and, therefore, ranked ahead of the trade creditors of USSC.

268 Second, in any event, subordinated debt is not synonymous with a capital contribution. For present purposes, subordinated debt remains debt, subject to demonstration that a borrower could not have obtained subordinated debt on any basis from external sources, that is, did not have the debt capacity to obtain external financing in the amount of the Term Loan or the amount of the First Tranche Indebtedness. In such event, such evidence would cast serious doubt on a parent corporation's expectation with respect to repayment with interest of the alleged subordinated debt. As discussed below, however, there is no such evidence in the present case.

269 Third, I am not persuaded that the actions of USS and USSC described above are properly characterized as subordination for present purposes. In the face of a significantly changed economic and financial environment described above, USS chose to defer rather than subordinate the repayment of the principal of the Loans and the payment of interest, except to the extent of the waived interest. However, USS left its options open regarding the treatment of amounts outstanding under the Term Loan in the future.

270 Fourth, and most important, there is no evidentiary connection between the factual circumstances which the Objecting Parties describe as effective subordination of the Term Loan and the Revolver Loan and the expectation of USS regarding repayment with interest of the Loans at the time the advances were made thereunder. As described elsewhere in these Reasons, the economic circumstances commencing in 2008 established a reason for the actions that USS and USSC took subsequently which the Objecting Parties say constituted effective subordination of the Loans. There is, however, no evidence of an intention to implement such actions or, more generally, to implement a principle of effective subordination, at the time of the advances under the Loans.

271 Accordingly, I am not persuaded that the argument of alleged effective subordination of the Term Loan and the Revolver Loan supports the position of the Objecting Parties that USS did not expect to receive repayment with interest of advances under the Term Loan or the Revolver Loan.

Analysis and Conclusions Regarding the Re-characterization Claim in Respect of the Term Loan

272 I propose to set out my analysis of the debt re-characterization claim of the Objecting Parties with respect to the Term Loan after first setting out the position of the Objecting Parties in their written submissions. I would note that, at the trial, the Objecting Parties concentrated on a subset of these considerations which are addressed in these Reasons.

Positions of the Parties

The Union

273 The essence of the position of the Union with respect to both the Term Loan and the Revolver Loan is captured by the two paragraphs below which are taken from the supplementary written submissions of the Union:

> Critically, USS always expected and intended that USSC's repayment of amounts owing under both the Term Loan and the Revolver Loan was contingent on USSC's performance.
>
> The evidence is clear that USS only expected to receive payments on account of interest and principal if and when USSC was able to make them, and not in accordance with the terms of the agreements. On discovery, Mr. Brockway's evidence

was that USS "anticipated that the ability to repay that portion of the debt would be dependent on the success of Stelco's business going forward."

274 The Objecting Parties do not merely assert that USS expected to disregard the timing requirements of the Term Loan Agreement and the Revolver Loan Agreement with respect to the movement of available cash from USSC to USS. Rather, they say that, from the outset of each of the Term Loan and the Revolver Loan, USS did not expect USSC to be able to repay the advances under such Loans, and the interest on such advances, and therefore expected to write off a significant portion of such obligations as they fell due.

275 In its factum, the Union argues that the Term Loan should be re-characterized as equity based principally on the following seven *AutoStyle* factors: (1) the ability of USSC to obtain similar financing from outside lending institutions; (2) the source of repayments of the Term Loan; (3) the presence or absence of a fixed maturity date and schedule of payments; (4) the absence of security for advances under the Term Loan; (5) the absence of a sinking fund to provide for repayments; (6) the extent to which the advances under the Term Loan were effectively subordinated to the claims of outside creditors; and (7) the inadequacy of capitalization of ABULC at the date of the initial advance under the Term Loan.

276 The Union also says that the lack of negotiation between USS and USSC regarding the Term Loan and the fact that the principal purpose of the initial advances under the Term Loan was the acquisition by USS of capital assets also support a finding of a contribution to capital rather than debt.

The Province

277 The general approach of the Province with respect to both the Term Loan and the Revolver Loan is set out in the following excerpts from its factum:

> The context of the Term Loan is crucial for the characterization exercise. ... Essentially, USSC operated as a division of the USS organization. This same context also applies to the Revolver....
>
> USS' attitude to the financing of USSC reflected what its attitude would be in funding one of its operating divisions — the money went where and when needed. There was no consideration or expectation that the funds would be treated other than equity — the investment would yield returns if, and only if, the business prospered. Advances were motivated by whether the global business would benefit from the allocation of resources to the facility, and not based upon any analysis of the profitability or credit-worthiness of the business unit....
>
> USS' loose approach to interest from USSC is understandable in the context of the complete control of USSC by USS discussed above. Whether USSC had the wherewithal at any point in time to pay interest was utterly dependent on the production USS assigned to it, the intercompany allocation of raw materials (and their cost) and USSC's personnel — all controlled by USS. Presumably, USS believed sending the money to USSC on a non-interest bearing basis allowed USS to earn a better return elsewhere in the global business.

278 In its factum, the Province argues that the Term Loan should be re-characterized as equity based principally on the following three allegations: (i) there was no expectation that USSC would pay interest on the Term Loan advances; (ii) there was no expectation that USSC would repay the principal of the Term Loan advances; and (iii) the Term Loan was not provided by, nor available from, a third-party lender on commercial terms. I note that the first two considerations are not actually referred to in *AutoStyle*, although, as discussed above, I think that they are fundamental issues in respect of the re-characterization issue.

279 The Province also suggested that the following four attributes of the Term Loan, which reflect factors referred to in *AutoStyle* and are included in the considerations upon which the Union relies, also demonstrate that it is, in substance, equity rather than debt: (1) the initial advances under the Term Loan were used to acquire a capital asset, being the outstanding shares of Stelco; (2) ABULC's capital structure was thinly or inadequately capitalised at the date of the Acquisition when the initial advances were made under the Term Loan, especially in light of Stelco's historical operating performance; (3) the failure to

provide for security for the Term Loan; and (4) the failure to establish a sinking fund for repayment, particularly in view of the 30-year term of the Term Loan.

USS

280 USS submits that a number of the *AutoStyle* factors considered by American courts refute, rather than support, the Objecting Parties' re-characterization argument, including: (1) the documents entered into between USS and USSC regarding the Term Loan on their face purport to evidence indebtedness and are titled "Loan Agreements"; (2) the parties intended to enter into a loan transaction; (3) the Term Loan has a fixed maturity date; (4) the Term Loan provides for a specified applicable interest rate; (5) under the Term Loan, USS has the right to enforce payment of interest and principal; (6) USS did not acquire any management control rights in exchange for the funds advanced under the Term Loan; (7) USS did not subordinate any amounts owing under the Term Loan to USSC's other creditors as a matter of law; and (8) a substantial portion of the funds advanced under the Term Loan were used to finance USSC's ongoing operations. In addition, USS relies on statements in a recent American decision, *Alternate Fuels Inc., Re*, 789 F.3d 1139 (U.S. C.A. 10th Cir. 2015), to the effect that the identity of interest between USS and USSC and any undercapitalization of ABULC should not be material considerations in the context of a loan from a parent to a wholly-owned subsidiary.

Analysis and Conclusions

281 As set out above, the claim of the Objecting Parties that the Term Loan should be characterized as an "equity claim" requires addressing two matters: (1) the expectation of USS regarding repayment of principal and interest on the Term Loan out of cash flows of USSC over the term of the Term Loan; and (2) the reasonableness of such expectations. I note that, while these are discrete issues, the evidence referred to below that is relevant to the expectation of USS at the time of any particular advance can also be relevant to the reasonableness of such expectation.

282 As described above, most of the Term Loan advances were advanced to ABULC between October 31, 2007 and December 31, 2007. However, further advances in the aggregate principal amount of $211.2 million were made in 2009. It is therefore necessary to address the characterization of the Term Loan advances in these two periods of time separately. In each case, I will address the application of the general considerations discussed above to the USS expectation regarding repayment of the Term Loan with interest and will then consider certain additional arguments of the Objecting Parties specific to the Term Loan that have not already been addressed above.

Term Loan Advances at the Time of the Acquisition

283 The advances made to USSC in respect of the Acquisition between October 31, 2007 and December 31, 2007 have been set out above. USS says that it expected to be repaid the principal of the Term Loan outstanding at December 31, 2007 with interest over the course of the Loan, even if it could not anticipate the timing of such payments given the cyclical nature of the steel industry.

284 USS relies principally on the evidence of Brockway with respect to the facts pertaining to its expectations at the time of the Acquisition and the initial advances under the Term Loan. Brockway testified that USS based its decision to acquire Stelco on a financial model which was created by USS internally, but was reviewed by its financial advisor in the transaction and was relied upon by the USS board of directors in connection with their decision to make the Acquisition.

285 The financial model contemplated stable sales of flat-rolled steel that would rise 1%-2% annually, which would generate earnings before interest, taxes and depreciation ("EBITDA") estimated to be U.S. $368 million in 2008 and projected to gradually rise over the next seven years. Brockway testified that, based on this financial model, USS anticipated that the Acquisition would generate sufficient free cash flow in USSC to pay the interest provided for under the Term Loan and to repay the principal over the 30-year term of the Term Loan. The financial model also included a discounted cash flow analysis. The extent to which this analysis is also supportive of the USS expectation is unclear. However, there is no evidence regarding this financial model that contradicts USS's expectation of repayment of the Term Loan with interest.

286 The Objecting Parties do not dispute that USS made its decision to acquire USSC based on the financial model described above. However, the Objecting Parties argue that the constellation of factors described above pertaining to the terms of the Term Loan Agreement, and the manner in which USS administered the Term Loan, demonstrate that USS did not expect to be repaid the principal with interest of the initial advances under the Term Loan.

Did USS Expect to be Repaid the Term Loan With Interest?

287 I do not propose to revisit the considerations that have been excluded for the reasons set out in the preceding section, including, in particular, the considerations that rely on a comparison with a third-party lender standard. Setting those considerations aside, the position of the Objecting Parties is based primarily on the following remaining factors which will be evaluated without regard to a third-party lender standard: (1) the terms of the Term Loan Agreement, in particular the deferred interest payment dates and the length of the term of the Term Loan; (2) the acceleration of interest payments in 2008; (3) the waivers of interest commencing in 2010; and (4) the view of the Objecting Parties that USS effectively subordinated payments on the Term Loan to payment of USSC's trade creditors. The Objecting Parties argue that, even considered without regard to the third-party lender standard, these factors, particularly the actions of USS after the advances were made, evidence the fact that USS did not expect to receive repayment of the principal with interest of the Term Loan. I will address each of these factors in turn and will then address the probative value of these factors considered collectively.

288 First, as mentioned, the Term Loan Agreement provided USSC and USS with considerable latitude regarding the timing of both the payment of interest and the repayment of principal. There was a legitimate business reason for these terms of the Loans. They provided USS with some, but not complete, flexibility to align the payment of interest with the receipt of excess cash flow in a highly cyclical industry. They also provided a lengthy period of time over which to repay the Loans for the same reason. These terms were permissible under applicable tax legislation without losing the tax treatment for debt. For the reasons set out above, I do not think that the terms of the Term Loan Agreement, by themselves, are more consistent with a re-characterization of the Term Loan as a capital contribution. The mere existence of provisions providing flexibility in the timing of payment of interest and repayment of principal is not a basis for inferring that USS did not expect to receive repayment with interest of the Term Loan without further evidence at the time of the initial advances. There is no such evidence in this case. In particular, as noted above, there is no evidence regarding the financial model that establishes, on a balance of probabilities, that repayment of the Term Loan was not a realistic possibility over the life of the Loan.

289 Second, the Objecting Parties suggest that the acceleration of interest payments in 2008 supports a finding that the payments were, in substance, dividend payments. For the reasons set out in the preceding section, I do not think that the two interest payments made in late 2008 are more properly characterized as dividends based on a third-party lender standard. I also do not think that the action of causing such payments in advance of their respective payment dates is, on its own, indicative of treatment of the Term Loan as a capital contribution. More generally, in the absence of any documentary or other evidence at the time of the payments suggesting otherwise, the fact that the payments were characterized as interest payments, that the payments did not exceed the amount of the accrued interest at the time, that the payments were permitted under the Term Loan Agreement, and that there was a legitimate business purpose for making interest payments in advance of their due date should be determinative.

290 Third, the Objecting Parties' reliance on the interest waivers and failure to repay any interest in the seven years between the initial advances under the Term Loan and the Filing Date is understandable. It raises a legitimate question of whether USS ever intended USSC to pay principal or interest on the Term Loan, that is, whether it ever expected to be paid interest and/or repaid principal.

291 There is some force to this argument in one respect. Insofar as USS waived, rather than continued to accrue, unpaid interest, it appears to have acted as a shareholder rather than a lender. The evidence before the Court established that it was not economic for USS to "round-trip" the payment of interest by USSC under the Term Loan. This explains why USS did not fund USSC to enable it to pay the accrued interest. However, it does not explain why it was appropriate to write off the interest that was waived in each of the relevant years, much less why only a portion of the interest was written off. Moreover, based

on an internal email dated March 29, 2011 of USS, it is possible that, in or about late 2010 or early 2011, USS decided on a policy of waiving at least some interest at the end of each year to the extent USS was not in a position to pay the accrued interest payable in such year.

292 However, the Objecting Parties suggest that the Court should infer from the interest waivers that USS did not expect to receive repayment with interest of the Term Loan at the time of the initial advances under the Term Loan. In the preceding section, I addressed the argument of Dr. Finnerty that the Court should draw such an inference from USS' failure to assert its rights as a lender in respect of the interest payment defaults that gave rise to the interest waivers. In this section, I address the alternative argument of the Objecting Parties that the granting of the interest waivers by themselves is sufficient to support the inference that USS never expected to receive repayment of the Term Loan with interest at the time that the initial advances were extended thereunder.

293 I do not think a court can reasonably draw such inferences for a number of reasons. First, and most important, there is no other evidence supporting such an expectation at the time of the establishment of the Term Loan and the making of the initial advances under the Loan. Second, the payment of interest under the Term Loan in 2008 is inconsistent with an absence of any expectation of payment of interest from the outset of the Term Loan. Third, the intervening economic events are sufficient to establish radically different economic conditions which support the USS position of altered expectations. There is no evidence that USS contemplated the possibility of a recession of the depth and length experienced in the steel market since 2008 even though it put in place flexibility regarding interest payments and a long maturity date as discussed above. Fourth, notwithstanding the waivers in 2011, 2012 and 2013, there is no evidence that such repeated waivers of interest reflected a long-term policy of USS that existed from the outset of the Term Loan.

294 Accordingly, the significant facts for this purpose are the lengthy period after the initial advances before the initial decision was made to waive interest coupled with the intervening occurrence of significantly adverse market conditions. These factors, together with the absence of any documentation or other evidence to the contrary at the time of the initial advances under the Term Loan, exclude an intention at the time of such advances to waive interest as and when it became payable under the terms of the Term Loan Agreement.

295 Lastly, with respect to the argument of subordination, I have concluded for the reasons set out above that the evidence regarding the alleged effective subordination of the Loan does not evidence the absence of an expectation of USS of repayment with interest of the Term Loan or the Revolver Loan, except to the extent of the waived interest which has been addressed above. I would add that I do not consider that the evidence of Brockway, discussed below, constitutes evidence that USS implemented a policy of subordination of the Term Loan to trade creditors from the time of the initial advances as the Objecting Parties suggest.

296 The Objecting Parties have raised one further argument that should be addressed pertaining to the use of the initial advances under the Term Loan. They suggest that both the use of the advances under the Term Loan to acquire capital assets, being the Stelco shares and other Stelco securities, and the circumstances surrounding the SHC Transaction, argue for a finding that the Term Loan constituted, in substance, a contribution to capital. I do not accept either submission for the following reasons.

297 With respect to the significance of the acquisition of the Stelco shares and other securities, the Objecting Parties say that such use of the initial advances under the Term Loan demonstrates that the primary intention of USS was the acquisition of Stelco rather than the establishment of a debtor-creditor relationship between Canada LP and ABULC.

298 This argument presumes that the purpose of debt is the provision of working capital and that the purpose of equity is the acquisition of capital assets. That is too narrow an approach. Term loans are regularly used to acquire capital assets and, indeed, are often secured on such capital assets in the case of third-party lenders. There is no necessary reason why the fact that advances under a term loan were used for the purpose of acquiring assets should be a consideration that demonstrates a capital contribution. In addition, as discussed above, there is no general principle that prevented USS from structuring a portion of its investment in USSC as a loan. Moreover, as described below, the portion of the Term Loan that reduced the Credit Corp Loan was effectively used to retire the third party debt of Stelco at the time of the Acquisition.

299 With respect to the SHC Transaction, the Union argues that the fact that advances under the Term Loan were used to satisfy the Credit Corp Loan, which was incurred to refinance the Stelco debt at the USS level, is indicative of a view of the Term Loan as an equity contribution. I do not see the connection suggested by the Union.

300 The SHC Transaction has been described above. The principal effect of the SHC Transaction was to effect a sale of SHC at its apparent fair market value by USSC and a reduction of the Credit Corp Loan in a like amount. If the SHC Transaction had not occurred, the Credit Corp Loan would have remained outstanding as of the Filing Date in the amount of such reduction and the amount of the Term Loan would have been correspondingly lower. From the point of view of the aggregate amount of outstanding debt of USSC, the SHC Transaction was therefore neutral. Moreover, the Credit Corp Loan was made for the purpose of repaying third-party debt of Stelco. To the extent that advances under the Term Loan in connection with the SHC Transaction were applied to reduce the Credit Corp Loan, such advances were therefore indirectly used to repay such third-party debt. I do not see any further significance to the SHC Transaction.

301 It is therefore necessary to address the argument of the Objecting Parties that, while none of the foregoing factors or considerations may be sufficient on its own to support a conclusion that the Term Loan was, in substance, a capital contribution, the combination of factors should support such a conclusion. This argument effectively brings together all of the factors set out and discussed above and asserts that collectively they establish that it is more probable that USS did not expect to receive repayment with interest of the Term Loan than that USS had such an expectation.

302 In considering this argument, I have looked more generally at which of the two scenarios proposed by the parties is more probable — the USS position that it expected to be repaid the principal with interest of the Term Loan at the time of the advances in 2007 or the Objecting Parties' position that, at the time of such advances, USS expected to receive only such cash flow and assets as were available after satisfaction of the obligations to third party creditors and to write off the principal or interest in respect of the Term Loan when cash was not available and such obligations fell due.

303 In addition to the factors described above, the Objecting Parties rely on the evidence of Brockway referred to above and the evidence more particularly described in certain excerpts of Brockway's discovery in these proceedings set out at pages 8 and 9 of the Union's Compendium of Key Read-in Evidence. The Union submits that these excerpts establish that USS' expectation of repayment was "contingent on USSC's performance" or was "dependent on the success of Stelco's business going forward" and that "[USS] only expected to receive interest payments if USSC was successful." I note that this argument is similar to, but separate from, the argument that USS effectively subordinated repayment of the Term Loan, and payment of interest thereon, to the payment of USSC's third party creditors.

304 I do not think that this submission accurately captures the evidence of Brockway and, accordingly, I think that the Objecting Parties rely on an interpretation of his evidence which it was not intended to carry.

305 There is a difference between the investment risks of USS' investment in Stelco, considered as a whole, and the risk of repayment of the portion of the investment that was structured as debt of USSC. Reading the entirety of Brockway's evidence, I am satisfied that Brockway's statement was intended to acknowledge no more than that there could be no certainty that the aggregate investment in Stelco would be profitable. Brockway acknowledged no more than that the Acquisition entailed normal investment risks and that, to the extent that USS made a bad investment, there was a risk that it had made such a bad investment that USSC would be unable to repay not only its equity investment but also the Term Loan with interest. His evidence does not, however, constitute an acknowledgement that USS believed it had made an unprofitable investment in acquiring Stelco, much less an acknowledgement that USS therefore expected that USSC would be unable to repay the Term Loan with interest.

306 The foregoing discussion highlights the fact that, at times, the position of the Objecting Parties approaches the issue of repayment of the Term Loan as part of the larger issue of the profitability of the entire investment of USS in USSC. This is reflected in the position of the Union, as excerpted above, which proceeds on the basis that USS treated both the Loans and the equity component as a single investment. In so doing, the Objecting Parties disregard the reality that the Term Loan was expressly structured and documented separately from the equity injections in order to function in the manner described

above. I do not think that the separate existence of the Term Loan can be simply ignored in the absence of an explanation or reason for treating the USS investment on an aggregate basis. In doing so, this approach conflates the issues of repayment of the Term Loan and the profitability of USS' acquisition of Stelco, which are very different. The Court is only concerned with USS' expectation of repayment with interest of the Term Loan. Even an unsuccessful investment may nevertheless repay with interest the portion of the investment structured as a loan.

307 Further, to the extent that Brockway was also acknowledging the existence of lending risks with respect to repayment of the Term Loan, the mere existence of lending risks is not a basis for an inference that there was no expectation of repayment of the debt portion of the USS' investment in USSC. The statement that USSC would not be able to repay the Term Loan with interest unless it was profitable is, on its own, a neutral statement. There is a considerable distance between an acknowledgement of the existence of normal lending risks and an acknowledgement that USS did not expect USSC to be able to repay the Term Loan with interest. I do not read Brockways' testimony as going to the latter statement.

308 It is also necessary to address the position of the Province as excerpted above. The Province argues, in effect, that, having made the decision to acquire Stelco and to integrate it into the USS business as an operating division, USS paid no attention to the ability of USSC to repay the Term Loan over the thirty-year life of the Loan. It says that such action demonstrates that the Term Loan was, in effect, equity. By way of explanation for this approach, the Province suggests that USS considered the investment from a business-wide perspective. The Province suggests that USS was not concerned specifically with the profitability of USSC, and its ability to repay the Term Loan, given that USS considered that an increased profitability of other companies within the USS group would more than compensate for any losses in USSC.

309 At the time of the initial advances under the Term Loan, USS undoubtedly intended to integrate Stelco into its business as an operating division. That fact alone, however, does not support the conclusion that USS had no expectation that USSC would be unable to repay with interest the portion of the acquisition cost that was provided to it in the form of the Term Loan. More importantly, the evidence does not support the conclusion that USS paid no attention to the ability of USSC to repay the Term Loan in the manner suggested by the Province for the following reasons.

310 First, as Brockway noted, it is incorrect to suggest that USS made no credit analysis of USSC in connection with the initial advances under the Term Loan. The financial model, upon which the decision to acquire Stelco was based, served the function of a credit analysis even if the principal purpose of the model was to address the financial impact of the entire investment. In its projections of cash flows of the post-acquisition Stelco, the financial model provided the basis for a conclusion regarding USSC's ability to service the Term Loan. As set out below, the evidence before the Court with respect to this financial model does not demonstrate that USS did not expect to receive repayment with interest of the initial advances under the Term Loan over the life of the Loan.

311 Second, while the financial model did anticipate the realization of substantial synergies outside of USSC, it is not suggested that the quantum of such synergies was such that they would compensate for anticipated losses in USSC. More generally, there is no evidence that USS did not anticipate recovery of the majority of its investment in the form of profits from USSC, including the portion represented by the initial advances under the Term Loan which for this purpose is notionally senior to USS' equity investment.

312 The Brockway evidence therefore does not constitute an acknowledgement or admission of USS that it had no expectation of repayment with interest of the initial advances under the Term Loan when they were made. For the reasons set out above, I am also not persuaded by the Province's argument that USS allocated its investment in Stelco between debt and equity with no regard to USSC's ability to repay the initial advances under the Term Loan. The probative value of the other considerations upon which the Objecting Parties rely has been discussed above. The element of USS' actions which most strongly raises a doubt regarding its expectation regarding repayment of the Term Loan is the experience of the interest waivers. The Objecting Parties also rely, among other considerations, on the long maturity date, the absence of a schedule of repayments, and the alleged effective subordination. For the reasons set out above, however, none of this evidence is sufficient on its own to support a characterization of the Term Loan advances as equity. I am also not persuaded, for the reasons discussed above, that the experience of the interest waivers, together with the other considerations upon which the Objecting Parties rely, collectively

demonstrate that USS did not expect to be repaid the initial advances under the Term Loan with interest as of the time such advances were made in 2007.

313 Accordingly, I find, on a balance of probabilities, that, at the time of the advances under the Term Loan in 2007, USS expected that USSC would repay interest on the Term Loan in accordance with the terms of the Term Loan Agreement and would repay principal on or prior to the maturity date of the Term Loan.

Was the USS Expectation Reasonable?

314 This raises the issue of the reasonableness of the USS expectation.

315 The Objecting Parties rely heavily on two factors which might suggest that such an expectation was unreasonable: (1) third party financing was not available to USSC on terms substantially similar to the terms of the financing provided by USS; and (2) the view of the Objecting Parties that ABULC was inadequately capitalized. I will address these issues in turn.

316 As mentioned, the Province introduced the Hall Report as expert evidence demonstrating that a third party lender would not have provided ABULC/USSC with financing in the amount and on the terms of the Term Loan provided by USS.

317 There is no actual dispute regarding this opinion in the Hall Report. However, for the reasons set out above, the standard addressed in the Hall Report — i.e., whether USSC could have obtained financing on the terms and in the amount of the Term Loan from a bank or other institutional lender — is too limited to establish that the USS expectation of repayment of the Term Loan was unreasonable. In this regard, it is noteworthy that both Mr. Hall and Dr. Finnerty, who relied on the Hall Report for the purpose of the opinion in the Finnerty Report on this issue, acknowledged that they were not expressing any opinion on the ability of USSC to have obtained financing other than from a third-party lender.

318 The question remains whether the evidence regarding the ability of USSC to raise debt on a viable basis as of December 31, 2007 contradicts the reasonableness of the USS expectation. If the Objecting Parties were able to demonstrate, on a balance of probabilities, that USSC could not have obtained external financing in the amount of the Term Loan on any viable basis, I think a court could conclude that at least the excess of the Term Loan over the amount of financing that was obtainable from external sources represented an equity contribution.

319 However, in the present circumstances, the evidence is not sufficient to establish that USSC lacked the capacity to raise an amount of debt equal to the outstanding amount of the Term Loan as of December 31, 2007, that is, that external financing would not have been available to USSC on a viable basis, although admittedly on a fully secured basis. Accordingly, the Objecting Parties cannot establish that the USS expectation in 2007 of repayment with interest of the Term Loan was unreasonable. In this regard, the following considerations are relevant.

320 First, Stelco had total debt approximating $1.16 billion at the time of the Acquisition. As the Austin Smith Report suggests and Mr. Hall acknowledged, this would appear to put a floor on the debt capacity of USSC at the time of the Acquisition.

321 Second, the historical financial results for Stelco (EBITDA and EBIT) prior to the Acquisition, when adjusted to remove non-recurring items, reflected an improving trend from 2006 to 2007 on a quarter-over-quarter comparison by year.

322 Third, the outstanding balance of the Term Loan at December 31, 2007, being approximately $1.4 million including the outstanding loan from the Province, was not significantly higher than the amount of the Stelco debt prior to the Acquisition. This level of debt represented approximately 70% of the total acquisition cost to USS of Stelco. It is not inconsistent with Brockway's testimony that USS believed that the Term Loan could be repaid over the 30-year life of the Loan as Brockway suggested. It is true that the investment failed to generate the results contemplated by the USS financial model. By any estimation, in hindsight, the investment was a significant failure. However, there is no basis for retrospectively fixing USS with such knowledge at the time of the initial advances under the Term Loan.

323 Fourth, the Hall Report bases its conclusions entirely on the historical performance of Stelco rather than on an analysis of the projected cash flow of USSC at the time of the Acquisition. However, as the Province's financial advisor in respect of

the Acquisition, Ernst & Young Inc., recognized in a report dated August 22, 2007 to the Province, the Acquisition was likely to improve the financial strength of USSC relative to Stelco. The report identified a number of factors for consideration by the Province regarding the Acquisition. Purely from a cash-flow perspective, these factors would have been expected to result in an increased and more stable cash flow, other economic factors being equal. There is, therefore, a reasonable basis for concluding that the Acquisition increased USSC's debt capacity relative to Stelco's pre-Acquisition debt capacity. The fact that a third-party lender might not have been prepared to rely on USS' cash flow projections is not determinative of whether lenders in other capital markets were prepared to do so.

324 Fifth, the limited metrics in evidence do not suggest that USSC lacked the ability to incur such external financing. As noted by Brockway, in 2007, Stelco incurred slightly less than $60 million in interest expense for the nine months ended September 30, 2007, or slightly less than $80 million on an annualized basis. The Term Loan interest for 2008 approximated $100 million, which was well within the estimated EBITDA for that year.

325 Sixth, while the Acquisition was not a leveraged buyout transaction as that term is generally understood, USS, as a strategic purchaser, approached the purchase of Stelco with a similar philosophy and approach to capitalization, as the Austin Smith Report notes. In this regard, the financial metrics pertaining to aggregate debt and interest coverage, on a prospective basis, are consistent with leveraged buyout financing transactions in 2007 and are, therefore, suggestive of the availability of financing in the high-yield market.

326 Given these factors, the evidence suggests a reasonable possibility of obtaining third-party financing in other capital markets, beyond the third-party lender market addressed in the Hall Report and the Finnerty Report, in particular, in the high-yield market. For the reasons discussed above, it is not relevant for present purposes that any such financing would have been on different terms and conditions from the Term Loan. The second issue raised by the Union in its Factum is the allegedly inadequate capitalization of ABULC/USSC at the time of the initial advances under the Term Loan.

327 Insofar as the Union says that ABULC was inadequately capitalized, I think the issue is misdirected. While it is correct that ABULC had no prior operating performance and no revenues or profits of its own, that is irrelevant. At all times, ABULC was the direct parent corporation of USSC. Its financial performance on a consolidated basis was that of USSC. Accordingly, the extent to which ABULC was or was not undercapitalized was directly dependent on the extent to which USSC was or was not undercapitalized.

328 Insofar as the Objecting Parties say that post-Acquisition USSC was inadequately capitalized, I think this issue engages the same issue as the preceding discussion of the availability of external financing. To the extent that the evidence fails to establish that USSC could not have obtained external financing on a viable basis in the amount of the Term Loan, it cannot reasonably be argued that USSC was inadequately capitalized.

329 Based on the foregoing, I find that the Objecting Parties have not satisfied the onus of demonstrating that the USS expectation of repayment with interest of the principal of the Term Loan as of December 31, 2007 was unreasonable.

Term Loan Advances in 2009

330 As mentioned, in 2009, USSC received additional advances totalling $211.2 million under the Term Loan from Canada LP. No interest or principal was paid during 2009. In addition, as set out in the table above, USS provided equity injections in the amount of $61 million during 2009.

331 The Objecting Parties do not raise any arguments regarding these advances under the Term Loan in addition to those addressed above. The relevant facts are essentially the circumstances as of December 31, 2007 carried forward, subject to the interest payments in 2008 and the occurrence of the recession in 2009. Given the history of the steel market in the period 2004 to 2008, USS had a reasonable expectation that markets would improve that justified supporting USSC in 2009 with additional working capital advances. I note as well that the first interest waiver under the Term Loan occurred subsequent to the advances in 2009.

332 Accordingly, I see no basis for reaching a different conclusion respecting the expectation of USS regarding repayment of these advances from the conclusion reached above regarding repayment of the initial advances under the Term Loan. The evidence before the Court establishes that USS expected that USSC would repay these advances with interest for the reasons set out above. Hindsight is always 20/20. There is, however, no evidence that, as of 2009 when such advances were made, USS or USSC anticipated the negative financial performance of USSC in the period 2009 to 2013 and therefore expected that USSC would be unable to repay these advances with interest. There is also no evidence before the Court that would demonstrate that the expectation of repayment with interest of these advances under the Term Loan was unreasonable.

Conclusion Regarding Characterization of the Term Loan

333 Based on the foregoing, I conclude that the outstanding Term Loan, being Claim #9, constitutes a debt claim rather than an "equity claim" for the purposes of this CCAA proceeding.

Analysis and Conclusions Regarding the Re-characterization Claim in Respect of the Revolver Loan

334 I propose to set out my analysis of the debt re-characterization claim of the Objecting Parties with respect to the Revolver Loan after first setting out the position of the Objecting Parties in their written submissions. As in the case of the Term Loan, the Objecting Parties concentrated on a subset of these considerations at the trial, which are addressed in these Reasons.

Positions of the Parties

The Union

335 The approach of the Union, as excerpted above from its written submissions, applies equally to the Term Loan and the Revolver Loan and therefore will not be repeated here. In its factum, the Union argues that the Revolver Loan should be re-characterized as equity based principally on the following seven *AutoStyle* factors: (1) the inability of USSC to obtain similar financing from outside lending institutions; (2) the source of repayments of the Revolver Loan; (3) the presence or absence of a fixed maturity date and schedule of payments; (4) the absence of security for advances under the Revolver Loan; (5) the absence of a sinking fund to provide for repayments; (6) the extent to which the advances under the Revolver Loan were effectively subordinated to the claims of outside creditors; and (7) the financial position of USSC, including an inadequate capitalization, at the date that the Revolver Loan was first put in place.

The Province

336 The Province's approach, as excerpted above from its factum, also applies equally to the Term Loan and the Revolver Loan and therefore will not be repeated here. In its written submissions, the Province argues that the Revolver Loan should be re-characterized as equity based principally on two assertions also made in respect of the Term Loan, namely: (i) there was no expectation that USSC would repay the principal of the Revolver Loan advances; and (ii) the Revolver Loan was not provided by, nor available from, a third-party lender on commercial terms. The Province also suggests that the following three attributes of the Revolver Loan further demonstrate that it is, in substance, equity rather than debt: (1) the arrangements pertaining to interest including, in particular, determination of the interest rate based on tax requirements, the timing of interest payments in the loan agreements, and the reliance on equity injections to make interest payments under the Revolver Loan; (2) thin or inadequate capitalization of USSC at the date of the Revolver Loan Agreement and USSC's operating performance at the time; and (3) the failure to establish a sinking fund for repayment.

USS

337 USS submits that the same *AutoStyle* factors upon which it relies in respect of the Term Loan also refute the Objecting Parties' re-characterization claim in respect of the Revolver Loan. Accordingly, I will not repeat them here.

Analysis and Conclusions

338 The claim of the Objecting Parties that the Revolver Loan should be characterized as an "equity claim" also requires addressing the two matters discussed above: (1) the expectation of USS regarding repayment of principal with interest on the Revolver Loan out of cash flows of USS over the term of the Revolver Loan; and (2) the reasonableness of such expectation. In the case of the Revolver Loan, it is necessary to address these issues separately in respect of each of the First Tranche Indebtedness and the Second Tranche Indebtedness. Accordingly, I will deal with each Tranche in order.

The First Tranche Indebtedness

Background

339 As set out above, the amount of the First Tranche Indebtedness outstanding as of October 31, 2013 was U.S. $116,969,996. It is understood that no payments of either principal or interest were made in respect of the First Tranche Indebtedness after October 30, 2013. The history of advances and payments under the Revolver Loan to this date is important for the determinations herein. The Monitor's Seventh Report sets out all such advances and repayments in Exhibit "O" thereto, which is briefly summarized as follows.

340 During 2010, USSC drew a total of U.S. $100,000,000 under the Revolver Loan and made no interest payments. In 2011, USSC drew U.S. $20,000,000 in June, repaid U.S. $18,339,563 in November and drew U.S. $25,223,983 in December. In the same year, USSC paid U.S. $6,660,437 of interest in November and U.S. $223,983 of interest in December. As of December 31, 2011, the amount outstanding under the Revolver Loan was U.S. $127,155,598.

341 In 2012, USSC obtained advances totaling U.S. $307,366,090. Advances were made in each month, other than March and April when it repaid U.S. $33,866,386 and U.S. $9,568,279, respectively, and October when there was no activity. In addition, small amounts of interest were paid in each of January, March and April, being U.S. $366,090, U.S. $1,133,614 and U.S. $431,721, respectively. At the end of December 2012, the outstanding balance of the Revolver Loan was U.S. $496,702,434, which amount was increased by a draw of U.S. $10,000,000 in early January 2013 to bring the outstanding amount to U.S. $507,750,128.

342 As Dr. Finnerty observed, with the qualification that money is fungible, it can be argued that the payments on account of principal and interest in the aggregate amount of U.S. $25,000,000 in November 2011, and a further interest payment of U.S. $223,983 in December 2011, were funded by an equity injection in October 2011. It can also be argued that the payments on account of principal and interest in March and April 2012 were funded by an advance under the Revolver Loan in February 2012.

343 In 2013, as described above, USS implemented a decision to "de-lever" USSC by reducing the Revolver Loan. Accordingly, principal and interest payments totaling $383,845,848 and $11,154,152, respectively, were made in each of the months of February to July 2013 inclusive. By this means, the balance outstanding at October 31, 2013, prior to the execution of the Third Revolver Amendment and the October Security Agreement, had been reduced to the level set out above, being the amount of the First Tranche Indebtedness. Applying advances and repayments on a first-in, first-out basis, the advances outstanding under the First Tranche Indebtedness at the Filing Date were advances made in the course of 2012.

344 It is necessary to overlay the economic performance of USS and USSC during these years. As described above, the evidence establishes that market conditions improved in the second quarter of 2010 and then weakened again in the second half of 2010. Similarly, market conditions improved in the second quarter and third quarter of each of 2011 and 2012 before weakening again in the fourth quarter of each year. Essentially, the evidence is that USS thought that the improvement in the markets in the first half of 2010 signalled the start of an improving market whereas, in retrospect, it heralded the beginning of several years of "mini-cycles" in each of 2010, 2011 and 2012. The evidence also indicates that a similar improvement did not occur in the first half of 2013.

345 Exhibit "O" to the Monitor's Seventh Report sets out the equity injections made by USS during the period 2010 to October 2013 on a monthly basis, which is briefly summarized as follows. In 2010, USS made equity injections in each of June, July, September, October and December totaling $611,754,000. In 2011, USS made equity contributions in each of January,

February, July, August, September and October totaling approximately U.S. $213 million. There were no equity injections in 2012. In 2013, as described above, in connection with its "de-leveraging" decision, USS contributed a total of $682,758,200 through equity injections in each month from February to and including September. It is not disputed that a significant portion of these equity injections in 2013 was used to pay interest owing, and to repay principal outstanding, on the Revolver Loan in connection with the "de-leveraging" exercise. A further $57,040,500 was injected in October 2013 prior to execution of the Third Revolver Amendment prompting a moratorium on further cash payments to USSC imposed by the new chief financial officer until security was provided.

Analysis and Conclusions

346 The evidence indicates that USS established the Revolver Loan in May 2010 during a period of improvement in market conditions after the significant slowdown in business activity during the second half of 2008 and 2009. The funding under the Revolver Loan provided additional working capital required to respond to the recovery of the steel market that was anticipated at that time. As mentioned, the advances comprising the First Tranche Indebtedness were made in 2012 based on a first-in, first-out approach to advances and repayments under the Revolver Loan. Accordingly, such advances must be considered in the context of the economic environment in which they were made in 2012.

347 USS says that it expected to be repaid all advances, with interest, when they were made under the Revolver Loan over the course of the Loan. As set out above, the principal argument of the Objecting Parties is that the terms of the Revolver Loan, as well as the manner in which the Loan was administered by USS, are more consistent with receipt of the residual cash flow and assets of the USSC, without any expectation of repayment with interest of the advances under the Revolver Loan.

348 The Objecting Parties rely largely on the general considerations that were addressed in respect of characterization of the Term Loan. This is consistent with the fact that the Revolver Loan performed the same cash management function as the Term Loan. They also rely on certain other considerations that are specific to the circumstances in which the First Tranche Indebtedness was advanced. These include the following matters: (1) the losses of USSC since 2009; (2) the failure of USSC to pay any interest on the Term Loan after 2009; (3) the negative equity of USSC in 2012; (4) the removal of the solvency representation from the Revolver Loan; and (5) the use of equity injections to fund repayment of the Revolver Loan pursuant to the "de-leveraging" exercise described above in 2013.

349 I will first address the application of the general considerations that the Objecting Parties suggest demonstrate the equity character of both the Term Loan and the Revolver Loan and then the additional considerations which they raise that are specific to the Revolver Loan.

350 As mentioned, in the period from 2010 to 2012, that is, prior to the "de-leveraging" exercise discussed below, USS administered the Revolver Loan in the same manner as it had administered the Term Loan with the exception that: (1) in each of 2011 and 2012, USSC repaid some principal and paid some accruing interest out of available cash; and (2) USSC did not waive any interest that became payable during this period. There are no additional facts in respect of the administration of the Revolver Loan that render the combined effect of the general considerations upon which the Objecting Parties rely more compelling in the context of the Revolver Loan than the Term Loan.

351 I therefore do not think that the terms of the Revolver Loan Agreement and the manner in which USS administered the Revolver Loan are sufficient to constitute the Revolver Loan, in substance, an equity contribution. There is nothing in these circumstances, considered on their own or collectively, that casts any doubt on the evidence that USS expected USSC to repay the principal with interest of the First Tranche Indebtedness over the life of the Loan.

352 The next issue is therefore whether the financial status of USSC in 2012, when the advances comprising the First Tranche Indebtedness were made, affects this conclusion. The Objecting Parties say that the Court should infer from the four considerations set out above, which pertain to the financial state of USSC in the latter half of 2012, that USS did not expect to receive repayment with interest of the Revolver Loan. These factors raise a legitimate issue regarding both the expectation

of USS and the reasonableness of that expectation at that time. I propose to address the issue of the removal of the solvency representation first and then the remaining considerations pertaining to USSC's financial state.

353 The Objecting Parties place considerable reliance on the agreement of USS to remove the solvency representation from the Revolver Loan Agreement in 2012 as evidence that USS could not have expected USSC to be able to repay any advances under the Revolver Loan. The solvency representation was removed by the First Revolver Amendment in July 2012 at the request of Michael McQuade, the chief financial officer of USSC at the time ("McQuade").

354 McQuade states in his affidavit sworn September 4, 2014 that, at the time of the execution of the First Revolver Amendment, he had a concern about USSC's solvency given its losses since 2009 and its reliance on USS for on-going liquidity and solvency. He testified at the hearing of this motion that he had a concern that USSC might become insolvent at some point over the remaining thirteen-year term of the Revolver Loan.

355 The Objecting Parties suggest the Court should draw the inference that USS was aware that USSC was insolvent in July 2012 and, from that inference, find that USS had no expectation of repayment with interest of the advances made in 2012 under the Revolver Loan. I do not think the evidence justifies such an inference or finding for the following reasons.

356 First, there is no evidence regarding the intentions of either USS or USSC in removing the insolvency representation that supports such a finding. McQuade requested its removal. His evidence at the trial was that he approached the solvency representation as a continuing representation. McQuade's concern was prospective rather than immediate. He was concerned that USSC might breach the representation at some point in the future rather than that USSC was insolvent in July 2012. In addition, McQuade also testified that he believed that USSC had a continuing right under the Revolver Loan Agreement to draw funds as needed up to the maximum availability. It is not clear how he integrated these two apparently contradictory considerations. McQuade's view of the operation of the Revolver Loan Agreement does, however, reinforce the prospective nature of his concern. In addition, there is no evidence regarding why USS agreed to remove the solvency representation at the time.

357 Second, it is not possible to draw any conclusion regarding the knowledge of USS and USSC from the terms of the Revolver Loan Agreement for the following reasons. As described elsewhere in these Reasons, I consider that the proper interpretation of the Revolver Loan Agreement is that a balance sheet solvency test remained in the form of the "unable to meet debts" event of default. In addition, a similar event of default remained in the Term Loan Agreement. I do not see any inconsistency in the removal of the solvency representation and the retention of a balance sheet event of default. Moreover, it is not clear whether the solvency representation was a continuing representation given at the time of each advance. Even if it was, which may be more likely, the net effect of the amendment was to remove the solvency test based on meeting liabilities as they fell due. As discussed above, there was no need for such an event of default in the context of a wholly-owned subsidiary relationship. It is therefore questionable whether the removal of the insolvency representation had any real practical significance from which it would be possible to draw an inference.

358 Third, while USSC may not have been solvent on a book value basis in July 2012, there is no evidence to suggest that USS considered that USSC was insolvent on a market value basis at that time, which is the relevant issue both as a practical matter as well as a legal matter.

359 I turn then to the remaining financial performance considerations upon which the Objecting Parties say that the Court should infer an absence of an expectation of repayment of the Revolver Loan on the part of USS in 2012. With hindsight, these considerations point in the direction of continuing financial problems of USSC which were identified in the autumn of 2013. With the benefit of that hindsight, it is also clear that USS had very lax controls over the provision of additional cash to USSC from 2010 until late October 2013 and perhaps poor planning processes. In practice, USSC's requests, as set out in its rolling thirteen-week cash forecasts, appear to have been satisfied on a regular basis without close scrutiny by the USS treasury department.

360 However, such evidence, considered collectively with the other considerations relied upon by the Objecting Parties, is not sufficient to establish that USS actually expected that USSC would be unable to repay with interest the advances in 2012. The evidence is more consistent with a USS expectation that funding additional working capital in 2012 was appropriate given an anticipated improvement in the steel market, with a concomitant ability of USSC to repay such advances under the Revolver Loan as USSC returned to profitability.

361 The advances under the Revolver Loan funded USSC with a view to increasing its working capital to take advantage of more favourable steel markets that were expected at the time. As described above, there were mini-cycles in each of 2010, 2011 and 2012. In each case, USS misread these mini-cycles as the start of a more broad-based improvement that did not occur. In the case of these advances, the evidence indicates a misplaced belief that the performance of USSC would improve in 2012 and 2013. There is, however, no evidence before the Court which suggests that USS did not hold these views. Nor is there any evidence that such views were unreasonable at the time.

362 The Objecting Parties also raise the issue that the outstanding principal amount of the Revolver Loan was reduced from slightly in excess of U.S. $500,000,000 to the amount of U.S. $116,969,996 during 2013 pursuant to the "de-leveraging" exercise that was funded by equity injections from USS. They suggest that the source of funds is a factor indicating that the Revolver Loan was, in fact, an equity injection. There are three difficulties with this argument.

363 First, USS had a legitimate business purpose in reducing the outstanding amount of the Revolver Loan that was not connected in any way to its expectation regarding the ability of USSC to repay the Revolver Loan. The "de-leveraging" exercise was undertaken to remove foreign currency fluctuations from the USSC financial statements and, thereby, to address an unnecessary complication in the USS consolidated financial statements.

364 Second, in any event, I do not see any necessary connection between the use of the equity injections to reduce the outstanding balance of the Revolver Loan and the characterization of the remaining outstanding balance of the Loan. It may be that the use of equity injections reflected the fact that, in the course of 2013, USS concluded that USSC was no longer likely to be able to repay an amount of the Revolver Loan equal to the amount repaid by the equity injections. However, any determination to that effect would require evidence regarding the options available to USS to address the currency fluctuation issue, including the feasibility of conversion of such advances into another debt instrument rather than equity. Such evidence was not before the Court. In addition and in any event, the issue for the Court is whether USS expected repayment of an amount of the Revolver Loan equal to the remaining balance, being the First Tranche Indebtedness. The "de-leveraging" exercise does not demonstrate that USS also concluded that USSC would not be able to repay the amount of the Revolver Loan that it determined to leave outstanding.

365 Third, there is a significant element of hindsight to this particular argument. The advances comprising the First Tranche Indebtedness were fully advanced before a decision to undertake the "de-leveraging" exercise was taken. In the absence of any documentary evidence of USS' decision-making in 2012, it is not possible to establish that the USS decision to convert a portion of the Revolver Loan to equity in 2013 reflected a determination made earlier in 2012 at the time of the advances under the Loan regarding the ability of USSC to repay such advances. More generally, there is no evidence that demonstrates that the use of equity injections to repay a portion or all of the Revolver Loan was contemplated at any time prior to late January 2013.

366 Accordingly, I do not see any demonstrable connection between the use of the equity injections to pay down the Revolver Loan and the expectation of USS regarding repayment with interest of the Loan when the Revolver Loan was established or when the advances comprising the First Tranche Indebtedness were made in 2012.

367 Lastly, as mentioned, the Province argues that, in respect of the Revolver Loan, USS advanced monies to USSC as an operating division based on anticipated benefits to the overall USS business and without any expectation of the payment of interest or the repayment of principal of the advances. On this view, USS provided monies to USSC that would not earn interest or be repaid because it would earn sufficient additional profits elsewhere in the organization to justify the increased equity investment in USSC.

368 While such a possibility cannot be wholly discounted, the evidence for such a conclusion is lacking, apart from the absence of any credit analysis by USS before establishing the Revolver Loan in 2010, upon which the Province relies. There is no evidence that the losses that USSC generated were compensated for by profits elsewhere within the USS companies between 2010 and 2012. Moreover, there also is no evidence that, by 2010, the synergies envisaged at the time of the Acquisition outside of USSC were being realized within the USS business. As discussed above, the evidence only goes as far as demonstrating lax controls and perhaps a poor planning process. Such evidence is insufficient to demonstrate an absence of an expectation of repayment with interest of the advances under the Term Loan.

369 Based on the foregoing, I therefore find that the evidence demonstrates, on a balance of probabilities, that USS had an expectation of repayment with interest of the advances comprising the First Tranche Indebtedness at the time such advances were made.

370 I turn then to the evidence regarding the reasonableness of such expectation.

371 In this regard, the principal argument of the Objecting Parties is that USSC could not have obtained an operating loan from a third-party lender on the terms and conditions of the Revolver Loan. They argue that this fact demonstrates that the First Tranche Indebtedness was in substance an equity injection.

372 There is no doubt that a third-party lender would not have made an operating line of credit available on the terms and conditions of the Revolver Loan. The Hall Report opines that a third-party lender would not have granted an unsecured credit facility in 2010 given the circumstances that USSC was unprofitable, was experiencing negative EBITDA, had a net worth deficit on a book value basis, and had an outstanding balance under the Term Loan of approximately $1.6 billion. On the other hand, there is no evidence before the Court that would support a conclusion that secured financing would not have been available on viable terms from an external source other than a third-party lender. Neither Mr. Hall nor Mr. Finnerty expressed any opinion on this matter.

373 The more difficult question is whether any external financing would have been available given the amount outstanding under the Term Loan in 2012, that is, whether the total debt capacity of USSC would have been exceeded by the addition of a secured operating line. If it could be demonstrated that such financing would not have been available, a court could find that it was unreasonable to expect repayment of the advances of the First Tranche Indebtedness, being Claim #10, when they were made.

374 However, there is no capital markets evidence before the Court that addresses this issue directly.

375 The limited financial evidence referred to above is not sufficient to support any inference regarding the debt capacity of USSC at such time as it is limited to the availability of an unsecured revolver loan from a third-party lender. As the Objecting Parties bear the onus of proof, there is, therefore, no basis for a conclusion that USS' expectation of repayment was unreasonable on the basis that USSC lacked the aggregate debt capacity in 2012 to establish a revolving loan facility in the amount of the Revolver Loan.

376 Based on the foregoing, I conclude that USS had a reasonable expectation of repayment with interest of the advances constituting the First Tranche Indebtedness at the time such advances were made. I therefore also conclude that the unsecured Claim in respect of the Term Loan, being Claim #10, constitutes a debt claim rather than an "equity claim" for the purpose of this CCAA proceeding.

The Second Tranche Indebtedness

377 As set out above, Credit Corp advanced loans to USSC under the Revolver Loan totaling U.S. $71 million after the execution of the Third Revolver Amendment and the October Security Agreement on or about October 30, 2013. These advances were outstanding at the Filing Date. USS did not make any equity injection after October 30, 2013. As noted above, USSC acknowledges that USSC was insolvent on a balance sheet basis as of October 31, 2013, by which it is understood that USSC's

liabilities exceeded the fair market value of its assets as of that date. The Objecting Parties argue that the Second Tranche Indebtedness was also an equity contribution.

378 For clarity, I have approached the issue of characterization of the Second Tranche Indebtedness on the basis that such Indebtedness is secured by the security constituted by the October Security Agreement. Because USS required such security before advancing the Second Tranche Indebtedness, it is not realistic to address the characterization of such Indebtedness independently of such security. Accordingly, no conclusion is reached in these Reasons on the characterization of such Indebtedness to the extent that such security may be held to be void or unenforceable.

379 I find the evidence supports the conclusion that USS expected to be repaid the Second Tranche Indebtedness as advanced under the Revolver Loan for the following reasons.

380 First, there can be little doubt that USS expected to be repaid the advances made after October 30, 2013 with interest given the security over all the assets of USSC provided by the October Security Agreement. The existence of security for the Second Tranche Indebtedness overwhelms any argument that could be made for an absence of any expectation of repayment with interest based on the general considerations relied upon to seek to characterize the Term Loan and the First Tranche Indebtedness as capital contributions. The existence of security also precludes an argument based on the financial status of USSC at the time the advances comprising the Second Tranche Indebtedness were made.

381 Second, the principal argument of the Objecting Parties is that USS was legally and practically obligated to continue funding USSC. The Objecting Parties say that, if USS had not funded through the Revolver Loan, it would have had to fund the same amounts by equity injections. They argue that therefore the Revolver Loan was effectively an equity contribution. There are two difficulties with this argument.

382 First, I find that USS was not legally obligated to continue funding USSC under the Revolver Loan Agreement for the following reasons.

383 The Objecting Parties submit that, as of October 31, 2013, USS was legally obligated to continue to make all advances requested by USSC up to the limit of the availability under the Revolver Loan Agreement, being U.S. $600 million. This position is based on the contractual interpretation set out in the Di Massa Report of the "unable to meet debts" event of default in section 11c of the Revolver Loan Agreement as of October 30, 2007.

384 However, I have concluded above that the "unable to meet debts" event of default constituted a balance sheet insolvency event of default in the Revolver Loan Agreement. There is no dispute that USSC was insolvent on a balance sheet basis in October 2013. Accordingly, on this interpretation of the Revolver Loan Agreement, an event of default had occurred under the "unable to meet debts" event of default in the Agreement entitling USS to refuse to advance further funds to USSC thereunder.

385 In addition, even assuming that USS was obligated practically to ensure financing for USSC, I do not think it is correct to say that USS was obligated to provide that financing by equity injections. This argument assumes that secured financing was not available from external sources on a viable basis in the amount of the Second Tranche Indebtedness. However, there is no reason to think that a revolving loan on a secured basis in the amount advanced during the remainder of 2013, being approximately $71 million, would not have been available to USS, although admittedly on terms and conditions which would have differed from those of the Revolver Loan.

386 I note that the Objecting Parties acknowledged at the trial that, but for the foregoing argument, they would have no compelling argument for characterization of the Second Tranche Indebtedness as a capital contribution. In particular, they do not raise any argument to the effect that any expectation of USS of repayment of the Second Tranche Indebtedness as secured debt was unreasonable. The principal issue raised by the Objecting Parties in respect of the Second Tranche Indebtedness is the validity or enforceability of the security for such Indebtedness constituted by the October Security Agreement, which is discussed below.

387 Based on the foregoing, I conclude that USS had a reasonable expectation of repayment with interest of the advances comprising the Second Tranche Indebtedness at the time such advances were made.

The Validity of the Security for the Second Tranche Indebtedness

388 The Objecting Parties submit that the security for the USS Secured Claims (being, collectively, Claims # 11, 11(a), 11(b), and 11(c)) should be invalidated. They make two principal arguments: (1) that the October Security Agreement and the November Security Agreement are unenforceable for lack of consideration at the time that they were executed and delivered by USSC; and (2) that the October Security Agreement and the November Security Agreement are void as constituting a fraudulent preference for the purposes of section 95(1)(b) of the BIA.

389 In this section, I will address these issues in respect of the security for the Second Tranche Indebtedness, being the October Security Agreement. The security for the Remaining USS Secured Claims will be addressed in the last section of these Reasons.

Alleged Unenforceability of the October Security Agreement

390 The Province and the Union argue that the October Security Agreement is unenforceable due to a lack of consideration at the time that it was executed and delivered by USSC and submit that, accordingly, the security constituted by such Agreement is invalid. On this basis, they argue that USS Claim #11, being the Second Tranche Indebtedness, should be declared to be an unsecured claim.

391 USS says consideration was given for the October Security Agreement in the form of further advances under the Revolver Loan which would not have been granted without the provision of security for such advances, as referenced in the recital in the October Security Agreement cited above.

392 The position of the Objecting Parties raises the following issues pertaining to the validity of security:

1. Is consideration for the October Security Agreement necessary for an enforceable security interest?

2. If so, did USS give consideration for the October Security Agreement in the form of an agreement to advance further funds under the Revolver Loan?

3. Alternatively, did USS give consideration for the October Security Agreement in the form of a forbearance or a waiver in respect of USS' rights to declare a default or take enforcement proceedings pursuant to the Revolver Loan Agreement or otherwise?

393 I do not accept the position of the Objecting Parties that the October Security Agreement is unenforceable for want of consideration for the following reasons, which address each of these questions in turn.

394 First, I do not think consideration is required for a grant of a security interest to be effective, although it will not be enforceable until such time as an obligation arises in favour of the grantee that is secured by the security interest. This result is a consequence of the fact that security is essentially a proprietary right. Consideration is not required to effect a pledge, or a charge on property. While a security interest is a statutory creation, I see nothing in the *Personal Property Security Act*, R.S.O. 1990, c. P.10 (the "PPSA") that imposes a requirement for consideration as a condition of the effectiveness of a grant of a security interest.

395 The Objecting Parties say that a requirement for consideration is found in the statutory provisions of the PPSA that require a security agreement between the parties. Given that any agreement requires consideration in favour of a party to the agreement to be enforceable against such party, the Objecting Parties say it necessarily follows that consideration is required for a party to enforce the grant of a security interest in its favour in a security agreement. I acknowledge that, in the absence of consideration, the other covenants in favour of a grantee of a security interest in a security agreement may not be enforceable.

That is, however, a different issue. In such event, the rights of the grantee would be limited to its statutory rights under the PPSA, but the grant of the security interest would still be effective.

396 Consistent with this approach, the PPSA expressly distinguishes between a security agreement and a security interest. A "security agreement" is defined in section 1(1) of the PPSA as "an agreement that creates or provides for a security interest and includes a document evidencing a security interest". I see no reason why a "document evidencing a security interest" cannot include a document or instrument containing a unilateral grant of a security interest by a grantor in favour of a grantee. Such a grant would be effective as between the parties regardless of whether consideration was given, provided the grantee could demonstrate that the grantor intended it to be delivered. It would also be effective in respect of the rights of third parties, subject to the other requirements of the PPSA regarding rights in the collateral and attachment. It is the extension of credit, and thereby the creation of an obligation in favour of the grantee that is secured by the security interest, that makes the security interest enforceable.

397 Second, if consideration is required for the security interest granted in the October Security Agreement to be effective, I think this requirement was satisfied in three separate ways.

398 First, the October Security Agreement recites that consideration was given, the receipt and sufficiency of which is acknowledged by both parties to the Agreement. It is an elementary principle that courts will not enter into an inquiry as to the adequacy of consideration: see John D. McCamus, *The Law of Contracts*, (Toronto: Irwin Law, 2005), at p. 222.

399 Second, as a related matter, as stated above, the third recital to the October Security Agreement recites, in effect, that Credit Corp required the provision of security as a condition of continued advances under the Revolver Loan Agreement. This recital is consistent with the Court's conclusion above that an event of default had occurred under the Revolver Loan Agreement entitling Credit Corp to refuse to advance further monies under the Revolver Loan. On this basis, USS was therefore in a position to provide consideration in the form of a commitment to advance further funds under the Revolver Loan Agreement. Accordingly, the commitment to advance further funds on the part of Credit Corp referred to in the third recital accurately reflected the existence of consideration for the purposes of the October Security Agreement.

400 Third, I am also of the opinion that any lack of consideration for the October Security Agreement was cured by the actual advances of monies under the Revolver Loan Agreement comprising the Second Tranche Indebtedness. If the execution of the October Security Agreement and the advance of monies had occurred concurrently, there would have been no issue regarding a lack of consideration. The advance of monies itself would have satisfied any requirement for consideration under the October Security Agreement. In other words, under such circumstances, it would have been unreasonable, and unnecessary, to require demonstration of an intermediate commitment to advance further funds. The result should not change merely because there was a period of time between the execution of the October Security Agreement and the subsequent advance of monies under the Revolver Loan. The significance of the lapse of time is that the security interest was not enforceable, in the sense that the security interest did not secure any outstanding obligation and therefore could be enforced, until such time as an advance occurred under the Revolver Loan. It did not, however, render the October Security Agreement void for lack of consideration.

401 The Objecting Parties raise three arguments to the effect that USS did not give any consideration, even if an event of default had arisen under the Revolver Loan Agreement which would otherwise have permitted USS to refuse to advance further funds under the Revolver Loan Agreement.

402 First, the Objecting Parties say that, notwithstanding the occurrence of an event of default, USS had waived its right to assert such an event of default by advancing funds prior to January 2013. They say this course of conduct constituted a waiver of USS' right to assert such an event of default in October 2013 or of USS' right to use the event of default to deny further advances under the Revolver Loan at that time.

403 This argument is rejected for three reasons. First, as a practical matter, the last advance which could have given rise to such a waiver took place in early January 2013. There is no evidence that USS knew that USSC was insolvent, and therefore that an event of default had occurred, at or prior to the time of any such advances. Second, as a legal matter, the language of

the Revolver Loan Agreement excluded the operation of a waiver in October 2013 based on previous conduct on two grounds. The provisions of section 7 of the Revolver Loan Agreement require that, to be effective, any waiver must be in writing, which would exclude entirely the possibility of an unwritten waiver based on a course of conduct. In addition, section 7 expressly negates the operation of a waiver based on the granting of a previous waiver. Third, in any event, as a practical matter, there can be no doubt that, as between USS and USSC, USSC would have understood that no course of conduct by USS could have given rise to a waiver of USS' rights to determine the availability of funding under the Revolver Loan Agreement, as described above.

404 Second, the Objecting Parties submit that USSC did not, in fact, provide consideration in the form of a commitment to advance further funds under the Revolver Loan. They base this argument on the fact that McQuade testified that he was never expressly advised by any USS representative that USS would refrain from advancing funds unless the October Security Agreement was signed. They also rely upon the fact that USS did not declare an event of default in October 2013.

405 I do not accept this argument for the following reasons. By acceding to USS' position with full knowledge that USS was taking the position that it was entitled to withhold future advances, USSC must be taken to have accepted USS' legal position. In this regard, it is clear that McQuade understood that execution of the October Security Agreement was a condition of the further advance of funds to USSC at the time he signed the Third Revolver Amendment and the October Security Agreement, notwithstanding the absence of any direct conversation on the matter with any USS representative. Further, McQuade's determination that execution of the October Security Agreement was in the best interests of USSC was expressly made on the basis of his understanding that USSC needed the advances to continue to meet its obligations and that USSC would only receive the further advances if it consented to the security.

406 Accordingly, while McQuade says he believed that USS was obligated to fund under the Revolver Loan Agreement up to the limit of availability, he also knew that USS was taking the position that it was entitled to withhold funding under the Agreement until it received security for any further advances. McQuade did not challenge this legal position on behalf of USSC. Instead, USSC agreed to provide the security. In these circumstances, it was not necessary for USS to declare an event of default as a formal matter to assert its legal position. More importantly, in the absence of a determination at the time regarding the right of USS to withhold further advances, the decision of USSC to provide security must constitute acceptance of such legal right of USS.

407 Lastly, the Objecting Parties say that, as a practical matter, USS was never going to stop advancing funds in October 2013 for reasons relating to the operational impact on USS and USSC as well as the potential triggering of cross-default provisions on the USS public debt. Whether or not this is true, I do not think it demonstrates an absence of legal consideration for the following reasons. First, the absence of a legal obligation to advance further funds is by itself sufficient to give rise to consideration. Second, the grant of security by USSC forecloses this argument as it become entirely speculative. The position of the Objecting Parties requires the Court to make a determination that, in the hypothetical situation in which USSC refused to provide the required security, USS would necessarily have advanced the monies comprising the Second Tranche Indebtedness. I do not think the Court could make such a determination on the limited evidence before it. Among other things, in order to make such a determination, the Court would need to address the other options that would have been available to USS in such circumstances, including a filing under the CCAA and DIP financing, which was raised at the time by the financial advisors to USS.Based on the foregoing, I do not accept the position of the Objecting Parties that the security constituted by the October Security Agreement is unenforceable for lack of consideration.

408 For completeness, USS also argues that it gave consideration in the form of a forbearance from declaring a default, accelerating the Revolver Loan or instituting insolvency proceedings. These arguments also turn, at least in part, on the Court's acceptance of the contractual interpretation of the "unable to meet debts" event of default proposed in the Di Massa Report. Given the determination herein regarding consideration for the October Security Agreement, it is not necessary to address these potential additional sources of consideration, and I therefore decline to make a finding on these issues.

Alleged Fraudulent Preference

409 In the alternative, if the October Security Agreement is held to be enforceable, the Objecting Parties submit that the Agreement constituted a fraudulent preference for the purpose of section 95(1)(b) of the BIA, as incorporated into the CCAA by the provisions of section 36.1 thereof. It is not disputed that the Objecting Parties bear the onus of proof in respect of this Objection.

410 The provisions of section 95 of the BIA have been set out above. To succeed in this proceeding, the Objecting Parties must demonstrate: (1) a non-arm's length relationship between USSC and USS at the time of entering into the October Security Agreement; (2) that USSC was insolvent at the time of entering into the October Security Agreement; (3) that the October Security Agreement was entered into within twelve months of the Filing Date; and (4) that the October Security Agreement had the effect of giving USS, or more particularly Credit Corp as the lender under the Revolver Loan, a preference over other unsecured creditors at the date of delivery of October Security Agreement. There is no dispute that Credit Corp was not dealing at arm's length with USSC, that USSC was insolvent on and after October 30, 2013, and that the grant of security in favour of Credit Corp occurred less than one year prior to the Filing Date.

411 USS argues, however, that the granting of security in the October Security Agreement did not give rise to a preference over another creditor entitling the Objecting Parties to relief under section 95 of the BIA. It bases this argument on the fact that the security in favour of Credit Corp is only being asserted in respect of advances made under the Revolver Loan after October 30, 2013, that is, in respect of the Second Tranche Indebtedness. USS bases its argument on the principle that there is no preference under section 95 if, and to the extent that, security is granted by a debtor company in respect of fresh advances which are used in the ongoing operations of the debtor company: see *McAsphalt Industries Ltd. v. Six Paws Investments Ltd.*, [1995] O.J. No. 2450 (Ont. C.A.), at para. 19.

412 The Objecting Parties make two submissions.

413 The principal submission of the Objecting Parties is that the October Security Agreement constituted a fraudulent preference because Credit Corp obtained security in circumstances in which it was obligated to advance monies under the Revolver Loan Agreement. They say that, if Credit Corp had an unqualified obligation to advance monies under the Revolver Loan as and when requested by USSC up to such limit, delivery of the October Security Agreement would have constituted a fraudulent preference on the basis that delivery of security in such circumstances would be similar to providing security for past debts. This argument turns on the question of the extent to which Credit Corp was legally obligated to advance funds to USSC up to the limit of availability under the Revolver Loan Agreement as and when requested by USSC. It is a novel argument that could only arise, as a practical matter, in a non-arm's length situation.

414 I have reservations regarding the merits of this argument as a matter of law. However, it is not necessary to determine the issue the alleged fraudulent preference on this basis. I have concluded above, in the context of the determination that USS provided consideration for the grant of the October Security Agreement, that Credit Corp was not obligated to advance further funds under the Revolver Loan Agreement. On this basis, this argument of the Objecting Parties cannot succeed.

415 The alternative argument of the Objecting Parties is that the security in favour of Credit Corp under the October Security Agreement must fail in its entirety to the extent that the October Security Agreement purports to secure a pre-existing debt. They rely on *Fulton (No. 2), Re*, [1926] O.J. No. 115 (Ont. C.A.), at para. 7, for this proposition.

416 I accept that the granting of security for existing or past indebtedness constitutes a preference for the purpose of section 95 of the BIA. However, USS is not asserting a secured claim in respect of any such obligations in this proceeding, notwithstanding that the definition of "Secured Obligations" in the October Security Agreement extends to pre-existing indebtedness.

417 In such circumstances, the Court of Appeal made it clear in *McAsphalt*, at para. 19, that "a security may be bad in respect to some advances, but enforceable in respect to others, thus protecting payments made by an insolvent company which would otherwise be preferential." In that case, the evidence indicated that the fresh advances at issue were used in the on-going operations of the company. On that basis, the Court of Appeal held that the repayment of the advances did not constitute a fraudulent preference.

418 In my opinion, the same principle operates in the present circumstances. There is no dispute that the advances comprising the Second Tranche Indebtedness were used in the on-going operations of USSC's business. The advances under the Revolver Loan after October 30, 2013 therefore benefitted the unsecured creditors as of the date of such advances. This factual context is sufficient under the case law to exclude a finding of a fraudulent preference under section 36.1 of the CCAA and section 95 of the BIA.

419 The decision in *Fulton* does not assist the Objecting Parties for the reason that the circumstances in *Fulton* were qualitatively different from the present circumstances. *Fulton* involved advances under a chattel mortgage totaling $3,800, of which $2,200 represented a new advance after the date of the chattel mortgage. The mortgage purported to secure the existing obligation as well as the new advance. The security was declared invalid in respect of both advances. However, there was a significant issue with the new advance that explains the result in that decision. The Court of Appeal expressly held that there was "no doubt that the $2,200 did not in fact increase the assets of the estate in any tangible way." In fact, the court concluded that there was no evidence regarding what became of the $2,200. Accordingly, the security failed in its entirety because the new advance could not be demonstrated to have been used in the operations of the debtor, not because the mortgage also purported to secure a past advance.

420 Based on the foregoing, I conclude that there is no basis for a finding that the delivery of the October Security Agreement constituted the grant of a fraudulent preference by USSC in favour of Credit Corp insofar as the security constituted thereby secured the Second Tranche Indebtedness.

Conclusion Regarding the Second Tranche Indebtedness

421 Based on the foregoing, I conclude that Claim #11, being the claim in respect of the Second Tranche Indebtedness under the Revolver Loan, constitutes a debt claim, rather than an "equity claim", which is a Secured Claim for the purpose of this CCAA proceeding.

Remaining USS Secured Claims

422 As mentioned, the Objecting Parties also submit that the security for the Remaining USS Claims (being Claims #11(a), 11(b) and 11(c)), should be invalidated on the grounds that the security for such Claims, being the November Security Agreement, is either unenforceable as a matter of contract law for lack of consideration at the time it was executed and delivered by USSC or void as constituting a fraudulent preference for the purposes of section 95(1)(b) of the BIA. The Objecting Parties do not dispute the quantum of any of these three Claims nor do they suggest that these Claims are "equity claims". For completeness, the Objecting Parties also submitted that the November Security Agreement cannot be an enforceable obligation to the extent that the Court were to find that the October Security Agreement was unenforceable. Given the determination above, it is not necessary to address this submission.

423 I propose to address the issues pertaining to the Remaining USS Secured Claims in the following order. First, I will describe the nature of the November Security Agreement. Then I will address the issues pertaining to Claim #11(c) (Intercompany Goods & Services), which relates to the provision of goods and services by USS to USSC prior to the Initial Order. Lastly, I will address the issues pertaining to Claim #11(a) (the Cliffs Transaction) and Claim #11(b) (Credit Support Payments), which involve different considerations, as these claims arose after the Filing Date.

The November Security Agreement

424 On November 12, 2013, Credit Corp, USSC, USS, United States Steel International, Inc. and SHC executed a further amendment and restatement of the October Security Agreement that provided security to each of USS, United States Steel International, Inc. and SHC (collectively, the "USS Affiliates") in respect of the provision of intercompany goods and services on credit by any of them to USSC (as so amended, the "November Security Agreement") in addition to, and alongside, the security already provided to Credit Corp in respect of advances under the Revolver Loan pursuant to the October Security Agreement.

425 The November Security Agreement contains recitals to the effect that each USS Affiliate sells "Goods" to USSC pursuant to arrangements and agreements, defined for such purposes as the "Sales Agreements", as between the USS Affiliates and USSC, that the USS Affiliates have determined that, in light of USSC's financial position and credit worthiness, they "no longer wish to sell Goods to the Debtor on terms other than cash in advance or cash on delivery, unless the Debtor provides acceptable financial accommodations" and that, "upon the Debtor's request, the [USS Affiliates] are willing to continue to sell Goods to the Debtor on credit...provided that the Debtor secures its obligations to pay for such Goods pursuant to the terms of the [November Security Agreement]". I would note that the definition of "Goods" for purposes of the November Security Agreement is "materials, goods and other products (including inventory and raw materials)".

426 The extension of security to the USS Affiliates was implemented by adding the USS Affiliates as parties to the October Security Agreement, providing that such parties were "Secured Parties" for purposes of such Agreement, and amending the definition of "Secured Obligations" to read as follows:

> ...all obligations, duties, indebtedness and liabilities of the Debtor from time to time owing by the Debtor to any Secured Party including, without limitation, obligations, duties, indebtedness and liabilities arising under, or in connection with: (i) the Loan Agreement; (ii) any amendment or restatement of the Loan Agreement, including any such amendment or restatement which increases or decreases the maximum amount of Loans and other obligations that may be made by Secured Party to Debtor thereunder; (iii) this Agreement; (iv) all obligations arising out of, in connection with or relating to the Sales Agreements or the sale of Goods by any USS Seller to the Debtor at any time and from time to time; and (v) any other document made, delivered or given in connection with any of the foregoing; in each case whether now existing or hereafter arising, whether evidenced by a note or other writing, whether allowed in any bankruptcy, insolvency, receivership or other similar proceedings, whether arising from an extension of credit, issuance of a letter of credit, acceptance, loan, guarantee, indemnification or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several.

427 By virtue of the definition of "Secured Obligations", therefore, all obligations owing by USSC to Credit Corp under the Revolver Loan Agreement, or to any of the USS Affiliates in respect of the sale of Goods, were entitled to the benefit of the general security interest granted by USSC in the Security Agreement, as amended and restated by the October Agreement and the November Security Agreement.

428 I would also note that the first advance comprising the Second Tranche Indebtedness was made at the time that the October Security Agreement was in force and that the two later advances were apparently made after the November Security Agreement came into force. However, it is not disputed that the same security interest was continued under the November Security Agreement. I would also note that the parties addressed the validity of the security for the Second Tranche Indebtedness, and the existence of a fraudulent preference in respect of the granting of security for the Second Tranche Indebtedness, in the context of the October Security Agreement rather than the November Security Agreement. As the Objecting Parties have not raised any additional issues in respect of the Second Tranche Indebtedness pertaining to the November Security Agreement, I have proceeded on the basis that such Indebtedness is secured thereunder the extent that the security for the Second Tranche Indebtedness under the October Security Agreement is not invalidated for one of the reasons discussed above.

The Intercompany Trade Claim - Claim #11 (c)

429 As mentioned, the Objecting Parties argue that the security for this Claim is either unenforceable for want of consideration from the USS Affiliates with respect to the November Security Agreement or void on the basis that the grant of the November Security Agreement constituted a fraudulent preference. I will address each issue in turn. I note that there is no issue regarding the fair market value of the goods and services relating to this Claim.

Alleged Unenforceability of the November Security Agreement

430 The principles regarding the requirement for consideration in respect of the grant of a security interest in a security agreement have been addressed above in respect of the October Security Agreement. I do not propose to repeat that discussion in this section. As applied to the November Security Agreement, I reach the following conclusions.

431 First, for the reasons set out above, I do not think that consideration is required for the grant of the security interest in the November Security Agreement.

432 Further, to the extent that consideration is required to enforce the security constituted by the November Security Agreement, I find that consideration was given for the November Security Agreement, as verified in the recitals in the Agreement and acknowledged by all the parties. In particular, the recitals to the November Security Agreement reflect the grant of consideration from the USS Affiliates in the form of a commitment to continue to provide the goods and services that are the subject of this Claim. The position of the USS Affiliates was made clear to McQuade before he executed the November Security Agreement on behalf of USSC. There is no evidence before the Court that would indicate that the USS Affiliates lacked the legal right to refuse to provide such goods and services if USSC had refused to provide the security. Insofar as the Objecting Parties suggest that the USS Affiliates were not going to stop providing these services, as a practical matter, I consider that the reasoning and conclusions reached in respect of the comparable argument made regarding the security for the Second Tranche Indebtedness is equally applicable in this context.

433 In addition, any lack of consideration was cured by the delivery and provision by the USS Affiliates of the goods and services in respect of Claim #11(c). I note that such delivery is the substantive equivalent of an advance of funds to be used in the operations of USSC to acquire such goods and services. If USS had advanced the purchase price of such goods and services to USSC under the Revolver Loan for the purpose of payment of such obligations, such advances would have been secured pursuant to the October Security Agreement based on the conclusion reached above. There is no principled reason why the result would differ because the USS Affiliates provided goods and services rather than advanced funds for such purposes.

434 Accordingly, I conclude that the November Security Agreement is not unenforceable in respect of the amounts constituting Claim #11(c) for lack of consideration from the USS Affiliates to USSC.

Alleged Fraudulent Preference

435 The principles regarding the operation of section 95(1)(b) of the BIA have also been set out above. As discussed above, there is no evidence before the Court that the USS Affiliates were legally obligated to continue to provide the goods and services that are the basis for this Claim. The security constituted by the November Security Agreement was given in respect of a the provision of additional goods and services that would not otherwise have been provided to USSC. Accordingly, for the reasons set out above, I conclude that the grant of the security under by the November Security Agreement in favour of the USS Affiliates did not constitute a fraudulent preference in their favour for the purposes of section 95.

436 Further, as stated above, the delivery and provision of the goods and services in respect of Claim #11(c) represents the substantive equivalent of a fresh advance of funds to USSC to be used in the operation of its business. On this basis, the grant of security in respect of the delivery and provision of such goods and services did not prejudice the unsecured creditors of USSC as of the date of delivery of the November Security Agreement or the date of the delivery or provision of such goods and services and does not constitute a fraudulent preference.

437 Based on the foregoing, I conclude there is no basis for a finding that the delivery of the November Security Agreement by the USS Affiliates in respect of Claim #11(c) constituted the grant of a fraudulent preference by USSC in favour of such parties.

The Cliffs Transaction Claim and the Credit Support Payments Claim — Claims #11(a) and #(b)

438 The claims for the Cliffs transaction and the credit support payments each arose after the Filing Date in the following circumstances.

439 USSC took delivery from Cliffs of the iron ore that is the subject of the Cliffs transaction prior to the Filing Date. However, USS was not in a position to sell the iron ore to USSC until it had paid Cliffs. Because USS did not pay for the iron ore until after the Filing Date, its claim against USSC for payment of the iron ore arose after the Filing Date.

440 USSC incurred the third-party obligations that are the basis of the credit support payments claim prior to the Filing Date but had not paid them as of that date. Because USS paid such claims pursuant to its guarantees in favour of such third parties after the Filing Date, its claim against USSC in respect of these payments also arose after the Filing Date.

441 I will address each of these claims in turn.

The Cliffs Transaction — Claim #11(a)

442 The Objecting Parties argue that the security for this Claim constituted by the November Security Agreement is either unenforceable or void as a fraudulent preference on the same grounds upon which they rely in respect of Claim #11(c). In addition, they argue that this claim is a pre-filing claim that is no different from all other trade creditor claims outstanding on the Filing Date. They argue that the effect of the November Security Agreement is to elevate improperly an unsecured pre-filing claim into a secured claim.

443 This Claim involves the sale of goods by USS to USSC and is therefore similar as a factual matter to the circumstances in Claim #11(c). I conclude that the principles that governed the determinations with respect to Claim #11(c) regarding the issues of consideration for the November Security Agreement and the alleged fraudulent preference are equally applicable in the present situation, with the following additional consideration which reinforces the conclusions therein.

444 In the case of this Claim, the Iron Ore Agreement specifically evidences fresh consideration for the grant of security pursuant to the November Security Agreement. While it is correct that USS was obligated to pay Cliffs under its agreement with Cliffs, as the Objecting Parties say, there is no evidence that USS was legally obligated to sell the iron ore to USSC once it acquired title to the ore. USS could have required that USSC deliver up possession of the iron ore to it. Instead, USS and USSC entered into a fresh agreement regarding the purchase by USSC of the iron ore at a time when USSC was independently represented. The Iron Ore Agreement provided that USSC's obligation to pay for such iron ore, when it arose, would be a "Secured Obligation" for purposes of the November Security Agreement, in return for USS' agreement effectively to sell USSC its interest in the iron ore and to pay Cliffs the purchase price of the ore on behalf of USSC.

445 Such circumstances are sufficient to satisfy any requirement for the demonstration of consideration for the grant of security pursuant to the November Security Agreement in respect of the purchase price obligation of USSC and to negate any fraudulent preference upon the grant of such security for such obligation.

446 I would add that, in the case of this claim, USSC expressly agreed to the secured treatment of the purchase price obligation prior to such obligation coming into existence. As such, the circumstances do not involve the transformation of a pre-filing unsecured claim into a post-filing secured claim.

The Credit Support Payments Claim — Claim #11(b)

447 As discussed above, USS paid these obligations pursuant to guarantees established in favour of the third-party creditors. It asserts Claim #11(b) against USSC pursuant to its rights of subrogation. USS submits that such rights of subrogation constitute "Secured Obligations" for the purposes of the November Security Agreement and, accordingly, rank ahead of all other trade creditors. If these credit support payments are secured, a consequence would be that the unsecured, pre-filing claims of the third party-creditors have become secured, post-filing claims of USS without any involvement of the Monitor or the Court pursuant to the provisions of section 10 of the Initial Order, which would otherwise govern the payment of pre-filing obligations.

448 The Objecting Parties argue that the security for this Claim constituted by the November Security Agreement is either unenforceable or void as a fraudulent preference on the same grounds upon which they rely in respect of Claims #11(a) and #11(c).

449 After a review of the documentation pertaining to this Claim, I think there is a threshold issue of whether the USS subrogation rights at issue qualify as "Secured Obligations" under the November Security Agreement. This issue was not, however, raised directly in the submissions of the parties. The parties should therefore be given an opportunity to make submissions regarding this threshold issue to the extent they wish to do so.

450 Accordingly, I do not propose to address the determination of the issues pertaining to this Claim at this time. If the parties are unable to agree on a schedule for submissions on the threshold issue, they should contact the Court to arrange a telephone case conference at their convenience.

Conclusions

451 he USS Claims referenced as Claims #1-8 inclusive in the Monitor's Third Report are not disputed in this proceeding and are therefore confirmed as unsecured Claims under the Claims Process Order. Based on the foregoing, the USS Claims referenced in such Report as Claims #9 and #10 are also confirmed as unsecured Claims under the Claims Process Order and Claims #11, #11(a) and #11(c) are confirmed as Secured Claims. The USS Claim referenced in the Report as Claim #11(b) remains to be determined.

Order accordingly.

2016 ONCA 662
Ontario Court of Appeal

U.S. Steel Canada Inc., Re

2016 CarswellOnt 14104, 2016 ONCA 662, [2016] O.J. No. 4688, 270 A.C.W.S. (3d) 471, 39 C.B.R. (6th) 173, 402 D.L.R. (4th) 450, 61 B.L.R. (5th) 1

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, As Amended

In the Matter of a Proposed Plan of Compromise or Arrangement with Respect to U.S. Steel Canada Inc.

George R. Strathy C.J.O., P. Lauwers, M.L. Benotto JJ.A.

Heard: March 17, 2016
Judgment: September 9, 2016
Docket: CA C61331

Counsel: Gordon Capern, Kristian Borg-Olivier, Denise Cooney for Appellant, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union
Andrew Hatnay, Barbara Walancik for SSPO and non-union retirees and active employees of U.S. Steel Canada Inc.
Tamryn Jacobson for Her Majesty the Queen in Right of Ontario and Superintendent of Financial Services (Ontario)
Michael E. Barrack, Jeff Galway, John Mather for Respondent, United States Steel Corporation
Sharon Kour for U.S. Steel Canada Inc.

Subject: Civil Practice and Procedure; Insolvency

Headnote

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — General principles — Jurisdiction — Court

Company was in Companies' Creditors Arrangement Act (CCAA) protection — Former employees of company claimed its American parent company ran company into insolvency to further its own interests — Former employees sought to have CCAA judge apply American legal doctrine of "equitable subordination" to subordinate parent company's claims to former employee's claims — CCAA judge held that he had no jurisdiction to apply doctrine of equitable subordination — Union appealed — Appeal dismissed — Nowhere in words of CCAA was there authority, express or implied, to apply doctrine of equitable subordination, nor did it fall within scheme of statute, which focused on implementation of plan of arrangement or compromise — Words "may make any order it considers appropriate in circumstances" in s. 11 of CCAA must be read as "may in furtherance of purposes of act make any order it considers appropriate in circumstances" — There was no support for concept that phrase "any order" in s. 11 provided at-large equitable jurisdiction to reorder priorities or to grant remedies as between creditors — Section 6(8) of CCAA effectively subordinates "equity claims", as defined, to claims of all other creditors — "Equitable subordination" is form of equitable relief to subordinate claim of creditor who has engaged in inequitable conduct, such claim was not "equity claim" as defined — There was no "gap" in legislative scheme to be filled by equitable subordination through exercise of discretion, common law, court's inherent jurisdiction or by equitable principles Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, s 11; Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, s 6.

Table of Authorities

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AEVO Co. v. D & A Macleod Co. (1991), 7 C.B.R. (3d) 33, 4 O.R. (3d) 368, 1991 CarswellOnt 206 (Ont. Bktcy.) — considered

ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp. (2008), 2008 ONCA 587, 2008 CarswellOnt 4811, 45 C.B.R. (5th) 163, 47 B.L.R. (4th) 123, (sub nom. *Metcalfe & Mansfield Alternative Investments II Corp., Re)* 296 D.L.R. (4th) 135, (sub nom. *Metcalfe & Mansfield Alternative Investments II Corp., Re)* 240 O.A.C. 245, (sub nom. *Metcalfe & Mansfield Alternative Investments II Corp., Re)* 92 O.R. (3d) 513 (Ont. C.A.) — referred to

Bell ExpressVu Ltd. Partnership v. Rex (2002), 2002 SCC 42, 2002 CarswellBC 851, 2002 CarswellBC 852, 100 B.C.L.R. (3d) 1, [2002] 5 W.W.R. 1, 212 D.L.R. (4th) 1, 287 N.R. 248, 18 C.P.R. (4th) 289, 166 B.C.A.C. 1, 271 W.A.C. 1, 93 C.R.R. (2d) 189, [2002] 2 S.C.R. 559, 2002 CSC 42 (S.C.C.) — considered

Canada Deposit Insurance Corp. v. Canadian Commercial Bank (1992), 5 Alta. L.R. (3d) 193, (sub nom. *Canada Deposit Insurance Corp. v. Canadian Commercial Bank (No. 3))* 131 A.R. 321, (sub nom. *Canada Deposit Insurance Corp. v. Canadian Commercial Bank (No. 3))* 25 W.A.C. 321, [1992] 3 S.C.R. 558, 16 C.B.R. (3d) 154, 7 B.L.R. (2d) 113, 97 D.L.R. (4th) 385, (sub nom. *Canada Deposit Insurance Corp. v. Canadian Commercial Bank (No. 3))* 143 N.R. 321, 1992 CarswellAlta 298, 1992 CarswellAlta 790, 16 C.B.R. (3d) 14 (S.C.C.) — referred to

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General Chemical Canada Ltd., Re (2006), 2006 CarswellOnt 4675, 22 C.B.R. (5th) 298, 53 C.C.P.B. 284, 23 C.E.L.R. (3d) 184 (Ont. S.C.J. [Commercial List]) — referred to

Housen v. Nikolaisen (2002), 2002 SCC 33, 2002 CarswellSask 178, 2002 CarswellSask 179, 286 N.R. 1, 10 C.C.L.T. (3d) 157, 211 D.L.R. (4th) 577, [2002] 7 W.W.R. 1, 219 Sask. R. 1, 272 W.A.C. 1, 30 M.P.L.R. (3d) 1, [2002] 2 S.C.R. 235, 2002 CSC 33 (S.C.C.) — referred to

I. Waxman & Sons Ltd., Re (2008), 2008 CarswellOnt 1245, 64 C.C.E.L. (3d) 233, 40 C.B.R. (5th) 307, 39 E.T.R. (3d) 49, 89 O.R. (3d) 427, 44 B.L.R. (4th) 295 (Ont. S.C.J. [Commercial List]) — followed

Indalex Ltd., Re (2013), 2013 SCC 6, 2013 CarswellOnt 733, 2013 CarswellOnt 734, D.T.E. 2013T-97, 96 C.B.R. (5th) 171, 354 D.L.R. (4th) 581, 20 P.P.S.A.C. (3d) 1, 439 N.R. 235, 301 O.A.C. 1, 8 B.L.R. (5th) 1, (sub nom. *Sun Indalex Finance LLC v. United Steelworkers)* [2013] 1 S.C.R. 271, 2 C.C.P.B. (2nd) 1 (S.C.C.) — referred to

Lloyd's Non-Marine Underwriters v. J.J. Lacey Insurance Ltd. (2009), 2009 NLTD 148, 2009 CarswellNfld 244, 58 C.B.R. (5th) 199, 78 C.C.L.I. (4th) 16, (sub nom. *J.J. Lacey Insurance Ltd. (Bankrupt), Re)* 291 Nfld. & P.E.I.R. 149, (sub nom. *J.J. Lacey Insurance Ltd. (Bankrupt), Re)* 898 A.P.R. 149 (N.L. T.D.) — followed

Mobile Steel Co., Re (1977), 563 F.2d 692 (U.S. C.A. 5th Cir.) — followed

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Olympia & York Developments Ltd. v. Royal Trust Co. (1993), 19 C.B.R. (3d) 1, 14 O.R. (3d) 1, 103 D.L.R. (4th) 129, 64 O.A.C. 324, 9 B.L.R. (2d) 221, 1993 CarswellOnt 200 (Ont. C.A.) — considered

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Sino-Forest Corp., Re (2012), 2012 ONCA 816, 2012 CarswellOnt 14701, 98 C.B.R. (5th) 20, 299 O.A.C. 107, 114 O.R. (3d) 304 (Ont. C.A.) — referred to

Stelco Inc., Re (2005), 2005 CarswellOnt 1188, 2 B.L.R. (4th) 238, 9 C.B.R. (5th) 135, 196 O.A.C. 142, 253 D.L.R. (4th) 109, 75 O.R. (3d) 5 (Ont. C.A.) — considered

Ted Leroy Trucking Ltd., Re (2010), 2010 SCC 60, 2010 CarswellBC 3419, 2010 CarswellBC 3420, 12 B.C.L.R. (5th) 1, (sub nom. *Century Services Inc. v. A.G. of Canada)* 2011 D.T.C. 5006 (Eng.), (sub nom. *Century Services Inc. v. A.G. of Canada)* 2011 G.T.C. 2006 (Eng.), [2011] 2 W.W.R. 383, 72 C.B.R. (5th) 170, 409 N.R. 201, (sub nom. *Ted LeRoy Trucking Ltd., Re)* 326 D.L.R. (4th) 577, (sub nom. *Century Services Inc. v. Canada (A.G.))* [2010] 3 S.C.R. 379, [2010] G.S.T.C. 186, (sub nom. *Leroy (Ted) Trucking Ltd., Re)* 296 B.C.A.C. 1, (sub nom. *Leroy (Ted) Trucking Ltd., Re)* 503 W.A.C. 1 (S.C.C.) — followed

U.S. Steel Canada Inc., Re (2016), 2016 ONSC 569, 2016 CarswellOnt 3816, 34 C.B.R. (6th) 226, 5 P.P.S.A.C. (4th) 157 (Ont. S.C.J.) — considered

Statutes considered:

Bankruptcy Code, 11 U.S.C.

s. 105(a) — considered

s. 510(c)(1) — referred to

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Generally — referred to

s. 38 — considered

s. 121 — considered

s. 121(1) — considered

s. 183 — considered

ss. 95-101 — referred to

Canada Business Corporations Act, R.S.C. 1985, c. C-44

s. 241 — considered

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Generally — referred to

Pt. I — referred to

Pt. II — referred to

Pt. III — referred to

s. 2(1) "claim" — considered

s. 2(1) "equity claim" — considered

s. 2(1) "equity interest" — considered

s. 6(8) — considered

s. 11 — considered

s. 11.02 [en. 2005, c. 47, s. 128] — considered

s. 11.8(8) [en. 1997, c. 12, s. 124] — considered

s. 19 — considered

s. 19(1) — considered

s. 20 — considered

s. 22 — considered

s. 22.1 [en. 2007, c. 36, s. 71] — considered

s. 36.1 [en. 2007, c. 36, s. 78] — considered

s. 36.1(1) [en. 2007, c. 36, s. 78] — considered

Winding-up and Restructuring Act, R.S.C. 1985, c. W-11

Generally — referred to

APPEAL by union of judgment finding that court had no jurisdiction to apply American doctrine of equitable subordination.

***George R. Strathy C.J.O.*:**

1 U.S. Steel Canada Inc. ("USSC") is in *CCAA* [1] protection. Its former employees claim that its American parent, United States Steel Corporation ("USS"), ran the company into insolvency to further its own interests. An issue arose in the court below as to whether the *CCAA* judge could apply an American legal doctrine called "equitable subordination" to subordinate USS's claims to the appellant's claims.

2 The *CCAA* judge held he had no jurisdiction to do so. For reasons different than the ones he gave, I agree, and would dismiss the appeal.

FACTUAL BACKGROUND

3 USS is one of the largest steel producers in North America. In 2007, it acquired Stelco, which was in *CCAA* protection at the time, and changed its name to USSC.

4 Seven years later, on September 16, 2014, USSC was again granted *CCAA* protection by order of the Superior Court of Justice (Commercial List).

5 The *CCAA* judge made a Claims Process Order on November 13, 2014, establishing a procedure for filing, reviewing and resolving creditors' claims against USSC.

6 The order set out a separate procedure for resolving claims of approximately $2.2 billion by USS against USSC. Most of the claims arose from USS's acquisition and reorganization of Stelco and from advances of working capital. Those claims were to be determined by the court, rather than by the Monitor.

7 USS filed its proofs of claims. The Monitor recommended they be approved and USS moved for court approval of the claims.

8 Notices of Objection were filed by four parties: (a) the Province of Ontario and the Superintendent of Financial Services in his capacity as administrator of the Pension Benefits Guarantee Fund; (b) the United Steelworkers, Locals 8782 and 1005; (c) Representative Counsel to the Non-USW Active Salaried Employees and Non-USW Salaried Retirees; and (d) Robert Milbourne, a former president of Stelco, and his wife, Sharon Milbourne, both of whom are beneficiaries of a pension agreement with USSC.

9 These objections overlapped to some extent. The *CCAA* judge had to develop a procedure to address the objections. He had to decide whether they should be dealt with within the *CCAA* process, outside it, or not at all.

10 The Province made two allegations. The first was that loans by USS to USSC should be characterized as shareholders' equity, because of the circumstances in which they were made. They should therefore be subordinated to all other claims pursuant to s. 6(8) of the CCAA [2] (the "Debt/Equity Objection"). Second, the Province argued that the security for the loans should be invalidated pursuant to provincial and federal fraudulent assignment and fraudulent preference legislation (the "Security Objection"). USS disputed both allegations, but was content to have the issues determined under the Claims Process Order.

11 The Union made objections similar to the Province's, but it added a third based on oppression and breach of fiduciary duty arising out of USS's conduct in relation to the Canadian plants, pensioners, pension plan members and beneficiaries (the "Conduct Objections").

12 The *CCAA* judge described the Conduct Objections as allegations that USS caused USSC to underperform, thereby requiring it to incur significant debt and to be unable to meet its pension obligations. The Union sought, among other things, an order subordinating the USS claims in whole or in part to its claims.

13 The Milbournes' objections were based on USS's alleged conduct and relied primarily on the doctrine of equitable subordination. They asked that the USS claims be dismissed entirely or subordinated to the claims of the other unsecured creditors.

14 The *CCAA* judge scheduled a motion to establish a litigation plan for USS's motion for approval of its claims against USSC. The parties agreed that the Security Objection and the Debt/Equity Objection could be determined pursuant to the Claims Process Order and within the *CCAA* proceedings. [3]

15 The primary disagreement concerned the procedure and timing for the determination of the other objections. The Union argued that the Conduct Objections should be resolved as part of the Claims Process Order and that an evidentiary record was required to do so. USS and USSC took the position that the Conduct Objections should be litigated outside the *CCAA* claims process.

16 The *CCAA* judge found that some of the claims of the Union and the Milbournes could be approached as third party claims against USS for oppression for the purpose of s. 241 of the Canada Business Corporations Act, R.S.C. 1985, c. C-44, and for breach of fiduciary duty. He found that neither the Claims Process Order nor the *CCAA* contemplated that such claims would be addressed by or would be relevant to a plan of arrangement or compromise under the *CCAA*. The third party claims fell outside the claims process unless specifically incorporated into the restructuring plan as approved by the parties or otherwise ordered.

17 The *CCAA*, he said at para. 65, "is directed towards the creation, approval and implementation of a plan of arrangement or compromise proposed between a debtor company and its secured and unsecured creditors". It did not contemplate incorporation of inter-creditor claims into any plan of arrangement or compromise or into the voting process in respect of any proposed plan.

18 He concluded, at para. 84, that under s. 11 the court had authority to order the remaining claims of the Union and the Milbournes, except the claim for equitable subordination, to be "determined by a process within the *CCAA* proceedings, other than the process contemplated by the Claims Process Order, if the Court is of the opinion that, on balance, such action is likely to further the remedial purpose of the *CCAA*." He held that those claims could be determined within the *CCAA* proceedings, rather than in a separate action in the Superior Court, but not under the Claims Process Order. He noted that the court retained jurisdiction to order that the claims be continued outside the *CCAA* if it was determined that pursuing them within the process would no longer further the remedial process of the *CCAA*.

19 He held, however, that he had no jurisdiction under the *CCAA* to apply the doctrine of equitable subordination. Before turning to his reasons, I will explain the doctrine of equitable subordination.

EQUITABLE SUBORDINATION

20 Equitable subordination was developed as an equitable remedy in American insolvency law to subordinate a creditor's claim based on its inequitable conduct. The principles were articulated in Mobile Steel Co., Re563 F.2d 692(U.S. C.A. 5th Cir. 1977), which set out a three-part test:

a. the claimant must have engaged in some type of inequitable conduct;

b. the misconduct must have resulted in injury to creditors of the bankrupt or conferred an unfair advantage on the claimant; and

c. equitable subordination of the claim must not be inconsistent with the provisions of the bankruptcy statute.

21 Paragraph 105(a) of the U.S. Bankruptcy Code authorizes bankruptcy courts to use equitable principles to alter the provisions of Title 11 or to prevent an abuse of process. One year after *Mobile Steel*, the Code was amended to give legislative effect to equitable subordination: *Bankruptcy Reform Act*, 11 U.S.C. §510(c)(1).

22 The Supreme Court of Canada considered the doctrine on two occasions. In both, the court found it unnecessary to determine whether equitable subordination should be applied, because the underlying facts did not meet the test: *Canada Deposit Insurance Corp. v. Canadian Commercial Bank*, [1992] 3 S.C.R. 558 (S.C.C.), at p. 609; and *Indalex Ltd., Re*, 2013 SCC 6, [2013] 1 S.C.R. 271(S.C.C.), at para. 77. This court also found it unnecessary to decide the issue in *Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), 14 O.R. (3d) 1 (Ont. C.A.).

23 The availability of the doctrine has been considered in various Canadian superior courts at the trial level, in various contexts and with inconclusive results: see *General Chemical Canada Ltd., Re*, [2006] O.J. No. 3087 (Ont. S.C.J. [Commercial List]), (in the context of the Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3); *Christian Brothers of Ireland in Canada, Re* (2004), 69 O.R. (3d) 507 (Ont. S.C.J. [Commercial List]), (in the context of the Winding-up and Restructuring Act, R.S.C. 1985, C. W-11, as amended).

24 In *AEVO Co. v. D & A Macleod Co.* (1991), 4 O.R. (3d) 368 (Ont. Bktcy.), Chadwick J. rejected the application of equitable subordination in Canadian law, observing, at p. 372, that to introduce the doctrine would create chaos and would lead to challenges to security agreements based on the conduct of the secured creditor. In *I. Waxman & Sons Ltd., Re* (2008), 89 O.R. (3d) 427 (Ont. S.C.J. [Commercial List]), Pepall J. queried, at para. 33, whether statutory priorities should be upset by a doctrine "divorced from its legal home". This observation was followed, however, with the comment that "a vibrant legal system must be responsive to new developments in the law and the need for reform. Jurisprudence from other jurisdictions often provides the impetus or basis for much needed legal developments."

25 On the other hand, the Newfoundland and Labrador Supreme Court (Trial Division) applied the doctrine in a bankruptcy case in *Lloyd's Non-Marine Underwriters v. J.J. Lacey Insurance Ltd.*, 2009 NLTD 148, 291 Nfld. & P.E.I.R. 149 (N.L. T.D.).

26 The Supreme Court of Canada's silence on the issue of equitable subordination in *CDIC* and *Indalex* cannot be taken, as the *CCAA* judge appears to have thought, as an outright rejection of the doctrine. In my view, the Supreme Court simply left the issue for another day.

27 It is unnecessary to decide that issue in order to resolve this appeal. The only issue is whether the *CCAA* judge was right in deciding that he had no jurisdiction to grant equitable subordination under the *CCAA*, assuming the remedy is available in Canadian law.

SUBMISSIONS AND ANALYSIS

A. PROCEDURAL OBJECTION

28 The appellant's first submission is procedural. It claims that it was unnecessary for the *CCAA* judge to determine whether he had jurisdiction to grant equitable subordination. The Union essentially says it was blindsided. It says it made no submissions on the doctrine of equitable subordination and the *CCAA* judge did not indicate that he was going to address the issue in the context of the scheduling motion. It was inappropriate and unnecessary for the court to shut the door on a novel and controversial remedy without a full factual record.

29 The respondent acknowledges that equitable subordination was not a central issue in the oral submissions before the *CCAA* judge, but points out that it was raised in some of the factums and memoranda filed before and after the hearing. The *CCAA* judge was required to determine what conduct-based inter-creditor claims would be litigated, either under the Claims Process Order or under the *CCAA*. He was entitled to determine whether he had jurisdiction to grant equitable subordination within the *CCAA*.

30 I do not accept the appellant's submission. The issue of equitable subordination was plainly before the *CCAA* judge in submissions made before and after the hearing. The Milbournes' factum made extensive submissions on equitable subordination and argued that it, along with fiduciary duty and oppression, were "live issues which should be the subject matter of a robust evidentiary record and subject to a fair and thorough due process in this court". The Union's factum suggested that some of USS's unsecured claim could be subordinated to the claims of other creditors "on account of a breach of fiduciary duty, a finding

of oppression, *or otherwise*." USSC's factum argued that the Union's claim for equitable subordination should be rejected and that suitable remedies were available outside the Claims Process. In supplementary written submissions, the Union argued, in response to USSC's submissions, that the determination of the issue of equitable subordination should await an evidentiary record.

31 Moreover, the issue before the *CCAA* judge was not simply scheduling. The motion sought directions on the extent and nature of production and discovery with respect to the various objections. The Union argued that the objections had to be resolved before there could be approval of a plan of restructuring, a sale process or a distribution to creditors. The allegations that USS's claims should be re-characterized, invalidated, disallowed or subordinated had to be resolved and the *CCAA* judge had to determine a process for their resolution. Some might be dealt with under the Claims Process Order and some might be dealt with outside that Order but nevertheless in the *CCAA* proceedings. Some might not be dealt with under the *CCAA* at all.

32 The *CCAA* judge was plainly aware that a determination of the inter-creditor claims could have implications for the approval of any subsequent reorganization, sale of the business or credit bid. It was appropriate for him to consider whether the court had jurisdiction to address those claims and, if so, how and when.

33 An evidentiary record was unnecessary. The *CCAA* judge was not deciding whether equitable subordination applied on the facts of this case. The issue was whether he had jurisdiction to grant equitable subordination under the *CCAA*.

34 I turn now to the question whether the *CCAA* judge correctly held that he had no jurisdiction under the *CCAA* to order equitable subordination of USS's claims.

B. JURISDICTION TO ORDER EQUITABLE SUBORDINATION

35 I will begin by summarizing the *CCAA* judge's reasons on this issue. I will then set out the submissions of the parties, identify the standard of review, describe the methodology I will use and apply that methodology to the legislation.

(1) The CCAA judge's reasons

36 The *CCAA* judge noted that although the *CCAA* gives authority to re-characterize debt as equity and to invalidate a preference or assignment, there is no express provision conferring jurisdiction to grant equitable subordination. He was of the view that any jurisdiction to do so would have to be found in s. 11, which provides that "the court ... may, subject to the restrictions set out in this Act ... make any order that it considers appropriate in the circumstances."

37 He observed that there is no Canadian case law supporting that authority and, when given the occasion to confirm the existence of equitable subordination on two occasions, the Supreme Court of Canada had declined to do so: *Canada Deposit Insurance Corp.*; and *Indalex*. He suggested that one might infer from this that the Supreme Court had rejected the principle of equitable subordination.

38 He found, however, that to the extent the issue remained open, the *CCAA* evidenced an intention to exclude equitable subordination. When Parliament amended the legislation in 2009, it gave authority under s. 6(8) to subordinate debt as being in substance equity, but it did not enact any provision to subordinate a claim based on the conduct of the creditor. Nor had it drafted s. 36.1, which permitted the court to invalidate preferences and assignments, broadly enough to permit the court to make an order for equitable subordination. These provisions, he said, were "restrictions set out in this Act", limiting the court's broad discretion under s. 11. Parliament's failure to include equitable subordination in the remedies introduced in 2009 must be taken as indicative of an intention to exclude the operation of the doctrine under the *CCAA*. This, he said, was a policy decision the court must respect.

(2) The submissions of the parties

39 The appellant submits the *CCAA* judge had jurisdiction to grant equitable subordination pursuant to s. 11 of the CCAA in the absence of express "restrictions" on that jurisdiction. He erred in implying restrictions based on Parliament's failure to amend the legislation.

40 The respondent submits that Canadian courts have all the tools they need to assess, review and, where necessary, subordinate or invalidate creditors' claims in a manner consistent with the underlying legislation, without the need for equitable subordination. Some of these tools are the result of the 2009 amendments to the *BIA* and the *CCAA*. Parliament might have expanded those amendments to incorporate equitable subordination or some other conduct-based remedy, but declined to do so. The court should not invoke a controversial doctrine that Parliament declined to adopt when it had the opportunity to do so.

(3) The standard of review

41 The parties agree that the applicable standard of review is correctness: *Housen v. Nikolaisen*, 2002 SCC 33 (S.C.C.), at para. 8; and *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587, 92 O.R. (3d) 513 (Ont. C.A.), at para. 40.

(4) Framework for analysis

42 In *Ted Leroy Trucking Ltd., Re*, 2010 SCC 60, [2010] 3 S.C.R. 379 (S.C.C.) [hereinafter Century Services], at paras. 65ff., the Supreme Court of Canada gave guidance on the approach to the scope of statutory remedies under the *CCAA*, and, if need be, under related sources of judicial authority. The court adopted the analysis proposed by Justice Georgina R. Jackson of the Court of Appeal for Saskatchewan and Professor Janis Sarra in an article entitled, "Selecting the Judicial Tool to get the Job Done: An Examination of Statutory Interpretation, Discretionary Power and Inherent Jurisdiction in Insolvency Matters" in Sarra, ed., *Annual Review of Insolvency Law, 2007* (Toronto: Thomson Carswell, 2007), at p. 41. Blair J.A. also approved of this approach in *Metcalfe & Mansfield*, at paras. 48-49.

43 Jackson and Sarra note that the *CCAA* is skeletal legislation and advocate a transparent and consistent methodology as judges define the scope of their jurisdiction under the statute. They propose that the courts should take a hierarchical view of the powers at their disposal, adopting a broad, liberal and purposive interpretation of the statute and applying the principles of statutory interpretation before turning to other tools such as the common law or the exercise of inherent jurisdiction.

44 At para. 66 of *Century Services*, the Supreme Court held that in most cases, the search for jurisdiction under the *CCAA* should be an exercise in statutory interpretation. The starting point is the "big picture" principles of statutory interpretation.

45 Driedger's modern principle is the crucial tool for construing skeletal legislation such as the *CCAA*. A court must go beyond an examination of the wording of the statute and consider the scheme of the Act, its object or the intention of the legislature and the context of the words in issue:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

See: Jackson and Sarra, at p. 47; Elmer A. Driedger, *The Construction of Statutes*, 2d ed (Toronto: Butterworths, 1983) at p. 87, cited in *Bell ExpressVu Ltd. Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559(S.C.C.), at para. 26. See also *Rizzo & Rizzo Shoes Ltd., Re*, [1998] 1 S.C.R. 27 (S.C.C.), at paras. 23, 40.

46 With this in mind, I will apply the framework in *Century Services* to the search for jurisdiction. I turn first to a consideration of the purpose and scheme of the *CCAA*, before considering the language of the statute.

(5) Application of the framework

(i) The purpose of the CCAA

47 There is no dispute about the purpose of the *CCAA*. It describes itself as "An Act to facilitate compromises and arrangements between companies and their creditors". Its purpose is to avoid the devastating social and economic effects of commercial

bankruptcies. It permits the debtor to continue to carry on business and allows the court to preserve the status quo while "attempts are made to find common ground amongst stakeholders for a reorganization that is fair to all": *Century Services*, at para. 77.

48 The *CCAA* has proven to be a flexible and successful tool to enable businesses to avoid bankruptcy. As Professor Sarra notes, "[i]t has been the statute of choice for debtor corporations in every major Canadian restructuring in the past quarter century, including national airlines, major steel and forestry companies, telecommunications companies, major retail chains, real estate and development groups, and the national blood delivery system": Janis P. Sarra, *Rescue! The Companies' Creditors Arrangement Act*, 2d ed. (Toronto: Carswell, 2013), at p. 1.

49 The *CCAA* achieves its goals through a summary procedure for the compromise or arrangement of creditors' claims against the company. It was described in *Stelco Inc., Re* (2005), 75 O.R. (3d) 5 (Ont. C.A.), at para. 36, as:

> a statutory framework to extend protection to a company while it holds its creditors at bay and attempts to negotiate a compromised plan of arrangement that will enable it to emerge and continue as a viable economic entity, thus benefiting society and the company in the long run, along with the company's creditors, shareholders, employees and other stakeholders.

50 The process has been effective because it is summary, it is practical, it is supervised by an independent expert monitor and it is managed in real time by an experienced commercial judge.

51 *Century Services* is a good example of how the purpose of the *CCAA* informs the exercise of the court's authority. At issue in that case were the reconciliation of another federal statute with the *CCAA* and the scope of a *CCAA* judge's discretion. At para. 70, the orders of the *CCAA* judge were considered squarely within the context of the purpose of the Act:

> The general language of the *CCAA* should not be read as being restricted by the availability of more specific orders. However, the requirements of appropriateness, good faith, and due diligence are baseline considerations that a court should always bear in mind when exercising *CCAA* authority. <u>Appropriateness under the *CCAA* is assessed by inquiring whether the order sought advances the policy objectives underlying the *CCAA*. The question is whether the order will usefully further efforts to achieve the remedial purpose of the *CCAA* — avoiding the social and economic losses resulting from liquidation of an insolvent company.</u> I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.
>
> [emphasis added]

52 The Supreme Court concluded, at para. 75, that the order advanced the underlying purpose of the *CCAA*.

(ii) The scheme of the CCAA

53 The *CCAA* has been described as "skeletal" or "under-inclusive" legislation, (Jackson and Sarra at p. 48) which grants broad powers to the courts in general terms.

54 The Act has five parts. Part I, entitled "Compromises and Arrangements" permits the court to sanction a compromise or arrangement between a company and its secured or unsecured creditors, or both.

55 The powers of the court are found in Part II, entitled "Jurisdiction of Courts". The statute gives the court jurisdiction to receive applications, order stays, approve debtor-in-possession financing and appoint a monitor, among other things. Proceedings are commenced by an application to the Superior Court. The court generally grants an initial stay, appoints a monitor with authority to repudiate leases and other agreements and authorizes debtor in possession financing. A process is established for the identification and review of creditors' claims by the monitor and to deal with disputed claims, with the ultimate purpose of establishing classes of creditors who will vote, by class, on the compromise or arrangement.

56 One possible outcome is the preparation of a plan of arrangement. Creditors vote by class on the plan at a meeting called for that purpose. A majority by number of creditors in each class, together with two-thirds of the creditors in that class by dollar value, must approve the plan. If a class of creditors approves the plan, it is binding on all creditors within the class, subject to the court's approval of the plan. If all classes of creditors approve the plan, the court must then approve the plan as a final step.

57 Part III, entitled "General", deals with such issues as the determination of the amount of creditors' claims, classes of creditors, the duties of monitors, the disclaimer of agreements between the company and third parties and preferences and transfers at undervalue.

58 Section 19 identifies "claims" that may be dealt with in a compromise or arrangement. Those are claims provable in bankruptcy that relate to debts or liabilities, present or future, to which the *debtor company* is subject or may become subject before the compromise or arrangement is sanctioned. [4]

59 The significance of this definition is that the focus of the plan of arrangement is claims against the *debtor company* that are provable in bankruptcy. The *CCAA* judge identified this significance at para. 59 of his reasons, where he noted that s. 19(1) of the CCAA provides, effectively, "that a plan of compromise or arrangement may only deal with claims that relate to debts or liabilities to which a debtor company is subject at the time of commencement of proceedings under the *CCAA*". At para. 61, he noted that neither the Claims Process Order nor the *CCAA* contemplated that inter-creditor claims would be addressed by or be relevant to a plan of arrangement.

60 Section 20 sets out the method for determining the amount of the claim of any secured or unsecured creditors. In most cases, it will be the amount "determined by the court on summary application by the company or by the creditor".

61 Section 22 provides for the establishment of classes of creditors for the purpose of voting on a compromise or arrangement, based on, among other things, the nature of their claims, the nature of the security in respect of their claims and the remedies available to them in relation to their claims. Creditors may be included in the same class "if their interests or rights are sufficiently similar to give them a commonality of interest".

62 Part IV deals with Cross-Border Insolvencies. Its stated purposes are to give mechanisms to provide for the fair and efficient administration of such insolvencies, to promote cooperation with courts of other jurisdictions, to promote "the rescue of financially troubled businesses to protect investment and preserve employment" and to protect the interests of creditors, of other interested persons and of the debtor company. Part V deals with Administration.

63 The *CCAA* was amended in 2009. The amendments were the product of extensive discussion of the *BIA* and the *CCAA* in the Standing Senate Committee on Banking, Trade and Commerce. The Committee recommended amendments to the legislation, including an expanded power to review, invalidate or subordinate creditors' claims under the *CCAA*.

64 These recommendations were reflected in the 2009 amendments in two respects. First, s. 6(8) provides that a compromise or arrangement will not be approved unless it provides that all other claims are to be paid in full before an equity claim is paid.

65 This provision, coupled with the definition of "equity interest" [5] and "equity claim" [6] in s. 2(1), permits the court to determine whether a creditor's claim is in substance a share, warrant or option. This is the underpinning of the Debt/Equity Objection, an objection based on a disagreement as to the proper characterization of the disputed claims.

66 Section 22.1, also added in 2009, provides that all creditors with equity claims are to be in the same class unless the court otherwise orders, and may not, as members of that class, vote at any meeting unless the court otherwise orders.

67 Second, the 2009 amendments harmonized the rules of reviewable transactions under the *BIA* and the *CCAA*. Creditors in a *CCAA* proceeding are now entitled to invoke the provisions of the *BIA* to invalidate security granted by a debtor corporation to a creditor where a fraudulent preference or transfer at undervalue is established. Section 36.1 of the CCAA provides that

ss. 38 and 95 to 101 of the BIA apply, with any required modifications, in respect of a compromise or arrangement, unless the compromise or arrangement provides otherwise.

68 USS says that the 2009 amendments reflected Parliament's decision concerning the extent of the court's jurisdiction over "reviewable transactions" in *CCAA* proceedings and the extent to which a creditor's claim can be subordinated to other claims as a result of its conduct. It says Parliament might have included jurisdiction to rearrange priorities between creditors, for example through equitable subordination, but it declined to do so.

69 The scheme of the *CCAA* focuses on the determination of the validity of claims of creditors against the company and the determination of classes of claims for the purpose of voting on a compromise or arrangement. Except as contemplated by ss. 2(1), 6(8), 22.1 and 36.1, the statute does not address either conflicts between creditors or the order of priorities of creditors. Priorities are, however, part of the background against which the plan of compromise or arrangement is negotiated.

70 There is nothing in the record before us to indicate that the issue of equitable subordination was given serious consideration at the time of the 2009 amendments or that those amendments were intended to import other remedies.

(iii) Interpreting the particular provisions before the court

71 I now turn to the words of the statute itself, considered in context and having regard to the scheme of the *CCAA*, the object of the act and the intentions of Parliament.

72 As Blair J.A. put it when deciding whether the *CCAA* granted the court the power to sanction the disputed order in Metcalfe& Mansfield, at para. 58, "[w]here in the words of the statute is the court clothed with authority to approve a plan incorporating a requirement for third-party releases?" The question before us is "where (if at all) in the words of the statute is the court (implicitly or explicitly) clothed with authority to make an order for equitable subordination of the USS claims?"

(a) Section 11: "The engine that drives the statutory scheme"

73 The parties focussed their arguments on whether the powers granted by s. 11 include the power to grant the remedy of equitable subordination. In order to inform the scope of s. 11, they urge us to consider the treatment of "equity" claims in s. 6(8) of the CCAA and the remedies available under s. 36.1.

74 In Stelco, at para. 36, Blair J.A. described s. 11 as "the engine that drives this broad and flexible statutory scheme". Section 11 states, in full:

> Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.
>
> [Emphasis added.]

75 Prior to amendment in 2005 (S.C. 2005, c. 47, s. 128), the underlined portion above had read "subject to this Act". In *Century Services*, the Supreme Court, at paras. 67-68, interpreted this amendment as being an endorsement of the broad reading of *CCAA* jurisdiction that had been developed in the jurisprudence.

76 The jurisdiction under s. 11 has two express limitations. First, the court must find that the order is "appropriate in the circumstances". Second, even if the court considers the order appropriate in the circumstances, it must consider whether there are "restrictions set out in" the *CCAA* that preclude it.

77 As I have noted, the *CCAA* judge held that s. 11 did not confer jurisdiction to apply the doctrine of equitable subordination. The statute could have provided the authority to subordinate claims on this basis, as it did with equity claims, but it did not.

He also held that the definition of "equity claim" and the option to bring proceedings under s. 36.1 were "restrictions" within the meaning of s. 11.

78 In my view, the interpretative process should start with the scope of s. 11 before the restrictions are considered in the analysis. The broad powers exercised by *CCAA* judges evolved in the jurisprudence before the concept of "restrictions" was legislated.

79 Moreover, it is inconsistent with the anatomy and history of the *CCAA* to maintain that if Parliament had intended that a *CCAA* judge would have the authority to make a certain type of order, it would have said so. The Supreme Court has made it clear that "[t]he general language of the *CCAA* should not be read as being restricted by the availability of more specific orders": *Century Services*, at para. 70.

80 What is apparent from the many creative orders that have been made, before and since the 2009 amendments, is that such orders are made squarely in furtherance of the legislature's objectives. In *Century Services*, at para. 59, the Supreme Court observed that "[j]udicial discretion must of course be exercised in furtherance of the *CCAA*'s purposes", to avoid the devastating social and economic effects of bankruptcy while an attempt is made to organize the affairs of the debtor under court supervision.

81 The words "may ... make any order it considers appropriate in the circumstances" in s. 11 must, in my view, be read as "may ... *in furtherance of the purposes of this act*, make any order it considers appropriate in the circumstances."

82 There is no support for the concept that the phrase "any order" in s. 11 provides an at-large equitable jurisdiction to reorder priorities or to grant remedies as between creditors. The orders reflected in the case law have addressed the business at hand: the compromise or arrangement.

83 I turn to the second limit on the court's jurisdiction under s. 11, the "restrictions set out in this Act". The first question is whether such restrictions must be express or can be implied.

84 It bears noting that there are numerous express restrictions on the court's jurisdiction contained within the *CCAA* itself. Some are contained in Part II (Jurisdiction of Courts) and some are actually preceded by the heading "Restriction". In *North American Tungsten Corp. v. Global Tungsten and Powders Corp.*, 2015 BCCA 426, 81 B.C.L.R. (5th) 102 (B.C. C.A.), at para. 34, the British Columbia Court of Appeal observed that "where other provisions of the statute are intended to restrict the powers under ss. 11 and 11.02 of the statute, they do so in unequivocal terms."

85 The *CCAA* judge found that there were "restrictions set out" in the *CCAA* that prevented the court from applying equitable subordination, namely the definition of "equity claim" in s. 2(1) and the provisions of s. 36.1. Essentially, he found that Parliament could have introduced equitable subordination into the *CCAA* when it amended the legislation in 2009, but declined to do so. "The court must respect that policy decision", he said at para. 53. The respondent supports this interpretation.

86 I agree with the appellant that "equity claim" is not a restriction at all, but a definition. Together with s. 6(8), it codifies what was essentially the law before the 2009 amendments. The purpose of this involvement in the priority of claims is to remove shareholders from the process of arriving at a compromise or arrangement, absent permission of the court. It has nothing to do with any wrongdoing by the person with the equity interest. The only "restriction", if any, would be the lack of flexibility to reverse this statutory subordination, as Pepall J. pointed out in *Nelson Financial Group Ltd., Re*, 2010 ONSC 6229, 75 B.L.R. (4th) 302 (Ont. S.C.J. [Commercial List]), at para. 34. However, this has to do only with subordination flowing from the characterization of a claim and not equitable subordination.

87 I also agree that the plain meaning of the words "subject to the restrictions *set out* in this Act" refers to express restrictions, of which there are a number.

(b) Subsection 6(8): Subordination of "equity claims"

88 In the court below, and in the appellant's submissions in this court, there was a blurring of the distinction between the separate concepts of "equity claim" and the doctrine of "equitable subordination". The *CCAA* judge's reasons referred at times

to the "subordination claims" of the Union and the Milbournes as including the equitable subordination claims and the claims for oppression and breach of fiduciary duty.

89 As explained earlier, s. 6(8) of the CCAA effectively subordinates "equity claims", as defined, to the claims of all other creditors. No compromise or arrangement can be approved unless it provides for other claims to be paid, in full, before equity claims are paid.

90 With the exception of environmental claims, ss. 6(8) and 22.1 are the only provisions of the *CCAA* to deal expressly with priorities between creditors.[7] There is a clear rationale for these provisions. In E. Patrick Shea*, BIA, CCAA & WEPPA: A Guide to the New Bankruptcy & Insolvency Regime* (Markham: LexisNexis Group, 2009), at p. 89, the author explains that "[t]he intention of these amendments is to remove the shareholder/creditor from the reorganization process, unless the court orders that they have a seat at the table."

91 "Equitable subordination", on the other hand, refers to the doctrine at issue here: a form of equitable relief to subordinate the claim of a creditor who has engaged in inequitable conduct. Such a claim is not an "equity claim", as defined. If it were, it would be subordinated without the need for intervention by the court.

92 Pepall J. dealt with these different principles and distinguished them clearly in *I. Waxman & Sons Ltd.*, a Commercial List decision that predated the 2009 amendments. There, a trustee in bankruptcy brought a motion for advice and directions as to whether a judgment creditor's claim should be allowed. Other creditors argued that his claim was rooted in equity and was not a debt claim. In the alternative, they argued that even if it was a debt claim, it should be subordinated to their claims pursuant to the doctrine of equitable subordination.

93 Pepall J. addressed the argument that the judgment creditor's claim was an equity claim under the heading "Characterization" (paras. 18-26), because the issue was whether his claim was properly characterized as one of equity or debt, with the attendant priority consequences. Next she considered whether, even though she had found that the claim was a debt claim, it should be subordinated pursuant to the doctrine of equitable subordination (paras. 27-35). She noted, at para. 27, that "[a]s its name suggests, the basis for development of the doctrine is the equitable jurisdiction of the court". She held that even if it applied in Canada, which was not established, there was no evidence on which to apply it in that case.

94 By contrast, the *CCAA* judge in this case disposed of these issues under one heading, "The Authority of the Court to Adjudicate Claims for Debt Re-Characterization and for Equitable Subordination", at paras. 38-53. He found, at para. 51, that the absence of any provision in the *CCAA* that would permit the application of equitable subordination was indicative of an intention to exclude the operation of the doctrine.

95 The *CCAA* judge appears to have treated equitable subordination as akin to equity claims as defined in s. 2(1), the subordination of equity claims in s. 6(8) and the remedies under s. 36.1. He found that because equitable subordination is not mentioned in the context of these remedies, Parliament must have intended to exclude it.

96 The distinction between these terms undermines the argument that equitable subordination does not exist because it was not included as part of the definition of (or together with the subordination of) equity claims. Equity claims are subordinated in order to keep shareholders away from the table while the claims of other creditors are being sorted out. Even prior to being explicitly subordinated by statute in 2009, they generally ranked lower than general creditors: *Sino-Forest Corp., Re*, 2012 ONCA 816, 114 O.R. (3d) 304 (Ont. C.A.), at para. 30. The purpose of the 2009 amendments appears to have been to confirm and clarify the law: see The Report of the Standing Senate Committee on Banking, Trade and Commerce, Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy and Insolvency Act *and the* Companies' Creditors Arrangement Act (Ottawa, November 2003), at p. 158-59.

(c) Section 36.1: Preferences and Assignments

97 Section 36.1, which was part of the 2009 amendments, incorporates by reference provisions of the *BIA* permitting the court to invalidate prior fraudulent preferences or fraudulent assignments.

> 36.1 (1) Sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act* apply, with any modifications that the circumstances require, in respect of a compromise or arrangement unless the compromise or arrangement provides otherwise.

98 The respondent argues that the inclusion of these express provisions implies that no other form of equitable remedy was contemplated. Its argument is that, had Parliament wished to invalidate or subordinate claims of creditors who had engaged in inequitable conduct in relation to other creditors, it could have expressly included that remedy.

99 I would not read anything into s. 36.1, one way or the other. Nor would I regard it as a "restriction" set out in the Act within the meaning of s. 11.

(6) Summary

100 The appellant requested "a declaration that the *CCAA* contains no restrictions within the meaning of s. 11 on the court's ability to apply the doctrine of equitable subordination." In my view, this is the wrong inquiry and this is why I reach the same result as the *CCAA* judge, but for different reasons.

101 I would not grant the relief sought because, applying the principles of statutory interpretation, nowhere in the words of the *CCAA* is there authority, express or implied, to apply the doctrine of equitable subordination. Nor does it fall within the scheme of the statute, which focuses on the implementation of a plan of arrangement or compromise. The *CCAA* does not legislate a scheme of priorities or distribution, because these are to be worked out in each plan of compromise or arrangement. The subordination of "equity claims" is directed towards a specific group, shareholders, or those with similar claims. It also has a specific function, consistent with the purpose of the *CCAA*: to facilitate the arrangement or compromise without shareholders' involvement.

102 The success of the *CCAA* in fulfilling its statutory purpose has been in large measure due to the ability of judges to fashion creative solutions, for which there is no express authority, through the exercise of their jurisdiction under s. 11. As Blair J.A. noted in *Metcalfe and Mansfield*, however, the court's powers are not limitless. They are shaped by the purpose and scheme of the *CCAA*. The appellant has not identified how equitable subordination would further the remedial purpose of the *CCAA*.

103 At this stage of the analysis, I am mindful of the Supreme Court's observation in *Century Services* that in most cases the court's jurisdiction in *CCAA* matters will be found through statutory interpretation. I am also mindful of its observation in Indalex, at para. 82, that courts should not use an equitable remedy to do what they wish Parliament had done through legislation. In my view, there is no "gap" in the legislative scheme to be filled by equitable subordination through the exercise of discretion, the common law, the court's inherent jurisdiction or by equitable principles.

104 There is no provision in the *CCAA* equivalent to s. 183 of the BIA or §105(a) of the U.S. Bankruptcy Code. Section 183 invests the bankruptcy court with "such jurisdiction at law and in equity" as will enable it to exercise its bankruptcy jurisdiction. This is significant, because if equitable subordination is to become a part of Canadian law, it would appear that the *BIA* gives the bankruptcy court explicit jurisdiction as a court of equity to ground such a remedy and a legislative purpose that is more relevant to the potential reordering of priorities.

CONCLUSION

105 For these reasons, I would dismiss the appeal. I would order that counsel may make written submissions as to costs, not to exceed five pages in length, excluding costs outlines. I would assume counsel can agree on a timetable for delivery of all costs submissions within 30 days of the release of these reasons.

***P. Lauwers J.A.*:**

I agree

***M.L. Benotto J.A.*:**

I agree

Appeal dismissed.

Footnotes

1 Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36.

2 6(8) No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

3 In a subsequent ruling, *U.S. Steel Canada Inc., Re*, 2016 ONSC 569 (Ont. S.C.J.), the *CCAA* judge dismissed the Debt/Equity objection, finding that approximately $2 billion of USSC's unsecured claims and $73 million in secured claims were properly characterized as debt rather than equity. He also dismissed the objection that approximately $118 million in secured claims should be invalidated due to lack of consideration or as a fraudulent preference.

4 CCAA, s. 2(1): "*claim* means any indebtedness, liability or obligation of any kind that would be a claim provable within the meaning of section 2 of the Bankruptcy and Insolvency Act." Section 121 of the BIA states that claims provable in bankruptcy are those to which the bankrupt is subject: "121(1) All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act."

5 "*Equity interest* means (a) in the case of a company other than an income trust, a share in the company — or a warrant or option or another right to acquire a share in the company — other than one that is derived from a convertible debt, and (b) in the case of an income trust, a unit in the income trust — or a warrant or option or another right to acquire a unit in the income trust — other than one that is derived from a convertible debt."

6 "*Equity claim* means a claim that is in respect of an equity interest, including a claim for, among others, (a) a dividend or similar payment, (b) a return of capital, (c) a redemption or retraction obligation, (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or (e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d)."

7 Subsection 11.8(8) gives the federal and provincial Crowns priorities for environmental claims against the debtor.

2020 ONSC 4006
Ontario Superior Court of Justice [Commercial List]

Lydian International Limited (Re)

2020 CarswellOnt 9768, 2020 ONSC 4006, 321 A.C.W.S. (3d) 618, 81 C.B.R. (6th) 218

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 LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES CORPORATION AND LYDIAN U.K. CORPORATION LIMITED

Geoffrey B. Morawetz C.J. Ont. S.C.J.

Heard: June 29, 2020
Judgment: July 10, 2020
Docket: CV-19-00633392-00CL

Counsel: Elizabeth Pillon, Maria Konyukhova, Sanja Sopic, Nicholas Avis, for Applicants
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Robert Mason, Virginie Gauthier, for Osisko Bermuda Limited
Pamela Huff, Chris Burr, for Resource Capital Fund VI L.P.
David Bish, Michael Pickersgill, for Orion Capital Management
Alexander Steele, for Caterpillar Financial Services (UK) Limited
Bruce Darlington, for ING Bank N.V./Abs Svensk Exportkredit (publ)
John LeRoux, Hasan Ciftehan, Mehmet Ali Ekingen, Atilla Bozkay, for themselves

Subject: Corporate and Commercial; Insolvency

Related Abridgment Classifications

Bankruptcy and insolvency
XIX Companies' Creditors Arrangement Act
XIX.2 Initial application
XIX.2.b Grant of stay
XIX.2.b.iv Length of stay

Bankruptcy and insolvency
XIX Companies' Creditors Arrangement Act
XIX.3 Arrangements
XIX.3.b Approval by court
XIX.3.b.i "Fair and reasonable"

Bankruptcy and insolvency
XIX Companies' Creditors Arrangement Act
XIX.3 Arrangements
XIX.3.e Miscellaneous

Headnote

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Arrangements — Approval by court — "Fair and reasonable"

Applicants L Intl., L Canada, and L UK were three entities at top of group that owned development-stage gold mine in south-central Armenia — Applicants contended that they were unable to access their main operating asset due to blockades, which prevented them from completing construction of mine and generating revenue in ordinary course — Since blockades began, senior lenders had been funding applicants' efforts to find solution to situation caused by blockades — Applicants sought protection under Companies' Creditors Arrangement Act (Act proceedings), were granted initial order, and monitor was appointed — Applicants created plan of arrangement that they submitted represented culmination of their restructuring efforts and allowed for resolution of Act proceedings and would recognize and continue priority position of senior lenders in restructuring — Applicants brought motion for relief, including order sanctioning and approving plan of arrangement — Motion granted — Plan was fair and reasonable in circumstances — Senior lenders were in favour of plan, and there were no viable alternatives — It was appropriate for plan to include releases in favour of released parties.

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Arrangements — Miscellaneous

Applicants L Intl., L Canada, and L UK were three entities at top of group that owned development-stage gold mine in south-central Armenia — Applicants contended that they were unable to access their main operating asset due to blockades, which prevented them from completing construction of mine and generating revenue in ordinary course — Since blockades began, senior lenders had been funding applicants' efforts to find solution to situation caused by blockades — Applicants sought protection under Companies' Creditors Arrangement Act (Act proceedings), were granted initial order, and mnitor was appointed — Applicants created plan of arrangement that they submitted represented culmination of their restructuring efforts and allowed for resolution of Act proceedings and would recognize and continue priority position of senior lenders in restructuring — Majority of senior lenders agreed to fund costs associated with implementing plan and termination of Act proceedings through debtor-in-possession (DIP) exit facility amendment — DIP exit facility amendment provided for exit financing to assist in implementing plan and taking necessary ancillary steps to terminate Act proceedings — Applicants brought motion for relief, including order approving applicants' debtor-in-possession amendment — Motion granted — Requested relief was reasonably necessary and appropriate in circumstances — DIP exit credit facility was necessary to enable applicants to implement plan, and monitor was supporting of DIP exit facility amendment — DIP exit facility amendment was not anticipated to give rise to any material finance prejudice, and DIP lenders were majority of senior lenders.

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Initial application — Grant of stay — Length of stay

Applicants L Intl., L Canada, and L UK were three entities at top of group that owned development-stage gold mine in south-central Armenia — Applicants contended that they were unable to access their main operating asset due to blockades, which prevented them from completing construction of mine and generating revenue in ordinary course — Since blockades began, senior lenders had been funding applicants' efforts to find solution to situation caused by blockades — Applicants sought protection under Companies' Creditors Arrangement Act (Act proceedings), were granted initial order, and monitor was appointed — Applicants created plan of arrangement that they submitted represented culmination of their restructuring efforts and allowed for resolution of Act proceedings and would recognize and continue priority position of senior lenders in restructuring — On plan implementation date, Act proceedings with respect to L UK and L Canada would be terminated such that L Intl. would be only remaining applicant — Applicants brought motion for relief, including order to extend stay period for L Intl. to enable remaining applicant and monitor to take necessary steps to implement plan and terminate Act proceedings — Motion granted — Applicants demonstrated that circumstances existed that made order appropriate — Applicants acted in good faith and with due diligence such that request was appropriate.

Table of Authorities

Cases considered by *Geoffrey B. Morawetz C.J. Ont. S.C.J.*:

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Canadian Airlines Corp., Re (2000), 2000 ABQB 442, 2000 CarswellAlta 662, [2000] 10 W.W.R. 269, 20 C.B.R. (4th) 1, 84 Alta. L.R. (3d) 9, 9 B.L.R. (3d) 41, 265 A.R. 201 (Alta. Q.B.) — referred to

Canwest Global Communications Corp., Re (2010), 2010 ONSC 4209, 2010 CarswellOnt 5510, 70 C.B.R. (5th) 1 (Ont. S.C.J. [Commercial List]) — referred to

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Sierra Club of Canada v. Canada (Minister of Finance) (2002), 2002 SCC 41, 2002 CarswellNat 822, 2002 CarswellNat 823, (sub nom. *Atomic Energy of Canada Ltd. v. Sierra Club of Canada)* 211 D.L.R. (4th) 193, (sub nom. *Atomic Energy of Canada Ltd. v. Sierra Club of Canada)* 18 C.P.R. (4th) 1, 44 C.E.L.R. (N.S.) 161, 287 N.R. 203, 20 C.P.C. (5th) 1, 40 Admin. L.R. (3d) 1, (sub nom. *Atomic Energy of Canada Ltd. v. Sierra Club of Canada)* 93 C.R.R. (2d) 219, 223 F.T.R. 137 (note), [2002] 2 S.C.R. 522, 2002 CSC 41 (S.C.C.) — followed

1078385 Ontario Ltd., Re (2004), 2004 CarswellOnt 8041, 16 C.B.R. (5th) 144 (Ont. S.C.J.) — referred to

1078385 Ontario Ltd., Re (2004), 2004 CarswellOnt 8034, 16 C.B.R. (5th) 152, (sub nom. *1078385 Ontario Ltd. (Receivership), Re)* 206 O.A.C. 17 (Ont. C.A.) — referred to

Statutes considered:

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Generally — referred to

s. 2(1) "debtor company" — considered

s. 2(1) "equity claim" — considered

s. 5.1 [en. 1997, c. 12, s. 122] — unconstitutional

s. 5.1(2) [en. 1997, c. 12, s. 122] — considered

s. 6(3) — considered

s. 6(5) — considered

s. 6(6) — considered

s. 6(8) — considered

s. 11.2(1) [en. 2005, c. 47, s. 128] — considered

s. 11.2(2) [en. 2005, c. 47, s. 128] — considered

s. 11.2(4) [en. 2005, c. 47, s. 128] — considered

MOTION by applicants for relief, including order and sanctioning and approving applicants' plan of arrangement.

***Geoffrey B. Morawetz C.J. Ont. S.C.J.*:**

1 Lydian International Limited, Lydian Canada Ventures Corporation and Lydian U.K. Corporation Limited (the "Applicants") bring this motion for an order (the "Sanction and Implementation Order"), among other things:

a) declaring that the Meeting of Affected Creditors held on June 19, 2020 was duly convened and held, all in accordance with the Meeting Order;

b) sanctioning and approving the Applicants' Plan of Arrangement (the "Plan") as approved by a requisite majority of Affected Creditors at the Meeting, in accordance with the Plan Meeting Order (each as defined below), a copy of which is attached as Schedule "A" to the draft Sanction and Implementation Order; and

c) granting various other related relief (as more particularly outlined below).

2 The Applicants submit that the Plan represents the culmination of the Applicants' restructuring efforts and allows for the resolution of these CCAA Proceedings. The Monitor and the majority of the Affected Creditors are supportive of the Plan and

if sanctioned and implemented, the Plan will provide a path forward for Lydian Canada and Lydian UK as part of a privatized Restructured Lydian Group (as defined in the Plan) and ultimately lead to the termination of these CCAA Proceedings.

3 Shortly after the conclusion of the hearing on June 29, 2020, which was conducted by Zoom, I granted the motion with reasons to follow.

4 The facts with respect to this motion are more fully set out in the Affidavit of Edward A. Sellers sworn June 24, 2020 (the "Sellers Sanction Affidavit"), the Affidavit of Edward A. Sellers sworn June 15, 2020 (the "Sellers Meeting Affidavit") and the Affidavit of Mark Caiger sworn June 11, 2020 (the "BMO Affidavit"). Mr. Sellers and Mr. Caiger were not cross-examined. Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Sellers Sanction Affidavit, the Sellers Meeting Affidavit, and the Plan. All references to currency in this factum are references to United States dollars, unless otherwise indicated.

Background

5 The Applicants are three entities at the top of the Lydian Group. The Lydian Group owns a development-stage gold mine in south-central Armenia through its wholly owned non-applicant operating subsidiary Lydian Armenia. The Applicants contend that they have been unable to access their main operating asset, the Amulsar mine, since June 2018 due to blockades and the associated actions and inactions of the Government of Armenia ("GOA"), and as a result, this has prevented the Applicants from completing construction of the mine and generating revenue in the ordinary course.

6 The Applicants further contend that the effects of the blockades, amongst other factors, caused the Applicants to seek protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA"). An Initial Order was granted on December 23, 2019. Alvarez & Marsal Canada Inc. was appointed as Monitor.

7 In the two years since the blockades began, the Applicants contend that they have used their best efforts to resolve the factors that led to their insolvency, including engaging in negotiations with the GOA, defending their commercial rights and commencing legal proceedings in Armenia to attempt to remove the blockades but these efforts have yet to result in the Applicants re-gaining access to the Amulsar site.

8 In early 2018, the Applicants retained BMO to canvass the market for potential refinancing or sale options. BMO has conducted multiple rounds of a sales process to market the Lydian Group's mining assets. BMO also ran a process to solicit interest in financing the Applicants' potential Treaty Arbitration. These efforts have not yet resulted in a transaction capable of satisfying the claims of the Applicants' secured lenders.

9 Since the blockades began, the Senior Lenders have been funding the Applicants' efforts to find a solution to the situation caused by the blockades. The Senior Lenders provided additional financial support to the Lydian Group totalling in excess of $43 million.

10 As of March 31, 2020, the Lydian Group owed its secured lenders more than $406.8 million.

11 According to the Applicants, the secured lenders are no longer willing to support the Applicants' efforts to monetize their assets. The Equipment Financiers CAT and ING have taken enforcement steps and Ameriabank has issued preliminary notice of enforcement.

12 Further, the Applicants point out that the liquidity made available to the Applicants since April 30, 2020 has been conditioned on the Applicants: (i) proposing a restructuring that would be equivalent to the Senior Lenders enforcing their security over the shares of Lydian Canada; and (ii) meeting a deadline to exit the CCAA Proceedings imposed by a majority of the Applicants' Senior Lenders, or further enforcement steps would be taken.

13 The Applicants submit that the Plan represents the most efficient mechanism to effect an orderly transition of the Lydian Group's affairs. The Applicants contend that the Plan minimizes adverse collateral impacts on Lydian Armenia, provides for

winding down the proceedings before this court and the Jersey Court and avoids uncoordinated enforcement steps being taken on the Lydian Group's property to the detriment of the Lydian Group's stakeholders generally.

The Plan

14 The Plan recognizes and continues the priority position of the Senior Lenders in the Restructured Lydian Group. The Senior Lenders make up the only class eligible to vote on the Plan and receive a distribution thereunder.

15 According to the Applicants, secured creditors and unsecured creditors with claims at or below Restructured Lydian will continue to maintain their claims in the Restructured Lydian Group, including Lydian Armenia, with the same priority as they previously had, ranking behind the Senior Lenders. Stakeholders with claims at the Lydian International level will continue to have their claims on the Plan Implementation Date, which are intended to be addressed through the proposed J&E Process in Jersey. Equity claims and unsecured claims against Lydian International will not be assumed by Restructured Lydian as part of the Plan.

16 The purpose of the Plan is to (a) implement a corporate and financial restructuring of the Applicants, (b) provide for the assignment or settlement of all intercompany debts owing to the Applicants prior to the Effective Time to, among other things, minimize adverse tax consequences to Lydian Armenia and its stakeholders, (c) provide for the equivalent of an assignment of substantially all of the assets of Lydian International to an entity owned and controlled by the Senior Lenders ("SL Newco"), through an amalgamation of Lydian Canada with SL Newco resulting in a new entity ("Restructured Lydian"), and (d) provide a release of all of the existing indebtedness and obligations owing by Lydian International to the Senior Lenders. The Plan will result in the privatization of the Lydian Group to continue as the Restructured Lydian Group.

17 The steps involved in the Plan's execution are described in detailed in paragraphs 71 to 74 of the Sellers Meeting Affidavit.

18 The Plan provides for certain releases. The releases are more fully described in the Sellers Meeting Affidavit at paragraph 83.

19 Mr. Sellers in the Sellers Sanction Affidavit at para. 16 states that the releases were critical components of the negotiations and decision-making process for the D&Os and Senior Lenders in obtaining support for the Plan and resolving these CCAA Proceedings for the benefit of the Restructured Lydian Group, including Lydian Armenia, and all of its stakeholders.

20 Mr. Sellers further states that the Released Parties made significant contributions to the Applicants' restructuring, both prior to and throughout these CCAA Proceedings, which resulted directly in the preservation of the Lydian Group's business, provided numerous opportunities for the Applicants to seek to monetize their assets for the benefit of stakeholders generally and led to the successful negotiation of the Plan for the benefit of the Restructured Lydian Group.

21 The Plan provides for a Plan Implementation Date on or prior to June 30, 2020. The majority of the Applicants' Senior Lenders have agreed to fund the costs associated with implementing the Plan and termination of the CCAA Proceedings and the J&E Process in Jersey, through the DIP Exit Facility Amendment, which will make a DIP Exit Credit Facility available to the Applicants totalling an estimated additional $1.866 million.

22 The test that a debtor company must satisfy in seeking the Court's approval for a plan of compromise or arrangement under the CCAA is well established:

a) there must be strict compliance with all statutory requirements;

b) all materials filed and procedures carried out must be examined to determine if anything has been done or purported to be done which is not authorized by the CCAA and prior Orders of the Court in the CCAA proceedings; and

c) the plan must be fair and reasonable.

Issues

23 The issues for determination on this motion are whether:

a) the Plan is fair and reasonable and should be sanctioned;

b) the releases contemplated by the Plan are appropriate;

c) the increase to the DIP Charge to capture the amounts to be advanced under the DIP Exit Credit Facilities is appropriate;

d) the Stay Period should be extended;

e) the unredacted Sellers Sanction Affidavit should be sealed; and

f) the Monitor's activities, as detailed in the Fifth Report, Sixth Report and Seventh Report, should be approved and the fees of Monitor and its counsel through to June 23, 2020 should be approved.

LAW AND ANALYSIS

Approval of the Plan

24 To determine whether there has been strict compliance with all statutory requirements, the court considers factors such as whether: (a) the applicant meets the definition of a "debtor company" under section 2 of the CCAA; (b) the applicant has total claims against it in excess of C$5 million; (c) the notice calling the creditors' meeting was sent in accordance with the order of the court; (d) the creditors were properly classified; (e) the meeting of creditors was properly constituted; (f) the voting was properly carried out; and (g) the plan was approved by the requisite majority.

25 The Applicants submit that they have complied with the procedural requirements of the CCAA, the Initial Order, the Amended and Restated Initial Order, the Meeting Order and all other Orders granted by this Court during these CCAA Proceedings. In particular:

a) at the time the Initial Order was granted, the Applicants were found to be "debtor companies" to which the CCAA applied and that the Applicants' liabilities exceeded the C$5 million threshold amount under the CCAA;

b) the classification of the Applicants' Senior Lenders into one voting class (namely, the Affected Creditors class) was approved pursuant to the Meeting Order. This classification was not opposed at the hearing to approve the Meeting, nor was the Meeting Order appealed; the Applicants properly effected notice in accordance with the Meeting Order prior to the Meeting. In addition, the Applicants issued a press release on June 15, 2020 announcing their intention to seek an Order of the Court to file the Plan and call, hold and conduct a meeting of the Senior Lenders;

c) the Meeting was properly constituted and the voting on the Plan was carried out in accordance with the Meeting Order; and

d) the Plan was approved by the Required Majority.

26 Sections 6(3), 6(5) and 6(6) of the CCAA provide that the Court may not sanction a plan unless the plan contains certain specified provisions concerning Crown claims, employee claims and pension claims. The Applicants' submit that these provisions of the CCAA are satisfied by the Plan. Crown claims and employee claims are treated by the Plan as Unaffected Claims, meaning that such claims, if any, are not compromised or otherwise affected. The Applicants do not maintain any pension plans, and thus section 6(6) of the CCAA does not apply. In compliance with s. 6(8) of the CCAA, the Plan does not provide for any recovery to equity holders.

27 I accept the foregoing submissions. I am satisfied that the statutory prerequisites to approval of the Plan have been satisfied, and that there has been strict compliance with all statutory requirements.

28 The Applicants submit that no unauthorized steps have been taken in these CCAA Proceedings and throughout the entirety of these CCAA Proceedings, they have kept this Court and Monitor appraised of all material aspects of the Applicants' conduct, activities, and key issues they have worked to resolve. I accept this submission.

29 The Applicants' submit that when considering whether a plan of compromise and arrangement is fair and reasonable, the court should consider the relative degree of prejudice that would flow from granting or refusing to grant the relief sought. Courts should also consider whether the proposed plan represents a reasonable and fair balancing of interests, in light of the other commercial alternatives available (see: *Canadian Airlines Corp., Re*, 2000 ABQB 442 (Alta. Q.B.) at paras. 3, 94, 96, and 137 - 138; and *Canwest Global Communications Corp., Re*, 2010 ONSC 4209(Ont. S.C.J. [Commercial List])).

30 The CCAA permits the filing of a Plan by an Applicant to its secured creditors. The Applicants' submit the fact that unsecured creditors may receive no recovery under a proposed plan of arrangement does not, of itself, negate the fairness and reasonableness of a plan of arrangement (*Anvil Range Mining Corp., Re* [2002 CarswellOnt 2254 (Ont. C.A.)], 2002 CanLII 42003; and *1078385 Ontario Ltd., Re* [2004 CarswellOnt 8034 (Ont. C.A.)], 2004 CanLII 55041 at paras 30-31 (*CanLII*), affirming [2004 CarswellOnt 8041 (Ont. S.C.J.)] 2004 CanLII 66329).

31 The Plan was presented to the Senior Lenders, who are the Applicants' only secured creditors and they voted on the Plan as a single class. The Senior Lenders voted in favour of the Plan by the Required Majority. The value of the claims of Orion and Osisko, who voted in favour of the Plan comprise 77.8% of the total value of the Affected Creditors who were present and voting.

32 RCF, a secured lender and 32% shareholder, did not vote in favour of the Plan. RCF has advised that it "does not intend at this time to propose or fund an alternative to the Plan, and in the absence of such an alternative we expect that the Court will have no choice but to issue the Sanction and Implementation Order."

33 I have been advised that an issue as between the Senior Lenders and ING has been resolved and for greater certainty this Plan does not compromise any claim that ING may have in respect of proceeds from a successfully-asserted arbitration claim. In addition, the Senior Lenders have agreed that, after payment of all claims of the Senior Lenders to proceeds from a successfully-asserted arbitration claim whether on account of: (i) claims of the Senior Lenders prior to the Plan Implementation Date; or (ii) further advances made by the Senior Lenders (or their affiliates) after the Plan Implementation Date, (whether such further advances are made as equity, secured debt or unsecured debt), the proceeds will be paid to Lydian Armenia in an amount sufficient and to be used to pay ING's claims against Lydian Armenia prior to any further monies being returned to equity holders.

34 The Applicants submit that the structure and the nature of the releases in the Plan recognizes and continues the priority position of the Senior Lenders. Secured creditors and unsecured creditors with claims at or below Restructured Lydian will continue to maintain their claims in the Restructured Lydian Group, including Lydian Armenia, with the same priority as they previously had, ranking behind the Senior Lenders.

35 The Applicants state that they have considered and believe the Plan is the best available outcome for the Applicants, and the interests of the stakeholders generally in the Lydian Group.

36 As noted in the BMO Affidavit, despite multiple rounds of the SISP and the Treaty Arbitration financing solicitation process, the Applicants submit that no transaction which would satisfy the Lydian Group's secured obligations is currently available to the Applicants.

37 The Applicants submit that the monetization of Treaty Arbitration is also not open to the Applicants at this time, and if initiated would require an extended period to litigate and significant additional financial resources.

38 The Applicants submit that for the purposes of valuing an estate at a plan sanction hearing, the "value has to be determined on a current basis. [...] It is inappropriate to value the assets on a speculative or (remote) possibility basis." A relevant consideration in this analysis is the scope and extent of previous sale or capital raising efforts undertaken by the company and

any financial advisors. In support of this submission, the Applicants reference: *Anvil Range Mining Corp., Re*, 2002 CanLII 42003, para 36 (*CanLII*); *Philip Services Corp., Re* [1999 CarswellOnt 4673 (Ont. S.C.J. [Commercial List])], 1999 CanLII 15012 at para 9 (*CanLII*) *1078385 Ontario Ltd., Re*, 2004 CanLII 55041 at paras 30-31 (*CanLII*), affirming *1078385 Ontario Ltd., Re*, 2004 CanLII 66329 (*CanLII*).

39 The Applicants submit that the outcome of the Plan, that being the distribution of the Applicants' estates to the Senior Lenders, is essentially identical to what would be achieved with any other options available in the circumstances. Without the Plan, the Senior Lenders could (a) privatize the Applicants' assets through the enforcement of share pledges and other security, or (b) could credit bid their debt to acquire the shares or assets; or (c) enforce their secured positions following the Applicants filing for bankruptcy, administration, or liquidation proceedings across multiple jurisdictions. In each scenario (as with the Plan), the Applicants' assets are transitioned to the Senior Lenders.

40 The foregoing submissions were not challenged.

41 The Monitor supports the Plan. As noted in the Monitor's Seventh Report, "it is the Monitor's view that the Plan represents a better path forward than any other alternative that is available to the Applicants and is fair and reasonable."

42 I am aware that concerns with respect to the fairness of the Plan have been raised by numerous shareholders of Lydian International and oral submissions were made by John LeRoux, Hasan Ciftehan, Mehmet Ali Ekingen and Atilla Bozkay.

43 In addition, a number of emails were sent directly to the court, which were forwarded to counsel to the Monitor. In addition, certain emails were sent to the Monitor. None of the emails were in a proper evidentiary form.

44 The concerns of the shareholders included criminal complaints of activities in Armenia, the content of certain press releases and the impact of the COVID-19 pandemic. Some shareholders requested a delay of three months in these proceedings.

45 As previously noted, equity claims and unsecured claims against Lydian International will not be assumed by Restructured Lydian as part of the Plan. Simply put, the shareholders of Lydian International will not receive any compensation for their shareholdings. This is a reflection of the insolvency of the Applicants and the priority position afforded to shareholders by the CCAA.

46 I recognize that the shareholders' monetary loss will be crystalized if the Plan is sanctioned. However, a monetary loss resulting from the ownership, purchase or sale of their equity interest is an "equity claim" as defined in s. 2(1) of the CCAA. This definition is significant as s. 6(8) of the CCAA provides:

> 6(8) Payment - equity claims - No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

47 The Plan does not provide for payment in full of claims that are not equity claims. Consequently, equity claimants are not in the position to receive any compensation.

48 The economic reality facing the shareholders existed prior to the COVID-19 pandemic. The Applicants were insolvent when they filed these proceedings on December 23, 2019. The financial situation facing the Applicants has not improved since the filing. In fact, it has declined. The mine is not operating with the obvious result that it is not generating revenues and interest continues to accrue on the secured debt. The fact that shareholders will receive no compensation is unfortunate but is a reflection of reality which does not preclude a finding that the Plan is fair and reasonable for the purposes of this motion.

49 The Senior Lenders have voted in sufficient numbers in favour of the Plan. I am satisfied that there are no viable alternatives, and, in my view, it is not feasible to further delay these proceedings.

50 Section 6.6 of the Plan provides for full and final releases in favour of the Released Parties, who consist of (a) the Applicants, their employees, agents and advisors (including counsel) and each of the members of the Existing Lydian

Group's current and former directors and officers; (b) the Monitor and its counsel; and (c) the Senior Lenders and each of their respective affiliates, affiliated funds, their directors, officers, employees, agents and advisors (including counsel) (collectively, the "Ancillary Releases"). A chart setting out the impact of the releases is attached as Schedule "A" to these reasons.

51 The Applicants submit that the releases apply to the extent permitted by law and expressly do not apply to, among other things:

a) Lydian Canada's, Lydian UK's or the Senior Lenders' obligations under the Plan or incorporated into the Plan;

b) obligations of any Existing Lydian Group member other than Lydian International under the Credit Agreement and Stream Agreement, and any agreements entered into relating to the foregoing, from and after the Plan Implementation Date;

c) any claims arising from the willful misconduct or gross negligence of any applicable Released Party; and

d) any Director from any Director Claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

52 Unsecured creditors' claims, other than the Ancillary Releases in favour of the Directors, are not compromised or released and remain in the Restructured Lydian Group.

53 The Applicants submit that it is accepted that there is jurisdiction to sanction plans containing releases if the release was negotiated in favour of a third party as part of the "compromise" or "arrangement" where the release reasonably relates to the proposed restructuring and is not overly broad. There must be a reasonable connection between the third-party claim being compromised in the plan and the restructuring achieved by the plan to warrant inclusion of the third-party release in the plan (see: *Canadian Airlines Corp., Re*, 2000 ABQB 442 (Alta. Q.B.) at para 92 (*CanLII*) CCAA at s. 5(1); *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587 (Ont. C.A.) at paras 61 and 70 (*CanLII*); *Canwest Global Communications Corp., Re*, 2010 ONSC 4209 (Ont. S.C.J. [Commercial List]) at para 28-30 (*CanLII*); and *Kitchener Frame Ltd., Re*, 2012 ONSC 234 (Ont. S.C.J. [Commercial List]) at paras 85-88 (*CanLII*).

54 The Applicants submit that in considering whether to approve releases in favour of third parties, courts will consider the particular circumstances of the case and the objectives of the CCAA. While no single factor will be determinative, the courts have considered the following factors:

a) Whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;

b) Whether the claims to be released were rationally connected to the purpose of the plan and necessary for it;

c) Whether the plan could succeed without the releases;

d) Whether the parties being released were contributing to the plan; and

e) Whether the release benefitted the debtors as well as the creditors generally.

55 The Applicants submit that the releases were critical components of the decision-making process for the Applicants' directors and officers and Senior Lenders' participation in these CCAA Proceedings in proposing the Plan and the Applicants submit that they would not have brought forward the Plan absent the inclusion of the releases.

56 The Applicants also submit that the support of the Senior Lenders is essential to the Plan's viability. Without such support, which is conditional on the releases, the Plan would not succeed.

57 The Applicants submit that the Released Parties made significant contributions to the Applicants' restructuring, both prior to and throughout these CCAA Proceedings. The extensive efforts of the Applicants' directors and officers and the Senior Lenders and Monitor resulted in the negotiation of the Plan, which forms the foundation for the completion of these CCAA Proceedings. The Senior Lenders financial contributions through forbearances, additional advances and DIP and Exit Financing were instrumental.

58 The Applicants also submit that the releases are an integral part of the CCAA Plan which provides an orderly and effective alternative to uncoordinated and disruptive secured lender enforcement proceedings. The Plan permits unsecured creditors future potential recovery in the Restructured Lydian Group, which may not exist in bankruptcy (*ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587 (Ont. C.A.) at paras 71 (*CanLII*); and *Kitchener Frame Ltd., Re*, 2012 ONSC 234 (Ont. S.C.J. [Commercial List]) at paras 80-82 (*CanLII*).

59 The Applicants submit that this Court has exercised its authority to grant similar releases, including in circumstances where the released claims included claims of parties who did not vote on the plan and were not eligible to receive distributions (*Target Canada Co. et al*. (2 June 2016), Toronto CV-15-10832-00CL (Ont. Sup. Ct. [Comm. List]) Sanction and Vesting Order at Schedule "B" art. 7 (*Monitor's website*); *Rubicon Minerals Corporation et al*. (8 December 2016), Toronto CV-16-11566-00CL (Ont. Sup. Ct. [Comm. List]) Sanction Order at Schedule "A" art. 7 (*Monitor's website*); and *Nortel Networks Corporation et al*. (30 November 2016), Toronto 09-CL-7950 (Ont. Sup. Ct. [Comm. List]) Plan of Compromise and Arrangement at art. 7 (*Monitor's website*)).

60 Full disclosure of the releases was made in (a) the draft Plan that was circulated to the Service List and filed with this Court as part of the Applicants' Motion Record (returnable June 18, 2020); and (b) the Plan attached to the Meeting Order. The Applicants also issued the Press Releases. This notification process ensured that the Applicants' stakeholders had notice of the nature and effect of the Plan and releases.

61 The foregoing submissions with respect to the releases were not challenged.

62 In my view, each of the Released Parties has made a contribution to the development of the Plan. In arriving at this determination, I have taken into account the activities of the Released Parties as described in the Reports of the court-appointed Monitor. I am satisfied that it is appropriate for the Plan to include the releases in favour of the Released Parties.

63 The development of this Plan has been challenging and as the Monitor has stated, "the Plan represents a better path forward than any other alternative that is available to the Applicants and is fair and reasonable".

64 I accept this assessment and find that the Plan is fair and reasonable in the circumstances.

DIP Charge

65 The terms of the DIP Exit Facility Amendment are described in the Sellers Sanction Affidavit. The DIP Exit Facility Amendment provides for exit financing totalling $1.866 million to assist in implementing the Plan and taking the necessary ancillary steps to terminate the CCAA Proceedings and support the J&E Process.

66 This Court has the jurisdiction to authorize funding in the context of a CCAA restructuring pursuant to s. 11.2(1) and 11.2(2) of the CCAA. In considering whether to approve DIP financing, the Court is to consider the non-exhaustive list of factors set out in s. 11.2(4) of the CCAA. These same provisions of the CCAA provide this Court with the authority to approve amendments to a DIP agreement and secure all obligations arising from the amended DIP loans with an increased DIP charge.

67 The Applicants submit that, based on the following, the DIP Amendment should be approved and the increase to the DIP Facility should be secured by the DIP Charge:

a) the DIP Exit Credit Facility is necessary to enable the Applicants to implement the Plan;

b) the Monitor is supportive of the DIP Exit Facility Amendment;

c) the DIP Exit Facility Amendment is not anticipated to give rise to any material financial prejudice; and

d) the DIP Lenders are the majority of Senior Lenders.

68 I am satisfied that the requested relief in respect to the DIP Amendment is reasonably necessary and appropriate in the circumstances.

Sealing Request

69 The Applicants seek to seal the unredacted Sellers Sanction Affidavit on the basis that the redacted portions of the Sellers Sanction Affidavit contain commercially sensitive information, the disclosure of which could be harmful to stakeholders.

70 The redactions currently being sought are consistent with previous Orders in these CCAA Proceedings. In my view, the documents in question contain sensitive commercial information. Having considered the principles set out in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 (S.C.C.) at para. 53 I am satisfied that the request for a sealing order is appropriate and is granted.

Stay Period

71 On the Plan Implementation Date, the CCAA Proceedings with respect to Lydian UK and Lydian Canada will be terminated, such that Lydian International will be the only remaining Applicant in the CCAA Proceedings. The Applicants are requesting an extension of the Stay Period for Lydian International until and including the earlier of (i) the issuance of the Monitor's CCAA Termination Certificate and (ii) December 21, 2020 to enable the remaining Applicant and the Monitor to take the steps necessary to implement the Plan and terminate the CCAA Proceedings and initiate the J&E Process. The Applicants are also requesting an extension of the Stay Period for the Non-Applicant Stay Parties (other than Lydian US) until and including the earlier of the issuance of the Monitor's Plan Implementation Certificate.

72 I am satisfied that the Applicants in requesting the extension of the Stay Period have demonstrated that circumstances exist that make the order appropriate; and that they have acted and are acting in good faith and with due diligence such that the request is appropriate.

Approval of Monitor's Activities

73 The Applicants are seeking an order approving the Monitor's activities to date, as detailed in the Fifth Report, Sixth Report and the Seventh Report (collectively, the "Reports"). This Court has already approved the activities of the Monitor that were detailed in its previous reports. There was no opposition to the request.

74 I am satisfied that the Reports and the activities described therein should be approved. The Reports were prepared in a manner consistent with the Monitor's duties and the provisions of the CCAA and in compliance with the Initial Order. The Reports are approved in accordance with the language provided in the draft order.

Approval of Monitor's Fees

75 The Applicants further seek approval of the fees and disbursements of (i) the Monitor for the period April 14, 2020 to June 23, 2020, inclusive, and (ii) counsel to the Monitor for the period April 16, 2020 to June 23, 2020. The Applicants have reviewed the fees of the Monitor and its counsel and support the payment of the same.

76 I am satisfied that the fee requests are appropriate in the circumstances and they are approved.

DISPOSITION

77 The Applicants' motion is granted. The Plan is sanctioned and approved. The ancillary relief referenced in the motion is also granted and an Order reflecting the foregoing has been signed.

Schedule "A"

Lydian International Limited et al.

Impact of the Releases Described in s. 6.6 of the Plan

	Lydian Jersey	
Type of Claim	**Treatment**	**Plan Reference**
Senior Lender Claims Held by RCF, Orion and Osisko	Released	Section 6.3(n)
Unsecured Guarantee of Equipment Lessors ING, CAT, Ameriabank	Not Released. Addressed in the J&E Process in Jersey	Section 6.6 (carve-out (E))
Other Unsecured Claims Includes Maverix Metals claim against Lydian Jersey	Not Released. Addressed in the J&E Process in Jersey.	Section 6.6 (carve-out (E))
Equity Claims Held by RCF, Orion, and public Shareholders	Not Released. Addressed in the J&E Process in Jersey.	Section 3.5
D&O Claims Claims against the Directors and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
Claims against Monitor Claims against the Monitor, and Monitor's legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
Claims against Senior Lenders Claims against the Senior Lenders and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
Intercompany Claims Claims by Lydian Jersey against Lydian Canada and other subsidiaries	Assigned to Lydian Canada	Section 6.3(h)
Priority Claims Admin Charge, DIP Lender's Charge, Transaction Charge, D&O Charge	Transaction Charge and D&O Charge to be terminated on Plan Implementation Date Admin Charge and DIP Lender's Charge to be terminated on CCAA Termination Date	Section 5.2(i)

	Lydian Canada	
Type of Claim	**Treatment**	**Plan Reference**
Senior Lender Claims Held by RCF, Orion and Osisko	Not Released	Section 6.6
Unsecured Claims of Equipment Lessors [1] ING, CAT, Ameriabank	Not Released	Section 6.6 (carve-out (E))
Other Unsecured Claims	Not Released	Section 6.6 (carve-out (E))
Equity Claims Shareholdings of Lydian Jersey in Lydian Canada	Not Released (but subject to amalgamation with SL Newco)	Section 3.5
D&O Claims Claims against the Directors and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)

Claims against Monitor Claims against the Monitor, and Monitor's legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
Claims against Senior Lenders Claims against the Senior Lenders and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
Priority Claims Admin Charge, DIP Lender's Charge, Transaction Charge, D&O Charge	Transaction Charge and D&O Charge to be terminated on Plan Implementation Date Admin Charge and DIP Lender's Charge to be terminated on CCAA Termination Date	Section 5.2(i)

Lydian UK

Type of Claim	Treatment	Plan Reference
Senior Lender Claims Held by RCF, Orion and Osisko	Not Released	Section 6.6
Unsecured Claims of Equipment Lessors ING, CAT, Ameriabank [2]	Not Released	Section 6.6 (carve-out (E))
Other Unsecured Claims	Not Released	Section 6.6 (carve-out (E))
Equity Claims Shareholdings of Lydian Canada in Lydian UK	Not Released	Section 3.5
D&O Claims Claims against the Directors and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
Claims against Monitor Claims against the Monitor, and Monitor's legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
Claims against Senior Lenders Claims against the Senior Lenders and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
Priority Claims Admin Charge, DIP Lender's Charge, Transaction Charge, D&O Charge	Transaction Charge and D&O Charge to be terminated on Plan Implementation Date Admin Charge and DIP Lender's Charge to be terminated on CCAA Termination Date	Section 5.2(i)

11910728 Canada Inc. ("DirectorCo")

Type of Claim	Treatment	Plan Reference
Senior Lender Claims Held by RCF, Orion and Osisko	Not Released	Section 6.6
Unsecured Claims	Not Released	Section 6.6 (carve-out (E))
Equity Claims Shareholdings of Lydian Canada in DirectorCo	Not Released	Section 3.5

D&O Claims Claims against the Directors and their legal cousnel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii) of the Plan
Claims against Monitor Claims against the Monitor, and Monitor's legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
Claims against Senior Lenders Claims against the Senior Lenders and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)

Lydian International Holdings Limited, Lydian Resources Armenia Limited, and Lydian Resources Kosovo Limited

Type of Claim	Treatment	Plan Reference
Senior Lender Claims Held by RCF, Orion and Osisko	Not Released	Section 6.6
Other Secured Claims Includes claim of Maverix Metals in shares of Lydian Resources Armenia Limited, which is subordinated to claims of Senior Lenders	Not Released	Section 6.6
Unsecured Claims Includes Maverix Metals claim against Lydian International Holdings Limited	Not Released	Section 6.6 (carve-out (E))
Equity Claims Shareholdings of Lydian UK in Lydian International Holdings Limited, and shareholdings of Lydian International Holdings Limited in Lydian Resources Armenia ("**BVI**") and Lydian Resources Kosovo Limited Includes Maverix Metals' share pledge in BVI	Not Released	Section 6.6 (carve-out (E))
D&O Claims Claims against the Directors and their legal cousnel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii) of the Plan
Claims against Monitor Claims against the Monitor, and Monitor's legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
Claims against Senior Lenders Claims against the Senior Lenders and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)

Lydian Armenia

Type of Claim	Treatment	Plan Reference
Senior Lender Claims Held by RCF, Orion and Osisko	Not Released	Section 6.6
Equipment Lessor Secured Claims ING, CAT and Ameriabank (to the extent secured by their collateral)	Not Released	Section 6.6 (carve-out (E))
Equipment Lessor Unsecured Claims	Not Released	Section 6.6 (carve-out (E))

ING, CAT and Ameriabank (unsecured deficiency claims)		
Other Unsecured Claims e.g. Trade creditors	Not Released	Section 6.6 (carve-out (E))
Equity Claims Shareholdings held by BVI / DirectorCo (as sole shareholder representative of BVI	Not Released	Section 3.5
D&O Claims Claims against the Directors	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6 (i) and (ii)
Claims against Monitor Claims against the Monitor, and Monitor's legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
Claims against Senior Lenders Claims against the Senior Lenders and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)

Lydian US Lydian Zoloto, Lydian Resources Georgia Limited ("Lydian Georgia") and Georgian Resource Company LLC ("Lydian GRC", and collectively with Lydian US, Lydian Zoloto and Lydian Georgia, the "Released Guarantors" under the Plan)

Type of Claim	Treatment	Plan Reference
Senior Lender Claims Held by RCF, Orion and Osisko	Released	Section 6.3(n)
Unsecured Claims	Not Released	Section 6.6
Equity Claims		
(a) Shareholdings of Lydian Jersey in Lydian US, Lydian Georgia and Lydian Zoloto; and (b) Shareholdings of Lydian Georgia in Lydian GRC	(a) Not Released. Per s. 6.4 of the Plan, Lydian US and Lydian Zoloto to be wound-up and dissolved pursuant to the laws of Colorado and Armenia, respectively. (b) Lydian Georgia shares held by Lydian Jersey to be transferred to Lydian Georgia Purchaser on Plan Implementation Date. (b) Shares of Lydian GRC held by Lydian Georgia not released. See note re: Lydian Georgia above.	Section 3.5 and section 6.4
D&O Claims, Claims against the Directors and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
Claims against Monitor Claims against the Monitor, and Monitor's legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
Claims against Senior Lenders Claims against the Senior Lenders and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)

Motion granted.

Footnotes

1 This includes contractual rights as outlined in the Waiver and Consent Agreement between Lydian Jersey, Lydian Canada, Lydian UK and Lydian Armenia dated November 26, 2018 (the "**Waiver**").

2 This includes the contractual rights outlined in the Waiver.

TACORA RESOURCES INC.
SUMMARY OF CURRENT AND FULLY DILUTED OWNERSHIP

	Current		Fully Diluted	
	Shares	% Ownership	Shares	% Ownership
Proterra M&M MGCA B.V.	165,770,379	69.2%	165,770,379	15.1%
Proterra M&M Co-Invest LLC	17,750,166	7.4%	17,750,166	1.6%
OMF Fund II	23,851,786	10.0%	23,851,786	2.2%
MagGlobal LLC	14,460,759	6.0%	14,460,759	1.3%
Titlis Mining AS	13,867,318	5.8%	13,867,318	1.3%
Class A B Shares	3,819,750	1.6%	3,819,750	0.3%
Sub-Total	**239,520,158**	**100.0%**	**239,520,158**	**21.9%**
Cargill Warrants	-		383,512,569	35.0%
AHG Warrants	-		346,987,562	31.7%
QNS&L Warrants	-		27,393,755	2.5%
Cargill Preferred C Shares	-		16,154,887	1.5%
Management Options	-		82,181,265	7.5%
Total	**239,520,158**	**100.0%**	**1,095,750,195**	**100.0%**

REGISTER OF DIRECTORS
(Section 126)

TACORA RESOURCES INC.

Full Name	Prescribed Address	Date Appointed	Date Ceased	OFFICE HELD		
				Office	Date Appointed	Date Ceased
Larry J. Lehtinen	Delivery address: 6377 Eshquaguma Road Gilbert, MN USA 55741	Jan 12, 2017	Jan 9, 2023	Chairman	Jan 12, 2017	Jun 30, 2019
				Chief Executive Officer	Jan 12, 2017	Jun 30, 2019
Matthew J. Lehtinen	Delivery address: 102 NE 3rd Street, Suite 120 Grand Rapids, MN USA 55744	Jan 12, 2017	Nov 16, 2018	President	Jan 12, 2017	Jun 30, 2019
				Chief Operating Officer	Jun 15, 2018	Jun 30, 2019
Torben Thordsen	Delivery address: 16 Clearwater Place Surbiton, Surrey United Kingdom KT6 4ET	Jul 17, 2017				
Rupert Sam Byrd	Delivery address: Lamorna, Nags Head Lane Great Missenden, Buckinghamshire United Kingdom HP16 0HD	Jul 17, 2017	Jan 9, 2023			
David Durrett	Delivery address: 1239 County Road 1608 Rusk, TX USA 75785	Jul 17, 2017	Nov 10, 2022	Chief Executive Officer	Jun 30, 2019	Jan 17, 2020
James Warren	Delivery address: 11372 Entrevaux Drive Eden Prairie, MN USA 55347	Jul 21, 2017	Jan 9, 2023			
Nick Carter	Delivery address: 3043 Clair Road Lexington, KY USA 40502	Nov 16, 2018	Nov 2, 2022			

Full Name	Prescribed Address	Date Appointed	Date Ceased	OFFICE HELD		
				Office	Date Appointed	Date Ceased
Philip Mulvihill	Delivery address: 6 Paradise Island, Sentosa Cove Singapore 098471	Nov 16, 2018				
Thierry Martel	Delivery address: 305 Edison Ave St. Lambert, QC J4R 2P8	Jul 20, 2020	Oct 21, 2021	Chief Executive Officer	Jul 14, 2020	Oct 21, 2021
				President	Jul 14, 2020	Oct 21, 2021
Michael Barton	Delivery address: 75 Marsham Way Gerrards Cross, United Kingdom SL9 8AW	Dec 11, 2020	Mar 29, 2022			
Peter Steiness Larsen	Delivery address: Froyas Gate 10B Oslo, Norway 0273	Jan 31, 2021	Jan 9, 2023			
Joe Broking	Delivery address: 102 NE 3rd Street, Suite 120 Grand Rapids, MN USA 55744	Jan 12, 2017 Oct 21, 2021	Jul 17, 2017	Chief Financial Officer	Jan 12, 2017	Oct 21, 2021
				Corporate Secretary	Aug 9, 2017	
				Executive Vice President	Jun 15, 2018	Oct 21, 2021
				Chief Executive Officer	Oct 21, 2021	
				President	Oct 21, 2021	
Andrew Ham	Delivery address: 33 Welbeck Street London, United Kingdom W1G 8EX	Mar 29, 2022				
Jacques Perron	Delivery address: 8965 E Phillips Drive Centennial, CO, USA 80112	Aug 1, 2022				

Why Iron Ore

Iron Ore Concentrate

Our Process

Future of Iron Ore

OUR PRODUCT

Why Iron Ore.

Iron ore is primarily used to create steel, which is essential for human progress; from culinary uses, electronics, surgical tools and medical equipment, architecture and construction to automotive and aerospace applications, it helps drive the world's economy, and allows human beings to harness their innovation to actualize their wildest dreams.

Steel is completely recyclable; it can be converted into material of the same quality over and over. Recycling steel reduces emissions and environmental impact, and each recycled tonne of scrap steel saves more than 1,400 kilograms of iron ore! Other uses of iron ore include creating powdered iron for magnets and catalysts, radioactive iron for biochemical research, iron blue used in paints, ink, cosmetics, dyeing, fertilizer, and industrial finishes, and black iron oxide – a pigment used in polishing compounds, metallurgy, medicine, and the electronics industry.

Canada exported 52.2 million tonnes of iron ore in 2019, worth roughly $6.6 billion. Pelletized iron ore accounted for 29.6% ($2.4 billion) of the volume, while the remaining 70.4% ($4.2 billion) was iron ore concentrate.

Iron Ore Premium Concentrat

- Why Iron Ore
- Iron Ore Concentrate
- Our Process
- Future of Iron Ore

High Quality

65.5% Fe

Low Impurity

Low silica and manganese content

Significant Environmental Benefits

Lower Carbon Footprint per Tonne of Steel

Cost Benefits

Higher Iron = Lower Transport and Processing Costs per Tonne of Steel

Increased Blast Furnace Productivity

Higher Recovery of Iron

Reduced Slag Volumes

Cleaner Concentrate = Less Waste

Lower CO2 Emissions

Per tonne of steel produced

Reduced Energy Requirements

For pelletizing

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Lower CO2 Emissions

Per tonne of steel produced

Reduced Energy Requirements

For pelletizing

Why Iron Ore

Iron Ore Concentrate

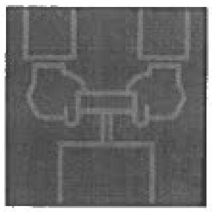
Our Process

Future of Iron Ore

Our process.

- Why Iron Ore
- Iron Ore Concentrate
- Our Process
- Future of Iron Ore

1. Land Survey & Blasting

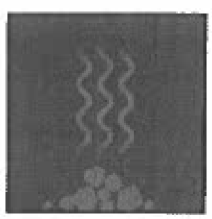


Surveying of land confirms whether iron ore is present. If so, blast team preps area for mining.

3. Iron Ore Is Crushed

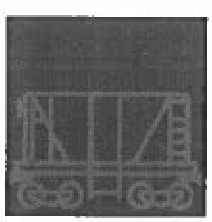
Large raw material is crushed into smaller material to be processed in the mill.

5. Drying Process



The high-grade iron ore is dried to remove all moisture prior to shipping.

7. Train Loading



High-quality, dry iron ore is loaded onto a train and transported to port for shipping.

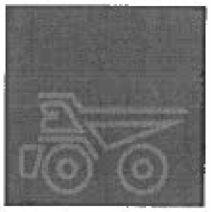
Why Iron Ore

Iron Ore Concentrate

Our Process

Future of Iron Ore

2. Heavy Equipment Operation

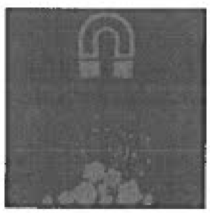


Heavy equipment is used to mine and haul iron ore from the pit to the crusher.

4. Iron Separation

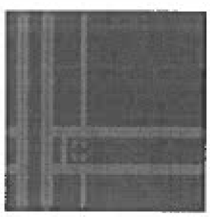
After leaving the mill, iron ore is sent through the spirals where water and gravity are used to separate the heavier iron ore from the lighter impurities.

6. High-Tension Magnetic Removal Process



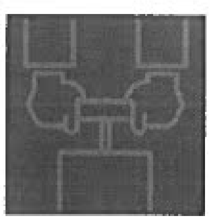
The dried iron ore is put through the high-tension magnetic process to remove final impurities.

8. High-Efficiency Steel Production



Iron ore is shipped to steel producers where low-waste steel is fabricated and used globally.

Land Survey & Blasting



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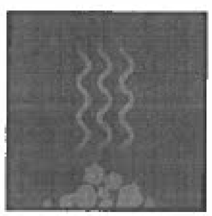
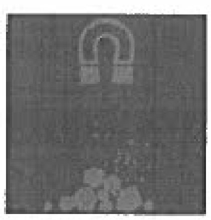
Drying Process



The high-grade iron ore is dried to remove all moisture prior to shipping.

High-Tension Magnetic Removal Process



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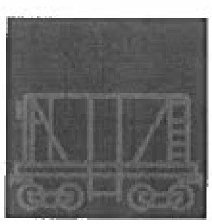
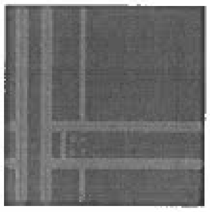
Train Loading



High-quality, dry iron ore is loaded onto a train and transported to port for shipping.

High-Efficiency Steel Production



Iron ore is shipped to steel producers where low-waste steel is fabricated and used globally.

- Why Iron Ore
- Iron Ore Concentrate
- Our Process
- Future of Iron Ore

Though the demand for iron ore continues to increase, there are many factors forging the path to the future of iron ore. Uncertainty in supply impacted by external factors causes volatility in the industry, and governments across the world are focusing on new decarbonization incentives.

Now the eyes of resource companies must shift to new processes, and new approaches to mining; new strategies for operational efficiency and sustainability, while reducing fuel usage. Increasing equipment availability and reducing maintenance time for equipment are proven ways to increase safety. Tacora is innovative in our approach, and we are constantly discovering new ways to improve health and safety within our operations, reducing accidents and mitigating ergonomic risks. We want to reduce cost, enhance the lives of our employees, and increase profit margins and in order to do so, we know that the industry has to adapt, and optimize to the future market; how will emerging technologies such as AI or drones be applied to the mining industry?

A shift to decarbonization strategies and EAF production may lessen overall interest in iron ore but still increases the relevance of iron ore by a large margin. Other factors that may impact the market are iron ore pricing mechanisms, high-grade iron ore pricing trends, global and regional iron ore market dynamics, trade flows, and procurement trends, as well as the development of China's steelmaking industry. We are working tirelessly so that we will be ready to face these factors head on.

Why Iron Ore

RESOURCES

Corporate

Shared Services

Scully Mine

Quick Links

We are sustainable

We are a community

We deliver Iron Ore

COMPANY

OPERATIONS

SUSTAINABILITY

PRODUCT

PROCUREMENT

CAREERS

INVESTORS

NEWS & STORIES

We are sustainable

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Contact Us

Have a question? Click here to get in touch.

CONTACT US

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- Why Iron Ore
- Iron Ore Concentrate
- Our Process
- Future of Iron Ore

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.

CROSS-EXAMINATION OF SAMUEL MORROW
On Affidavit Sworn March 26, 2024
Held via Arbitration Place Virtual
on Friday, April 5, 2024, at 8:01 a.m.

APPEARANCES:

Alexander Rose RJ Reid	Counsel for the Applicant, Tacora Resources Inc.
Colm St. Roch Seviour Josh Merrigan	Counsel for 1128349 BC Ltd.
Kiyan Jamal	Counsel for the Monitor

INDEX

LIST OF REFUSALS

LIST OF EXHIBITS

Arbitration Place Virtual

--- Upon commencing Friday, April 5, 2024 at 8:01 a.m.

AFFIRMED: SAMUEL MORROW

CROSS-EXAMINATION BY MR. ROSE:

1 Q. Mr. Morrow, hi. My name is Alex Rose. I am a lawyer with Stikeman Elliott. We act as counsel for Tacora. With me also on the video conference is RJ Reid, who is also from our firm. I thank you for joining us. The way this goes is I am going to ask you a number of questions today. If you don't hear the question clearly or you don't understand, please just ask me to clarify and I will repeat myself or try to simplify. Okay?

A. Will do.

2 Q. So, obviously, we are conducting this examination by videoconference, so can I ask you just to clarify where you are physically located right now?

A. Yeah, sure. I am in the Warders Hotel in Fremantle, just south of Perth in Western Australia.

3 Q. Is anybody with you in the hotel room there right now?

A. My wife and two sons are like, in a separate room, but no one else, just them.

4 Q. Okay. And do you have --

A. And they are separated by a door. I should clarify that there is a closed door between us.

5 Q. Okay. I am not too worried about them, thank you, unless you tell me I should be. No, that will be fine. Do you have any screens or iPhones or personal devices, other than the computer you are using for the purpose of this video conference?

A. I do. I have a phone, but I can place it away if that would be --

6 Q. I would appreciate that. During the course of the cross-examination, you shouldn't read or receive any e-mails or texts or other messages.

A. Yes.

7 Q. You understand that?

A. Yes. Sorry, I've just gotten rid of my iWatch, as well.

8 Q. Oh, thank you. If your counsel should choose to object to a question, I

would ask that they simply raise their hand and I will give them the opportunity to speak. But you don't need to message with them or e-mail or text or communicate.

A. Understood.

9 Q. Of course, if you need a break at some point, please just let me know and we can step away. This is not an endurance exercise, so let me know if you need a few minutes.

A. Sure thing.

10 Q. I will be referencing your affidavit that is sworn March 26th, 2024, which became tab 2 of the responding motion record that was put in by a numbered company called 1128349 BC Limited. So I will be referencing that affidavit. Do you have a copy of that affidavit with you, in the hotel?

A. I don't. I have it electronically on my computer, but I don't have a physical copy with me.

11 Q. Okay. As I mentioned at the outset, I have Mr. Reid with me from our firm, and so, to the extent I am making reference to documents, I will ask Mr. Reid to put them up on

the screen. He should be able to share screen, and, unless he tells me otherwise, in the few instances where I am going to go to your affidavit, I will ask him to put that on the screen, as well, and you can see.

A. Okay.

12 Q. If we do something like that, I would ask that this be somewhat of a cooperative exercise. So, if you want to read up or down or scroll through, Mr. Reid will have to do that for you, so you will have to tell him to go up or down or so forth.

A. Sure thing.

13 Q. So, again, this is a cross-examination on that March 26th affidavit. Can I ask you, just at the outset: Did you prepare that affidavit, or did somebody prepare it for you?

A. That was prepared by both myself and counsel, Stewart McKelvey.

14 Q. But you reviewed that affidavit before swearing it, I take it?

A. I did.

15 Q. Your affidavit was sworn after the affidavit of Joe Broking, sworn on March

21, 2024. Correct?

A. I believe so. Joe Broking has submitted a couple of affidavits --

16 Q. He did.

A. ...and I think it was...

17 Q. Yes. His first one was March 21, and his second one is March 28th. As I understand it, yours comes in the middle, on March 26th.

A. That seems right.

18 Q. Yes, so did you prepare your affidavit before reading Mr. Broking's first affidavit?

A. Much of it was prepared before reading Mr. Broking's first affidavit.

19 Q. Okay. I understand. That makes sense. Did you read Mr. Broking's first affidavit before you swore your affidavit?

A. I think so. I can't specifically remember.

20 Q. And so you don't recall whether you read his first affidavit before swearing yours. Have you read his second one?

A. Yes.

21 Q. So, at the outset, I am

going to ask for a little help. So there is a numbered company called 0778539 BC, and, as I understand it, it is sometimes referred to as "MFC." Is that right?

A. I don't refer to that company as MFC, but --

22 Q. Okay. 0778539, are you familiar with that numbered company?

A. I am.

23 Q. What does it do?

A. Currently?

24 Q. Yes.

A. I am not involved in that company currently. I --

25 Q. Okay.

A. ...am not aware.

26 Q. Do you know if it is beneficially owned by 1128349 BC?

A. It is not.

27 Q. Okay. But that company, 1128349 BC, I am just going to shorten that to 112 if that is all right.

A. Please.

28 Q. Yeah. Now, 112 is the company that receives the earned royalties from

Tacora. Is that correct?

A. Correct.

29 Q. Correct, and 112 is owned by Scully Royalty. Is that right?

A. Indirectly.

30 Q. Indirectly, okay. I understand from your affidavit that you are a director of 112. Is that right?

A. It is.

31 Q. And you are the president, CEO, and CFO of Scully Royalty Ltd. Correct?

A. Correct.

32 Q. How long have you held those roles, director and CEO and CFO?

A. So I have been the CFO of Scully Royalty since July of 2017, and I have been a director of 112, I believe, since, you know, Q3, Q4 2017. There might have been a break in that directorship for a couple months at one point.

33 Q. And president and CEO of Scully Royalty, when did you assume that position?

A. A couple years ago now.

34 Q. Okay. So your first involvement with these entities would have been

mid-2017 and somewhere in there. Is that right?

A. Can you clarify what you mean by "these entities"?

35 Q. Oh, I am sorry, yes. The first time you took a position with either 112 or Scully Royalty would have been in or around July of 2017. Is that right?

A. Yes. Scully Royalty, the parent company today, was only incorporated in June of 2017, and 112 was only incorporated shortly thereafter.

36 Q. And what did you do before taking on those positions?

A. I was the CFO and deputy CEO of the former parent company of the group, the Scully group.

37 Q. Okay. I understand that you have never worked for or been a director or officer of or acted as a consultant to any of the following, okay?

Tacora, you have never worked for Tacora or been a director or officer of Tacora or acted as a consultant to Tacora?

A. No.

38 Q. How about Proterra

Investment Partners?

A. No.

39 Q. Proterra M&M MGCA, which I call "holdings"?

A. No.

40 Q. Proterra MGCA Cooperatief U.S.?

A. No.

41 Q. Black River Asset Management?

A. No.

42 Q. Black River Capital Partners Fund (Metals And Mining A)?

A. No.

43 Q. Black River Capital Partners Fund (Metals And Mining B)?

A. No.

44 Q. Cargill International?

A. No.

45 Q. Cargill Inc.?

A. No.

46 Q. Any other affiliate of Cargill?

A. Not that I am aware of.

47 Q. So, at all times between

April of 2017 and today, you have worked only for Scully Royalty and 112. Is that right?

A. We have a number of subsidiaries in our group, and I work for the group, and I am involved in many of those subsidiaries.

48 Q. Okay. So I should rephrase that. At all times between April 2017 and today, you have only worked for Scully Royalty and its subsidiaries. Is that fair?

A. Yes.

49 Q. Okay.

A. Yes.

50 Q. Okay. So I understand that in 2017 there was an earlier dispute alleging underpayment of royalties by Tacora's predecessor, a past operator. Do you have any knowledge of that?

A. Some limited knowledge, yes. There were a number of disputes with the past operator, including those that, you know, were still outstanding at the time of their own CCAA.

51 Q. And are these disputes related to the payment of the royalties?

A. Yes.

MR. SEVIOUR: Counsel, I saw the reference to the Quebec CCAA decisions of the Quebec Superior Court which related to the Cliffs CCAA, and just a question at this point, but it related to a different lease, different parties, and a different royalty dispute. As Sam has indicated, there were prior royalty disputes with Cliffs, as well.

So our view generally is that none of those have relevance to the current proceeding, so, you know, I will be measured, obviously, but we will need to be satisfied as to the relevance of any questioning of those prior royalty disputes under a different lease.

MR. ROSE: Okay. Well, I understand that you may take a position on relevance on any question. But let me just start by asking my question, and then you can take a view on it.

MR. SEVIOUR: Sure.

MR. ROSE: So, Mr. Reid, if you wouldn't mind, amongst the documents we provided last night was a Scully Royalty Ltd. 20-F for the year ended 2021. If you could put that up on the screen, I would appreciate that.

52 Q. Do you see that document, Mr. Morrow, a form 20-F?

A. I do.

53 Q. It is for the year ended 2021. And did Scully Royalty issue this form 20-F?

A. Yes.

54 Q. And are you familiar with these kinds of filings?

A. I am.

MR. ROSE: Mr. Reid, could you go to page 27 of the PDF.

55 Q. And you see in the fourth paragraph down that begins, "In the third quarter of 2017," we entered into a settlement agreement?

A. Yes.

56 Q. With the new operator. So this is the or one of the disputes over the payment of royalties that you were referencing, and this is a dispute with the former operator. Is that correct?

A. Yes.

57 Q. And this was resolved in the third quarter of 2017 by way of a settlement

payment.

A. Correct.

58 Q. Okay. So that is one dispute over the royalty payment that got resolved.

MR. ROSE: You can close that, Mr. Reid.

59 Q. So your counsel made reference to a couple of decisions in Quebec in 2018. Mr. Reid, if you could put up the 2018 judgment of the lower court, I would appreciate that.

Do you see this decision, Mr. Morrow?

A. I do.

60 Q. Are you familiar with this proceeding?

A. To a limited extent.

61 Q. Okay. As I understand it, a decision was sought by Wabush that it was not required to pay any minimum royalty, and that position was contested by MFC. Does that help?

A. I read this decision earlier today. I wasn't terribly involved at the time, which is why I say "to a limited extent."

62 Q. Okay. But this is a separate dispute than the one referenced in the 20-F that I showed you earlier?

A. That is my understanding.

63 Q. Okay. So here is a second dispute over payment of royalties, this one resulting in a judgment in 2018. Is that correct?

A. Yes.

MR. ROSE: You can take that down now, Mr. Reid.

64 Q. So, at paragraph 14 of your affidavit, you state that, on October 25, 2021, 112 received a shockingly low royalty payment from Tacora for Q3 2021. Do you recall putting that in your affidavit?

A. I do.

65 Q. Okay. I take it you were shocked by the amount that was paid as a royalty. Is that right?

A. It is.

66 Q. And the royalty that was paid was about $844,000. Correct?

A. Correct.

67 Q. And you were shocked because the prior quarter had been $18 million and

no royalty, no royalty payment, had ever been less than $4 million. Is that fair?

A. That is fair.

68 Q. And you didn't know how the royalty could have been calculated to be so low. Fair?

A. Fair.

69 Q. Okay. And you had a right under the lease to perform an audit. Correct?

A. Correct.

70 Q. And so, in November of 2021, 112 engaged forensic accountants to assess that issue. Is that right?

A. Yes.

71 Q. Okay. And those accountants were Lepage Marcil David. Right?

A. Yes.

72 Q. Okay. And you say at paragraph 15 of your affidavit that the purpose in engaging Lepage Marcil David was to assess this low payment of the royalty. Do you recall putting that in your affidavit?

A. That is correct.

73 Q. Okay. So the auditors

were going to go in and make an assessment of what happened. Is that right?

A. Yes.

74 Q. And, on the basis of that assessment, you could decide whether to accept Tacora's view of the royalty calculation or issue a default notice or commence arbitration or take some other steps. Right?

A. We didn't have a specific outcome in mind or have an option list in mind. We were confused by why the payment was so low, and we wanted to learn more.

MR. ROSE: Okay. Mr. Reid, could you put up the form 6-K, the Scully Royalty form 6-K for the month ended December 31, 2021. I am going to pause there. For the record -- and I apologize to counsel because I am awful at doing this, but the first document that I showed you was a 20-F. I will call that Exhibit A.

EXHIBIT NO. A:
Scully Royalty Ltd. 20-F
for the year ended 2021.

MR. ROSE: The second document I showed was a 2018 judgment. I will call that Exhibit B.

EXHIBIT NO. B:
2018 Lower Court
judgment.

MR. ROSE: This now is the third document that I am going to show you, and I will call that Exhibit C. I apologize to my friends and to the record in general for not having done that sooner.

EXHIBIT NO. C:
Scully Royalty form 6-K
for the month ended
December 31, 2021.

MR. ROSE:

75 Q. Here we are, a form 6-K which I am going to call Exhibit C. Okay. This is a Scully Royalty report for the month ended December 31, 2021. Are you familiar with this report?

A. I am.

MR. ROSE: Okay. Mr. Reid, can you go to page 4 of the PDF.

76 Q. If you keep scrolling down, you can see those three paragraphs under the heading, "Update on Q3 2021 royalty." The last of those three paragraphs begins:

"Utilizing the rights within our agreement, we engaged the third-party forensic accounting firm to perform an audit of the various calculations which comprise the historical royalty payments, including the inputs to the operator's revenue. This audit is currently underway, though initial findings appear to confirm the calculations."

Do you see that there?

A. I do.

77 Q. So, once the auditor had gone through its review, at least on an initial basis, it confirmed Tacora's calculations. Is that correct?

REF MR. SEVIOUR: I am just going to object. I can't put my hand up because you can't see me, but I think that, you know, counsel is aware of the position that is stated in that portion of paragraph 15 of the affidavit to which counsel did not take Mr. Morrow, which says that 112 engaged LMD, the forensic accountants, for the dominant purpose of commencing litigation against Tacora for such royalty underpayment.

So -- and counsel is aware that 112 claims privilege on LMD's communications to 112, pursuant to that engagement. So, to the extent that it appears in the form 6-K which you have before us, which speaks to preliminary findings, I would object to any questions being asked of the witness in relation to privileged communications between the forensic accounting experts and Mr. Morrow, as 112's representative.

MR. ROSE: Yes, I have your position on that. I have read the bald statement in the affidavit, which is not a permissible statement. We refuse and reject your assertion that there is somehow privilege over this, particularly when there has been disclosure of the initial conclusions in that report in a public filing. But I have your witness' evidence on that, and I will take that. All right. I have asked him only what this document says and whether those were the initial findings as publicly disclosed. You can take whatever position you want.

MR. SEVIOUR: Yes.

MR. ROSE: And, as the questions come up, you can object. You can refuse them.

But I have asked him if this is a 6-K, if he is familiar with it. He says yes. I asked him if those were the findings. I believe he said yes. He has already indicated under oath, in his own words, the purpose for undertaking this audit. I have all that. But we do not accept your assertion of litigation privilege.

MR. SEVIOUR: I understand that, and we can have that debate. But, anyway, you have our position and --

MR. ROSE: I do.

MR. SEVIOUR: ...carry on.

MR. ROSE: If it is okay with you, I will carry on.

78 Q. So, Mr. Morrow, I assume that this disclosure would not have been made by Scully Royalty if it were not accurate. Is that fair?

MR. SEVIOUR: Sorry, I didn't

hear that question.

MR. ROSE:

79 Q. I assume, Mr. Morrow, that this disclosure would not have been made by Scully Royalty if it were not accurate. Is that fair?

A. Sorry, too many double negatives there.

80 Q. All right.

A. This disclosure is accurate.

81 Q. It is accurate? Okay. These three paragraphs, all three of them?

A. Yes.

82 Q. Okay. Including the explanation in the second one?

A. Yes.

83 Q. Okay. So I take it, at some point, this audit was completed. Is that right?

A. Can you define "completed"?

84 Q. Well, it says in the last paragraph that there were initial findings that were made, and I assume that at some point there

was a final finding that was made. Is that a fair assumption?

A. I don't recall if we ever received a final report labelled "final" or if it still had "draft" on it or what have you, but there was a point in time in which it was concluded.

85 Q. Okay. Now, your counsel may wish to object to this, but did the conclusions in that final report differ from the interim conclusions presented in this 6-K?

REF MR. SEVIOUR: Don't answer that, Sam. We claim privilege for the reasons I explained.

MR. ROSE:

86 Q. After the audit was completed in one form or another, after the audit ended, 112, Scully Royalty, didn't deliver a notice of default under the lease or initiate arbitration based on the auditor's findings. Is that correct?

A. No.

87 Q. You initiated an arbitration or delivered a notice of default based on the auditor's findings?

A. Sorry. Maybe repeat the question. We did issue, you know, an arbitration subsequently.

88 Q. I know you did issue an arbitration some years later, but did you issue an arbitration based on the findings of the auditor as described in the form 6-K?

A. Once again, I am going to defer to Colm there. To me, everything that is within those findings is privileged, and I think you are asking once again for --

89 Q. Yes, your counsel can voice those objections. I will simplify this. He can put his hand up.

A. Yeah, I will defer to Colm.

90 Q. I assume that is a refusal? Okay.

REF MR. SEVIOUR: Yes.

MR. ROSE:

91 Q. Okay. In paragraph 16 of your affidavit, you say that 112 later became concerned that Tacora was not at arm's length to Cargill International. Do you recall putting that in your affidavit?

A. I do.

92 Q. Okay. So, in the arbitration and now on this motion, 112 alleges that Tacora was wrong to conclude that the Offtake Agreement was an arm's-length agreement and to calculate the royalty on that basis. Is that fair, that that is the allegation in the arbitration and now this motion, Tacora was wrong to conclude that the Offtake Agreement was an arm's-length agreement?

A. That is our belief.

93 Q. Right. And the allegation goes further. The allegation is that Tacora acted in bad faith by withholding the nature of its relationship with Cargill. Do you recall that allegation?

MR. SEVIOUR: Counsel, I am not sure if I see "bad faith" referenced in the affidavit. Perhaps you can take the witness to any --

MR. ROSE: It is in the arbitration.

MR. SEVIOUR: I think in paragraph 16 which you pulled out --

MR. ROSE:

94 Q. Paragraph 5:

"112 therefore pleads and relies on the Supreme Court of Canada's holding in Bhasin for the proposition that Tacora owed 112 a duty to disclose and omitted its non-arm's-length relationship with Cargill International."

And the footnote says:

"Bhasin stands for the proposition that [...]. This means simply that parties must not lie or otherwise knowingly mislead each other about matters directly linked to the performance of the contract."

So the allegation is not only that Tacora erred in taking the position that it was an arm's-length contract but it withheld the nature of its relationship with Cargill. Is that correct?

A. Are you in my affidavit right now or are you in --

95 Q. I am in the Statement of Claim, which Mr. Reid has now helpfully put up on the screen. The Statement of Claim is exhibit B to your affidavit, tab 2B of the responding motion record, at paragraph 5. Your counsel asked me to identify where the allegation of bad faith lies, and it lies at paragraph 5 of the Statement of Claim there.

I am going to ask you more generally. The principal allegation is that Tacora made an error in calculating the royalties on the basis that the Offtake Agreement was an arm's-length agreement. And you said that, yes, that is the case.

And now I say that it goes further and alleges that Tacora withheld the nature of its relationship with Cargill from 112. Correct?

A. To make sure that I have your question answered correctly, can you please repeat it once more?

96 Q. Sure. In addition to the

basic allegation that Tacora was wrong to conclude that the Offtake Agreement was an arm's-length contract, there is an allegation that Tacora withheld the nature of its relationship with Cargill from 112. Isn't that right?

A. Correct.

97 Q. All right. So there was that allegation, but there is no allegation that, if the Offtake Agreement is an arm's-length contract, that the royalties had been improperly calculated. Isn't that right?

MR. SEVIOUR: Counsel, are you asking Mr. Morrow to characterize the claim, or are you simply excluding a potential argument, as trying to clarify it for Mr. Morrow?

MR. ROSE: I am trying to define the nature of the dispute.

98 Q. We have a dispute over whether this Offtake Agreement is an arm's-length contract. But, if it is not -- if it is in fact an arm's-length contract, then Tacora's numbers in its royalty statements are correct. Is that right?

A. Once again, this touches on the forensic audit which we were engaged to have done and its conclusions, and, therefore, Colm, maybe I will have to defer to you here.

REF MR. SEVIOUR: We will take that as a refusal.

MR. ROSE: You are going to refuse to answer what the nature of your claim is?

MR. SEVIOUR: Well, let me speak to this. In my understanding, the question is directed to whether there is a complaint about revenues received if the Cargill Offtake Agreement is found to be an arm's-length agreement, and it is a matter of pleading that that is not the issue that is raised by 112. 112 alleges that the -- essentially two things, the Cargill Offtake Agreement was or became a non-arm's-length agreement and that, under the Cargill Offtake agreement, there were non-arm's-length transactions of sale of iron ore products which were captured by the second branch of the definition in J(ii) of the lease. So that is the nature of the claim that we are into.

There is no allegation that payments made under the first branch of the definition of Net Revenues -- if the Cargill Offtake Agreement was arm's length, there is no allegation that is made that those payments were non-arm's-length payments. The issue is that they were not, that they were in fact non-arm's-length payments.

MR. ROSE: Okay. I think I understand.

99 Q. The audit report, then, was the audit report provided to Mr. Persampieri in preparing his report?

According to the audit report of Lepage Marcil David, was that provided to Mr. Persampieri?

A. I don't believe so.

100 Q. Did anyone discuss it with him?

A. I don't know. I didn't discuss it with him.

101 Q. All right. So you indicated earlier that you have never worked for Tacora. Do you recall that?

A. Yes.

102 Q. Okay. And you were not involved, then, in the negotiations of the Offtake Agreement between Tacora and Cargill. Correct?

A. Correct.

103 Q. You were not part of Tacora's negotiation team?
A. I was not.
104 Q. And Tacora negotiated that agreement without you or anyone from Scully Royalty or 112 or any of their affiliates. Correct?
A. Correct.
105 Q. And Tacora didn't report to you on the negotiations or seek your approval for the terms that were proposed. Isn't that right?
A. It did not.
106 Q. And you were not involved in any of the exchanges or any of the discussions between Tacora and Cargill during the course of that negotiation. Correct?
A. Correct.
107 Q. And so the persons who were involved in those negotiations would be in a better position to speak about how they unfolded than you would be. Isn't that fair?
A. Sure.
108 Q. Okay. And the persons who were involved in those negotiations would be

in a better position to say why they agreed on the terms that they did than you would be. Isn't that fair?

A. Sure.

109 Q. So the Offtake Agreement was originally executed in April of 2017, April 17, 2017. I have that date right, do I?

A. I believe so. I don't have it on my fingertips, but I believe so.

110 Q. Okay. That is my understanding. You have no reason to think otherwise, April 17, 2017. Correct?

A. Correct.

111 Q. Okay. And I want to talk about that time period around April 17, 2017, the period leading up to April 2017 and through July 2017, when Proterra Holdings acquired an ownership interest in Tacora, so the period leading up to April all the way up to July 2017, and that is the period that I want to talk about now. And that is a period that you talk about in your affidavit, don't you?

A. Yes.

112 Q. Okay. As I understand it, there is no allegation in your affidavit or in

the arbitration materials or on this motion that Cargill International or Cargill Inc. had a direct or indirect ownership interest in Tacora in April of 2017. Do I have that right?

A. I believe so.

113 Q. So I will put it more bluntly. In April of 2017, neither Cargill Inc. nor Cargill International had a direct or indirect ownership interest in Tacora. Right?

A. I believe so.

114 Q. Okay. And I am looking for your help here because I am reading your affidavit, but, as I understand your affidavit, you state that Cargill's interest in Tacora stems not from its direct or direct ownership of Tacora but stems from the involvement of Proterra Investment Partners with Tacora in 2017. Is that what you are saying in your affidavit?

A. What I say in my affidavit is that, throughout its corporate existence, Tacora has had a somewhat incestuous relationship with Cargill through Proterra and through all of these other various involvements, and that is what leads us to conclude that this is not an arm's-length business relationship.

115 Q. Yeah, I read your affidavit, Mr. Morrow. I know it doesn't say the word "incestuous." I have read it a few times. What I am trying to do is pinpoint exactly what you say the nature of that relationship is. So you just told me that Cargill did not have a direct or indirect ownership interest in Tacora in April of 2017. And it appears to me that the link between Tacora and Cargill that you are drawing in 2017 relates to the involvement of Proterra Investment Partners. Is that fair?

A. And you are asking just about 2017 at this stage?

116 Q. Yes, I am talking about that period leading up to April 2017 all the way up to July 2017, just that period.

A. That is fair.

117 Q. Okay. And so Mr. Broking states at paragraph 26 of his affidavit that:

"Tacora reached out to Proterra Investment Partners to obtain financing in January of 2017."

Are you aware of that

evidence, that Tacora reached --

A. I don't.

118 Q. ...out to --

A. I don't recall that specifically from Mr. Broking's affidavit.

119 Q. Is that your understanding, that Tacora had reached out to Proterra to obtain some financing in early 2017?

A. I have no reason to believe otherwise.

120 Q. Okay. There was no prior involvement of Proterra Investment Partners with Tacora, was there?

A. I am not aware whether or not that statement would be true.

121 Q. Okay. You weren't involved in the discussions between Proterra Investment Partners and Tacora in early 2017?

A. No.

122 Q. And you weren't involved in the negotiations around that commitment?

A. No.

123 Q. And so I understand that Proterra made a commitment to make an investment in Tacora in or around March of 2017. Is that

your understanding, as well?

Do you have any knowledge of that?

A. I have no reason to believe otherwise if that is what you are saying.

124 Q. You have no personal knowledge of these interactions between Proterra and Tacora in early 2017, though. Is that fair?

A. That is fair.

125 Q. Okay. As far as you know, was this commitment to make an investment in Tacora Proterra's first investment in Tacora?

As far as you know, was that commitment its first investment?

A. I have no personal knowledge, but I have no reason to believe otherwise.

126 Q. Okay. So, as of April 17, 2017, the extent of the relationship between Proterra Investment Partners and Tacora was that Proterra had made a commitment to investment in Tacora. Is that the extent of the relationship at that time?

A. I don't have any personal knowledge.

127 Q. So maybe you can help me with this: As at April 2017, Cargill didn't have any ownership interest in Tacora. Right?
That is what you told me earlier. Is that right?
A. You will have to speak up a little bit. I am not sure if it was my camera or yours.
128 Q. In April 2017, Cargill did not have an ownership interest in Tacora. Isn't that right?
A. Again, I don't have any personal knowledge of this, but, if that is what you are saying, I don't have any reason to believe otherwise.
129 Q. No, no, your point is well taken. You can just say, "I don't know."
A. Yeah, sure.
130 Q. All right. So, in April 2017, Cargill did not have anyone on the Tacora board. Are you aware of that? Do you have any information --
A. I believe that is correct.
131 Q. Okay. Now, things

changed in July of '27[sic], I understand, when Proterra Holdings became Tacora's majority shareholder. Are you aware that that happened?

A. I am.

132 Q. But, as at July of 2017, Cargill still did not have an ownership interest in Tacora. Isn't that right?

A. I don't know.

133 Q. Okay. As at July of 2017, Cargill did not have anyone on the Tacora board. Isn't that right?

A. I believe that is correct.

134 Q. So I was just talking about the relationship between Tacora and Proterra. I now want to talk about the relationship between Proterra and Cargill in April 2017. Again, if you don't know, if you don't have any information, you can just say so.

In your affidavit, you reference various newspaper articles and some website disclosure for the idea that there is a connection between Cargill and Proterra Investment Partners, and those are found at exhibits O and Q and T to your affidavit. Do you remember attaching those newspaper articles and website excerpts?

A. I do.

135 Q. Okay. All of those were obtained for you by counsel. Isn't that right?

A. Correct.

136 Q. And so you told me earlier you never worked for Cargill or Proterra Investment Partners. Do you recall telling me that?

A. I do.

137 Q. And so what you are trying to do in your affidavit is you are trying to piece together the relationship between Cargill and Proterra based on what you read in the press. Is that a fair characterization?

A. Not by what I read in the press, by what was presented to me by our counsel.

138 Q. Okay. So you are taking the limited set of newspaper articles given to you by counsel, and you are reading them -- I think there are three of them -- and, on that basis, you are drawing conclusions about the relationship between Proterra and Cargill. Fair?

A. At which time are you

referring to at this stage?

139 Q. Again, I am talking about the relationship between Cargill and Proterra in the period leading up to April 2017 up until July of 2017, in early 2017. That is what I am talking about.

A. That is right.

140 Q. Okay. You didn't speak with anyone from Proterra Investment Partners in preparing your affidavit. Am I right about that?

A. I did not.

141 Q. You did not speak with anyone from Cargill in preparing your affidavit. Am I right about that?

A. I did not.

142 Q. So you have no firsthand knowledge of the relationship between Proterra and Cargill in early 2017. Correct?

A. Correct.

MR. ROSE: Right. Mr. Reid, I want to ask you to bring up exhibit T to Mr. Morrow's affidavit. It is in the responding motion record at tab 2(T), page 572. There it is.

143 Q. This is an excerpt from the Proterra Investment Partners website, and this

was included as an exhibit to your affidavit. Do you recall including that in your affidavit?

A. I do.

144 Q. And I assume you would not have included that in your affidavit if you didn't believe it to be true. Is that fair?

A. That is fair.

145 Q. Okay. I understand from this excerpt that Proterra Investment Partners is an investment advisor and fund manager. I understand that because that is what it says in the second paragraph. Is that your understanding, as well?

A. It is.

146 Q. And it is my understanding that that has been its role at all relevant times, all the way back to April 2017. Is that also your understanding?

A. It is.

147 Q. And, as an investment advisor and fund manager, it manages funds in which people invest. Is that its role?

A. Can you define "people"? I think you said "in which people invest."

148 Q. Entities. I am just

trying -- what I am really trying to do is distinguish between a fund advisor and manager and the funds, themselves. And so Proterra Investment Partners is the fund advisor or the fund manager distinct from the funds, itself. So, the Proterra Investment Partners, as the fund manager, it makes decisions about how the funds are going to invest the money, and the funds get the money from their investors. Is that right?

A. That is my understanding.

149 Q. Okay. As I said, the funds are separate vehicles from Proterra Investment Partners. The funds are things like Black River Capital Partners Fund (Metals And Mining A) LP, which you reference in your affidavit, and Black River Capital Partners Fund (Metals And Mining B) LP, which you also reference at paragraph 30(H) of your affidavit. Those types of entities are the funds. Correct?

A. That is my understanding.

150 Q. And Proterra Investment Partners is a fund manager that helps direct where the money of those funds is going to go. Fair?

A. Fair.

151 Q. And you can tell me if

you don't know, but it is my understanding that private equity funds are typically established as limited partnerships or limited liability companies for tax reasons amongst other things. Is that -- do you have any knowledge or understanding about that?

A. I know that, generally, those types of limited partnerships are used. I think you are asking about general knowledge. Are you talking about general knowledge?

152 Q. Yes, just general knowledge, just general knowledge. In this case, Black River Capital Partners (Metals and Mining A) is a limited partnership, as is Black River Capital Partners Funds (Metals and Mining B); it is also a limited partnership. But I ask you this because it becomes relevant when you look at these press releases that use some of these terms, so I just wanted to get your understanding, and it sounds like it is the same as mine, that these funds are typically set up as limited partnerships. Okay.

So I wanted to show you a few articles. Before I do that -- I am not going to make the same mistake that I did. I will refer to that document that we just put on the screen by reference to the responding motion record and not mark it as an exhibit. But I do want to show you a few articles that we will mark, that were provided in the package that was sent over to your counsel yesterday evening. There are four of them.

And, Mr. Reid, if you would put them up on the screen, I would appreciate that. We can show them to Mr. Morrow, and I can mark them. The first is a Star Tribune article dated January 29, 2016. If you could just put that up, Mr. Reid, I would appreciate it, although, frankly, the order of putting them up on the screen doesn't really matter. We can start with that one, Mr. Reid. That is fine.

This is an article by Global AgInvesting, dated January 26th, 2016. Have you reviewed that article? Did you see that in the package that was sent over, Mr. Morrow?

A. I saw it. I wouldn't say that I have reviewed it. I skimmed through it.

153 Q. Skimmed through it? Okay.

MR. ROSE: I would like to

mark that one as Exhibit D. That is the Global AgInvesting article dated January 26, 2016.

EXHIBIT NO. D: Global AgInvesting article dated January 26, 2016.

MR. ROSE: Mr. Reid, you can take that one down temporarily and either put up the Financial Times article or the Star Tribune article. This is an article from the Financial Times. Scroll down, Mr. Reid. You can see the date. It is dated September 28, 2015. We will mark that as Exhibit E.

EXHIBIT NO. E: Article from the Financial Times dated September 28, 2015.

MR. ROSE:

154 Q. Did you see that, Mr. Morrow, in the package that we sent over? Have you had the opportunity to review that?

A. Same as the last one, I saw it was included, and I skimmed through it, but I wouldn't say that I have reviewed it.

MR. ROSE: Okay. There are

two others, Mr. Reid. There is a Star Tribune article dated January 29, 2016, and a news release or press release from Proterra Investment Partners.

155 Q. The news release, the file is titled "Press release of Proterra Investment Partners." Do you see that, Mr. Morrow?

That is an article titled "Proterra Investment Partners launches and will manage Black River private equity fund," dated January 25, 2016. Did you see that in the package, Mr. Morrow?

A. I did.

156 Q. And have you had an opportunity to look through that?

A. Once again, I skimmed through that.

EXHIBIT NO. F: Article titled "Proterra Investment Partners launches and will manage Black River private equity fund," dated January 25, 2016.

MR. ROSE: Okay. And the last document, Mr. Reid, the file is titled "Phase-out of Cargill's Black River Asset Management completed." And, that, I am going to mark as Exhibit G.

EXHIBIT NO. G: File titled "Phase-out of Cargill's Black River Asset Management completed."

MR. ROSE:

157 Q. Did you see that in the package, Mr. Morrow, and have you had the --

A. Yes.

158 Q. ...chance to review that?

A. I skimmed through it, once again. I wouldn't say "reviewed."

159 Q. Okay. That is all right. Rather than go through each of these articles one by one, I just wanted to ask a general question about all of them, if I may.

So these articles are referencing the same wind-down and spin-out of the Black River funds that is referenced in your affidavit and the articles that you cite. Is that right?

It is all the same transaction that is being described?

A. I don't have any personal knowledge of what the whole transaction there would have comprised of.

160 Q. Okay. But these articles are describing the same spin-out of the former Cargill funds and the creation and establishment of Proterra Investment Partners?

A. This one here seems to be talking about a company called Garda, not Proterra, so --

MR. ROSE: Right. If you skim down or if you go down, Mr. Reid, you see now, in the middle of the page, references to Proterra.

161 Q. Do you see that? You are right, and it is fair, Mr. Morrow, that there was a larger wind-down of this business. Proterra was established and I understand that other entities were established to manage some of these funds, looking at Proterra. But these articles that we are showing you are describing the same wind-down or spin-out from Cargill that you reference in your affidavit?

A. That is my understanding, yes.

162 Q. All right. I understand that these articles -- and I am happy to take a break and have you review them, but it is my understanding that these articles establish a few things, and I ask you to confirm that they establish these things. If you need more time with them, let me know, but here we go.

The first thing I understand that they tell us, these articles, is that, number one, Proterra Investment Partners became an independent, employee-owned firm. It was no longer owned or it was not owned by Cargill. It was an independent, employee-owned firm. Is that your understanding?

A. Once again, I don't have any personal knowledge of that ownership structure.

163 Q. Okay. The article, the Reuters article that you attach to your affidavit as exhibit O, talks about "employee-owned Proterra." I assume you would not have put that article in your affidavit if you didn't think that was true?

Or you have no knowledge whatsoever of any of this, other than what you have read. Is that a fair statement?

A. I have no firsthand knowledge of this. I was advised on counsel about that article and others. I think that is probably the best way to put it. I have no reason to believe otherwise, but I have no firsthand knowledge.

164 Q. Okay. So you can't confirm that Proterra Investment Partners is an independent, employee-owned firm, other than based on reading these articles and assuming them to be true. Is that fair?

A. Correct.

165 Q. Right. So you had no idea who owned Proterra Investment Partners?

A. I don't know who those shareholders were, no.

166 Q. Well, it, too, is a limited partnership, but you have no idea who owned it, other than --

A. Well, the partners.

167 Q. (Indiscernible).

A. The partners.

168 Q. Yes.
A. I apologize for --
169 Q. Oh, okay. And so, when I read the words "employee-owned Proterra," that leads me to the second thing I think these articles tell us, that Cargill -- sorry, that Proterra is owned by its employees, not Cargill; that Proterra Investment Partners is not owned by Cargill, that is what these articles tell me. Is that your understanding, or do you simply have no knowledge of who owns it?
A. Can you define "ownership"?
170 Q. Ownership of Proterra Investment Partners, either the general partner or any of the limited partnership interests in Proterra Investment Partners.
A. I have no reason to believe otherwise.
171 Q. Okay. The next thing I see is that there are statements in these articles that Cargill will remain invested in the funds managed by Proterra Investment Partners and not invested in Proterra Investment Partners, itself.
So Cargill will remain

investor in the funds but not Proterra Investment Partners. Do you have any understanding of that? Do you have any knowledge of that?

A. I don't have any.

172 Q. The reason I say that, Mr. Morrow, if it helps, is, in the press release that we marked as Exhibit F, there is a statement:

"Proterra retained all related funds, limited partners, and fund commitments following their exit from Black River. Cargill will continue to be an investor in the funds."

In the Star Tribune, which we marked as Exhibit G, states:

"Cargill has retained investments in funds managed by Proterra."

That is my basis for my belief. Do you have any knowledge of that?

A. My hesitation was with your term "investor" --

173 Q. Okay.

A. -- where I don't have any knowledge as to whether or not Cargill had any other type of investments in Proterra, the fund manager, by means of debt or anything else. I just --

174 Q. You --

A. I have no personal knowledge of that and therefore will need to clarify that point. But I would agree with your statement that they are remaining as investors in the funds, themselves.

175 Q. Okay. No, we are running up against the limits of your knowledge, I mean you made clear, and I asked you to agree with me.

You have no actual knowledge of the relationship between Cargill and Proterra Investment Partners except for what you have read from the handful of articles put to you by counsel and that I have now presented to you. Is that right?

A. That is correct.

176 Q. Okay. And so you quoted an article by a man named Karl Plume in your affidavit, and Mr. Plume's article is attached at tab 2(O), page 496 of the responding motion

record. And Mr. Plume wrote:

"Employee-owned Proterra said it would retain all of its fund commitments and limited partners, including Cargill."

And it is my understanding that what Mr. Plume is talking about is that, number one, Proterra Investment Partners will be employee-owned, will be owned by its employees and not Cargill, and, number two, as a result of the spin-out, Proterra isn't going to lose any investors from the funds; it will retain all of the limited partners in the fund, including Cargill. Is that your understanding of what Mr. Plume was saying in his article?

A. Yes.

177 Q. Okay. Mr. Plume is not saying that employee-owned Proterra will be partially owned by Cargill. Fair?

A. Fair.

178 Q. There is nothing in these articles or anywhere, to your knowledge, that says that Cargill ever had an ownership interest in Proterra Investment Partners. Is that right?

A. I believe so.

179 Q. Okay. And I will be a little bit more direct now. In 2017, the period that we have been discussing, beginning in 2017 through April of 2017, up until July of 2017, Cargill was not an owner of Proterra Investment Partners. Correct?

A. I believe so.

180 Q. You believe it was not an owner of Proterra Investment Partners. Is that right?

A. I believe it was not a partner of Proterra Investment Partners.

181 Q. Or an owner of the general partner for Proterra Investment Partners. Correct?

A. Correct.

182 Q. In early 2017, Cargill was not an owner of Proterra Holdings. Correct?

MR. SEVIOUR: Sorry, define "Proterra Holdings."

MR. ROSE: Oh, that is fair.

183 Q. Okay. Proterra M&M MGCA B.V., that is the one I am going to call Proterra Holdings, Proterra M&M MGCA B.V. In early 2017,

April 2017 all the way up to July, Cargill was not an owner of Proterra Holdings. Isn't that right?

A. Again, I don't have any personal knowledge of that, but, if that is what you are saying, I have no reason to believe otherwise.

184 Q. Okay. In 2017, Cargill was not an owner of a Dutch company, Proterra MGCA Cooperatief U.S. Isn't that right?

A. Once again, I have no personal knowledge of that, but, if that is what you are saying, I have no reason to believe otherwise.

185 Q. Okay. And there is no evidence that you are aware of that Cargill had an employee on the board at Proterra Investment Partners, Proterra Holdings, or Proterra Cooperatief in 2017. Isn't that right?

A. I -- yeah, I don't know the dates of Cargill employees being on the board of Proterra and its affiliates.

186 Q. Well, if it helps, Proterra Holdings -- sorry, Cargill Incorporated acquired a membership interest in Proterra Cooperatief in late 2018. You have no reason to

believe that there was any Cargill representation on the boards of the Proterra entities before that time?

A. I don't know off the top of my head who was on those boards or what their affiliations were at that time.

187 Q. How about not off the top of your head; do you have any knowledge?

A. I was advised by counsel for certain, you know, board compositions of Proterra and its funds, but I don't recall the dates of, you know, of when those boards were.

188 Q. So, just to be clear, so you don't -- you don't have any personal knowledge of this ownership or interest that Cargill may have had in Proterra; you don't have any personal knowledge of who was on the boards of any of these entities. All of that information came to you from counsel. Is that right?

A. That is correct.

189 Q. And all of these articles that you were presented with came to you from counsel. Is that right?

A. That is correct.

190 Q. I assume that, these

portions of your affidavit that talk about this stuff, that was all drafted by counsel. Is that right?

A. Correct.

191 Q. So, in these respects, ownership and the relationship between Proterra, Tacora, Cargill, all of that, all that evidence is actually evidence from your counsel. Is that right?

A. No.

192 Q. It all came from them. You had no personal information about it. You don't know anything about it.

A. Well, I think you said -- can you rephrase that question? The way that you addressed it was overly broad --

193 Q. Okay.

A. ...and encompassed other items that I don't think -- I think maybe, if you could specify the period of time or the relationships that you are discussing --

194 Q. The period of time.

A. ...that would be helpful.

195 Q. ...that we are still talking about is early 2017, leading up to April

2017, when the Offtake Agreement was entered into, through to July 2017. All of your information about that period and the ownership and the relationship between Tacora and Proterra and Cargill, that all comes from counsel. Correct?

A. Correct.

196 Q. So, to your knowledge and your understanding, the extent of the relationship between Cargill and Proterra in 2017 was that Cargill was an investor in some funds managed by Proterra. Is that right?

A. Correct.

197 Q. And it is my understanding from those articles that Proterra had more than $2 billion in funds under management. Do you have a reason to think that's not correct?

A. No.

198 Q. You don't know which funds Cargill invested in, do you?

A. No.

199 Q. And you don't know how much they invested?

A. No.

200 Q. And you are aware that

Proterra managed funds wholly unrelated to metals and mining. Are you aware of that?

A. Yes.

201 Q. Agriculture and the like. Is that fair?

A. Yes.

MR. ROSE: Can we go off the record for a second?

MR. SEVIOUR: Sure.

--- (Off-record discussion)

MR. ROSE:

202 Q. All right. So thank you, Mr. Morrow. So, just before stepping off the record, I referred to two Proterra companies, so one which I called "Proterra Holdings" and the other a Dutch company that I called "Proterra Cooperatief." I understand that Proterra Holdings became the majority owner of Tacora on July 17, 2017, the day before Tacora's acquisition of the Scully Mine. Does that accord with your understanding?

A. Yes.

203 Q. So that is July 2017. In late 2018, it is my understanding that Cargill Incorporated acquired a membership interest in

Proterra Cooperatief for $20 million. Are you aware of that?

A. Of the size of the investment?

204 Q. Oh, no, that it happened in late 2018. In late 2018, Cargill acquired a membership interest in Proterra Cooperatief. Are you aware of that?

A. Again, you know, all these different Proterra entities are a little bit confusing to follow, but that is consistent with my knowledge, assuming that it is, you know, the correct Proterra entity that Cargill acquired an interest in.

205 Q. So you can't speak to the name of the Proterra entity, and I understand that. In your mind, you probably call them all "Proterra." Is that fair?

A. I'm sorry, yeah. I just call everything "Proterra." Yeah.

206 Q. Okay. But you are aware that in late 2018 is when this Proterra entity -- sorry, when Cargill acquired an interest in this Proterra entity. Is that correct?

That is the timing as you

understand it?

A. Sorry, can you maybe rephrase that question?

207 Q. Oh, sure. Okay, so I will back up a little bit. So we were talking about that period leading up to April 2017 and all the way up to July of 2017. And what happened in July of 2017, as I understand it, is that Proterra Holdings acquired a majority ownership interest in Tacora. And you indicated that that accords with your recollection.

The next thing that happened in the chronology, as far as I am aware, is that a year later, in late 2018, Cargill acquired an interest in Proterra Cooperatief, the parent company to Proterra Holdings. But I am just asking about the timing. So we are now in late 2018. That is when Cargill arrives in the picture. Is that fair?

A. Yeah, again it's -- when you say "arrives in the picture," I am not sure --

208 Q. Oh.

A. ...that would necessarily -- it is just I think my understanding of the timing of the investment specifically that you are referring to is consistent with yours, but, you know, when you are using terminology like "arrives in the picture," I am not sure that --

209 Q. They had an offtake --

A. (Indiscernible) Tacora.

210 Q. Okay. So the first time that --

A. And they were an investor in the Proterra funds.

211 Q. Ah, fair enough.

A. Yeah.

212 Q. And so -- but, in late 2018, Cargill did not acquire a direct interest in Tacora. Isn't that right?

A. Correct.

213 Q. Okay. And so this is the first time, as far as you are aware, that Cargill had an ownership interest in Proterra, Proterra Holdings, Proterra Cooperatief, Tacora, any of those entities; up until this point it had an investment in some funds managed by Proterra, but, up until late 2018, Cargill did not have an investment in Tacora, Proterra Holdings, Proterra Cooperatief. Is that right?

A. Once again, I don't have

any personal knowledge of Cargill's ownership of Proterra and its various entities.

214 Q. Okay. It is funny you say that because you speak to it in your affidavit. At paragraph 30(G) of your affidavit, you say that that investment took place through an amended and restated member and contribution agreement executed on October 18, 2018. You are aware that you put that in your affidavit?

A. I am. I am specifically referring to my commentary before, in which you were asking me about whether or not Cargill was a partner in Proterra or Proterra Holdings or -- and I limited my understanding there -- sorry, not limited my understanding, I limited my response to my personal understanding.

215 Q. You were not involved in the negotiation of that investment in Cooperatief by Cargill, were you?

A. No.

216 Q. So, if we want to understand the nature of those negotiations, it makes sense that we should speak to somebody who was directly involved. Is that fair?

A. Fair.

217 Q. At paragraph 30(H) of your affidavit, you say that the membership interest in Cooperatief was 3.37 per cent to Black River Capital Partners (Metals and Mining A), 52.48 per cent to Black River Capital Partners Fund (Metals and Mining B), 30.3 per cent to Aequor Holdings LLC -- that is spelled A-E-Q-U-O-R -- and 13.85 per cent to Cargill. Do you recall putting that in your affidavit?

A. I do.

218 Q. Okay. Those two Black River Capital funds that I mentioned, it is my understanding that these were -- well, let me ask you. Do you have any information as to whether those funds were spun out of the Cargill family?

A. I believe that those funds were spun out of the Cargill family.

219 Q. That belief is based on what?

A. The articles which were provided to me by counsel.

220 Q. Okay. And, if those two funds are not mentioned in those articles, it is based on an assumption that those funds were amongst the funds that were spun out. Correct?

A. Correct.

221 Q. Okay. All right. At paragraph 30(H) of your affidavit, you say that:

"Cargill maintains management and advisory connections with respect to those funds."

You say that because they are managed by Proterra Investment Partners. Is that right?

A. I say that because I was advised by counsel that that was the case.

222 Q. Okay. So, in Ontario, if you swear an affidavit and it is not based on your own personal information, you are provided with that information by someone else, you have to indicate who that person was that provided you with that information, and then you have to state whether or not you have a belief that it is true.

A. I believe that that is true.

223 Q. I understand that, but I would like -- do I assume then that, in your affidavit, everywhere there is a mention of a relationship between Cargill, Proterra, Tacora,

that that information presented in your affidavit came from counsel?

MR. SEVIOUR: Perhaps I can interject, counsel. In paragraph 27 of Mr. Morrow's affidavit, he makes it clear as to the source of his exhibits and which came from counsel and which came --

MR. ROSE: Which paragraph, sir? I am sorry.

MR. SEVIOUR: Paragraph 27 of the affidavit that has been filed, and --

MR. ROSE: I understand that. Paragraph 27 indicates which articles came from counsel. I get that. Here we are, paragraph 30(H).

MR. SEVIOUR: And, in paragraph 6, Mr. Morrow makes clear on the basis of which he makes the affidavit and the information in the affidavit. He says:

"In my capacities as chief executive officer of Scully Royalty Ltd. and a director of 1128349 and in managing the lease and monitoring the royalty, I have gained a personal knowledge of the matters I hereinafter depose to. Where I rely on information that is not personal knowledge, I do so in the honest belief that such information is true."

So that frames his affidavit --

MR. ROSE: Yeah, I read the affidavit, sir. Can you tell me where in paragraph 30(H) he indicates where that information came from?

Is it coming from the lead-in to 30, that everything in paragraph 30 he gleans from the exhibits to this affidavit, being the press release? Is that --

MR. SEVIOUR: I believe that that is fair. It is based on the files in the original arbitration Statement of Claim, which include the press releases and the set of news stories that you referred to.

MR. ROSE: Okay.

224 Q. So, again, maybe I will just cut to the chase. So, Mr. Morrow, you have no personal knowledge of that ownership relationship with -- in Cooperatief; you have no knowledge of that, no personal knowledge, no involvement?

A. Correct.

225 Q. You couldn't say who owned that thing, could you?

A. I can say what I said in my affidavit, which is based on the information provided to me by counsel on the ownership.

226 Q. Okay. So you are just transcribing what you see in that material; you didn't have any personal involvement in that transaction, at all. Correct?

A. Correct.

227 Q. Okay. Okay. So, in late 2018, I understand that Cargill acquired a membership in Proterra Cooperatief. This is the first time that an affiliate of Cargill had a direct or indirect interest in Tacora. Isn't that right?

MR. SEVIOUR: Counsel, I think that the witness has already said that he is not aware personally of the arrangements with the Proterra funds and doesn't know how they are funded but understood that Cargill retained an interest in the Proterra funds, which are separate, I think, from what you are asking about.

MR. ROSE: I understand what he said, which he says it is his understanding that Cargill remained invested in the fund. He knows that based upon having read, I think, about seven newspaper articles, some of which he skimmed.

So he believes that they are invested in the funds, but he doesn't know what funds they are invested in or how much they invested or whether those funds have anything to do with these funds. He also says he has no idea whether these funds were spun out of a Cargill-owned entity.

228 Q. Do I have that right, Mr. Morrow?

A. I would not put that in the same terminology that you did.

229 Q. At which point, Mr. Morrow?

A. Again, and I don't want

to be too cute with nuance and words --

230 Q. (Indiscernible).

A. ...um, you could --

231 Q. Let me just give you the question. Okay? Here we go.

A. Thank you.

232 Q. This was the first time, late 2018, this is the first time that Cargill or any of its affiliates held a direct or indirect interest in Tacora?

A. Can you define "interest"?

233 Q. I beg your pardon?

A. Can you define "interest"?

234 Q. Ownership interest, a direct or indirect ownership interest in Tacora.

A. I believe so.

235 Q. And Cargill has never acquired a direct ownership in Cooperatief except for this 13.85 per cent. Is that correct?

A. I don't have any personal knowledge of that or subsequent events or what happened.

236 Q. Okay. Cargill has never

acquired, to your knowledge, to your knowledge, Cargill has never acquired a direct ownership interest in Proterra Investment Partners. Is that correct?

A. Correct.

237 Q. All right. And Cargill never acquired, they have never had, a direct ownership interest in any of Tacora's securities until 2022, when it acquired some preferred shares. Isn't that right?

A. Sorry, can you repeat --

238 Q. Cargill never had a direct ownership interest in any of Tacora's securities until 2022, when it acquired some preferred shares. Is that your understanding?

A. That is my understanding.

239 Q. Those preferred shares, they were non-voting. Is that what you understand?

A. I believe so.

240 Q. And, those preferred shares, they were convertible into voting shares. Isn't that right?

A. I believe so.

241 Q. But they were never

converted. Correct?

A. I don't believe so.

242 Q. So, just in terms of timing, those preferred shares were issued 5 years after the Offtake Agreement was entered into. Is that correct?

A. Correct.

243 Q. In 2023, I understand that Tacora issued to Cargill certain penny warrants that are exercisable for common shares. Is that your understanding, as well?

A. It is.

244 Q. And those also have never been exercised. Correct?

A. That is my understanding.

245 Q. And those penny warrants were also issued more than 5 years after the Offtake Agreement was entered into. Correct?

A. Correct.

246 Q. So I want to talk about Tacora's board, the board of directors at Tacora. You never served on Tacora's board. Correct?

A. Correct.

247 Q. You did not attend Tacora board meetings. Correct?

A. Correct.

248 Q. You never attended a board meeting that dealt with the Offtake Agreement. Isn't that right?

A. Correct.

249 Q. Proterra did not have any rights to a Tacora board seat before July of 2017. Is that correct?

A. Again, I don't have any personal knowledge of those dates, but --

250 Q. Okay.

A. ...that is aligned, you know, generally aligned, with my understanding.

251 Q. Okay. July 2017 is when Proterra Holdings acquired its interest in Tacora, but, before that time, it is your understanding that Proterra Holdings, Proterra Investment Partners, Proterra, had no right to appoint directors to Tacora's board. Correct?

A. Again, I don't have any personal knowledge of when they were entitled to board members, whether it was on commitment or investment or what have you.

252 Q. Okay. Do you have any reason to believe that anyone sat on Tacora's

board who was appointed by Proterra, before July of 2017?

A. No.

253 Q. Okay. So it is my understanding that a Cargill employee began sitting on the Tacora board in or about November of 2018. Is that right?

A. Yes.

254 Q. Okay. And a Cargill employee sat on the board between November 2018 and November 2023, during that period. Is that right?

A. I believe so, yes.

255 Q. Okay.

A. I don't know when the Cargill employee finally left, if it was November or December --

256 Q. Okay.

A. ...when he finally stepped down.

257 Q. But the start date you are pretty confident, November 2018?

A. Yes.

258 Q. And, at all times, it was only a single director who was a Cargill employee.

Isn't that right?

A. I believe so.

259 Q. For much of that period, it was Mr. Mulvihill. Is that right?

A. Yes.

260 Q. And then Mr. Mulvihill was replaced in mid-2023 by Mr. Leon Davies. Is that your understanding?

A. Yes.

261 Q. But they did not overlap. Correct?

A. I don't believe so.

262 Q. Okay. And so Cargill never had more than one employee on Tacora's board. Correct?

A. Correct.

263 Q. And it only had one employee on Tacora's board, no matter how large Tacora's board was. Correct?

A. Correct.

264 Q. And it is my understanding that Tacora has a large board that has varied in number and often exceeds nine people. Is that your understanding?

A. Can you rephrase that

question? You are using the current tense.

265 Q. Yeah, no, I appreciate that. Sorry. So Tacora has typically had a large board. Is that right?

A. That is my understanding.

266 Q. Okay. At many times, it has exceeded nine people on the board. Correct?

A. I don't know the exact number, but I recall it being large.

267 Q. Okay. Are you aware that, at times, it was 12 seats on the board?

A. Again, I was aware it was large, but I don't remember the specific numbers.

268 Q. Okay. Are you aware --

A. If you say it was 12, I have no reason to believe that it wasn't 12.

269 Q. Okay. Thank you. Mr. Broking states that Cargill's employees have abstained from voting on issues related to the Offtake Agreement. Do you have any factual basis to think that is not correct?

A. No.

270 Q. Okay. You say at paragraph 30(AA) of your affidavit that:

"Tacora's board of

directors has been under de facto control by Proterra and Cargill executives since execution of the Offtake Agreement."

Can you tell me which Cargill executives you are referring to?

Is that Mr. Mulvihill and then Mr. Davies?

A. That was a general comment without specifically referencing any individuals.

271 Q. Again, you were not on the board of directors of Tacora at any time. Correct?

A. No.

272 Q. And no Cargill employees served on Tacora's board prior to November 2018. Correct?

A. Correct.

273 Q. Now, I want to switch gears briefly to talk about Cargill. Okay. There is Cargill Inc. and Cargill International. Are you aware of that?

A. I am.

274 Q. But there are many companies in the Cargill Inc. family. Correct?

A. Correct.

275 Q. It is a very large, multi-national conglomerate. Isn't that right?

A. Correct.

276 Q. And one of the things that it does is it acts as a commodities trader. Is that right?

A. Correct.

277 Q. Through one of its subsidiaries, I imagine. And, in that capacity, Cargill buys iron ore from Tacora under the Offtake Agreement. Isn't that right?

A. Correct.

278 Q. And Cargill then sells the Tacora product to third parties in China and elsewhere. Is that your understanding?

A. My hesitation there is that I don't know the end customer of every transaction that Tacora has, but I can say generally that is my understanding. But I don't know who the -- who Cargill is selling their iron ore to, you know, the Tacora product to.

279 Q. Okay. Well, you skipped to my next question. You have not reviewed the sales agreements that Cargill entered into with those third-party purchasers, have you?

A. No.

280 Q. And you have not reviewed the prices at which Cargill sold to those third-party purchasers. That is correct, as well?

A. No, that is not entirely correct.

281 Q. Okay. You have reviewed the sales prices that Cargill sold Tacora iron ore products to third parties?

A. In the course of our relationship, certain information, including individual transactions, has been provided to us.

282 Q. Okay. There is no allegation in the arbitration that Cargill was not trying to sell the third parties at the highest possible price, is there?

That is not something that you have alleged. Correct?

A. Our allegations are limited to Tacora's sale to Cargill.

283 Q. Okay. Right. So there

is no complaint that Cargill is not trying to maximize the sales price to third parties?

A. Again, this is -- I will refer back to what I was just saying, where I don't know specifically who Cargill is selling this, the Tacora iron ore, to, nor do I think -- I have no opinion or no view on whether or not Cargill is -- you know, what their intentions are or what their incentives are there.

284 Q. Okay. Then I think the rest of these questions are going to be a little easier. You haven't identified any agreement between Cargill and a third party that was not at arm's length, for the sale of Tacora iron ore?

A. Our issue has nothing to do with Cargill's transactions with other parties; it has to do with Tacora's transactions with Cargill.

285 Q. Right. But you have no factual basis to believe that Cargill wasn't out there trying to sell at the highest possible price. Correct?

A. Can you repeat that?

286 Q. You have no factual basis to believe that Cargill was not trying to sell

Tacora iron ore product to third parties at the highest possible price?

A. Correct.

MR. ROSE: Mr. Morrow, if it's all right, I will go off the record there for a second and just take a brief -- can we take 5 minutes, and I will come back to you. Is that all right?

MR. SEVIOUR: That is fine with us.

THE WITNESS: Yes.

MR. ROSE: Thank you. Go off the record. I think it is 9:41, so I will be back here at quarter to, and join us when you can, Mr. Morrow. I will be right back. Excuse me.

--- Recess taken at 9:41 a.m.

--- Upon resuming at 9:46 a.m.

MR. ROSE: Mr. Morrow, those are all my questions. I want to thank you for taking the time to speak with me. I appreciate it. Subject to anything from your counsel, that is the end of the cross-examination.

MR. SEVIOUR: I can confirm that we have no re-examination questions for Mr. Morrow.

MR. ROSE: Okay. Well, thank you very much. We can go off the record.

--- Whereupon the proceeding concluded at 9:47 a.m.

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 20-F

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2021

Commission file number 001-04192

SCULLY ROYALTY LTD.

(Exact name of Registrant as specified in its charter)
Cayman Islands
(Jurisdiction of incorporation or organization)

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Facsimile: +1 604-669-8803

(Name, Telephone, E-mail and/or Facsimile number and Address of Company Contact Person)

Securities registered or to be registered pursuant to Section 12(b) of the Act:

Title of each class	**Trading Symbol(s)**	**Name of each exchange on which registered**
Common Shares of US$0.001 par value each	SRL	New York Stock Exchange

Securities registered or to be registered pursuant to Section 12(g) of the Act: None.
Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act: None.

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report.

There were 14,779,302 Common Shares of US$0.001 par value each issued and outstanding as at December 31, 2021.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. ☐ YES ☒ NO

If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934. ☐ YES ☒ NO

Note – Checking the box above will not relieve any registrant required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 from their obligations under those Sections.

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. ☐ YES ☐ NO

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). ☒ YES ☐ NO

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or an emerging growth company. See definition of "large accelerated filer, "accelerated filer," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐   Accelerated filer ☐   Non-accelerated filer ☒
Emerging growth company ☐

If an emerging growth company that prepares its financial statements in accordance with U.S. GAAP, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards† provided pursuant to Section 13(a) of the Exchange Act. ☐

†The term "new or revised financial accounting standard" refers to any update issued by the Financial Accounting Standards Board to its Accounting Standards Codification after April 5, 2012.

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☐

Indicate by check mark which basis of accounting the registrant has used to prepare the financial statements included in this filing:

U.S. GAAP ☐   International Financial Reporting Standards as issued by the International Accounting Standards Board ☒   Other ☐

If "Other" has been checked in response to the previous question, indicate by check mark which financial statement item the registrant has elected to follow. ☐ Item 17 ☐ Item 18

If this is an annual report, indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). ☐ YES ☒ NO

DEAR FELLOW SHAREHOLDERS,

April 22, 2022

To the Shareholders of Scully Royalty Ltd.,

We are pleased to present the financial results of Scully Royalty Ltd. for the year ended December 31, 2021, to declare our second cash dividend of 2022, and to provide you with an update on our recent corporate developments. All dollar amounts are in Canadian dollars, unless otherwise provided.

I. 2021 FINANCIAL RESULTS

Revenues for the year ended December 31, 2021 reached $71.3 million, an increase of 20% over 2020. In 2021, 87% of our revenues were from the Americas, 7% was from Europe and 6% were from other regions. In 2020, 81% of our revenues were from the Americas, 12% was from Europe and 7% were from other regions.

Costs of sales and services, increased in 2021 to $30.9 million from $26.9 million in 2020, primarily as a result of a change in fair value of a loan payable measured at FVTPL and losses on securities in our industrial segment, which was partially offset by a gain on derivatives in 2021 in connection with iron ore hedging.

Selling, general and administrative expenses marginally increased to $21.1 million in 2021 from $19.9 million in 2020. As a percentage of gross revenue, selling, general and administrative expenses were 30% in 2021, compared to 33% in 2020.

In 2021, we recognized share-based compensation expenses of $2.5 million in connection with the grant of options to directors, officers and key employees during the period, compared to $nil for 2020. We view this expense to be one time in nature, and do not expect to incur any material share-based compensation expenses in the near future.

We recognized an income tax expense (other than resource revenue taxes) of $2.3 million in 2021, compared to $4.9 million in 2020. The decrease in the income tax expense in 2021 was primarily the result of a one-time reduction in deferred tax liability as a result of an internal reorganization. Excluding resource revenue taxes, we paid $0.6 million in income tax in cash during 2021 and, in 2020, we did not pay any income tax in cash. We also recognized a resource revenue tax expense of $7.9 million in 2021 compared to $6.1 million in 2020.

Overall, we recognized an income tax expense of $10.2 million (income tax expense of $2.3 million and resource revenue tax expense of $7.9 million) in 2021, compared to $11.0 million (income tax expense of $4.9 million and resource revenue tax expense of $6.1 million) in 2020.

In 2021, our net income attributable to shareholders was $7.6 million, or $0.51 per share on a basic and diluted basis, compared $0.4 million, or $0.03 per share on a basic and diluted basis in 2020.

	As at December 31, 2021 (In thousands, except per share amounts and ratio)
Current assets	145,654
Non-current assets	364,312
Current liabilities	12,348
Non-current liabilities and non-controlling interests	132,018
Shareholders' equity	365,600
Shares outstanding	14,779
Book value per share	24.74
Book value per share (US$)	19.51
Market price per share (US$)	8.86
Price/Book	0.45

II. UPDATE ON THE SCULLY MINE

Overview

The most valuable asset that the Company owns is its royalty interest in the Scully iron ore mine located in the Province of Newfoundland and Labrador, Canada. The royalty rate under this interest is 7.0% on iron ore shipped from the mine and 4.2% on iron ore shipped from tailings and other disposed materials, with a minimum payment of $3.25 million per annum.

In 2017, a new operator acquired the Scully mine and has since achieved a number of milestones, including completing a US$276 million financing and commencing operations at the mine in 2019. The Scully mine has a capacity of six million tonnes per annum and produces, what is considered a premium iron ore product, with Fe content in excess of 65%.

Iron ore is primarily used to make steel, which is considered to be a critical commodity for global economic development. As such, the demand and consequently the pricing of iron ore are largely dependent upon the raw material requirements of integrated steel producers. Demand for blast furnace steel is in turn cyclical.

Iron Ore Price & Scully Mine Production

The operator of the mine has disclosed that the Scully iron ore mine produces a high-grade ore in excess of 65% iron content that also has other favorable characteristics, such as relatively low contaminant ratios. Globally, steelmakers value high grade iron ore with low contaminants (such as silica, alumina, and phosphorus) because they improve environmental and financial performance through more efficient raw material utilization, higher plant yields, and lower emissions. Therefore, it is common and generally expected for 65% Fe iron ore, including the Scully iron ore mine's product, to sell at a premium to 62% Fe iron ore. In 2021, the Platts 65% Fe index price was at an approximately 16% (US$26) premium to the Platts 62% Fe Index price, trading at US$185 per tonne versus $122 per tonne in 2020. However, in the second half of the year 65% Fe iron ore prices declined to US$102 per tonne before rebounding to US$140 per tonne by December 31, 2021. While iron prices have increased thus far in 2022, they remain volatile.

The following table sets forth total iron ore products shipped by the Scully mine operator in 2019, 2020, and 2021:

	H1	H2 (In tonnes)	Full Year
2019	—	954,579	954,579
2020	1,459,162	1,539,492	2,998,654
2021	1,676,321	1,507,682	3,184,003

In the first quarter of 2022, the operator of the mine shipped 767,630 tonnes of iron ore, resulting in a royalty payment of approximately $11.8 million, gross of the 20% mining tax in Newfoundland & Labrador.

The operator of the mine remains committed to ramping up production to at least six million tonnes per annum, and, in support of that commitment, is executing several capital improvement projects which are expected to reduce bottlenecks, while also investing in human resources and operational efficiency. These investments are currently expected to yield results in calendar 2022.

III. DIVIDENDS

Cash Dividend Policy

In April 2021, the Company announced that it was determined to focus its efforts on enhancing shareholder value and maximizing earnings and dividends to its shareholders based upon its iron ore royalty interest. Aligned with this focus, the Company announced that its board of directors had taken the first step by approving a cash dividend policy.

On February 9, 2022, we announced that our board of directors had declared a cash dividend of $0.25 (US$0.18) per Common Share pursuant to this policy, which was paid in US dollars on March 4, 2022 to shareholders of record on February 21, 2022.

Today, we are pleased to announce the following details with respect to the second cash dividend of 2022:

- The dividend of $0.34 (US$0.27) per common share will be paid in US dollars on May 23, 2022 to shareholders of record on May 10, 2022.

- The ex-dividend date will be May 9, 2022. In setting the amount of the dividend, the Company took into account gross first quarter royalty payment of approximately $11.8 million on 767,630 tonnes shipped, before the application of corporate and mining taxes, and the Company's general and administrative expenses for the period.

The declaration, timing and payment of future dividends will depend on, among other things, royalty payments received, the Company's financial condition and operating results.

Stock Dividends

In 2021, our board of directors approved two tax-free stock dividends which increased the number of shares outstanding by approximately 18% without diluting shareholders. The goal of these stock dividends was to improve shareholder value and liquidity and make our common shares more accessible to a broader base of investors, and to date we are pleased with the outcome of this corporate action.

IV. SHARE PRICE & VALUATION

It has been and remains our goal and initiative to structure the group in a way that substantially eliminates the discount between the market price of our common shares and our stated net book value per share. For example, we believe that the value of our royalty interest in the Scully iron ore mine is not properly reflected in the price of our common shares. We believe that one of the reasons for this discrepancy is our complex group structure and diverse portfolio of assets with different economics, capital requirements, and growth prospects.

In April 2021, we announced that to support the Company's core focus, the other two of our operating segments – Industrial and Merchant Banking would be classified as discontinued operations in our 2021 financial statements, beginning with our 2021 half-year results. However, in December 2021, due to the uncertainty caused by recent new strains of COVID-19 and various economic and other factors, our Board of Directors determined to postpone the discontinued operations accounting treatment until further decision (or there is a certainty that a rationalization will be completed within one year).

We are committed to a plan to rationalize these interests, and substantial progress has been made on both projects. These two segments have not produced returns commensurate to that of our royalty interest, and our board believes that these actions provide compelling benefits to our shareholders and to all aspects and business segments of the Company. It simplifies the Company's corporate structure by separating its non-strategic assets and allows the independent business lines to focus on pursuing and operating their respective businesses.

	Royalty	Industrial	Merchant Banking	All Other	Consolidated
	(In thousands, except per share amounts)				
As of December 31, 2021:					
Assets	216,900	148,426	96,934	47,706	509,966
Liabilities and non-controlling interests	49,566	51,442	42,675	683	144,366
Shareholders' equity	**167,334**	**96,984**	**54,259**	**47,023**	**365,600**
Shareholders' equity per Share	**11.32**	**6.56**	**3.67**	**3.18**	**24.74**
Shares Outstanding	14,779	14,779	14,779	14,779	14,779
Year ended December 31, 2021:					
Revenue from external customers	40,335	23,428	6,527	1,001	71,291
Income (loss) before income taxes	26,892	(4,739)	736	(5,342)	17,547

Industrial

Our Industrial segment includes multiple projects in resources and services around the globe. It seeks opportunities to benefit from long-term industrial and services assets, with a focus on East Asia. This segment makes proprietary investments as part of its overall activities and we seek to realize gains on such investments over time. These investments can take many forms and can include acquiring entire businesses or portions thereof, investing in equity or investing in existing indebtedness (secured and unsecured) of businesses or in new equity or debt issues. These activities are generally not passive. The structure of each of these opportunities is tailored to each individual transaction. This segment also holds various production and processing assets, including production and processing assets.

The book value of our Industrial segment was $97.0 million, or $6.56 per share, as at December, 31, 2021.

Merchant Banking

Our Merchant Banking segment comprises regulated European merchant banking business. We own Merkanti Bank Limited, a licensed bank in Europe, which does not engage in general retail, commercial banking or any universal banking operations, but provides specialty banking services, focused on merchant banking, to our customers, suppliers and group members. In addition, we hold an interest in two industrial real estate parks in Europe.

In March 2022, we announced that Merkanti Holding plc, the parent company of our merchant banking segment, had entered into an agreement to acquire Sparkasse (Holdings) Malta Ltd. the parent of Sparkasse Bank Malta plc. Upon closing of this transaction, and subject to regulatory approval, it is the intention to merge Sparkasse Bank and Merkanti Bank, in order to form a larger independent institution with projected combined own funds based upon December 31, 2021 figures of circa €60 million, total assets of €1.1 million, assets under custody of €8.1 billion and revenues of €17 million.

The combined entity will be renamed and rebranded to reflect its focus and market footprint in corporate banking, custody, depositary and investments services in Malta and Ireland. The combination of the existing market presence and product offerings of Sparkasse Bank with the investment in resources and capital from Merkanti Bank creates a strong foundation for growth and development in the Bank’s core markets.

The business model of Sparkasse Bank will remain unchanged and will be supplemented with the additional resources and banking activities of Merkanti Bank. Mr. Paul Mifsud will be named the Chief Executive Officer of the merged entity and a Director of Merkanti Holding plc upon closing, subject to regulatory approval.

The total consideration payable by the Company for Sparkasse Holdings is approximately equal to the net tangible asset value of Sparkasse Holdings, less certain adjustments, and includes (i) a cash payment at closing of the transaction, (ii) three consecutive annual payments of €2.5 million; and (iii) a contingent payment, payable upon the recovery of an asset of Sparkasse Bank which was previously written off in its entirety. The consideration is expected to be satisfied through cash on hand, available liquidity, or other means.

The transaction is conditional upon regulatory approval from various regulators, including the European Central Bank, the Malta Financial Services Authority and the Central Bank of Ireland. The acquisition is currently expected to be concluded in the second half of 2022.

The book value of our Merchant Banking segment was $54.3 million, or $3.67 per share, as at December, 31, 2021.

V. STAKEHOLDER COMMUNICATIONS

We welcome any questions you may have and looks forward to discussing our operations, results and plans with stakeholders. Further:

- stakeholders are encouraged to read our entire annual report, which includes our audited financial statements and management's discussion and analysis, for the year ended December 31, 2021, for a greater understanding of our business and operations; and

- direct any questions regarding the information in this report to our North American toll-free line at 1 (844) 331 3343 or email info@scullyroyalty.com to book a conference call with our senior management.

VI. MANAGEMENT COMMENTARY

We are very pleased to announce our second dividend of 2022 alongside our 2021 financial results. With the recent announcement of the acquisition of Sparkasse Bank Malta by Merkanti Holding plc, our plans to rationalize our merchant banking and industrial segments gain more momentum. We continue to make progress towards our strategic goals that we believe will maximize value for our shareholders over the long-term.

Respectfully Submitted,

April 29, 2022

Samuel Morrow
President, Chief Executive Officer
& Chief Financial Officer

SCULLY ROYALTY LTD.

Form 20-F

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INTRODUCTORY MATTERS

All references in this document to "$" and "dollars" are to Canadian dollars, all references to "US$" are to United States dollars and all references to "Euro" or "€" are to the European Union Euro, unless otherwise indicated.

Unless the context otherwise indicates, references herein to "we", "us", "our" or the "Company" are to Scully Royalty Ltd. and its consolidated subsidiaries.

PART I

FORWARD-LOOKING STATEMENTS

This document contains certain forward-looking information and statements, including statements relating to matters that are not historical facts and statements of our beliefs, intentions and expectations about developments, results and events which will or may occur in the future, including "forward-looking statements" within the meaning of the "safe harbor" provisions of the United States *Private Securities Litigation Reform Act of 1995*, as amended, collectively referred to as "forward-looking statements". Forward-looking statements are typically identified by words such as "anticipate", "could", "should", "expect", "may", "intend", "will", "plan", "estimate", "believe" and similar expressions suggesting future outcomes or statements or their negative or other comparable words. Forward-looking statements include, but are not limited to, statements with respect to: our market, economic conditions, performance and business plans and prospects. All such forward-looking statements are based on certain assumptions and analyses made by us in light of our experience and perception of historical trends, current conditions and expected future developments, as well as other factors we believe are appropriate in the circumstances. These forward-looking statements are, however, subject to known and unknown risks and uncertainties and other factors. As a result, actual results, performance or achievements could differ materially from those expressed in, or implied by, these forward-looking statements and, accordingly, no assurance can be given that any of the events anticipated by the forward-looking statements will transpire or occur, or if any of them do so, what benefits will be derived therefrom. These risks, uncertainties and other factors include, among others, those set forth under the heading entitled "*Item 3: Key Information – D. Risk Factors*".

Although we believe that the expectations reflected in such forward-looking information and statements are reasonable, we can give no assurance that such expectations will prove to be accurate. Accordingly, readers should not place undue reliance upon any of the forward-looking information and statements set out in this document. The forward-looking information and statements are made as of the date of this document and we assume no obligation to update or revise them except as required pursuant to applicable securities laws.

CURRENCY INFORMATION

The following table sets forth the exchange rates for the translation of United States dollars and Euros to Canadian dollars in effect at the end of each of the three most recent financial years. The exchange rates are based on the average daily rate of exchange as reported by the Bank of Canada.

	Years Ended December 31,		
	2021	2020	2019
		($/US$)	
End of period	1.2678	1.2732	1.2988
High for period	1.2040	1.2718	1.2988
Low for period	1.2942	1.4496	1.3600
Average for period	1.2535	1.3415	1.3269
		(€/$)	
End of period	1.4391	1.5608	1.4583
High for period	1.4188	1.4282	1.4438
Low for period	1.5641	1.5851	1.5441
Average for period	1.4828	1.5298	1.4856

On April 27, 2022, the average daily rate of exchange for the translation of United States dollars and Euros to Canadian dollars were US$1.00 = $1.2828 and €1.00 = $1.3540, respectively.

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NOTE ON FINANCIAL AND OTHER INFORMATION

Unless otherwise stated, all financial information presented herein has been prepared in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board, referred to as "IFRS" and the "IASB", respectively, which may not be comparable to financial data prepared by many U.S. companies.

Due to rounding, numbers presented throughout this document may not add up precisely to the totals we provide and percentages may not precisely reflect the absolute figures.

All websites referred to herein are inactive textual references only, meaning that the information contained on such websites is not incorporated by reference herein and you should not consider information contained on such websites as part of this document unless expressly specified.

NON-IFRS FINANCIAL MEASURES

This document includes "non-IFRS financial measures", that is, financial measures that either exclude or include amounts that are not excluded or included in the most directly comparable measure calculated and presented in accordance with IFRS. Specifically, we make use of the non-IFRS measures "EBITDA".

EBITDA is defined as earnings before interest, taxes, depreciation and amortization. Our management uses EBITDA as a measure of our operating results and considers it to be a meaningful supplement to net income as a performance measurement, primarily because we incur significant depreciation and EBITDA eliminates the non-cash impact.

EBITDA is used by investors and analysts for the purpose of valuing an issuer. The intent of EBITDA is to provide additional useful information to investors and the measure does not have any standardized meaning under IFRS. Accordingly, this measure should not be considered in isolation or used in substitute for measures of performance prepared in accordance with IFRS. For a reconciliation of net income from continuing operations to EBITDA, please see "Item 5: Operating and Financial Review and Prospects – Results of Operations".

ITEM 1: IDENTITY OF DIRECTORS, SENIOR MANAGEMENT AND ADVISERS

Not applicable.

ITEM 2: OFFER STATISTICS AND EXPECTED TIMETABLE

Not applicable.

ITEM 3: KEY INFORMATION

A. [RESERVED]

B. Capitalization and Indebtedness

Not applicable.

C. Reasons for the Offer and Use of Proceeds

Not applicable.

D. Risk Factors

An investment in our common shares of US$0.001 par value each, referred to as the "Common Shares", involves a number of risks. You should carefully consider the following risks and uncertainties in addition to other information in this annual report on Form 20-F in evaluating our company and our business before making any investment decisions. Our business, operating and financial condition could be harmed due to any of the following risks.

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Risk Factors Relating to Our Business

Our financial results may fluctuate substantially from period to period.

We expect our business to experience significant periodic variations in its revenue and results of operations in the future. These variations may be attributed in part to the fact that our merchant banking revenue is often earned upon the successful completion of a transaction, the timing of which is uncertain and beyond our control. In many cases, we may receive little or no payment for engagements that do not result in the successful completion of a transaction. Additionally, we seek to acquire undervalued assets where we can use our experience and management to realize upon the value. Often, we will hold or build upon these assets over time and we cannot predict the timing of when these assets' values may be realized. As a result, we are unlikely to achieve steady and predictable earnings, which could in turn adversely affect our financial condition and results of operations.

A weakening of the global economy, including capital and credit markets, could adversely affect our business and financial results and have a material adverse effect on our liquidity and capital resources.

Our business, by its nature, does not produce predictable earnings and it may be materially affected by conditions in the global financial markets and economic conditions generally. As demand for our products and merchant banking services has historically been determined by general global macro-economic activities, demand and prices for our products and services have historically decreased substantially during economic slowdowns. A significant economic downturn may affect our sales and profitability and may adversely affect our suppliers and customers. Further, an economic downturn may impact the operations and production of the iron ore mine underlying our royalty interest. Depending on their severity and duration, the effects and consequences of a global economic downturn could have a material adverse effect on our liquidity and capital resources, including our ability to raise capital, if needed, and otherwise negatively impact our business and financial results.

A weakening of global economic conditions would likely aggravate the adverse effects of difficult economic and market conditions on us and on others in the merchant banking industry. In particular, we may face, among others, the following risks related to any future economic downturn: increased regulation of our banking operations; compliance with such regulation may increase the costs of our banking operations, may affect the pricing of our products and services and limit our ability to pursue business opportunities; reduced demand for our products and services; inability of our customers to comply fully or in a timely manner with their existing obligations; and the degree of uncertainty concerning economic conditions may adversely affect the accuracy of our estimates, which, in turn, impact the reliability of the process and the sufficiency of our credit loss allowances.

Further, any disruption or volatility in the global financial markets could have a material adverse effect on us, including our ability to access capital and liquidity on financial terms acceptable to us, if at all. Market deterioration and weakness can result in a material decline in the number and size of the transactions that we execute for our own account or for our clients and to a corresponding decline in our revenue. Any market weakness can further result in losses to the extent that we hold assets in such market. If all or some of the foregoing risks were to materialize, this could have a material adverse effect on us.

We are subject to global economic, market and business risks with respect to the current COVID-19 pandemic.

In March 2020, the World Health Organization declared a global pandemic related to COVID-19. The COVID19 pandemic is continuing to cause significant widespread global infections and fatalities. It has also materially adversely affected global economic activity, caused significant market volatility and resulted in numerous governments declaring emergencies and implementing measures, such as travel bans, quarantines, business closures, shelter-in-place and other restrictions. There is significant ongoing uncertainty surrounding COVID-19 and the extent and duration of the impacts that it may have on global financial markets, including the price of iron, which is the commodity produced by the mine underlying our royalty interest.

As a result of the ongoing global COVID-19 pandemic, continuing outbreaks along with a spike in infections and fatalities in many countries and emergence of new strains, increased levels of volatility have continued to adversely impact the economies and global financial markets. We are unable to predict whether the resurgence in infections and fatalities or emergence of new strains may cause governments to re-impose some or all prior or new restrictive measures, including business closures. Continuing effects of the pandemic, including variants of the virus, could result in negative economic effects and significant negative impacts on the price of iron and steel, which could have a material adverse impact on our results of operations and financial condition.

To date, while restrictions on travel have had some impact on pursuing business development initiatives, we have not experienced a significant impact on our operations as a result of the current COVID-19 pandemic. However, the ultimate scope, duration and effects of the pandemic are uncertain. We expect that this pandemic, and any future epidemic or pandemic crises, could result in direct and indirect adverse effects on the industries in which we operate, customers and the demand for the iron ore products. The pandemic, including restrictive measures in response thereto could, in the future, impact the operations of the iron ore mine underlying our royalty interest or the customers of our other business segments.

The impact of the pandemic on global economic activity and markets both in the short and longer term is uncertain at this time. The magnitude and duration of the disruption and resulting decline in business activity resulting from the COVID-19 pandemic is currently uncertain. While we expect that there will likely be some negative impact on our results of operations, cash flows and financial position from the pandemic beyond the near-term, the extent to which the COVID-19 pandemic impacts our business, operations and financial results will depend on numerous evolving factors that we may not be able to accurately predict, including: the duration and scope of the pandemic; governmental, business and individuals' actions that have been and continue to be taken in response to the pandemic; the impact of the pandemic on economic activity and actions taken in response thereto; the effect on our customers, including the borrowers and customers of our Bank; its impacts on our suppliers; and the impact of the pandemic on our counterparties and their ability to carry out their obligations to us.

Given the dynamic nature of the pandemic and the worldwide nature of our business and operations, the duration of any business disruption and the related financial impact cannot be reasonably estimated at this time but could materially affect our business results of operations and financial condition.

Our business is highly competitive.

All aspects of our business are highly competitive and we expect them to remain so.

Our competitors include merchant and investment banks, brokerage firms, commercial banks, private equity firms, hedge funds, financial advisory firms and natural resource and mineral royalty companies. Some of our competitors have substantially greater capital and resources, including access to supply, than we do. We believe that the principal factors affecting competition in our business include transaction execution, our products and services, client relationships, reputation, innovations, credit worthiness and price.

The scale of our competitors has increased in recent years as a result of substantial consolidation. These firms may have the ability to offer a wider range of products than we do, which may enhance their competitive position.

If we are unable to compete effectively with our competitors, our business and results of operations will be adversely affected.

During the year ended December 31, 2021, other than revenue from our royalty interest representing approximately 57% of our total revenue, none of our customers accounted for more than 10% of our total revenue. The loss of key customers, due to competitive conditions or otherwise, may adversely affect our results of operations.

Our earnings and, therefore, our profitability may be affected by price volatility in our various products.

The majority of our revenue in 2021 was derived from our iron ore royalty interest. Any revenues from our royalty interest are impacted by the price of iron ore. We also derived revenues from, from among other things, the sale of hydrocarbons and other materials. As a result, our earnings are directly related to the prices of these underlying products. There are many factors influencing the price of these products, including: expectations for inflation; global and regional demand and production; political and economic conditions; and production costs in major producing regions. These factors are beyond our control and are impossible for us to predict. Changes in the prices of our products may adversely affect our operating results.

We may face a lack of suitable acquisition, merger or other proprietary investment candidates, which may limit our growth.

In order to grow our business, we may seek to acquire, merge with or invest in new companies or opportunities. Our failure to make acquisitions or investments may limit our growth. In pursuing acquisition and investment opportunities, we face competition from other companies having similar growth and investment strategies, many of which may have substantially greater resources than us. Competition for these acquisitions or investment targets could result in increased acquisition or investment prices, higher risks and a diminished pool of businesses, services or products available for acquisition or investment.

The operation of the iron ore mine underlying our royalty interest is generally determined by a third-party operator and we currently have no decision-making power as to how the property is operated. In addition, we have no or very limited access to technical or geological data respecting the mine, including as to mineralization or reserves. The operator's failure to perform or other operating decisions could have a material adverse effect on our revenue, results of operations and financial condition.

The iron ore mine underlying our royalty interest was closed in 2014. A new operator acquired the former operator's interests in the second quarter of 2017. The operator generally has the power to determine the manner in which the property is operated. The interests of the operator and our interests may not always be aligned. Our inability to control the operations of the mine can adversely affect our profitability, results of operations and financial condition. In addition, we have no or very limited access to technical or geological data respecting the mine, including as to mineralization and reserves.

To the extent grantors of royalties and other interests do not abide by their contractual obligations, we may be forced to take legal action to enforce our contractual rights. Should any decision with respect to such action be determined adversely to us, such decision may have a material adverse effect on our profitability, results of operations and financial condition.

In addition, we have no or very limited access to technical or geological data relating to the mine and operations underlying our interest, including reserves data. Accordingly, we can provide no assurances as to the level of reserves at the mine. If the operator determines there are insufficient reserves to economically operate the mine, it may abandon its currently announced re-start or, thereafter, scale back or cease operations, which could have a material adverse effect on our profitability, results of operations and financial condition.

Our activities are subject to counterparty risks associated with the performance of obligations by our counterparties.

Our business is subject to commercial risks, which include counterparty risk, such as failure of performance by our counterparties. We seek to reduce the risk of non-performance by requiring credit support from creditworthy financial institutions where appropriate. We also attempt to reduce the risk of non-payment by customers or other counterparties by imposing limits on open accounts extended to creditworthy customers and imposing credit support requirements for other customers. Nevertheless, we are exposed to the risk that parties owing us or our clients and other financial intermediaries may default on their obligations to us due to bankruptcy, lack of liquidity, operational failure or other reasons. These counterparty obligations may arise, for example, from placing deposits, the extension of credit or guarantees in trading and investment activities and participation in payment, securities and supply chain transactions on our behalf and as an agent on behalf of our clients. If any such customers or counterparties default on their obligations, our business, results of operations, financial condition and cash flow could be adversely affected.

In addition, we evaluate the credit risk in respect of accounts receivable and other amounts owed to us by counterparties, including loss allowances. We may recognize losses on such amounts where, based on such evaluations, we determine that the related credit risk has increased significantly. Furthermore, while we take steps to mitigate such credit risks, our actual losses on such balances may differ from our assessments and currently anticipated loss allowances and, as a result, we may recognize impairments in the future.

We are subject to transaction risks that may have a material adverse effect on our business, results of operations, financial condition and cash flow.

We manage transaction risks through allocating and monitoring our capital investments in circumstances where the risk to our capital is minimal, carefully screening clients and transactions and engaging qualified personnel to manage transactions. Nevertheless, transaction risks can arise from our proprietary investing activities. These risks include market and credit risks associated with our operations. We intend to make investments in highly unstructured situations and in companies undergoing severe financial distress and such investments often involve severe time constraints. These investments may expose us to significant transaction risks. An unsuccessful investment may result in the total loss of such investment and may have a material adverse effect on our business, results of operations, financial condition and cash flow.

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Our risk management strategies may leave us exposed to unidentified or unanticipated risks that could impact our risk management strategies in the future and could negatively affect our results of operations and financial condition.

We use a variety of instruments and strategies to manage exposure to various types of risks. For example, we may use derivative foreign exchange contracts to manage our exposure and our clients' exposure to foreign currency exchange rate risks. If any of the variety of instruments and strategies we utilize to manage our exposure to various types of risk are not effective, we may incur losses. Many of our strategies are based on historical trading patterns and correlations. However, these strategies may not be fully effective in mitigating our risk exposure in all market environments or against all types of risk. Unexpected market developments may affect our risk management strategies and unanticipated developments could impact our risk management strategies in the future.

If the fair values of our long-lived assets or their recoverable amounts fall below our carrying values, we would be required to record non-cash impairment losses that could have a material impact on our results of operations.

We review the carrying value of long-lived assets for impairment when events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable. Should the markets for our products deteriorate, should we decide to invest capital differently or should other cash flow assumptions change, it is possible that we will be required to record non-cash impairment losses in the future that could have a material adverse effect on our results of operations.

Derivative transactions may expose us to unexpected risk and potential losses.

We, from time to time, enter into derivative transactions that require us to deliver to the counterparty an underlying security, loan or other obligation in order to receive payment. Such derivative transactions may expose us to unexpected market, credit and operational risks that could cause us to suffer unexpected losses. Severe declines in asset values, unanticipated credit events or unforeseen circumstances may create losses from risks not appropriately taken into account in the structuring and/or pricing of a derivative transaction.

The operations of our banking subsidiary are subject to regulation, which could adversely affect our business and operations.

The operations of Merkanti Bank Limited, referred to as the "Bank", are subject to a number of directives and regulations, which materially affect our businesses. The statutes, regulations and policies to which we are subject may be changed at any time. In addition, the interpretation and the application by regulators of the laws and regulations to which we are subject may also change from time to time. Extensive legislation affecting the financial services industry has recently been adopted in Europe that directly or indirectly affects our business and regulations are in the process of being implemented. The manner in which those laws and related regulations are applied to the operations of credit institutions is still evolving. Any legislative or regulatory actions and any required changes to our business operations resulting from such legislation and regulations could result in significant loss of revenue, limit our ability to pursue business opportunities in which we might otherwise consider engaging or provide certain products and services, affect the value of assets that we hold, require us to increase our prices and therefore reduce demand for our financial products, impose additional compliance and other costs on us or otherwise adversely affect our businesses. Accordingly, there can be no assurance that future changes in regulations or in their interpretation or application will not adversely affect us. Please see "*Item 4: Information on the Company – B. Business Overview – Regulation*" for further information.

Further, the operations of our Bank may involve transactions with counterparties in the financial services industry, including commercial banks, investment banks and other institutional clients. Defaults by, and even rumors or questions about the solvency of certain financial institutions and the financial services industry generally, have led to market-wide liquidity problems and could lead to losses or defaults by other institutions. We may enter into transactions that could expose us to significant credit risk in the event of default by one of our significant counterparties. A default by a significant financial counterparty, or liquidity problems in the financial services industry generally, could have a material adverse effect on us.

In February 2020 the Cayman Islands was included in the European Council to the European Union's list of non-cooperative jurisdictions for tax purposes, referred to as the "EU Blacklist". Additionally, Malta has been listed as a jurisdiction subject to increased monitoring by the Financial Action Task Force. While the Cayman Islands was removed from the EU Blacklist in October 2020, the reputational damage could cause our clients, customers and other counterparties to lose confidence in the Cayman Islands or Malta as a financial centre and impact their willingness to conduct business with us.

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In February 2020, the Cayman Islands was added to the EU Blacklist and remained thereon until October 2020. This, along with the related reputational damage for the jurisdiction, resulted in clients, customers and other counterparties questioning the integrity and the transparency of the Cayman Islands as a viable financial centre. It may also result in their seeking to reduce the amount of business activity they conduct with us or to alter the terms of their business with us so they are less favourable. Such actions may adversely affect our business and operations.

In addition, in June 2021, the Financial Action Task Force announced that Malta was included in the list of jurisdictions under increased monitoring. Countries included on such list have had strategic deficiencies identified by the task force in their regimes to counter money laundering, terrorist financing and proliferation financing, but have committed to resolve swiftly the identified strategic deficiencies within agreed timeframes and are subject to increased monitoring. We have subsidiaries incorporated in Malta, including the Bank.

The reputational harm to our businesses associated with our being a Cayman Islands entity or as a result of the Bank and certain of our other subsidiaries being Maltese entities could potentially have an adverse impact on our business, financial condition and results of operations if that status continues for an extended period of time.

Any failure to remain in compliance with sanctions, anti-money laundering laws or other applicable regulations in the jurisdictions in which we operate could harm our reputation and/or cause us to become subject to fines, sanctions or legal enforcement, which could have an adverse effect on our business, financial condition and results of operations.

Our business has adopted policies and procedures respecting compliance with sanctions and anti-money laundering laws and we have adopted various policies and procedures to ensure compliance with specific laws applicable to it, including internal controls and “know-your-customer” procedures aimed at preventing money laundering and terrorism financing; however, participation of multiple parties in any given transaction can make the process of due diligence difficult. Further, because our Bank’s activities can be more document-based than other banking activities, it is susceptible to documentary fraud, which can be linked to money laundering, terrorism financing, illicit activities and/or the circumvention of sanctions or other restrictions (such as export prohibitions, licencing requirements or other trade controls). While we are alert to high-risk transactions, we are also aware that efforts, such as forgery, double invoicing, partial shipments of goods and use of fictitious goods may be used to evade applicable laws and regulations. If our policies and procedures are ineffective in preventing third parties from using our finance operations as a conduit for money laundering or terrorism financing without our knowledge, our reputation could suffer and/or we could become subject to fines, sanctions or legal action (including being added to any “blacklists” that would prohibit certain parties from engaging in transactions with us, including our banking subsidiary), which could have an adverse effect on our business, financial condition and results of operations. In addition, amendments to sanctions, anti-money laundering laws or other applicable laws or regulations in countries in which we operate could impose additional compliance burdens on our operations.

Fluctuations in interest rates and foreign currency exchange rates may affect our results of operations and financial condition.

Fluctuations in interest rates may affect the fair value of our financial instruments sensitive to interest rates. An increase or decrease in market interest rates may result in changes to the fair value of our fixed interest rate financial instrument liabilities, thereby resulting in a reduction in the fair value of our equity. Similarly, fluctuations in foreign currency exchange rates may affect the fair value of our financial instruments sensitive to foreign currency exchange rates.

Some of our operations are subject to environmental laws and regulations that may increase the costs of doing business and may restrict such operations.

Some of our operations present environmental risks and hazards and are subject to environmental regulation pursuant to a variety of government laws and regulations. These regulations mandate, among other things, the maintenance of air and water quality standards and land reclamation. They also set forth limitations on the generation, transportation, storage and disposal of solid and hazardous waste. Compliance with such laws and regulations can require significant expenditures, and a breach may result in the imposition of fines and penalties, which may be material. Environmental legislation is evolving in a manner expected to result in stricter standards and enforcement, larger fines and liability and potentially increased capital expenditures and operating costs. Any breach of environmental legislation by the operator of properties underlying our interests or by us, as an owner or operator of a property, could have a material impact on the viability of the relevant property and impair the revenue derived from the owned property or applicable royalty or other interest, which could have a material adverse effect on our results of operations and financial condition. Further, environmental hazards may exist on the properties on which we hold, or have previously held, interests, which are unknown to us at present and have been caused by previous or existing owners or operators of such properties.

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Failure to comply with applicable laws, regulations or permitting requirements may result in enforcement actions thereunder, including orders issued by regulatory or judicial authorities causing operations to cease or be curtailed and may include corrective measures requiring capital expenditures, installation of additional equipment or other remedial actions. Parties engaged in resource operations or in the exploration or development of resource properties may also be required to compensate those suffering loss or damage by reason of their exploration or mining activities and may also be subject to civil or criminal fines or penalties imposed for violations of applicable laws or regulations.

We may not be fully insured against certain environmental risks, either because such insurance is not available or because of high premium costs. In particular, insurance against risks from environmental pollution occurring over time, as opposed to sudden and catastrophic damages, is not available on economically reasonable terms. Accordingly, our properties may be subject to liability due to hazards that cannot be insured against or that have not been insured against due to prohibitive premium costs or for other reasons.

Limitations on our access to capital could impair our liquidity and our ability to conduct our business.

Liquidity, or ready access to funds, is essential to companies engaged in our business. Failures of financial firms have often been attributable in large part to insufficient liquidity. Liquidity is of particular importance to our merchant banking business and perceived liquidity issues may affect our clients' and counterparties' willingness to engage in transactions with us. Our liquidity could be impaired due to circumstances that we may be unable to control, such as a general market disruption or an operational problem that affects our clients, counterparties, our lenders or us. Further, our ability to sell assets may be impaired if other market participants are seeking to sell similar assets at the same time.

We may require new capital to grow our business and there are no assurances that capital will be available when needed, if at all. It is likely such additional capital will be raised through the issuance of additional equity, which would result in dilution to our shareholders. A failure to obtain such additional capital could delay our ability to pursue our business plans in the future and adversely affect our future operations.

We may substantially increase our debt in the future.

It may be necessary for us to obtain financing with banks or financial institutions to provide funds for working capital, capital purchases, potential acquisitions and business development. Interest costs associated with any debt financing may adversely affect our profitability. Further, the terms on which amounts may be borrowed – including standard financial covenants regarding the maintenance of financial ratios, the prohibition against engaging in major corporate transactions or reorganizations and the payment of dividends – may impose additional constraints on our business operations and our financial strength.

As a result of our global operations, we are exposed to political, economic, legal, operational and other risks that could adversely affect our business, results of operations, financial condition and cash flow.

In conducting our business in major markets around the world, we are subject to political, economic, legal, operational and other risks that are inherent in operating in other countries. These risks range from difficulties in settling transactions in emerging markets to possible nationalization, expropriation, price controls and other restrictive governmental actions, and terrorism. We also face the risk that exchange controls or similar restrictions imposed by foreign governmental authorities may restrict our ability to convert local currency received or held by us in their countries into Canadian dollars, Euros or other hard currencies or to take those other currencies out of those countries. If any of these risks become a reality, our business, results of operations, financial condition and cash flow could be negatively impacted.

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We are exposed to litigation risks in our business that are often difficult to assess or quantify and we could incur significant legal expenses every year in defending against litigation.

We are exposed to legal risks in our business and the volume and amount of damages claimed in litigation against financial intermediaries are increasing. These risks include potential liability for advice we provide to participants in corporate transactions and disputes over the terms and conditions of complex trading arrangements. We also face the possibility that counterparties in complex or risky trading transactions will claim that we improperly failed to inform them of the risks involved or that they were not authorized or permitted to enter into such transactions with us and, accordingly, that their obligations to us are not enforceable. During a prolonged market downturn, we expect these types of claims to increase. We are also exposed to legal risks in our merchant banking and proprietary investing activities.

We seek to invest in undervalued businesses or assets often as a result of financial, legal, regulatory or other distress affecting them. Investing in distressed businesses and assets can involve us in complex legal issues relating to priorities, claims and other rights of stakeholders. These risks are often difficult to assess or quantify and their existence and magnitude often remains unknown for substantial periods of time. We may incur significant legal and other expenses in defending against litigation involved with any of these risks and may be required to pay substantial damages for settlements and/or adverse judgments. Substantial legal liability or significant regulatory action against us could have a material adverse effect on our financial condition and results of operations.

We rely significantly on the skills and experience of our executives and the loss of any of these individuals may harm our business.

Our future success depends to a significant degree on the skills, experience and efforts of our executives and the loss of their services may compromise our ability to effectively conduct our business. We do not maintain “key person” insurance in relation to any of our employees.

The loss of any of our management personnel could negatively affect our business operations. From time to time, we will also need to identify and retain additional skilled management and specialized technical personnel to efficiently operate our business. The competition for such persons is intense. Recruiting and retaining qualified personnel is critical to our success and there can be no assurance of our ability to attract and retain such personnel. If we are not successful in attracting and retaining qualified personnel, our ability to execute our business model and strategy could be affected, which could have a material adverse impact on our profitability, results of operations and financial condition.

We conduct business in countries with a history of corruption and transactions with foreign governments and doing so increases the risks associated with our international activities.

As we operate internationally, we are subject to the United States’ *Foreign Corrupt Practices Act of 1977* and other laws that prohibit improper payments or offers of payments to foreign governments and their officials and political parties by the United States and other business entities that have securities registered in the United States for the purpose of obtaining or retaining business. We have operations and agreements with third parties in countries known to experience corruption. Further international expansion may involve more exposure to such practices. Our activities in these countries create the risk of unauthorized payments or offers of payments by our employees or consultants that could be in violation of various laws including the *Foreign Corrupt Practices Act of 1977*, even though these parties are not always subject to our control. It is our policy to implement safeguards to discourage these practices by our employees and consultants. However, our existing safeguards and any future improvements may prove to be less than effective and our employees or consultants may engage in conduct for which we might be held responsible. Violations of the *Foreign Corrupt Practices Act of 1977* may result in criminal or civil sanctions and we may be subject to other liabilities, which could negatively affect our business, operating results and financial condition.

Our hydrocarbon and related operations are subject to inherent risks and hazards.

There are many operating risks and hazards inherent in our resource operations, including environmental hazards, industrial accidents, changes in the regulatory environment, impact of non-compliance with laws and regulations, potential damage to equipment or personal injury and fires, explosions, blowouts, spills or other accidents. Additionally, we could experience interruptions to, or the termination of, production, processing or transportation activities due to bad weather, natural disasters, delays in obtaining governmental approvals or consents, insufficient storage or transportation capacity or other geological or mechanical conditions. Any of these events that result in an interruption or suspension of operations would adversely affect our hydrocarbon operations.

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In addition, certain of our undeveloped reserves are, or may in the future be, subject to third-party operating agreements, including farm-out and participation agreements. As a result, development activities conducted by such third-parties may not be entirely within our control.

Future environmental and reclamation obligations respecting our resource properties and interests may be material.

We have not established a separate reclamation fund for the purpose of funding estimated future environmental and reclamation obligations or liabilities. Any site reclamation or abandonment costs incurred in the ordinary course in a specific period will be funded out of cash flow from operations. To the extent our hydrocarbon properties are not disposed of, we expect to incur site restoration costs over a prolonged period as wells reach the end of their economic life and may also be subject to reclamation and other environmental liabilities for past resource activities. There are significant uncertainties related to decommissioning obligations and the impact on the financial statements could be material. The eventual timing of and costs for these asset retirement and other environmental obligations or potential liabilities could differ from current estimates.

Strategic investments or acquisitions and joint ventures, or our entry into new business areas, may result in additional risks and uncertainties in our business.

On March 7, 2022, we announced that our subsidiary, Merkanti Holding plc, referred to as "Merkanti", entered into a definitive agreement to acquire Sparkasse (Holdings) Malta Ltd., the Maltese parent company of Sparkasse Bank Malta plc, referred to as "Sparkasse Bank". We may fail to satisfy the conditions to the completion of such acquisition, which include receipt of applicable regulatory approvals. In addition, if the transaction is completed, we may fail to realize the anticipated benefits and synergies of the proposed transaction.

We may make additional strategic investments and acquisitions or joint ventures and similar transactions in the future. When we make strategic investments or acquisitions or enter into joint ventures, we expect to face numerous risks and uncertainties in combining or integrating the relevant businesses and systems, including the need to combine accounting and data processing systems and management controls and to integrate relationships with customers and business partners. The costs of integrating acquired businesses (including restructuring charges associated with the acquisitions, as well as other related costs, such as accounting, legal and advisory fees) could significantly impact our operating results.

Although we perform due diligence on the businesses we purchase, in light of the circumstances of each transaction, an unavoidable level of risk remains regarding the actual condition of these businesses. We may not be able to ascertain the value or understand the potential liabilities of the acquired businesses and their operations until we assume operating control of these businesses.

Furthermore, any acquisitions of businesses or facilities could entail a number of risks, including, among others: problems with the effective integration of operations; inability to maintain key pre-acquisition business relationships; increased operating costs; exposure to substantial unanticipated liabilities; difficulties in realizing projected efficiencies, synergies and cost savings; the risks of entering markets in which we have limited or no prior experience; and the possibility that we may be unable to recruit additional managers with the necessary skills to supplement the management of the acquired businesses.

In addition, geographic and other expansions, acquisitions or joint ventures may require significant managerial attention, which may be diverted from our other operations. If we are unsuccessful in overcoming these risks, our business, financial condition or results of operations could be materially and adversely affected.

Tax audits or disputes, or changes in the tax laws applicable to us, could materially increase our tax payments.

We exercise significant judgment in calculating our provision for income taxes and other tax liabilities. Although we believe our tax estimates are reasonable, many factors may affect their accuracy. Applicable tax authorities may disagree with our tax treatment of certain material items potentially causing an increase in tax liabilities. Due to the size, complexity and nature of our operations, various tax matters and litigation are outstanding from time to time, including relating to our former affiliates. Currently, based upon information available to us, we do not believe any such matters would have a material adverse effect on our financial condition or results of operations. However, due to the inherent uncertainty, we cannot provide certainty as to their outcome. If our current assessments are materially incorrect or if we are unable to resolve any of these matters favourably, there may be a material adverse impact on our financial performance, cash flows or results of operations.

Furthermore, changes to existing laws may also increase our effective tax rate. A substantial increase in our tax burden could have an adverse effect on our financial results. Please see "*Item 8: Financial Information – A. Consolidated Statements and Other Financial Information*" for further information.

Restrictions on the remittance of RMB into and out of China and governmental control of currency conversion may limit our ability to pay dividends and other obligations, and affect the value of your investment.

A portion of our cash is held in China in Renminbi, referred to as "RMB". The government of the People's Republic of China, referred to as the "PRC", imposes controls on the convertibility of the RMB into foreign currencies and the remittance of currency out of the PRC. We may convert a portion of our revenues held by our subsidiary in the PRC into other currencies to meet our foreign currency obligations. Shortages in the availability of foreign currency may restrict the ability of our PRC subsidiary to remit sufficient foreign currency to pay dividends or other payments to us, or otherwise satisfy its foreign currency denominated obligations.

Under existing PRC foreign exchange regulations, payments of current account items, including profit distributions, interest payments and trade and service-related foreign exchange transactions, can be made in foreign currencies without prior approval of the PRC State Administration of Foreign Exchange, referred to as "SAFE", as long as certain routine procedural requirements are fulfilled. However, approval from or registration with competent government authorities is required where the RMB is to be converted into foreign currency and remitted out of the PRC to pay capital expenses such as the repayment of loans denominated in foreign currencies. The PRC government may at its discretion restrict access to foreign currencies for current account transactions in the future. If the foreign exchange control system prevents us from obtaining sufficient foreign currencies to satisfy our foreign currency demands, we may not be able to utilize such funds for purposes outside of the PRC.

Failures or security breaches of our information technology systems could disrupt our operations and negatively impact our business.

We use information technologies, including information systems and related infrastructure as well as cloud applications and services to store, transmit, process and record sensitive information, including employee information and financial and operating data, communicate with our employees and business partners and for many other activities related to our business. Our business partners, including operating partners, suppliers, customers and financial institutions, are also dependent on digital technology. Some of these business partners may be provided limited access to our sensitive information or our information systems and related infrastructure in the ordinary course of business.

Despite security design and controls, our information technology systems, and those of our third-party partners and providers, may be vulnerable to a variety of interruptions, including during the process of upgrading or replacing software, databases or components thereof, natural disasters, terrorist attacks, telecommunications failures, computer viruses, cyber-attacks, the activities of hackers, unauthorized access attempts and other security issues or may be breached due to employee error, malfeasance or other disruptions. Any such interruption or breach could result in operational disruptions or the misappropriation of sensitive data that could subject us to civil and criminal penalties, litigation or have a negative impact on our reputation. There can be no assurance that such disruptions or misappropriations and the resulting repercussions will not negatively impact our cash flows and materially affect our results of operations or financial condition.

General Risks Faced by Us

Investors' interests may be diluted and investors may suffer dilution in their net book value per share if we issue additional shares or raise funds through the sale of equity securities.

Our constating documents authorize the issuance of our Common Shares and preference shares, issuable in series. In the event that we are required to issue any additional shares or enter into private placements to raise financing through the sale of equity securities, investors' interests in us will be diluted and investors may suffer dilution in their net book value per share depending on the price at which such securities are sold. If we issue any such additional shares, such issuances will also cause a reduction in the proportionate ownership of all other shareholders. Further, any such issuance may result in a change of control of our company.

Certain factors may inhibit, delay or prevent a takeover of our company, which may adversely affect the price of our Common Shares.

Certain provisions of our charter documents may discourage, delay or prevent third parties from effecting a change of control or changes in our management in a tender offer or otherwise engaging in a merger or similar type of transaction with us. If a change of control or change of management is delayed or prevented, the market price of our Common Shares could decline.

Any future weaknesses or deficiencies or failures to maintain internal controls or remediate weaknesses could impair our ability to produce accurate and timely financial statements.

If material weaknesses in our internal controls are discovered in the future, our ability to report our financial results on a timely and accurate basis could be impacted in a materially adverse manner, and, as a result, our financial statements may contain material misstatements or omissions. If we cannot maintain and execute adequate internal control over financial reporting that provides reasonable assurance of the reliability of the financial reporting and preparation of our financial statements for external use, we could suffer harm to our reputation, fail to meet our public reporting requirements on a timely basis, cause investors to lose confidence in our reported financial information or be unable to properly report on our business and the results of our operations, and the trading price of our Common Shares could be materially adversely affected.

Investors may face difficulties in protecting their interests, and their ability to protect their rights through United States courts may be limited, because we are incorporated under Cayman Islands law.

We are incorporated under the laws of the Cayman Islands and substantially all of our operations and assets are located outside the United States. Our corporate affairs are governed by our memorandum and articles of association, the Companies Law of the Cayman Islands (2020 Revision), as amended, referred to as the “Cayman Act” and the common law of the Cayman Islands. The rights of shareholders to take action against the directors, actions by minority shareholders and the fiduciary responsibilities of our directors to us under Cayman Islands law are to a large extent governed by the common law of the Cayman Islands. The common law of the Cayman Islands is derived in part from comparatively limited judicial precedent in the Cayman Islands as well as from the common law of England, the decisions of whose courts are of persuasive authority, but are not binding, on a court in the Cayman Islands. The rights of our shareholders and the fiduciary responsibilities of our directors under Cayman Islands law are not as clearly established as they would be under statutes or judicial precedent in some jurisdictions in the United States. Some U.S. states, such as Delaware, have more fully developed and judicially interpreted bodies of corporate law than the Cayman Islands. In addition, Cayman Islands companies may not have standing to initiate a shareholder derivative action in a federal court of the United States.

There is no statutory recognition in the Cayman Islands of judgments obtained in the United States, although the courts of the Cayman Islands will in certain circumstances recognize and enforce a non-penal judgment of a foreign court of competent jurisdiction without retrial on the merits. In addition, a majority of our directors and officers are nationals and residents of countries other than the United States. The Cayman Islands courts are also unlikely to recognize or enforce against us judgments of courts of the United States based on certain civil liability provisions of U.S. securities laws; and to impose liabilities against us, in original actions brought in the Cayman Islands, based on certain civil liability provisions of U.S. securities laws that are penal in nature.

As a result of all of the above, our public shareholders may have more difficulty in protecting their interests in the face of actions taken by management, members of the board of directors or controlling shareholders than they would as public shareholders of a company incorporated in the United States.

ITEM 4: INFORMATION ON THE COMPANY

A. History and Development of the Company

We are a corporation organized under the Cayman Act. We were incorporated on June 5, 2017. In addition, on June 3, 2019, we changed our name to “Scully Royalty Ltd.” from MFC Bancorp Ltd. Our office is located at Unit 803, Dina House, Ruttonjee Centre, 11 Duddell Street, Hong Kong, SAR China, and its telephone number is +1 844 331 3343. Our registered office is located at P. O. Box 31119 Grand Pavilion, Hibiscus Way, 802 West Bay Road, Grand Cayman, KY1 – 1205 Cayman Islands. Our website address is www.scullyroyalty.com.

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Our core asset is a net revenues royalty interest in the Scully iron ore mine located in the Province of Newfoundland and Labrador, Canada. The royalty rate under this interest is 7.0% on iron ore shipped from the mine and 4.2% on iron ore shipped from tailings and other disposed materials. The current operator of the mine commenced mining operations in 2019. See "- *B. Business Segments – Royalty*" and "*– D. Property, Plants and Equipment*".

In addition, we have two other business segments operating that provide merchant banking and financial services. We specialize in markets that are not adequately addressed by traditional sources of supply and finance, with an emphasis on providing solutions for small and medium sized enterprises. We operate in multiple geographies and participate in industries including manufacturing, natural resources and medical supplies and services.

As a supplement to our operating business, we commit proprietary capital to assets and projects where intrinsic values are not properly reflected. These investments can take many forms, and our activities are generally not passive. The structure of each of these opportunities is tailored to each individual transaction.

We file reports and other information with the Securities and Exchange Commission, referred to as the "SEC". The SEC maintains an Internet site that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC. Our filings with the SEC are available to the public over the internet at such website at http://www.sec.gov.

Please see "*B. Business Overview*" for further information regarding our recent developments.

B. Business Overview

The following is a brief description of our business and recent activities.

Recent Developments

Continued Scully Iron Ore Mine Ramp Up

In 2021, the operator of the Scully iron ore mine in the Province of Newfoundland and Labrador, Canada, continued its ramp-up of production at the mine after announcing recommencement of operations in August 2019. As a result of such increased operations, our Iron Ore Royalty segment revenues 2021 were $40.3 million, compared to $31.4 million in 2020. See "*Business Segments*".

The Scully iron ore mine produces a high-grade ore in excess of 65% iron content that also has other favorable characteristics, such as relatively low contaminant ratios. Globally, steelmakers value high grade iron ore with low contaminants (such as silica, alumina, and phosphorus) because they improve environmental and financial performance through more efficient raw material utilization, higher plant yields, and lower emissions. Therefore, it is common and generally expected for 65% Fe iron ore, including the Scully iron ore mine's product, to sell at a premium to 62% Fe iron ore. In 2021, the Platts 65% Fe index sold at approximately a 16% (US$26) premium to the Platts 62% Fe Index.

The following table sets forth the total iron ore products (which include pellets, chips and concentrates) shipped from the mine based upon the amounts reported to us by the Scully mine for the periods indicated:

	Year Ended December 31,	
	2021	2020
	(tonnes)	
Iron Ore Products Shipped	3,184,003	2,988,654

In July 2021, the operator of the Scully iron ore mine filed an environmental assessment registration with the Newfoundland and Labrador government, seeking to expand its current tailings impoundment area by up to 1.411 hectares. The disclosed purpose of such expansion was to enable the extension of mine operations by 22 years to 2047 to fully utilize the mines ore reserves. The provincial government registered said application in 2021.

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The operator of the mine remains committed to ramping up production to at least six million tonnes per annum, and, in support of that commitment, is currently executing several capital improvement projects which are expected to reduce bottlenecks, while at the same time investing in human resources and operational efficiency. These investments are currently expected to yield results in calendar 2022.

Cash Dividend Policy

On April 30, 2021, we announced that our board of directors approved a cash dividend policy, which is intended to maximize potential future dividends to holders of our Common Shares. On February 9, 2022, we announced that our board of directors declared a cash dividend of $0.25 (US$0.18) per Common Share pursuant to this policy, which was paid in US dollars on March 4, 2022 to shareholders of record on February 21, 2022.

On April 29, we announced that our board of director declared a cash dividend of $0.34 (US$0.27) per Common Share, which will be paid in US dollars on May 23, 2022 to shareholders of record on May 10, 2022.

Based upon a review of our financial position, operating results, ongoing working capital requirements and other factors, our board of directors may from time to time and if deemed advisable by it, declare and pay cash dividends to holders. The timing, payment and amount of any dividends paid on our Common Shares may be determined by our board of directors from time to time, based upon considerations such as our cash flow, results of operations and financial condition, the need for funds to finance ongoing operations and such other business considerations as our board of directors considers relevant.

Stock Dividend

On April 30, 2021, we announced that our board of directors approved the following stock dividends that have been distributed to holders of our Common Shares:

- a 9% stock dividend was distributed on May 31, 2021, to shareholders of record as at May 14, 2021, where such holders received 9 Common Shares for every 100 Common Shares held on the record date; and

- an 8% stock dividend was distributed on November 30, 2021, to shareholders of record as at November 15, 2021, where such holders received 8 Common Shares for every 100 Common Shares held on the record date.

The above stock dividends received requisite stock exchange approvals. No fractional shares were issued by us in connection with such stock dividends.

Acquisition of Sparkasse Bank Malta

On March 7, 2022, we announced that our subsidiary, Merkanti, entered into a definitive agreement to acquire Sparkasse (Holdings) Malta Ltd., the Maltese parent company Sparkasse Bank. Upon closing, we intend to merge our subsidiary, Merkanti Bank Ltd. with Sparkasse Bank, in order to form a larger independent institution.

Merkanti is acquiring Sparkasse Holdings and the total consideration is approximately equal to the net tangible asset value of Sparkasse (Holdings) Malta Ltd., less certain adjustments, and includes (i) a cash payment at closing of the transaction, (ii) three consecutive annual payments of €2.5 million; and (iii) a contingent payment, payable solely upon the recovery (if any) of an asset of Sparkasse Bank which was previously written off in its entirety. The consideration is expected to be satisfied through cash on hand and available liquidity within our group. The transaction is conditional upon the satisfaction of certain customary conditions precedent such as regulatory approval from various regulators, including the European Central Bank, the Malta Financial Services Authority and the Central Bank of Ireland. The acquisition is currently expected to be concluded in the second half of calendar year 2022.

Sparkasse Bank is a public limited liability company registered in Malta. Sparkasse Bank is licensed by the Malta Financial Services Authority to carry out the business of banking in terms of the Banking Act (Malta), to provide investment services and custody and depositary services in terms of the Investment Services Act (Malta), and is authorised to act as custodian of retirement schemes in terms of the Retirements Pensions Act (Malta).

Founded in 2000, Sparkasse Bank is a leading custody and depositary provider in Europe, operating under four licenses:

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- Credit Institution License
    - o Corporate & Private bank accounts, term deposits, online banking
    - o Payment services: SEPA, SWIFT, and TARGET connectivity
- Investment Firm License
    - o Execution and receipt of transmission of orders
    - o Settlement, custody and asset servicing
    - o Investment advisory and non-advisory services
    - o Foreign exchange services
- Depositary License
    - o Depositary Services for Alternative Investment Funds ("AIF") and Undertakings for the Collective Investment in Transferable Securities ("UCITS")
- Registered Custodian License
    - o Custody Services for retirement schemes under the Retirement Pensions Act (Malta) (Chapter 514 of the laws of Malta)

In addition, Sparkasse Bank has a branch in Dublin, Ireland, that provides depositary services to collective investment schemes and is authorized by the Central Bank of Ireland to act as depositary to Irish authorized investment funds.

We believe that this transaction has the potential to provide Merkanti with an increased scale, operational scope and a broader service offering to pursue its strategy as a standalone merchant banking institution, furthering our previously announced strategy to focus on our iron ore royalty interest while seeking to rationalize our industrial and merchant banking assets.

Business Segments

We currently have three operating segments: (i) Royalty, which includes our interest in an iron ore mine; (ii) Industrial, which includes multiple projects in resources and services; and (iii) Merchant Banking, which comprises regulated merchant banking activities. In April 2021, we announced that to support the Company's core focus, the other two of our operating segments – Industrial and Merchant Banking would be classified as discontinued operations in our 2021 financial statements, beginning with our 2021 half-year results. However, due to the uncertainty caused by recent new strains of COVID-19 and various economic and other factors, our Board of Directors has determined to postpone the discontinued operations accounting treatment until further decision (or there is a certainty that a sale will be completed within one year).

Management is committed to a plan to rationalize these interests, and substantial progress has been made on both projects. These two segments have not produced returns commensurate to that of our royalty interest, and our Board of Directors believes that these actions provide compelling benefits to our shareholders and to all aspects and business segments of the Company. It simplifies the Company's corporate structure by separating its non-strategic assets and allows the independent business lines to focus on pursuing and operating their respective businesses.

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Royalty

We hold a net revenues royalty interest in the Scully iron ore mine located in the Province of Newfoundland and Labrador, Canada. The royalty rate under this interest is 7.0% on iron ore shipped from the mine and 4.2% on iron ore shipped from tailings and other disposed materials. In 2021, approximately 57% of our total revenues were derived from such royalty interest. As at December 31, 2021, its total assets were $216.9 million, of which $206.4 million was represented by our interest in the underlying iron ore mine. Please see Note 12 to our audited consolidated financial statements for the year ended December 31, 2021 for further information.

We hold the royalty interest pursuant to a mining sub-lease upon which the Scully iron ore mine is situated. The sub-lease commenced in 1956 and expires in 2055. Pursuant to this sub-lease, we hold a net revenues royalty interest on iron ore shipped from the mine. Under the terms of the sub-lease, we are entitled to minimum royalty payments of $3.25 million per year, payable on a quarterly basis, which quarterly payments may be credited towards earned royalties relating to the same calendar year.

See "*– D. Property, Plants and Equipment*" for further information regarding this interest.

Industrial

Our Industrial segment includes multiple projects in resources and services around the globe. It seeks opportunities to benefit from long-term industrial and services assets, including natural gas, with a focus on East Asia.

The Industrial segment includes our hydrocarbon assets located in Alberta, Canada, which generated 33% of our revenues in 2021. No customer in the Industrial segment represented 10% or more of our revenue in 2021.

Other production and processing assets in this segment include a hydro-electric power plant located in Africa.

We make proprietary investments as part of our overall activities in the segment and we seek to realize gains on such investments over time. We seek to participate in many industries, emphasizing those business opportunities where the perceived intrinsic value is not properly recognized, often as a result of financial or other distress affecting them. These investments can take many forms and can include acquiring entire businesses or portions thereof, investing in equity or investing in existing indebtedness (secured and unsecured) of businesses or in new equity or debt issues. These activities are generally not passive. The structure of each of these opportunities is tailored to each individual transaction.

Merchant Banking

Our Merchant Banking segment consists of a subsidiary with its bonds listed on the Malta Stock Exchange and comprises regulated merchant banking in Europe, including the activities of the Bank.

The Bank does not engage in general retail or commercial banking, but provides specialty banking services, focused on merchant banking, to our customers, suppliers and group members. Generally, the Bank earns fees from provisions of a range of financial and consultancy services to the customers and investment income.

In addition, we hold interests in two industrial real estate parks in Europe for sale in the ordinary course of business or as investment property.

All Other

Our All Other segment encompasses our corporate and other investments, as well as the overhead expenses of the parent company. Our All Other segment includes our corporate and operating segments whose quantitative amounts do not exceed 10% of any of our reported revenue, net income or total assets.

Competitive Conditions

Our business is intensely competitive and we expect it to remain so. We operate in a highly competitive environment in most of our markets and we face competition in all of our activities, principally from international banks, the majority of which are European or North American regulated banks, in our finance and fee-generating activities. Such competition may have the effect of reducing spreads on our financing activities.

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Our business is small compared to our competitors in the sector. Many of our competitors have far greater financial resources, a broader range of products and sources of supply, larger customer bases, greater name recognition and marketing resources, a larger number of senior professionals to serve their clients' needs, greater global reach and more established relationships with clients than we do. These competitors may be better able to respond to changes in business conditions, compete for skilled professionals, finance acquisitions, fund internal growth and compete for market share generally.

We believe that our experience and operating structure permit us to respond more rapidly to our clients' needs than many of our larger competitors. These traits are important to small and mid-sized business enterprises, many of which do not have large internal corporate finance departments to handle their capital requirements. We develop a partnership approach to assist our clients. This often permits us to develop multiple revenue sources from the same client. For example, we may commit our own capital to make a proprietary investment in its business or capital structure.

Regulation

Our operations are international in nature and are subject to the laws and regulations of a number of international jurisdictions, as well as oversight by regulatory agencies and bodies in those jurisdictions.

The operator of the mine that is the subject to our iron ore royalty interest must comply with numerous environmental, mine safety, land use, waste disposal, remediation and public health laws and regulations promulgated by federal, provincial and local governments in Canada. Although we, as a royalty owner, are not responsible for ensuring compliance with these laws and regulations, failure by the operator to comply with applicable laws, regulations and permits can result in injunctive action, orders to suspend or cease operations, damages, and civil and criminal penalties on the operators, which could have a material adverse effect on our results of operations and financial condition.

Our hydrocarbon interests are subject to various Canadian governmental regulations including those imposed by the Alberta Energy Regulator and Alberta Utilities Commission. Matters subject to regulation include discharge permits for drilling operations, drilling and abandonment bonds and pooling of properties and taxation. The production, handling, storage, transportation and disposal of oil and gas, by-products thereof, and other substances and materials produced or used in connection with such operations are also subject to regulation under federal, provincial and local laws and regulations. These hydrocarbon operations are subject to decommissioning obligations in connection with its indirect ownership interests in hydrocarbon assets, including well sites, gathering systems and processing facilities. The total decommissioning obligation is estimated based on the net ownership interest in wells and facilities, estimated costs to reclaim and abandon the same and the estimated timing of the costs to be incurred in future years. We have estimated the net present value of total decommissioning obligations to be $15.1 million as at December 31, 2021.

In particular, the banking industry is subject to extensive regulation and oversight. The operations of our Bank are subject to the regulations and directives issued by the European Union, as well as any additional Maltese legislation. The Bank is subject to direct supervision by the Malta Financial Services Authority, the Central Bank of Malta and the Financial Intelligence Analysis Unit and indirect supervision by the European Central Bank. There are various regulations and guidelines that the Bank needs to adhere to but the most noticeable ones relate to capital requirements, liquidity and the funding and the Anti-Money Laundering and Anti-Terrorist Financing. As a Maltese credit institution, the Bank is subject to the Capital Requirements Directive and Regulatory Frameworks, referred to as the "CRD and CRR Framework" (as updated from time to time), through which the European Union implements the Basel Capital reforms. The CRD and CRR Framework, among other things, requires regulatory reporting of leverage ratio, requirements of own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, large exposures, and other disclosure requirements as applicable. The main liquidity requirements imposed by the CRD and CRR Framework are the liquidity coverage ratio, referred to as "LCR", which refers to the proportion of highly liquid assets held by the Bank to ensure its ongoing ability to meet short-term liquidity obligations. The Bank must maintain a minimum statutory LCR of 100%. The CRD and CRR determine that the minimum Net Stable Funding Ratio referred to "NSFR" requirement is that of 100%. Unlike the LCR, the NSFR is a liquidity standard requiring the Bank to hold enough stable funding to cover the duration of its long-term assets.

The Bank is currently working on the requirements of the revised Capital Requirements Directive and Regulation, commonly referred to as CRD6/CRR3 package, which will be wide-ranging, but is expected to include core Basel III components as well as market risk. However, the European Commission also introduces further initiatives in the package, which include: Streamlining regulatory reporting; Reflecting environmental, social and governance (ESG) risks in the capital framework; and Enhancing the fit-and-proper requirements in the CRD to strengthen bank governance.

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We hold a portion of our cash in China in RMB. Under the 2008 Foreign Currency Administration Rules, if documents certifying the purposes of the conversion of RMB into foreign currency are submitted to the relevant foreign exchange conversion bank, the RMB may be convertible for current account items, including the distribution of dividends, interest and royalty payments, and trade and service-related foreign exchange transactions. Conversion of RMB for capital account items, such as direct investment, loans, securities investment and repatriation of investment, however, is subject to the approval of the government of SAFE and its local counterparts.

Under the 1996 Administration Rules of the Settlement, Sale and Payment of Foreign Exchange, foreign-invested enterprises may only buy, sell and/or remit foreign currencies at banks authorized to conduct foreign exchange business after providing valid commercial documents and, in the case of capital account item transactions, obtaining approval from SAFE or its local counterparts. Capital investments by PRC entities outside of China, after obtaining the required approvals from the relevant approval authorities, such as the Ministry of Commerce and the National Development and Reform Commission or their local counterparts, are also required to register with SAFE or its local counterparts.

SAFE promulgated a circular on November 19, 2010, or Circular No. 59, which tightens the examination on the authenticity of settlement of net proceeds from an offering and requires that the settlement of net proceeds shall be in accordance with the description in its prospectus. On March 30, 2015, SAFE issued the Circular on Reform of the Administrative Rules of the Payment and Settlement of Foreign Exchange Capital of Foreign-Invested Enterprises, or SAFE Circular 19, which became effective on June 1, 2015. Pursuant to SAFE Circular 19, foreign-invested enterprises may either continue to follow the current payment-based foreign currency settlement system or elect to follow the “conversion-at-will” regime of foreign currency settlement. Where a foreign-invested enterprise follows the conversion-at-will regime of foreign currency settlement, it may convert part or all of the amount of the foreign currency in its capital account into RMB at any time. The converted RMB will be kept in a designated account labeled as settled but pending payment, and if the foreign-invested enterprise needs to make payment from such designated account, it still needs to go through the review process with its bank and provide necessary supporting documents. SAFE Circular 19, therefore, has substantially lifted the restrictions on the usage by a foreign-invested enterprise of its RMB registered capital converted from foreign currencies. According to SAFE Circular 19, such RMB capital may be used at the discretion of the foreign-invested enterprise and SAFE will eliminate the prior approval requirement and only examine the authenticity of the declared usage afterwards. In addition, as SAFE Circular 19 was promulgated recently, there remain substantial uncertainties with respect to the interpretation and implementation of this circular by relevant authorities.

C. Organizational Structure

The following table describes our material subsidiaries as at December 31, 2021, their respective jurisdictions of organization and our interest in respect of each subsidiary. The table excludes subsidiaries that only hold inter-company assets and liabilities and do not have active businesses or whose results and net assets do not materially impact our consolidated results and net assets.

Subsidiaries	Country of Incorporation	Proportion of Interest[(1)]
Merkanti Holding plc.	Malta	99.96%
1178936 B.C. Ltd.	Canada	100%
Merkanti (A) International Ltd.	Malta	99.96%
Merkanti (D) International Ltd.	Malta	99.96%

Note:

(1) Our proportional voting interests are identical to our proportional beneficial interests, except that we hold a 99.68% proportional beneficial interest in each of Merkanti (A) International Ltd. and Merkanti (D) International Ltd.

Please see Note 28 to our audited consolidated financial statements for the year ended December 31, 2021 for further information.

D. Property, Plants and Equipment

We have offices at Unit 803, Dina House, Ruttonjee Centre, 11 Duddell Street, Hong Kong, SAR China.

We believe that our existing facilities are adequate for our needs through the end of the year ending December 31, 2022. Should we require additional space at that time or prior thereto, we believe that such space can be secured on commercially reasonable terms.

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Royalty Interest

Our core asset is a net revenues royalty interest in the Scully iron ore mine located in the Province of Newfoundland and Labrador, Canada. The royalty rate under this interest is 7.0% on iron ore shipped from the mine and 4.2% on iron ore shipped from tailings and other disposed materials. The mine site is located approximately three kilometers west of the town of Wabush and is connected by rail access to the Port of Sept-Îles, Quebec.

The royalty is payable pursuant to a mining sub-lease related to the lands on which the mine is situated. This lease commenced in 1956 and expires in 2055.

Iron ore was first reported in the area of the mine in 1933. In 1956, Picklands Mathers & Company, referred to as “Picklands”, began work on the project and started the first intensive geological, metallurgical and economic investigations thereon. The mine was operated by Picklands from 1965 to 1986, when Picklands was acquired by Cleveland-Cliffs Inc., referred to as “Cliffs”, who operated it from 1986 until being put on care and maintenance in February 2014. For most of its life until 2010, the mine was operated as a joint venture owned by Stelco, Dofasco, Inland Steel, Acme Steel and Cliffs. Cliffs exercised a right of first refusal in February 2010 to acquire 100% ownership of the property. Cliffs placed the mine and concentrator on care and maintenance in February 2014 and, in 2015, commenced proceedings under the *Companies’ Creditors Arrangement Act*, referred to as the “CCAA”. The mine was acquired by Tacora Resources Inc. referred to as “Tacora”, in July 2017 and, in November 2018, Tacora announced that it had completed financing that, together with existing commitments it had received, would be sufficient to fund a proposed re-start of the mine. On August 30, 2019, as part of its production ramp-up, Tacora announced that it had made its first seaborne vessel shipment of iron ore concentrate produced at the Scully iron ore mine.

In the third quarter of 2017, we entered into a settlement agreement with the new operator in respect of an underpayment of royalties under the lease by the past operator, whereby we received $5.6 million in settlement of such claims. Pursuant to such agreement, we also amended and restated the sub-lease underlying our interest. As a result, our royalty interest is now a 7.0% net revenue royalty interest on iron ore produced from the mine and 4.2% net revenue royalty interest on iron ore produced from tailings and other disposed materials. Under the terms of the sub-lease, we are entitled to minimum payments of $3.25 million per year.

Iron ore is primarily used to make steel, which is considered to be a critical commodity for global economic development. As such, the demand and consequently the pricing of iron ore are dependent upon the raw material requirements of integrated steel producers. Demand for blast furnace steel is in turn cyclical in nature and is influenced by, among other things, the level of global economic activity.

The Scully iron ore mine produces a high-grade ore in excess of 65% iron content that also has other favorable characteristics, such as relatively low contaminant ratios. Globally, steelmakers value high grade iron ore with low contaminants (such as silica, alumina, and phosphorus) because they improve environmental and financial performance through more efficient raw material utilization, higher plant yields, and lower emissions. Therefore, it is common and generally expected for 65% Fe iron ore, including the Scully iron ore mine’s product, to sell at a premium to 62% Fe iron ore. In 2021, the Platts 65% Fe index sold at approximately a 16% (US$26) premium to the Platts 62% Fe Index.

Description of Scully Iron Ore Mine

As we are not the operator and generally not the owner of the property underlying our royalty interest, we have limited or no access to related exploration, development or operational data or to the properties itself. As such, the disclosure herein is based on information publicly disclosed by the operator of the Scully Iron Ore Mine. Although we do not have any knowledge that such information may not be accurate, there can be no assurance that such third-party information is complete or accurate.

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In 2018, the SEC adopted amendments to the disclosure requirements for mining properties. Effective for fiscal years beginning on or after January 1, 2021, the disclosure requirements under the SEC's Industry Guide 7 have been replaced with new disclosure requirements under subpart 1300 of Regulation S-K under the Exchange Act, referred to as the “SEC Mining Rules”. Subpart 1300 of Regulation S-K under the Exchange Act, referred to as the “SEC Mining Rules”, requires a registrant that has mining operations to, among other things: (i) obtain a dated and signed “technical report summary” from a qualified person with respect to each material mining property, and (ii) file such technical report summary as an exhibit to the relevant registration statement or other prescribed filing with the SEC. We consider our royalty interest in the Scully Iron Ore Mine, being the only mining interest we hold, as our material property for the purposes of the SEC Mining Rules. As we do not operate such property, for the purposes of this Annual Report on Form 20-F, we have relied on Item 1302(b)(3)(ii) of the SEC Mining Rules and have not obtained or filed a technical report summary as: (i) obtaining such report would result in an unreasonable burden or expense; and (ii) we have requested such technical report summary from the operators of the Scully Iron Ore Mine and were denied the request.

The property information included herein contains information reported by the operator of the Scully Iron Ore Mine under Canadian National Instrument 43-101, referred to as "NI 43-101". Specifically, unless otherwise stated, the information contained herein has been derived from a technical report prepared for the operator under NI 43-101 titled "Feasibility Study Technical Report - Update, Scully Mine Re-Start Projects, Wabush, Newfoundland & Labrador, Canada" with an effective date of May 31, 2021.

Under the SEC Mining Rules, we may not disclose such Mineral Resource and Mineral Reserve estimates herein unless the operator has filed a Technical Report Summary under Item 1300 of Regulation S-K or unless we have filed a Technical Report Summary containing such estimates. As a result of this requirement and the relief provided to holders of royalties and other similar interests under the SEC Mining Rules, the disclosure contained herein does not include estimates of Mineral Resources or Mineral Reserves that may have been prepared by the operator of the mine underlying our royalty interest.

Certain information regarding the Scully iron ore mine as contemplated under the SEC Mining Rules has not been included herein on the basis that it is unavailable to us in our capacity as a royalty holder on the applicable properties and that obtaining such information would result in an unreasonable burden and expense. Such excluded information includes:

1. Mineral Resources and Mineral Reserves estimates;

2. Specific information regarding the age of and condition of project infrastructure;

3. The total cost for or book value of the underlying property and its associated plant and equipment; and

4. descriptions of significant encumbrances on the property**.**

Measurement units presented in this document are metric units and converted to US standard units where applicable. There may be small rounding differences due to unit conversions. Additional specific information on the principal property is available under Material Properties, below.

Summary

The Scully iron ore mine is production stage iron ore mine, which is operated as an open-pit operation. The mine is located in Newfoundland & Labrador, Canada. The mine site includes a concentration plant with a 6.6 million ton per year capacity. The geographic location of Scully is set forth below.

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Figure 1. Scully Mine Location

Source: *Google Earth (March, 2022)*

The mine covers a Superior-type banded iron formation of mineralization. Key operating infrastructure at the mine comprises a 6 million tonne (6.6 million ton) per annum iron ore concentrator plant producing iron ore concentrate.

The operator of the mine that is subject to our royalty interest must comply with environmental, mine safety, land use, waste disposal, remediation and public health laws and regulations promulgated by federal, state, provincial and local governments in Canada where we hold an interest. Although we, as a royalty interest owner, are not responsible for ensuring compliance with these laws and regulations, failure by the operator to comply with applicable laws, regulations and permits can result in injunctive action, orders to suspend or cease operations, damages, and civil and criminal penalties on the operators, which could have a material adverse effect on our results of operations and financial condition.

In general, Scully Royalty has no decision-making authority regarding the development or operation of the mineral property underlying our royalty interest. The operator makes all development and operating decisions, including decisions about permitting, feasibility analysis, mine design and mine operation, processing, plant, equipment matters, and temporary or permanent suspension of operations.

Location

Scully is an open-pit mine and mineral processing operation located in the southwest corner of Labrador, in the Province of Newfoundland and Labrador, Canada, at 52°54'26.7" N and 66°54' 34.6" W. The nearest local communities are the Town of Labrador City (3.5 km or 2.2 miles north), Town of Wabush (2.5 km or 1.6 miles east), and Town of Fermont (Quebec; 18 km or 11 miles southwest). From Wabush, the City of Sept-Iles is located 320 km (or 199 miles) away (on the north shore of the St. Lawrence River), the City of St. John's 1,200 km (or 746 miles) to the southeast, and the City of Montreal 1,020 km (or 634 miles) to the southwest.

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The Scully Mine Property lies in the sub-arctic region of northern Canada, in an area of undulating hills with an elevation high of 686 m (2,251 ft) and elevation low of 533 m (1,749 ft). There are several lakes within the mine property area. As for climate, temperatures range from -40°C to 25°C (-40°F to 77°F). In a wet year, Wabush can receive up to 1,185 mm (47 inches) of precipitation (Environment Canada, 2012). In a dry year, Wabush receives only 675 mm (27 inches) of precipitation.

Infrastructure

Access to the Scully Mine site is provided by a four km road from Highway 500. The latter is accessible via Highway 389 from Baie-Comeau on the north shore of the Saint Lawrence River. The Wabush airport is 2 miles or 3 km from the mine site, within the town limits of Wabush.

Rail access from the Scully Mine Site to the port at Sept-Iles consists of two separate segments. The first segment uses the QNS&L railway from Wabush to Arnaud Junction in Sept-Îles. From there, the second section is from Arnaud junction to Pointe-Noire (Sept-Îles), property of "Les Chemins de Fer Arnaud", Sept-Îles, Quebec, where the iron ore concentrate is unloaded, stockpiled, and loaded on sea-going vessels. The second rail segment is owned by the Government of Quebec through the Sociéte du Plan Nord, which acquired these assets from Cliffs Natural Resources, Inc. bankruptcy of Canadian assets. The second segment was owned originally by the Wabush Railway Company Limited.

The towns of Wabush and Labrador City are well established with populations of 1,861 (2011) and 7,367 (2011), respectively. These two communities are located 5 km apart from one another and they contain the infrastructure and necessities to house the employees and their families who live there, including indoor shopping centres, hotels and lower, middle and high schools, community centre, and hospital. Several other iron mines operate within the Scully Mine region. Therefore, supplies, material and experienced mine labour are readily available.

The Scully Mine site is connected to the Newfoundland & Labrador Hydro electrical network. Electric power is generated at Churchill Falls, 200 km to the east. The Churchill power station has the second largest hydroelectric generating capacity in North America at 5,428 MW installed. An on-site 46-kV electrical grid electrifies the mine area and powers mine equipment and pumping stations.

The mine site already contained the necessary structures for mining from the previous owner. These structures include: mine electrical infrastructure; a maintenance facility with five bays and cranes; warehouses; wash bay; explosive storage; machine shop; dewatering equipment; fuel storage; administration buildings; an iron ore concentrator plant; and required rail load-out and track infrastructure. The buildings required minor repair to support the restart of the Scully Mine in 2017. The concentrator underwent some maintenance and installation of additional processing equipment prior to the restart.

A pumping station and water intake structure located east of the process facility on Little Wabush Lake provides water for iron ore beneficiation and potable water consumption.

Area of Interest

The Scully Mine Property consists of five Mining Leases; namely Mining Lease Lot No. 1, Lot No. 2, Lot No. 3; Lot No. 4, and the Wabush Mountain Area (Figures 3 and 4). The Scully Mine Royalty pertains only to Newfoundland & Labrador Corp. Ltd. Mining Lease Lot No. 1 ("Mining Lease Lot No. 1"). The industrial site and open pits are located within the Mining Lease Lot No. 1 area, which is 14.43 square km (5.57 square miles or 3,565.73 acres) in area. The surface and mineral rights on this Mining Lease are leased from the Government of Newfoundland and Labrador. This 99-year lease expires in 2055.

Property Description

The Scully Mine is a production stage property consisting of an open pit mine and an iron ore concentrator plant.

The operation consists of a conventional surface mining method using an owner mining approach with electric and diesel hydraulic shovels and mine trucks. The open pit mine is designed with a 12 m to 24 m bench height and pit slopes of 32° to 46°. Mining is carried out by two hydraulic front shovels equipped with 24 m^3 (31.3 $yard^3$) buckets. The shovels are matched with a fleet of up to sixteen 211-tonne payload mine haulage trucks.

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For the life of mine, the overall strip ratio will be 0.87:1 (waste to ore), with ore transiting through stockpiles for blending purposes and to balance mining and processing plant constraints. Waste rock storage is planned in waste dumps outside the pits and in depleted pits.

Iron ore concentrate is produced by processing iron ore through autogenous grinding mills and gravity and magnetic separation and a drying concentrator plant at a planned rate of up to 2,400 tonnes per hour. The concentrator plant produces iron ore concentrate with a grade of 65.9% Fe, a level that exceeds the industry standard 62% benchmark and high-grade 65% benchmark. The concentrate also has low levels of deleterious elements (including silica and manganese) and very low moisture content.

From the Scully Mine iron concentrator, the iron ore concentrate is rail shipped to the Port of Sept-Iles for loading onto ships and transport overseas. Tacora has an agreement with Cargill, a leading independent iron ore trader, for purchase of 100% of the iron ore concentrate produced by the Scully Mine. Cargill has rolling options to extend this agreement over the life of the Scully Mine. The Scully Mine has a forecast mine life of 26 years.

Tailings from the iron ore processing plant are stored in historical disposal areas to the north and south of the open pits. The tailings are considered low risk of acid generation and relatively coarse, allowing for use as material for future tailings storage area embankments. The existing remaining storage capacity with the current embankment dykes is sufficient for at least seven years.

Age and Condition of Infrastructure

The Scully Mine and Concentrator was originally commissioned in the 1960s. The facilities were reactivated by the current operator in 2019.

Property History

The Scully Mine operated continuously from 1965 to February 2014 with the mining and concentrating at Wabush and the subsequent stage of pelletizing done at Pointe Noire near the port of Sept-Iles, Quebec. Iron deposits were first reported in the Wabush area in 1933. In 1956, Picklands Mather & Company ("PM") began work on the project and started the first intensive geological, metallurgical and economic investigation. A pilot plant was built and successfully produced 100,000 tonnes of iron ore concentrate. From 1965 to 2014, the Scully Mine produced between 2.7 million and 6.0 million tonnes of iron ore concentrate annually.

The Scully Mine was operated by PM from 1965 to 1986 when PM was acquired by Cleveland-Cliffs Inc. ("Cliffs"), who operated it from 1986 until 2014. For most of its life, the mine was a joint venture owned by Stelco (37.9%), Dofasco (24.3%), Inland Steel (15.1%), Acme Steel (15.1%) and Cliffs (7.7%). However, following various mergers and acquisitions in the North American steel industry, the ownership was consolidated between Cliffs, ArcelorMittal and U.S. Steel Canada, whereby each company respectively owned a joint venture percent ownership of 26.8%, 28.6% and 44.6%. Cliffs exercised their right of first refusal in February 2010 to acquire 100% ownership of the Property.

Under Cliffs, the Scully Mine and associated pellet plant located at Pointe-Noire (near Sept-Iles, Quebec), had the capacity of producing 6 million tonnes of iron ore pellets per year via three Dravo Straight Grate Induration machines. An integrated rail system was utilized to transport the iron ore concentrate product to the pelletizer plant at Pointe-Noire utilizing a bottom dump unloading system. From there, the product could be transported via sea-going ship to clients in America or elsewhere on the seaborne market. The product produced from the Scully Mine contained higher than normal levels of manganese due to the geology of the Deposit. The Scully Mine's integrated mine and pellet plant facilities produced two types of iron ore pellets with varying manganese contents as controlled only by the ore blends, since the concentrating process was formerly unable to reduce the manganese content in the ore.

Cliffs shutdown the pellet plant in May 2013 followed by the mine and iron ore concentrator in February 2014, and placed the site on care and maintenance. The closure was due to increased costs, reduced production rates and a drastic decrease in seaborne iron ore prices combined with a decrease on pellet premium pricing. The current operator acquired the Scully Mine in July 2017 and completed a feasibility study in 2018. It then restarted mining operations and commercial production at the mine, and shipped its first seaborne iron ore concentrate in August 2019. Such feasibility study was not completed under the SEC Mining Rules.

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Permitting

The operator has disclosed that it is fully permitted to operate the mine. The most recent overall environmental study completed at the Scully Mine Site is the Environmental Assessment Registration (EA Registration) submitted by the operator to the Government of Newfoundland and Labrador in September 28, 2017. The Government placed the document on a public notice period, responded to public comments, and released the Scully Mine reactivation project from further environmental assessment on November 21, 2017. Such feasibility study was not completed under the SEC Mining Rules.

Property Geology

The Scully Deposit is a Proterozoic age Superior-type banded iron formation. The Scully Mine lies within the southern end of the Labrador Trough in Western Labrador. The Labrador Trough comprises a sequence of Proterozoic sedimentary rocks, including iron formations, volcanic rocks and mafic intrusions. The principal iron formation unit, the Sokoman Formation, forms a regionally continuous stratigraphic unit. The Sokoman Formation is more than 300 m thick near the Scully Mine and has been subjected to two episodes of folding and metamorphism during the Hudsonian and Greenville Orogenies, resulting in a complex structural pattern in the Wabush area.

Iron deposits in the Wabush area of the Labrador Trough are Scully, Bloom Lake, Lac Jeannine, Fire Lake, Mounts Wright and Reed, Luce, and Humphrey. During high-grade metamorphism, the iron oxides and quartz recrystallized to produce coarse-grained sugary quartz, magnetite, specular hematite schists (meta-taconites) that are of improved quality for processing and concentrating.

The Scully Deposit consists of folded and faulted stratigraphic beds of iron-bearing units within the Sokoman Iron Formation. The geological understanding of the Scully Deposit is based primarily on diamond drilling data and two-dimensional sectional interpretations by the prior operator (Cliffs). The ore minerals are hematite (specularite), magnetite, and martite hematite pseudomorphs after magnetite). The waste minerals are hydrated iron oxides, such as limonite and goethite, and quartz. Manganese oxides also occur in bands or are disseminated throughout the iron-bearing units.

The mine site includes electrical infrastructure, a maintenance facility with five bays and cranes, warehouses, a wash bay, explosive storage, a machine shop, dewatering equipment, fuel storage, administration buildings, a concentrator plant and rail load-out and track infrastructure.

Production

The following table sets forth the total iron ore products (which include pellets, chips and concentrates) shipped from the mine based upon the amounts reported to us by the Scully mine operator in 2021 and 2020:

	Year Ended December 31,	
	2021	2020
	(tonnes)	
Iron Ore Products Shipped	3,184,003	2,988,654

Other Interests

As at December 31, 2021, we had hydrocarbon interests located in west central Alberta, Canada comprised of approximately 93 producing and 62 non-producing natural gas wells and approximately 10 producing and 9 non-producing oil wells and an average 74% working interest in approximately 67,564 gross acres of land.

Such hydrocarbon activities produce natural gas, natural gas liquids (“NGLs”) and oil. Our natural gas production is sold to creditworthy counterparties under contracts at AECO Daily Index prices and is transported through regulated pipelines in the Province of Alberta at tariffs that require either Provincial or Federal regulatory approval. NGLs are re-priced on an annual basis reflecting purchaser monthly pool prices or are based on U.S. market hub locations with a basis differential. Our crude oil sales are priced at market using the Edmonton market hub as a benchmark and are typically made through 30-day evergreen contracts. NGLs and crude oil are transported to the point of sale to creditworthy counterparties using a combination of pipelines and trucking services. Sales are with customers in the oil and gas industry and are subject to normal industry credit risks.

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In addition, we own two industrial real estate parks in the Saxony-Anhalt region in Germany, which primarily lease out space for storage and production facilities. One of these parks is located in Arneburg, Germany and is 1,671,479 square meters, currently houses approximately 32 buildings and offers developed industrial and commercial land for greenfield investments as well as warehouses, production halls, workshops and offices. The property has railway, road and harbour connections. The other industrial park is located in Dessau, Germany and is a 111,688 square meter development property, currently houses approximately 15 buildings and offers office and administrative buildings, production halls and warehouses and land for industrial investments. The property has connections to railway and roads. Both of these industrial parks are part of the security package for the €25.0 million in principal amount of bonds issued by Merkanti Holding plc in 2019, and to the extent that any sales of these properties, in whole or in part, cause the security to fall below a certain ratio, proceeds of said sale, up to an amount of the collateral shortfall, are required to be placed as cash collateral with the bondholder trustee until maturity.

ITEM 4A: UNRESOLVED STAFF COMMENTS

None.

ITEM 5: OPERATING AND FINANCIAL REVIEW AND PROSPECTS

The following discussion and analysis of our financial condition and results of operations for the years ended December 31, 2021, 2020 and 2019 should be read in conjunction with our audited consolidated financial statements and related notes included elsewhere herein.

General

Our core asset is an interest in a mining sub-lease of the lands upon which the Scully iron ore mine is situated in the Province of Newfoundland and Labrador, Canada. The sub-lease commenced in 1956 and expires in 2055. Pursuant to this sub-lease, we hold a 7.0% net revenues royalty interest on iron ore shipped from the mine and a 4.2% net revenues royalty interest on iron ore shipped from tailings and other disposed materials. The current operator of the mine commenced mining operations in 2019. Under the terms of the sub-lease, we are entitled to quarterly minimum royalty payments of $3.25 million per year, which quarterly payments may be credited towards earned royalties relating to the same calendar year.

In addition, we have two other business segments operating that provide merchant banking and financial services. We specialize in markets that are not adequately addressed by traditional sources of supply and finance, with an emphasis on providing solutions for small and medium sized enterprises. We operate in multiple geographies and participate in industries including manufacturing, natural resources and medical supplies and services.

As a supplement to our operating business, we commit proprietary capital to assets and projects where intrinsic values are not properly reflected. These investments can take many forms, and our activities are generally not passive. The structure of each of these opportunities is tailored to each individual transaction.

Our results of operations have been and may continue to be affected by many factors of a global nature, including economic and market conditions, the availability of capital, the level and volatility of equity prices and interest rates, currency values, asset prices and other market indices, technological changes, the availability of credit, inflation and legislative and regulatory developments. Our results of operations may also be materially affected by competitive factors. Our competitors include firms traditionally engaged in merchant banking such as investment banks, along with other capital sources such as hedge funds, private equity firms and insurance companies on a global basis.

Our results of operations for any particular period may also be materially affected by our realization on proprietary investments. These investments are made to maximize total return through long-term appreciation and recognized gains on divestment. We realize on our proprietary investments through a variety of methods including sales, capital restructuring or other forms of divestment.

In April 2021, we announced that to support the Company's core focus, the other two of our operating segments –Industrial and Merchant Banking would be classified as discontinued operations in our 2021 financial statements,beginning with our 2021 half-year results. However, due to the uncertainty caused by recent new strains of COVID-19 and various economic and other factors, our Board of Directors has determined to postpone the discontinued operations accounting treatment until further decision (or there is a certainty that a sale will be completed within one year).

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Management is committed to a plan to rationalize these interests, and substantial progress has been made on both projects. These two segments have not produced returns commensurate to that of our royalty interest, and our Board of Directors believes that these actions provide compelling benefits to our shareholders and to all aspects and business segments of the Company. It simplifies the Company's corporate structure by separating its non-strategic assets and allows the independent business lines to focus on pursuing and operating their respective businesses.

Business Environment

Our financial performance is, and our consolidated results in any period can be, materially affected by economic conditions and financial markets generally, including the availability of capital, the availability of credit and the level of market and commodity price volatility. Our results of operations may also be materially affected by competitive factors. Our competitors include firms traditionally engaged in merchant banking as well as other capital sources such as hedge funds and private equity firms and other companies engaged in similar activities in Europe, Asia and globally.

In the first half of 2021, the demand for iron ore increased, with iron ore prices reaching record levels as global steel production increased and seaborne iron ore supply growth was limited. According to the World Steel Association, global crude steel production in the first half of 2021 increased 14% over the first half of 2020, with strong increases in crude steel production in China, which accounts for approximately 70% of all seaborne iron ore demand. The 65% Fe iron ore price, as reported by Platts, increased by 100% to an average US$212 per tonne for the first half of 2021, compared to an average of US$106 in the same period of 2020. In the second half of 2021, iron ore prices decreased to a low of US$102 per tonne for 65% Fe iron ore, before rebounding to US$140 per tonne at December 31, 2021, as the demand for seaborne iron ore from China weakened due to government efforts to curb steel production growth in China. Overall, the average iron price for 65% Fe iron ore, as reported by Platts was US$185 per tonne in 2021, compared to US$122 per tonne in 2020.

Our financial performance is, and our consolidated results in any period can be, materially affected by economic conditions and financial markets generally, including the availability of capital, the availability of credit and the level of market and commodity price volatility. Our results of operations in our merchant banking and industrial segments may also be materially affected by competitive factors. Our competitors include firms traditionally engaged in merchant banking as well as other capital sources such as hedge funds and private equity firms and other companies engaged in similar activities in Europe, Asia and globally.

We operate internationally and therefore our financial performance and position are impacted by changes in the Canadian dollar, our reporting currency, against the other functional currencies of our international subsidiaries and operations, particularly the Euro. As at December 31, 2021, the Canadian dollar had strengthened by 8.5% against the Euro from the end of 2020. We recognized a $6.2 million currency translation adjustment loss in other comprehensive income within equity in 2021, compared to a currency translation adjustment gain of $7.2 million, before reclassification adjustment for exchange difference to profit or loss for subsidiaries deconsolidated, in other comprehensive income within equity in 2020. In addition, we recognized net gains of $2.8 million on exchange differences on foreign currency transactions in our consolidated statement of operations in 2021, compared to net losses of $2.7 million on exchange differences on foreign currency transactions in our consolidated statement of operations in 2020.

In March 2020, the World Health Organization declared a global pandemic related to COVID-19. The COVID-19 pandemic has materially adversely affected global economic activity, caused significant market volatility and resulted in numerous governments declaring emergencies and implementing measures, such as travel bans, quarantines, business closures, shelter-in-place and other restrictions. To date, we have not experienced a significant impact on our operations as a result of the current COVID-19 pandemic, though the inability to travel effectively has somewhat impacted certain business development initiatives. See "*Item 3: Key Information – D. Risk Factors*".

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Results of Operations

The following table sets forth certain selected operating results and other financial information for each of the years ended December 31, 2021, 2020 and 2019:

	Years Ended December 31,		
	2021	2020	2019
	(In thousands, except per share amounts)		
Revenue	$ 71,291	$ 59,432	$ 113,267
Costs of sales and services	30,918	26,870	96,561
Selling, general and administrative expenses	21,144	19,901	22,573
Share-based compensation – selling, general and administrative	2,497	—	—
Finance costs	1,935	1,881	1,243
Credit losses (reversal)(1)	88	(3,108)	13,398
Net income (loss)(2)	7,564	369	(18,553)
Earnings (loss) per share – basic and diluted	0.51	0.03 (3)	(1.26)(3)

Notes:
(1) Such credit losses primarily related to former businesses and did not relate to our Bank operations.
(2) Attributable to the owners of the parent company.
(3) Restated for 2020 and 2019 as a result of stock dividends issued in 2021.

The following table provides a breakdown of revenue for each of the years ended December 31, 2021, 2020 and 2019:

	Years Ended December 31,		
	2021	2020	2019
	(In thousands)		
Royalty, goods and products and services	$ 60,201	$ 48,441	$ 101,013
Interest	405	531	1,057
Dividends	244	—	—
Gain on securities, net	—	758	931
Other, including medical and real estate sectors	10,441	9,702	10,266
Revenue	$ 71,291	$ 59,432	$ 113,267

Year Ended December 31, 2021 Compared to the Year Ended December 31, 2020

The following is a breakdown of our revenue by segment for each of the years indicated:

	Years Ended December 31,	
	2021	2020
Revenue:	(In thousands)	
Royalty	$ 40,335	$ 31,360
Industrial	23,428	17,666
Merchant Banking	6,527	10,406
All Other	1,001	—
	$ 71,291	$ 59,432

In 2021, 87% of our revenues were from the Americas, 7% was from Europe and 6% were from Africa, Asia and other regions. In 2020, 81% of our revenues were from the Americas, 12% was from Europe and 7% were from Africa, Asia and other regions.

Based upon the average exchange rates for 2021, the Canadian dollar was stronger by 3.2% in value against the Euro compared to the average exchange rates for 2020.

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Revenue for 2021 increased to $71.3 million from $59.4 million in 2020, mainly as a result of increased iron ore prices in the first half of 2021, an increase in production at the mine underlying our royalty interest and, to a lesser extent, an increase in natural gas pricing in 2021. A customer in the Royalty segment located in Canada represented approximately 56% and 53%, respectively, of our total revenue for the years ended December 31, 2020 and 2019.

Revenue for our Royalty segment for 2021 increased to $40.3 million from $31.4 million in 2020 as a result of the continued ramp-up of operations at the Scully iron ore mine in 2021 and stronger iron ore prices in the first half of 2021.

Revenue for our Industrial segment for 2021 increased to $23.4 million from $17.7 million in 2020, primarily as a result of increased natural gas pricing.

Revenue for our Merchant Banking segment for 2021 decreased to $6.5 million from $10.4 million in 2020, primarily as a result of exiting a marginally profitable business line.

Revenue for our All Other segment was $1.0 million in 2021 and $nil in 2020.

In 2021, total revenues include revenues of $60.2 million from royalty, goods and products and services, of which 68% was from our iron ore royalty, 22% was from hydrocarbons, 5% was from food products and 5% was from electricity and power. In 2020, total revenues included revenues of $48.4 million from royalty, goods and products and services, of which 67% was from our iron ore royalty, 16% was from hydrocarbons, 10% was from food products and 7% was from electricity and power.

Costs of sales and services increased in 2021 to $30.9 million from $26.9 million in 2020, primarily as a result of a change in fair value of a loan payable measured at FVTPL and losses on securities in our industrial segment, which was reduced by a gain on derivatives in 2021 in connection with iron ore prices. The following is a breakdown of our costs and other for each of the years indicated:

	Years Ended December 31, 2021	2020
	(In thousands)	
Royalty, goods and products and services	$ 22,933	$ 22,102
(Reversal) write-down of inventories	(19)	469
Gain on derivative contracts, net	(1,376)	—
Fair value gain on investment property, net of write-down of real estate for sale	(407)	(757)
Loss on dispositions of subsidiaries, net[(1)]	—	546
Gains on settlements and derecognition of liabilities	(390)	(2,600)
Changes in fair value of a loan payable measured at FVTPL	1,616	549
Losses on securities, net	2,320	—
Other, including medical and real estate sectors	6,241	6,561
Total costs of sales and services	$ 30,918	$ 26,870

We recognized a gain on settlements and derecognition of liabilities of $0.4 million in 2021, compared to $2.6 million in the prior year.

We recognized a net loss on securities primarily relating to listed equity securities of $2.3 million in 2021.

We recognized a net gain on derivative contracts of $1.4 million in 2021, compared to $nil in 2020. This income was generated from premiums of put options sold and gains from futures as a result of a decline in iron ore prices in the second half of 2021.

We recognized a net loss on dispositions of subsidiaries of $0.5 million in 2020. Net gain or loss on dispositions of subsidiaries consisted of the reclassification of exchange differences and the difference between the book value of such net assets (or net liabilities) and the consideration received. The subsidiaries disposed in 2020 comprised non-operating entities, which will not have an impact on our operations going forward.

We recognized a fair value gain on investment property, net of write-down of real estate for sale of $0.4 million in 2021, compared to $0.8 million in 2020.

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We recognized a reversal of write-downs of inventories of $19,000 in 2021, compared to a write-down of $0.5 million in 2020.

We also recognized $6.2 million of other costs relating to medical and real estate sectors in 2021, compared to $6.6 million in 2020.

Selling, general and administrative expenses marginally increased to $21.1 million in 2021 from $19.9 million in 2020.

In 2021, we recognized share-based compensation expenses of $2.5 million in connection with the grant of options to directors, officers and key employees during the period, compared to $nil for 2020.

In 2021, we recognized a net foreign currency transaction gain of $2.8 million compared to a net foreign currency transaction loss of $2.7 million in 2020, in our consolidated statement of operations. The foreign currency transaction gain represents exchange differences arising on the settlement of monetary items or on translating monetary items into our functional currencies at rates different from those at which they were translated on initial recognition during the period or in previous financial statements.

In 2021 and 2020, finance costs were $1.9 million. These related primarily to interest on Merkanti's publicly listed bonds.

In 2021 we recognized credit losses of $0.1 million, compared to a reversal of credit losses on loans and receivables and guarantees of $3.1 million in 2020.

We recognized an income tax expense (other than resource revenue taxes) of $2.3 million in 2021, compared to $4.9 million in 2020. The decrease in the income tax expense in 2021 was primarily the result of a one-time reduction in deferred tax liability as a result of an internal reorganization. Excluding resource revenue taxes, we paid $0.6 million in income tax in cash during 2021 and, in 2020, we did not pay any income tax in cash. We also recognized a resource revenue tax expense of $7.9 million in 2021 compared to $6.1 million in 2020.

Overall, we recognized an income tax expense of $10.2 million (income tax expense of $2.3 million and resource revenue tax expense of $7.9 million) in 2021, compared to $11.0 million (income tax expense of $4.9 million and resource revenue tax expense of $6.1 million) in 2020.

In 2021, our net income attributable to shareholders was $7.6 million, or $0.51 per share on a basic and diluted basis, compared to net income attributable to shareholders of $0.4 million, or $0.03 per share on a basic and diluted basis in 2020.

In 2021, our EBITDA was $30.5 million, compared to $24.5 million in 2020.

The following is a reconciliation of our net loss to EBITDA for each of the years indicated:

	Years Ended December 31,	
	2021	2020
	(In thousands)	
Net income for the year[1]	$ 7,371	$ 212
Income tax expense	10,176	10,967
Finance costs	1,935	1,881
Depreciation, depletion and amortization	11,023	11,470
EBITDA	$ 30,505	$ 24,530

Note:
(1) Includes net income attributable to non-controlling interests.

Please see "*Non-IFRS Financial Measures*" for additional information.

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Year Ended December 31, 2020 Compared to the Year Ended December 31, 2019

The following is a breakdown of our revenue by segment for each of the years indicated:

	Years Ended December 31,	
	2020	2019
Revenue:	(In thousands)	
Royalty	$ 31,360	$ 5,496
Industrial	17,666	100,184
Merchant Banking	10,406	7,565
All Other	—	22
	$ 59,432	$ 113,267

In 2020, 81% of our revenues were from the Americas, 12% was from Europe and 7% were from Asia, Africa and other regions. In 2019, 17% of our revenues were from the Americas, 77% was from Europe and 6% were from Asia, Africa and other regions.

In the third quarter of 2019, we disposed of certain non-core subsidiaries in Europe which processed different metals. The metal product lines disposed of, which processed aluminium and zinc alloys in Europe, each represented approximately 1% of our consolidated total assets, less than 1% of our consolidated net assets at the time of disposition and $81.8 million of our revenue in 2019. We determined to dispose of these product lines as a result of our board of directors' determination to streamline our operations. During 2019, we recognized a net gain of $0.5 million on the dispositions of subsidiaries before reclassification adjustment for the exchange differences upon disposition of subsidiaries, which represented consideration received plus the underlying net liabilities of the subsidiaries at the times of their dispositions. The dispositions of these subsidiaries in 2019 significantly reduced our revenues and costs and expenses in 2020.

Based upon the average exchange rates for 2020, the Canadian dollar weakened by approximately 2.9% in value against the Euro compared to the average exchange rates for 2019.

Revenue for 2020 decreased to $59.4 million from $113.3 million in 2019, as a result of the disposition of metal product lines (which contributed total revenue of $81.8 million in 2019), partially offset by increased revenue as a result of the commencement of operations at the Scully iron ore mine in 2019 and increased production at the mine in 2020. A customer in the Royalty segment located in Canada represented approximately 53% and 5%, respectively, and a customer of a former subsidiary in the Industrial segment located in Slovakia represented approximately nil% and 13%, respectively, of our total revenue for the years ended December 31, 2020 and 2019.

Revenue for our Royalty segment for 2020 increased to $31.4 million from $5.5 million in 2019 as a result of the start-up and ongoing ramp-up of operations at the Scully iron ore mine in the second half of 2019 and through 2020.

Revenue for our Industrial segment for 2020 decreased to $17.7 million from $100.2 million in 2019, as a result of the disposition of metal product lines in the second half of 2019. The dispositions of these subsidiaries in 2019 significantly reduced our revenues and costs and expenses in 2020.

Revenue for our Merchant Banking segment for 2020 increased to $10.4 million from $7.6 million in 2019, primarily as a result of additional merchant banking activities.

Revenue for our All Other segment was $nil in 2020 and $22,000 in 2019.

In 2020, total revenues included revenues of $48.4 million from royalty, goods and products and services, of which 67% was from our iron ore royalty, 16% was from hydrocarbons, 10% was from food products and 7% was from electricity and power. In 2019, total revenues included revenues of $101.0 million from royalty, goods and products and services, of which 6% was from our iron ore royalty, 8% was from hydrocarbons, 3% was from food products, 3% was from electricity and power and 80% was from metals processing.

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Costs of sales and services decreased to $26.9 million during 2020 from $96.6 million in 2019 as a result of the disposition of our non-core metal product lines in the second half of 2019. The following is a breakdown of our costs and other for each of the years indicated:

	Years Ended December 31, 2020	2019
	(In thousands)	
Royalty, goods and products and services	$ 22,102	$ 95,189
Market value increase on commodity inventories	—	(160)
Write-down of inventories	469	1,822
Gain on derivative contracts, net	—	(122)
Fair value gain on investment property, net of write-down of real estate for sale	(757)	(3,122)
Loss (gain) on dispositions of subsidiaries, net	546	(2,243)
Gains on settlements and derecognition of liabilities	(2,600)	(1,168)
Changes in fair value of a loan payable measured at FVTPL	549	979
Other, including medical and real estate sectors	6,561	5,386
Total costs of sales and services	$ 26,870	$ 96,561

We recognized a gain on settlements and derecognition of liabilities of $2.6 million in 2020, compared to $1.2 million in the prior year.

We recognized a fair value gain on investment property, net of write-down of real estate for sale of $0.8 million in 2020, compared to $3.1 million in 2019.

We recognized a net loss on dispositions of subsidiaries of $0.5 million in 2020, compared to a net gain on dispositions of subsidiaries of $2.2 million in 2019. Net gain or loss on dispositions of subsidiaries consisted of the reclassification of exchange differences and the difference between the book value of such net assets (or net liabilities) and the consideration received. The subsidiaries disposed in 2020 comprised non-operating entities, which will not have an impact on our operations going forward.

We recognized a write-down of inventories of $0.5 million in 2020, compared to $1.8 million in 2019.

We also recognized $6.6 million of other costs relating to medical and real estate sectors in 2020, compared to $5.4 million in 2019.

Selling, general and administrative expenses decreased to $19.9 million in 2020 from $22.6 million in 2019 primarily as a result of the deconsolidation of former subsidiaries, offset by increased legal costs.

In 2020, we recognized a reversal of credit losses on loans and receivables and guarantees of $3.1 million primarily resulting from the reversal of a credit loss of $3.2 million, which was initially recognized in 2019 as a result of the calling of certain guarantees. In 2019, we recognized credit losses on loans and receivables and guarantees (net of recoveries) of $13.4 million, which included $6.1 million relating to a receivable due from former non-core subsidiaries in the energy business, $3.2 million relating to the consideration from the sale in 2017 of a subsidiary, which is no longer expected to be received, and $3.1 million on certain corporate guarantees. The credit losses primarily related to former non-core businesses unrelated to our Bank operations. Please also see Note 25 to our audited consolidated financial statements for the year ended December 31, 2021 for further information.

In 2020, finance costs increased to $1.9 million from $1.2 million in 2019, primarily as a result of the issuance of public bonds listed on the Malta Stock Exchange in the second half of 2019.

In 2020, we recognized a net foreign currency transaction loss of $2.7 million compared to a net foreign currency transaction gain of $3.7 million in 2019, in our consolidated statement of operations. The foreign currency transaction loss represents exchange differences arising on the settlement of monetary items or on translating monetary items into our functional currencies at rates different from those at which they were translated on initial recognition during the period or in previous financial statements.

We recognized an income tax expense (other than resource revenue taxes) of $4.9 million in 2020, compared to $0.5 million in 2019. The increase in the income tax expense in 2020 was primarily the result of increased income before income taxes. Excluding resource revenue taxes, we did not pay any income tax in cash during 2020 and, in 2019, our income tax paid in cash was $0.1 million. We also recognized a resource revenue tax expense of $6.1 million in 2020 compared to $1.1 million in 2019.

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Overall, we recognized an income tax expense of $11.0 million (income tax expense of $4.9 million and resource revenue tax expense of $6.1 million) in 2020, compared to $1.6 million (income tax expense of $0.5 million and resource revenue tax expense of $1.1 million) in 2019.

In 2020, our net income attributable to shareholders was $0.4 million, or $0.03 per share on a basic and diluted basis, compared to net loss attributable to shareholders of $18.6 million, or $1.26 per share on a basic and diluted basis in 2019.

In 2020, our EBITDA was $24.5 million, compared to an EBITDA loss of $7.3 million in 2019.

The following is a reconciliation of our net loss to EBITDA for each of the years indicated:

	Years Ended December 31, 2020	Years Ended December 31, 2019
	(In thousands)	
Net income (loss) for the year[1]	$ 212	$ (18,403)
Income tax expense	10,967	1,619
Finance costs	1,881	1,243
Depreciation, depletion and amortization	11,470	8,287
EBITDA (loss)	$ 24,530	$ (7,254)

Note:
(1) Includes net income (loss) attributable to non-controlling interests.

Please see "*Non-IFRS Financial Measures*" for additional information.

Liquidity and Capital Resources

General

Liquidity is of importance to our business as insufficient liquidity often results in underperformance.

Our objectives when managing capital are:

- to safeguard our ability to continue as a going concern so that we can continue to provide returns for shareholders and benefits for other stakeholders;
- to provide an adequate return to our shareholders by pricing products and services commensurately with the level of risk; and
- to maintain a flexible capital structure that optimizes the cost of capital at acceptable risk.

We set the amount of capital in proportion to risk. We manage our capital structure and make adjustments to it in the light of changes in economic conditions and the risk characteristics of the underlying assets.

Consistent with others in our industry, we monitor capital on the basis of our net debt-to-equity ratio and long-term debt-to-equity ratio. The net debt-to-equity ratio is calculated as net debt divided by shareholders' equity. Net debt is calculated as total debt less cash. The long-term debt-to-equity ratio is calculated as long-term debt divided by shareholders' equity.

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The following table sets forth the calculation of our net debt-to-equity ratio as at the dates indicated:

	December 31, 2021	December 31, 2020
	(In thousands, except ratio amounts)	
Total debt[1]	$ 35,227	$ 38,053
Less: cash	(54,873)	(63,552)
Net debt	Not applicable	Not applicable
Shareholders' equity	365,600	361,544
Net debt-to-equity ratio	Not applicable	Not applicable

Note:

(1) Long-term debt includes bonds payable and does not include: (a) a non-interest bearing loan payable of $6.8 million as at December 31, 2021 and $5.2 million as at December 31, 2020 which is measured at fair value through profit or loss and does not have a fixed repayment date. See "– *Financial Position*"; and (b) long-term lease liabilities of $0.5 million at December 31, 2021 ($0.8 million at December 31, 2020), recognized as a consequence of IFRS 16.

There were no amounts in accumulated other comprehensive income relating to cash flow hedges, nor were there any subordinated debt instruments as at December 31, 2021 and 2020. Our net debt-to-equity ratio as at December 31, 2021 and 2020 was not applicable as we had a net cash balance.

The following table sets forth the calculation of our long-term debt-to-equity ratio as at the dates indicated:

	December 31, 2021	December 31, 2020
	(In thousands, except ratio amounts)	
Long-term debt, less current portion[1]	$ 35,227	$ 38,053
Shareholders' equity	365,600	361,544
Long-term debt-to-equity ratio	0.10	0.11

Note:

(1) See note in the table immediately above.

During 2021, our strategy, which remained unchanged from 2020, was to maintain our net debt-to-equity ratio and long-term debt-to-equity ratio at manageable levels.

Cash Flows

Due to the number of businesses we engage in, our cash flows are not necessarily reflective of net earnings and net assets for any reporting period. As a result, instead of using a traditional cash flow analysis solely based on cash flow statements, our management believes it is more useful and meaningful to analyze our cash flows by overall liquidity and credit availability. Please see the discussion on our financial position and long-term debt below for further information.

Our business can be cyclical and our cash flows can vary accordingly. Our principal operating cash expenditures are for our working capital, proprietary investments and general and administrative expenses.

Working capital levels fluctuate throughout the year and are affected by the level of our operations, pricing of iron ore, the timing of collection of receivables and the payment of payables and expenses. Changes in the volume of transactions can affect the level of receivables and influence overall working capital levels. We currently have a sufficient level of cash on hand and expected cash flows from operations to meet our working capital and other requirements as well as unexpected cash demands.

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The following table presents a summary of cash flows for each of the periods indicated:

	Years Ended December 31,		
	2021	2020	2019
		(In thousands)	
Cash flows used in operating activities	$ (6,637)	$ (21,271)	$ (9,807)
Cash flows (used in) provided by investing activities	(971)	3,419	(10,202)
Cash flows (used in) provided by financing activities	(424)	(498)	34,792
Exchange rate effect on cash	(647)	3,628	(4,269)
(Decrease) increase in cash	(8,679)	(14,722)	10,514

Cash Flows from Operating Activities

Operating activities used cash of $6.6 million in 2021, compared to $21.3 million in 2020. In 2021, an increase in receivables used cash of $24.5 million compared to $33.8 million in 2020. The increase in receivables related to an affiliate controlled by our Chairman (see " *Item 7: Major Shareholders and Related Party Transactions - B. Related Party Transactions*" and Notes 8 and 25 to our audited consolidated financial statements for the year ended December 31, 2021 for further information). An increase in income tax liabilities provided cash of $0.6 million in 2021, compared to $26,000 in 2020. An increase in short-term securities used cash of $3.9 million in 2021, compared to $2.6 million in 2020. In 2021, a decrease in account payables and accrued expenses used cash of $1.7 million, compared to an increase in account payables and accrued expenses providing cash of $0.5 million in 2020. A decrease in inventories provided cash of $0.3 million in 2021, compared to $0.5 million in 2020. In 2021, a decrease in deposits, prepaid and other provided cash of $0.4 million, compared to $0.1 million in 2020.

Operating activities used cash of $21.3 million in 2020, compared to $9.8 million in 2019. In 2020, an increase in receivables used cash of $33.8 million compared to $0.5 million in 2019. The increase in receivables was as a result of an increased royalty receivable and receivables due from an affiliate (see " *Item 7: Major Shareholders and Related Party Transactions – B. Related Party Transactions*"). An increase in short-term securities used cash of $2.6 million in 2020, compared to $6.4 million in 2019. In 2020, an increase in account payables and accrued expenses provided cash of $0.5 million, compared to a decrease in account payables and accrued expenses using cash of $0.2 million in 2019. A decrease in inventories provided cash of $0.5 million in 2020, compared to $1.6 million in 2019. In 2020, a decrease in deposits, prepaid and other provided cash of $0.1 million, compared to an increase in deposits, prepaid and other using cash of $0.5 million in 2019.

Cash Flows from Investing Activities

Investing activities used cash of $1.0 million in 2021, compared to providing cash of $3.4 million in 2020. In 2021, purchases of property, plant and equipment, net of sales, used cash of $1.0 million, compared to $0.2 million in 2020.

Investing activities provided cash of $3.4 million in 2020, compared to using cash of $10.2 million in 2019. In 2020, proceeds from sales of investment properties provided cash of $4.6 million, compared to $nil in 2019. An increase in a loan receivable, net and the acquisition of an indemnification asset used cash of $0.3 million and $nil, respectively in 2020, compared to $0.8 million and $6.7 million, respectively for 2019. In 2020, the dispositions of subsidiaries, net of cash disposed of, used cash of $0.9 million, compared to $1.9 million in 2019. Purchases of property, plant and equipment, net of sales, used cash of $0.2 million in 2020, compared to $0.7 million in 2019.

Cash Flows from Financing Activities

Net cash used in financing activities was $0.4 million in 2021, compared to $0.5 million in 2020. In 2021, reductions in lease liabilities used cash of $0.4 million in 2021 compared to $0.5 million in 2020.

Net cash used in financing activities was $0.5 million in 2020, compared to providing cash of $34.8 million in 2019. In 2020, reductions in lease liabilities used cash of $0.5 million in 2020 compared to $0.9 million in 2019. The issuance of bonds payable (net of commissions, fees and expenses relating to the issuance thereof) provided cash of $nil in 2020, compared to $35.4 million in 2019.

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Financial Position

The following table sets out our selected financial information as at the dates indicated:

	December 31, 2021	December 31, 2020
	(In thousands)	
Cash	$ 54,873	$ 63,552
Short-term securities	19,256	18,497
Trade receivables	4,164	4,755
Tax receivables	1,092	282
Other receivables	64,446	39,518
Inventories	1,100	1,413
Restricted cash	142	175
Deposits, prepaid and other	581	1,019
Total current assets	145,654	129,211
Working capital	133,306	113,074
Total assets	509,966	509,125
Account payables and accrued expenses	11,346	15,680
Income tax liabilities	1,002	457
Total current liabilities	12,348	16,137
Bonds payable, long-term	35,227	38,053
Loan payable, long-term	6,817	5,223
Decommissioning obligations, long-term	15,096	14,072
Deferred income tax liabilities	67,461	66,115
Total liabilities	137,432	140,401
Shareholders' equity	365,600	361,544

We maintain an adequate level of liquidity, with a portion of our assets held in cash and securities. The liquid nature of these assets provides us with flexibility in managing and financing our business and the ability to realize upon investment or business opportunities as they arise. We also use liquidity for our own proprietary trading and investing activities.

As at December 31, 2021, cash decreased to $54.9 million from $63.6 million as at December 31, 2020.

We had short-term securities of $19.3 million as at December 31, 2021, compared to $18.5 million as at December 31, 2020. These mainly comprised of liquid government debt securities and other securities held by our Bank in the ordinary course of business.

Trade receivables and other receivables were $4.2 million and $64.4 million, respectively, as at December 31, 2021, compared to $4.8 million and $39.5 million, respectively, as at December 31, 2020. Included in other receivables were receivables of $5.8 million related to our iron ore royalty interest, compared to $10.1 million as at December 31, 2020. Other receivables included an indemnification asset of $6.8 million, a loan and aggregate current account receivables of $47.7 million as at December 31, 2021 from a related party, compared to other receivables including an indemnification asset of $6.8 million, a loan and aggregate current account receivables of $21.6 million as at December 31, 2020 from a related party. See "*Item 7: Major Shareholders and Related Party Transactions – B. Related Party Transactions*" for further information.

Inventories decreased to $1.1 million as at December 31, 2021, from $1.4 million as at December 31, 2020.

Current tax receivables, consisting primarily of refundable value-added taxes, were $1.1 million as at December 31, 2021, compared to $0.3 million as at December 31, 2020.

Deposits, prepaid and other assets were $0.6 million as at December 31, 2021, compared to $1.0 million as at December 31, 2020.

Account payables and accrued expenses were $11.3 million as at December 31, 2021, compared to $15.7 million as at December 31, 2020. The decrease was primarily due to general reductions in accounts payable and contract liabilities.

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We had deferred income tax liabilities of $67.5 million as at December 31, 2021, compared to $66.1 million as at December 31, 2020.

We had bonds payable of $35.2 million as at December 31, 2021, compared to $38.1 million as at December 31, 2020.

We had a non-interest bearing loan payable, which is measured at fair value through profit or loss, of $6.8 million as at December 31, 2021, compared to $5.2 million as at December 31, 2020. The increase resulted from a change in fair value due to interest accretion. The loan does not have a fixed repayment date and the estimated fair value has been determined using a discount rate for similar investments. Please see Note 26 to our audited consolidated financial statements for the year ended December 31, 2021 for further information.

As at December 31, 2021, we had long-term decommissioning obligations of $15.1 million relating to our hydrocarbon properties, which will be funded through cash flows from such interests over their operating lives, compared to $14.1 million as at December 31, 2020.

Long-Term Debt

As at December 31, 2021, we had long-term bonds payable of $35.2 million compared to $38.1 million as at December 31 2020. In August 2019, Merkanti Holding plc completed a public issue of bonds with an aggregate nominal amount of €25.0 million. The bonds are redeemable in August 2026, with interest payable in August each year at a nominal interest rate of 4.00% (or an effective interest rate of 4.41%) and secured by our investment property and real estate for sale. To the extent that any sales of these properties, in whole or in part, cause the security to fall below a certain ratio, proceeds of said sale, up to an amount of the collateral shortfall, are required to be placed as cash collateral with the bondholder trustee until maturity.

Future Liquidity

We expect that there will be acquisitions of businesses or commitments to projects in the future. To achieve the long-term goals of expanding our assets and earnings, including through acquisitions, capital resources will be required. Depending on the size of a transaction, the capital resources that will be required can be substantial. The necessary resources will be generated from cash flows from operations, cash on hand, borrowings against our assets, sales of proprietary investments or the issuance of securities.

Foreign Currency

Our consolidated financial results are subject to foreign currency exchange rate fluctuations.

Our presentation currency is the Canadian dollar. We translate subsidiaries' assets and liabilities into Canadian dollars at the rate of exchange on the balance sheet date. Revenue and expenses are translated at exchange rates approximating those at the date of the transactions or, for practical reasons, the average exchange rates for the applicable periods, when they approximate the exchange rate as at the dates of the transactions. As a substantial amount of revenue is generated in Euros, the financial position for any given period, when reported in Canadian dollars, can be significantly affected by the exchange rates for these currencies prevailing during that period. In addition, we also have exposure to the RMB, the United States dollar and the Hong Kong dollar.

In 2021, we reported a $6.2 million currency translation adjustment loss in other comprehensive income within equity. This compared to a $7.2 million currency translation adjustment gain, before reclassification adjustment for exchange difference to profit or loss for subsidiaries deconsolidated, under other comprehensive income within equity in 2020. This currency translation adjustment did not affect our profit and loss statement. The loss in 2021 was primarily a result of the strengthening of the Canadian dollar against the Euro from 2020.

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Contractual Obligations

The following table sets out our obligations and commitments including contractual obligations, bonds payable and loan payable held at fair value as at December 31, 2021.

	Payments Due by Period[1] (In thousands)				
Contractual Obligations[2]	Less than 1 Year	1 – 3 Years	3 – 5 Years	More than 5 Years	Total
Lease liabilities	$ 314	$ 492	$ —	$ —	$ 806
Bonds payable	1,439	2,878	38,856	—	43,173
Loan payable[3]	—	—	—	6,817	6,817
Total	$ 1,753	$ 3,370	$ 38,856	$ 6,817	$ 50,796

Notes:
(1) Includes principal and interest.
(2) This table does not include non-financial instrument liabilities and guarantees.
(3) Consists of a US dollar loan payable to a former subsidiary, which is interest free, does not have a fixed maturity date and is measured at fair value through profit or loss. The undiscounted contractual amount due to former subsidiary out of surplus cash of the applicable subsidiary note holder is $53.3 million (US$42.1 million). The payment amount disclosed here represents its fair value as at December 31, 2021. The total amount due on December 31, 2021 or within 12 months thereafter is $nil. The actual repayment may be materially different from the amount disclosed herein. See "– *Financial Position*" for further information.

Risk Management

Risk is an inherent part of our business and operating activities. The extent to which we properly and effectively identify, assess, monitor and manage each of the various types of risk involved in our activities is critical to our financial soundness and profitability. We seek to identify, assess, monitor and manage the following principal risks involved in our business activities: market, credit, liquidity, operational, legal and compliance, new business, reputational and other. Risk management is a multi-faceted process that requires communication, judgment and knowledge of financial products and markets. Our management takes an active role in the risk management process and requires specific administrative and business functions to assist in the identification, assessment and control of various risks. Our risk management policies, procedures and methodologies are fluid in nature and are subject to ongoing review and modification.

Inflation

Inflation has had a minimal impact on our costs of sales and services and selling, general administrative expenses over the last two fiscal years. Our management does not consider inflation to be a significant risk to direct expenses in the current and foreseeable economic environment.

Critical Accounting Estimates

The preparation of financial statements in conformity with IFRS requires our management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting periods.

Our management routinely makes judgments and estimates about the effects of matters that are inherently uncertain. As the number of variables and assumptions affecting the probable future resolution of the uncertainties increase, these judgments become even more subjective and complex. We have identified certain accounting policies that are the most important to the portrayal of our current financial condition and results of operations. Please refer to Note 2 to our audited consolidated financial statements for the year ended December 31, 2020, for a discussion of the significant accounting policies.

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In the process of applying our accounting policies, management makes various judgments and estimates that can significantly affect the amounts it recognizes in the consolidated financial statements. The following is a description of the critical judgments and estimates that management has made in the process of applying our accounting policies and that have the most significant effects on the amounts recognized in the consolidated financial statements:

Identification of Cash-generating Units

Our assets are aggregated into cash-generating units, referred to as "CGUs", for the purpose of assessing and calculating impairment, based on their ability to generate largely independent cash flows. The determination of CGUs requires judgment in defining the smallest identifiable group of assets that generate cash inflows that are largely independent of the cash inflows from other assets or groups of assets. CGUs have been determined based on similar geological structure, shared infrastructure, geographical proximity, product type and similar exposure to market risks. In the event facts and circumstances surrounding factors used to determine our CGUs change, we will re-determine the groupings of CGUs. Please see Notes 11 and 12 to our audited consolidated financial statements for the year ended December 31, 2021 for further information.

Impairment and Reversals of Impairment on Non-Financial Assets

The carrying amounts of our non-financial assets, other than deferred tax assets, are reviewed at the end of each reporting period to determine whether there is an indication of impairment or reversal of previously recorded impairment. If such indication exists, the recoverable amount is estimated.

Determining whether there are any indications of impairment or impairment reversals requires significant judgment of external factors, such as an extended change in prices or margins for iron ore, hydrocarbon commodities or refined products, a significant change in an asset's market value, a significant revision of estimated volumes, revision of future development costs, a change in the entity's market capitalization or significant changes in the technological, market, economic or legal environment that would have an impact on our CGUs. Given that the calculations for recoverable amounts require the use of estimates and assumptions, including forecasts of commodity prices, market supply and demand, product margins and in the case of our interests in an iron ore mine, power plant and hydrocarbon properties, expected production volumes, it is possible that the assumptions may change, which may impact the estimated life of the CGU and may require a material adjustment to the carrying value of non-financial assets.

Impairment losses recognized in prior years are assessed at the end of each reporting period for indications that the impairment has decreased or no longer exists. An impairment loss is reversed only to the extent that the carrying amount of the asset or CGU does not exceed the carrying amount that would have been determined, net of depreciation, depletion and amortization, if no impairment loss had been recognized.

Valuation of Investment Property

Investment properties are included in the consolidated statement of financial position at their market value, unless their fair value cannot be reliably determined at that time. The market value of investment properties is assessed annually by an independent qualified valuer, who is an authorized expert for the valuation of developed and undeveloped land in Germany, after taking into consideration the net income with inputs on realized basic rents, operating costs and damages and defects. The assumptions adopted in the property valuations are based on the market conditions existing at the end of the reporting period, with reference to current market sales prices and the appropriate capitalization rate. Changes in any of these inputs or incorrect assumptions related to any of these items could materially impact these valuations.

Assets Held for Sale and Dispositions

We apply judgment to determine whether an asset (or disposal group) is available for immediate sale in its present condition and that its sale is highly probable and therefore should be classified as held for sale at the balance sheet date. In order to assess whether it is highly probable that the sale can be completed within one year, or the extension period in certain circumstances, management reviews the business and economic factors, both macro and micro, which include the industry trends and capital markets, and the progress towards a sale transaction. It is also open to all forms of sales, including exchanges of non-current assets for other non-current assets when the exchange will have commercial substance in accordance with IAS 16, *Property, Plant and Equipment*, referred to as "IAS 16".

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Credit Losses and Impairment of Receivables

We apply credit risk assessment and valuation methods to our trade and other receivables under IFRS 9, *Financial Instruments*, referred to as "IFRS 9", which establishes a single forward-looking expected loss impairment model.

We measure the loss allowance for a financial instrument at an amount equal to the lifetime expected credit losses if the credit risk on the financial instrument has increased significantly since initial recognition. The objective of the impairment requirements is to recognize lifetime expected credit losses for all financial instruments for which there have been significant increases in credit risk since initial recognition – whether assessed on an individual or collective basis – considering all reasonable and supportable information, including that which is forward-looking.

At each reporting date, our management assesses whether the credit risk on a financial instrument that is measured at amortized cost or at FVTOCI has increased significantly since initial recognition. When making the assessment, management uses the change in the risk of a default occurring over the expected life of the financial instrument instead of the change in the amount of expected credit losses. To make that assessment, management compares the risk of a default occurring on the financial instrument as at the reporting date with the risk of a default occurring on the financial instrument as at the date of initial recognition and consider reasonable and supportable information, that is available without undue cost or effort, that is indicative of significant increases in credit risk since initial recognition.

Allowance for credit losses is maintained at an amount considered adequate to absorb the expected credit losses. Such allowance for credit losses reflects our management's best estimate of changes in the credit risk on our financial instruments and judgments about economic conditions. The assessment of allowance for credit losses is a complex process, particularly on a forward-looking basis; which involves a significant degree of judgment and a high level of estimation uncertainty. The input factors include the assessment of the credit risk of our financial instruments, legal rights and obligations under all the contracts and the expected future cash flows from the financial instruments, which include inventories, mortgages and other credit enhancement instruments. The major source of estimation uncertainty relates to the likelihood of the various scenarios under which different amounts are expected to be recovered through the security in place on the financial assets. The expected future cash flows are projected under different scenarios and weighted by probability, which involves the exercise of significant judgment. Estimates and judgments could change in the near-term and could result in a significant change to a recognized allowance.

Interests in Resource Properties and Reserve Estimates

We had interests in resource properties mainly comprised of an iron ore royalty interest, and to a lesser extent, hydrocarbon properties, with an aggregate carrying amount of $254.7 million as at December 31, 2021.

Generally, estimation of reported recoverable quantities of proved and probable reserves of resource properties include judgmental assumptions regarding production profile, prices of products produced, exchange rates, remediation costs, timing and amount of future development costs and production, transportation and marketing costs for future cash flows. It also requires interpretation of geological and geophysical models and anticipated recoveries. The economical, geological and technical factors used to estimate reserves may change from period to period. Changes in reported reserves can impact the carrying amounts of our interests in resource properties and/or related property, plant and equipment, the recognition of impairment losses and reversal of impairment losses, the calculation of depreciation and depletion, the provision for decommissioning obligations and the recognition of deferred income tax assets or liabilities due to changes in expected future cash flows. The recoverable quantities of reserves and estimated cash flows from our hydrocarbon interests are independently evaluated by reserve engineers at least annually. In 2021, we did not recognize any impairment in respect of our interests in resource properties.

Our iron ore reserves are estimates of the amount of product that can be economically and legally extracted from our mining properties. Reserve and resource estimates are an integral component in the determination of the commercial viability of our interest in the iron ore mine, amortization calculations and impairment analyses. In calculating reserves and resources, estimates and assumptions are required about a range of geological, technical and economic factors, including quantities, grades, production techniques, production decline rates, recovery rates, production costs, commodity demand, commodity prices and exchange rates. In addition, future changes in regulatory environments, including government levies or changes in our rights to exploit the resource imposed over the producing life of the reserves and resources may also significantly impact estimates.

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Our hydrocarbon reserves represent the estimated quantities of petroleum, natural gas and natural gas liquids which geological, geophysical and engineering data demonstrate with a specified degree of certainty to be economically recoverable in future years from known reservoirs and which are considered commercially producible. Such reserves may be considered commercially producible if management has the intention of developing and producing them and such intention is based upon: (a) a reasonable assessment of the future economics of such production; (b) a reasonable expectation that there is a market for all or substantially all the expected hydrocarbon production; and (c) evidence that the necessary production, transmission and transportation facilities are available or can be made available. Reserves may only be considered proven and probable if producibility is supported by either production or conclusive formation tests.

Included in interests in resource properties as at December 31, 2021, were exploration and evaluation assets with an aggregate carrying amount of $17.0 million. Exploration and evaluation assets are assessed for impairment when facts and circumstances suggest that the carrying amount of an exploration and evaluation asset may exceed its recoverable amount and upon reclassification to hydrocarbon development and production assets. If such indicators exist, impairment, if any, is determined by comparing the carrying amounts to the recoverable amounts. The measurement of the recoverable amount involves a number of assumptions, including the timing, likelihood and amount of commercial production, further resource assessment plans and future revenue and costs expected from the asset, if any.

Please see Note 12 to our audited consolidated financial statements for the year ended December 31, 2021 for further information.

Impairment of Other Non-Financial Assets

We had property, plant and equipment aggregating $49.1 million as at December 31, 2021, consisting mainly of a power plant and a natural gas processing facility. Impairment of our non-financial assets is evaluated at the CGU level. In testing for impairment, the recoverable amounts of the Company's CGUs are determined as the higher of their values in use and fair values less costs of disposal. In the absence of quoted market prices, the recoverable amount is based on estimates of future production rates, future product selling prices and costs, discount rates and other relevant assumptions. Increases in future costs and/or decreases in estimates of future production rates and product selling prices may result in a write-down of our property, plant and equipment. Please see Note 11 to our audited consolidated financial statements for the year ended December 31, 2021 for further information.

Taxation

We are subject to tax in a number of jurisdictions and judgment is required in determining the worldwide provision for income taxes. Deferred income taxes are recognized for temporary differences using the liability method, with deferred income tax liabilities generally being provided for in full (except for taxable temporary differences associated with investments in subsidiaries and branches where we are able to control the timing of the reversal of the temporary differences and it is probable that the temporary differences will not reverse in the foreseeable future) and deferred income tax assets being recognized to the extent that it is probable that future taxable profits will be available against which the temporary differences can be utilized.

Our operations and organization structures are complex, and related tax interpretations, regulations and legislation are continually changing. The income tax filings of the companies in our group are subject to audit by taxation authorities in numerous jurisdictions. There are audits in progress and items under review, some of which may increase our income tax liabilities. In addition, the companies have filed appeals and have disputed certain issues. While the results of these items cannot be ascertained at this time, we believe that we have an adequate provision for income taxes based on available information.

We recognized deferred income tax assets of $9.6 million as at December 31, 2021. In assessing the realizability of deferred income tax assets, our management considers whether it is probable that some portion or all of the deferred income tax assets will be realized. The ultimate realization of deferred income tax assets is dependent upon the generation of future taxable income during the periods in which temporary differences become deductible or before tax loss and tax credit carry-forwards expire. Our management considers the future reversals of existing taxable temporary differences, projected future taxable income, taxable income in prior years and tax planning strategies in making this assessment. Unrecognized deferred income tax assets are reassessed at the end of each reporting period.

We do not recognize the full deferred tax liability on taxable temporary differences associated with investments in subsidiaries and branches where we are able to control the timing of the reversal of the temporary differences and it is probable that the temporary differences will not reverse in the foreseeable future. We may change our investment decision in our normal course of business, thus resulting in additional income tax liabilities.

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The operations and organization structures of our group are complex, and related tax interpretations, regulations and legislation are continually changing. The income tax filings of the members of our group of companies are subject to audit by taxation authorities in numerous jurisdictions. At any given time, there may be audits in progress and items under review, some of which may increase our income tax liabilities in the future. In addition, in some circumstances, our Group may file appeals and dispute certain issues. While the results of these items cannot be ascertained at this time, we believe we have an adequate provision for income taxes based on available information.

Contingencies

Pursuant to IAS 37, *Provisions, Contingent Liabilities and Contingent Assets*, we do not recognize a contingent liability. By their nature, contingencies will only be resolved when one or more future events occur or fail to occur. The assessment of contingencies inherently involves the exercise of significant judgment and estimates of the outcome of future events. If it becomes probable that an outflow of future economic benefits will be required for an item previously accounted for as a contingent liability, an accrual or a provision is recognized in the consolidated financial statements in the period in which the change in probability occurs. See Note 23 to our audited consolidated financial statements for the year ended December 31, 2021 for further information.

New Standards and Interpretations Not Yet Adopted

In January 2020, the IASB issued the final amendments in *Classification of Liabilities as Current or Non-Current (Amendments to IAS 1)* which affect the presentation of liabilities in the statement of financial position. The amendments clarify that the classification of liabilities as current or non-current should be based on rights that are in existence at the end of the reporting period and align the wording in all affected paragraphs to refer to the "right" to defer settlement by at least twelve months and make explicit that only rights in place "at the end of the reporting period" should affect the classification of a liability; clarify that classification is unaffected by expectations about whether an entity will exercise its right to defer settlement of a liability; and make clear that settlement refers to the transfer to the counterparty of cash, equity instruments, other assets or services. The changes in *Classification of Liabilities as Current or Non-current — Deferral of Effective Date (Amendment to IAS 1)* defers the effective date of *the January 2020 Classification of Liabilities as Current or Non-Current (Amendments to IAS 1)* to annual reporting periods beginning on or after January 1, 2023. Earlier application of the January 2020 amendments is permitted. Management is currently assessing the impacts of the amended standard.

In May 2020, the IASB issued amendments to IAS 37, *Provisions, Contingent Liabilities and Contingent Assets* ("IAS 37"). The amendments clarify that for the purpose of assessing whether a contract is onerous, the cost of fulfilling the contract includes both the incremental costs of fulfilling that contract and an allocation of other costs that relate directly to fulfilling contracts. The amendments are effective for contracts for which an entity has not yet fulfilled all its obligations on or after January 1, 2022. Earlier application is permitted. Management is currently assessing the impacts of the amended standard.

In May 2020, the IASB issued further amendments to IFRS 3, *Business Combinations* ("IFRS 3") which update references in IFRS 3 to the revised *2018 Conceptual Framework*. To ensure that this update in referencing does not change which assets and liabilities qualify for recognition in a business combination, or create new Day 2 gains or losses, the amendments introduce new exceptions to the recognition and measurement principles in IFRS 3.

An acquirer should apply the definition of a liability in IAS 37, rather than the definition in *the Conceptual Framework,* to determine whether a present obligation exists at the acquisition date as a result of past events. For a levy in the scope of IFRIC 21, *Levies* ("IFRIC 21"), the acquirer should apply the criteria in IFRIC 21 to determine whether the obligating event that gives rise to a liability to pay the levy has occurred by the acquisition date. In addition, the amendments clarify that the acquirer should not recognize a contingent asset at the acquisition date. The amendments to IFRS 3 are effective for business combinations occurring in reporting periods starting on or after January 1, 2022. Earlier application is permitted. Management is currently assessing the impacts of the amended standard.

In May 2020, the IASB issued Property, Plant and Equipment—Proceeds before Intended Use, which made amendments to IAS 16. The amendments prohibit a company from deducting from the cost of property, plant and equipment amounts received from selling items produced while the company is preparing the asset for its intended use. Instead, a company will recognize such sales proceeds and related cost in profit or loss. The amendments are effective for annual periods beginning on or after January 1, 2022. Early application is permitted. Management is currently assessing the impacts of the amended standard.

In May 2020, the IASB issued *Annual Improvements to IFRS Standards 2018-2020* which contain an amendment to IFRS 9. The amendment clarifies which fees an entity includes when it applies the "10 per cent" test in paragraph B3.3.6 of IFRS 9 in assessing

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whether to derecognize a financial liability. An entity includes only fees paid or received between the entity (the borrower) and the lender, including fees paid or received by either the entity or the lender on the other's behalf. The amendment is effective for annual reporting periods beginning on or after January 1, 2022. Management is currently assessing the impacts of the amended standard.

In February 2021, the IASB issued narrow-scope amendments to IAS 1, *Presentation of Financial Statements*, IFRS Practice Statement 2, *Making Materiality Judgements*, and IAS 8. The amendments are effective for annual periods beginning on or after January 1, 2023, although earlier application is permitted. The amendments will require the disclosure of material accounting policy information rather than disclosing significant accounting policies and clarifies how to distinguish changes in accounting policies from changes in accounting estimates. Management is currently assessing the impacts of the amended standards and does not expect that there will be material effects from these amendments on our consolidated financial statements.

In May 2021, the IASB issued targeted amendments to IAS 12, *Income Taxes*. The amendments are effective for annual periods beginning on or after January 1, 2023, although earlier application is permitted. With a view to reducing diversity in reporting, the amendments will clarify that companies are required to recognize deferred taxes on transactions where both assets and liabilities are recognized, such as leases and asset retirement (decommissioning) obligations. Management is currently assessing the impacts of the amended standard and does not expect that there will be material effects from these amendments on our consolidated financial statements.

Trend Information

For a discussion of trends relating to revenue derived from our royalty interest, please see "*Item 4: Information on the Company – B. Business Overview – Business Segments – Royalty*".

Safe Harbor

The safe harbor provided in Section 27A of the *Securities Act of 1933*, as amended, and Section 21E of the *Securities Exchange Act of 1934*, as amended, applies to forward-looking information provided under *"Off-Balance Sheet Arrangements*" and "*Liquidity and Capital Resources – Contractual Obligations*".

ITEM 6: DIRECTORS, SENIOR MANAGEMENT AND EMPLOYEES

A. Directors and Senior Management

We have no arrangement or understanding with major shareholders, customers, suppliers or others pursuant to which any of our directors or officers was selected as a director or officer. Each director holds office until the next annual general meeting of our shareholders or until his or her successor is elected or appointed unless such office is earlier vacated in accordance with our memorandum and articles of association, referred to as the "Articles", or with the provisions of the Cayman Act. The following table sets forth the names of each of our directors and executive officers as at the date hereof:

Name (Age)	Present Position	Date of Commencement of Office with our Company
Michael J. Smith (74)	Executive Chairman and Director(1)	2017
Samuel Morrow (37)(2)	President, Chief Executive Officer, Chief Financial Officer and Director(1)	2017
Dr. Shuming Zhao (70)(3)(4)(5)	Director	2017
Indrajit Chatterjee (76)(4)(5)	Director	2017
Silke S. Stenger (54)(3)(4)(5)	Director	2017
Friedrich Hondl (61)(2)(3)	Director	2017
Jochen Dümler (67)(2)(3)(4)	Director	2017

Notes:

(1) Samuel Morrow was appointed our President and Chief Executive Officer and as a director effective May 1, 2021, replacing Michael Smith, who continues as our Executive Chairman and as a director.

(2) Member of the Risk Committee.
(3) Member of the Audit Committee.
(4) Member of the Compensation Committee.
(5) Member of the Nominating and Corporate Governance Committee.

Michael J. Smith – Executive Chairman and Director

Mr. Smith was the President and Chief Executive Officer of the Company from June 2017 to May 1, 2021, at which time he became our Executive Chairman. Mr. Smith has served as a director and in executive positions of various publicly traded and private companies. Mr. Smith has experience in corporate finance and restructuring.

Samuel Morrow – President, Chief Executive Officer, Chief Financial Officer and Director

Mr. Morrow was our Deputy Chief Executive Officer and Chief Financial Officer from June 2017 to May 1, 2021. On May 1, 2021, Mr. Morrow became our President and Chief Executive Officer. Mr. Morrow is a Chartered Financial Analyst. Prior thereto, Mr. Morrow was previously Vice President of Tanaka Capital Management and Treasurer, Chief Financial Officer and Chief Operating Officer of the Tanaka Growth Fund. Mr. Morrow is a graduate of St. Lawrence University in New York.

Dr. Shuming Zhao – Director

Dr. Zhao is a Senior Distinguished Professor and Honorary Dean of the School of Business at Nanjing University, the People's Republic of China. He serves as President of the International Association of Chinese Management Research (IACMR, Third Term), Vice President of the Chinese Academy of Management, President for Jiangsu Provincial Association of Human Resource Management, and Vice President of Jiangsu Provincial Association of Professional Managers. Since 1994, Dr. Zhao has acted as management consultant for several Chinese and international firms. Dr. Zhao is also a director of Daqo New Energy Corp. (China) and JSTI Group (China) Ltd. Dr. Zhao has successfully organized and held nine international symposia on multinational business management. Since 1997, Dr. Zhao has been a visiting professor at the Marshall School of Business, University of Southern California, USA, the College of Business, University of Missouri-St. Louis, USA, Drucker Graduate School of Management, Claremont Graduate University, USA and Honorary Professor of SolBridge International School of Business, South Korea. Dr. Zhao has lectured in countries including the United States, Canada, Japan, Singapore, South Korea, the United Kingdom, Germany, the Netherlands, Portugal and Australia.

Indrajit Chatterjee – Director

Mr. Chatterjee is a retired businessman and formerly was responsible for marketing with the Transportation Systems Division of General Electric for India. Mr. Chatterjee is experienced in dealing with Indian governmental issues. He is an Executive Committee member of the Indian National Trust for Art and Cultural Heritage, which was founded in 1984 in New Delhi with the vision to spearhead heritage awareness and conservation in India.

Silke S. Stenger – Director

Ms. Stenger is an independent business consultant and business coach, with experience in the automotive, plant engineering and cement, franchising and consulting industries. She was formerly the vice chairperson of KHD Humboldt Wedag International AG. Ms. Stenger was the Chief Financial Officer of Management One Human Capital Consultants Limited and Head of Investor Relations and authorized representative (*Prokurist*) with Koidl & Cie Holding AG. She holds a Masters of Science in Industrial and Communications Psychology from FHWien University of Applied Sciences of WKW in Vienna, Austria and is a certified controller (German Chamber of Commerce IHK) and IFRS accountant, specializing in corporate governance and *Sarbanes-Oxley Act of 2002* compliance. Furthermore, she is a business coach by training.

Friedrich Hondl – Director

Mr. Hondl has over 30 years of management experience in the European banking industry and has held several management positions with international banks, including Erste Group Bank, UniCredit and Deutsche Bank, where he was responsible for the international relationship business. Since 2018, he has been the Managing Partner of AMM Prime Management GmbH. From 2013 to 2015, he was the head of Erste Group Bank AG's Large Corporate International Division and from 2009 to 2012 he was the head of International Corporate Relationship Management of UniCredit Bank Austria AG. He also served as chairman of the supervisory board of Intermarket

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Bank AG from 2014 to 2015 and from 2010 to 2012 was a member of the supervisory board of Oesterreichische Kontrollbank AG (OeKB). OeKB acts as Austria's Export Credit Agency (ECA) on behalf of the Austrian government and specifically the Federal Ministry of Finance. It is a public and a private export insurer and financial institution. Within this group is the Austrian development bank. As an ECA, OeKB supports corporations financially in their export businesses and protects the business activities of Austrian companies abroad by means of export guarantees, investment guarantees and loan guarantees. Mr. Hondl has also served as a board member of a private foundation since 2007.

Jochen Dümler – Director

Mr. Dümler was the President and Chief Executive Officer of Euler Hermes North America from 2010 to 2015. From 2002 to 2010, Mr. Dümler was a member of the Board of Management of Euler Hermes Kreditversicherung AG and, from 1995 to 2002, he was a member of the Board of Management of PRISMA Kreditversicherung AG. Mr. Dümler is a member of the German-American Chamber of Commerce (New York City), a member of the German Executive Roundtable (Washington, D.C.) and a board member of the German-American Partnership Program.

There are no family relationships among any of our directors and executive officers.

B. Compensation

During the fiscal year ended December 31, 2021, we paid an aggregate of approximately $1.4 million in cash compensation to our directors and officers, excluding directors' fees. No other funds were set aside or accrued by our company during the fiscal year ended December 31, 2021 to provide pension, retirement or similar benefits for our directors or officers pursuant to any existing plan provided or contributed to by us.

Executive Officers

The following table provides a summary of compensation paid by us during the fiscal year ended December 31, 2021 to our executive officers:

				Non-equity incentive compensation plan compensation ($)[1]				
Name and Principal Position	**Salary ($)**	**Share-based awards ($)**	**Option-based awards ($)**	**Annual incentive plans**	**Long-term incentive plans**	**Pension value ($)**	**All other compensation ($)**	**Total compensation ($)**
Michael J. Smith Executive Chairman[2]	448,899 [3]	—	—	—	—	—	275814[4]	724,713
Samuel Morrow President, Chief Executive Officer and Chief Financial Officer[5]	457,594	—	762,826	—	—	80,000[6]	105,730[7]	1,406,156

Notes:

(1) All awards under our non-equity incentive compensation plans are paid during the financial year they were earned.
(2) On May 1, 2021, Mr. Smith resigned as President and Chief Executive Officer of the Company.
(3) Consists of net pay.
(4) Consists of housing allowances and expenses.
(5) On May 1, 2021, Mr. Morrow was appointed as President, Chief Executive Officer and a director of the Company, replacing Mr. Smith, who continued as the Executive Chairman and as a director.
(6) Consists of a 401(K) benefit plan.
(7) Consists of medical and other customary perquisites.

For the purposes of the above table, compensation amounts were translated to Canadian dollars at the applicable exchange rate at the date of the transaction or, for practical reasons, the average exchange rates for the applicable periods, when they approximate the exchange rates as at the date of the transactions.

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Directors' Compensation

The following table provides a summary of compensation paid by us to, or earned by, the directors of our company during the fiscal year ended December 31, 2021:

Director Compensation Table

Name	Fees Earned ($)	Share-based awards ($)	Option-based awards ($)	Non-equity incentive plan compensation ($)	Pension Value ($)	All other compensation ($)	Total ($)
Michael J. Smith(1)	—	—	—	—	—	—	—
Dr. Shuming Zhao	94,175	64,839	—	—	—	—	159,014
Indrajit Chatterjee	87,811	64,839	—	—	—	—	152,650
Silke S. Stenger	183,872	64,839	—	—	—	—	248,711
Friedrich Hondl	185,721	64,839	—	—	—	—	250,560
Jochen Dümler	107,362	64,839	—	—	—	—	172,201
Samuel Morrow	—	—	—	—	—	—	—

Note:
(1) Compensation provided to Mr. Smith, in his capacity as Chairman, President and Chief Executive Officer is disclosed in the table above under the heading "*Executive Officers*".
(2) Compensation provided to Mr. Morrow, in his capacity as Deputy Chief Executive Officer and Chief Financial Officer is disclosed in the table above under the heading "*Executive Officers*".

A total of $0.7 million (excluding non-cash option-based awards) was paid to our directors for services rendered as directors (including as directors of our subsidiaries), or for committee participation or assignments, during our most recently completed financial year. Our directors are each paid an annual fee of US$25,000 and an additional US$2,500 per meeting for each director's meeting attended as well as additional fees, as applicable, for their respective participation on our committees. We also reimburse our directors and officers for expenses incurred in connection with their services as directors and officers.

Pension Plan Benefits

As of December 31, 2021, other than as disclosed herein, we did not have any defined benefit, defined contribution or deferred compensation plans for any of our senior officers or directors.

C. Board Practices

Board of Directors

Our Articles provide that the number of directors shall be the greater of three and the number most recently established by the directors. Our directors have currently fixed the size of our board at seven directors.

Pursuant to our Articles, each of our directors holds office until the expiration of his term and until his successor has been elected or qualified. At every annual general meeting of our shareholders, shareholders entitled to vote for the election of directors must, by ordinary resolution, elect the directors. There is no mandatory retirement age for our directors and our directors are not required to own securities of our company in order to serve as directors.

Our Articles do not restrict a director's power to vote on a proposal, arrangement or contract in which the director is materially interested, vote on compensation to themselves or any other members of their body in the absence of an independent quorum or exercise borrowing powers.

Our board is currently comprised of Michael J. Smith, Indrajit Chatterjee, Shuming Zhao, Silke S. Stenger, Friedrich Hondl, Jochen Dümler and Samuel Morrow.

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Other than as discussed elsewhere herein, there are no service contracts between our company and any of our directors providing for benefits upon termination of employment.

Committees of the Board of Directors

Our board of directors has established an Audit Committee. Our Audit Committee currently consists of Silke S. Stenger, Dr. Shuming Zhao, Friedrich Hondl and Jochen Dümler. The Audit Committee operates pursuant to a charter adopted by our board of directors on December 18, 2021, a copy of which is available online at our website at www.scullyroyalty.com. The Audit Committee is appointed by and generally acts on behalf of the board of directors. The Audit Committee is responsible primarily for monitoring: (i) the integrity of our financial statements; (ii) compliance with legal and regulatory requirements; (iii) the independence, qualifications and performance of our independent auditors; and (iv) the performance and structure of our internal audit function. The Audit Committee also reviews and approves our hiring policies, establishes our procedures for dealing with complaints, oversees our financial reporting processes and consults with management and our independent auditors on matters related to our annual audit and internal controls, published financial statements, risk assessment and risk management, accounting principles and auditing procedures being applied.

Our board of directors has established a Compensation Committee. Our Compensation Committee currently consists of Indrajit Chatterjee, Silke S. Stenger, Dr. Shuming Zhao and Jochen Dümler. Our Compensation Committee operates pursuant to a charter adopted by our board of directors on December 18, 2021, a copy of which is available online at our website at www.scullyroyalty.com. The Compensation Committee is appointed and generally acts on behalf of the board of directors. The Compensation Committee is responsible for reviewing our board compensation practices and our selection, retention and remuneration arrangements for our executive officers and employees and reviewing and approving our Chief Executive Officer’s compensation in light of our corporate goals and objectives. Except for plans that are, in accordance with their terms or as required by law, administered by our board of directors or another particularly designated group, the Compensation Committee also administers and implements all of our incentive compensation plans and equity-based compensation plans. The Compensation Committee also recommends changes or additions to those plans, monitors our succession planning processes and reports to our board of directors on other compensation matters. Our Chief Executive Officer does not vote upon or participate in the deliberations regarding his compensation.

Our board of directors has established a Nominating and Corporate Governance Committee. Our Nominating and Corporate Governance Committee currently consists of Indrajit Chatterjee, Silke S. Stenger and Dr. Shuming Zhao. Our Nominating and Corporate Governance Committee operates pursuant to a charter adopted by our board of directors on December 18, 2021, a copy of which is available online at our website at www.scullyroyalty.com. The primary function of the Nominating and Corporate Governance Committee is to assist our board of directors in developing our Corporate Governance Guidelines and monitor the board and management’s performance against the defined approach. The Nominating and Corporate Governance Committee is also responsible for evaluating the board and board committees’ structure and size and the independence of existing and prospective directors, identifying and reporting on candidates to be nominated to our board of directors, reporting on the board’s annual performance and overseeing our process for providing information to the board.

Our board of directors has established a Risk Committee. Our Risk Committee currently consists of Jochen Dümler, Friedrich Hondl and Samuel Morrow. The Risk Committee reviews and reports to our board of directors respecting our business risks and risk mitigation strategies.

D. Employees

At December 31, 2021, 2020 and 2019, we employed approximately 72, 81 and 80 people, respectively.

E. Share Ownership

There were 14,779,302 Common Shares, 2,001,822 stock options and no share purchase warrants issued and outstanding as of December 31, 2021. Of the Common Shares and stock options issued and outstanding on that date, our directors and senior officers, who served in such positions at any time during the fiscal year ended December 31, 2021, beneficially owned the following Common Shares and held the following stock options:

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Name and principal position	Common Shares beneficially owned (#)	Percentage of total Common Shares outstanding (%)	Stock options held (#)
Michael J. Smith Executive Chairman and Director	128,393	0.9%	14,715(1)
Samuel Morrow President, Chief Executive Officer and Director	9,888	—*	541,512(2)
Dr. Shuming Zhao Director	—	—	54,150(3)
Indrajit Chatterjee Director	—	—	54,150(3)
Silke S. Stenger Director	—	—	54,150(3)
Friedrich Hondl Director	2,353	—*	54,150(3)
Jochen Dümler Director	—	—	54,150(3)

Notes:

(1) The options are exercisable at a price of US$7.44 per Common Share and expire on December 1, 2027.

(2) 70,632 options are exercisable at a price of US$7.44 per Common Share and expire on December 1, 2027 and 470,880 options are exercisable at a price of US$11.17 per Common Share and expire on May 4, 2031.

(3) 14,126 options are exercisable at a price of US$7.44 per Common Share and expire on December 1, 2027 and 40,024 options are exercisable at a price of US$11.17 per Common Share and expire on May 4, 2031.

* Less than 0.1%.

2017 Equity Incentive Plan

The 2017 Equity Incentive Plan, referred to as the “Incentive Plan”, was adopted by the Company on July 14, 2017. At our annual meeting of shareholders held on December 29, 2021, shareholders approved an amendment to the plan to: (i) increase the total number of our Common Shares under the plan by 677,364 Common Shares to 2,239,027 (after giving effect to adjustments under the Incentive Plan in connection with stock dividends declared in 2021); (ii) increase the maximum number of Common Shares subject to options and stock appreciation rights that may be granted to any one Covered Employee (as defined in the Incentive Plan) to 400,000; and (iii) increase the maximum number of Common Shares that may be granted to any one Covered Employee during the fiscal year where such participant's employment commences to 425,000 and 400,000 for all other fiscal years.

Pursuant to the terms of the Incentive Plan, our board of directors, our Compensation Committee or such other committee as is appointed by our board of directors to administer the Incentive Plan, may grant stock options, restricted stock rights, restricted stock, performance share awards, performance share units and stock appreciation rights under the Incentive Plan, establish the terms and conditions for those awards, construe and interpret the Incentive Plan and establish the rules for the Incentive Plan’s administration. Such awards may be granted to employees, non-employee directors, officers or consultants of ours or any affiliate or any person to whom an offer of employment with us or any affiliate is extended. Such committee has the authority to determine which employees, non-employee directors, officers, consultants and prospective employees should receive such awards.

The maximum number of Common Shares which may be issued as incentive stock options (being stock options intended to meet the requirements of an “incentive stock option” under the U.S. Internal Revenue Code) under the Incentive Plan is limited to 400,000. Further, the maximum number of Common Shares that may be granted to any one participant in the Incentive Plan, who is a Covered Employee (as defined in the Incentive Plan) during the fiscal year where such participant’s employment commences, shall be 425,000 and 400,000 for all other fiscal years.

Our Compensation Committee and board of directors also approved grants of stock options entitling the holders thereof to acquire up to 1,538,596 Common Shares of the Company, which options have a term of 10 years, were granted effective on May 4, 2021 and have an exercise price equal to US$11.17. These grants were approved at our annual meeting held in 2021 and the awards have vested.

In addition, the aggregate fair value of Awards (as defined in the Incentive Plan) granted to any one non-employee director cannot exceed US$100,000 in any one year, and the aggregate number of securities issuable to all non-employee directors cannot exceed 1% of the Company's issued and outstanding Common Shares.

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As at December 31, 2021 and the date hereof, 2,001,822 Common Shares were subject to outstanding awards under the Incentive Plan and 213,659 Common Shares were available for future awards under the Incentive Plan.

ITEM 7: MAJOR SHAREHOLDERS AND RELATED PARTY TRANSACTIONS

A. Major Shareholders

There were 14,816,757 Common Shares issued and outstanding as of April 26, 2022. Persons known to us to be the beneficial owner of more than five percent (5%) of our Common Shares as of April 26, 2022:

Name	Amount Owned	Percent of Class(1)
Peter Kellogg, group(2)	5,147,283	34.7%
Lloyd Miller, III(3)	1,842,087	12.4%
Nantahala Capital Management, LLC(4)	807,089	5.4%

Notes:

(1) Based on 14,816,757 Common Shares issued and outstanding on April 26, 2022.

(2) As disclosed in a Schedule 13D/A filed on February 10, 2014 by IAT Reinsurance Company Ltd., referred to as "IAT" and Peter Kellogg, collectively, referred to as, the "IAT Group", the IAT Group may be deemed to beneficially own an aggregate of 5,147,283 Common Shares, which includes Common Shares owned by IAT, over which Mr. Kellogg has sole dispositive and voting power over. In such filing, Mr. Kellogg disclaims beneficial ownership of all of the shares, at the time of the filing of the Schedule 13D/A, owned by IAT. Included in this figure are Common Shares held by Cynthia Kellogg, Mr. Kellogg's wife, which Mr. Kellogg disclaims beneficial ownership of in his public filings. Shareholdings previously reported by IAT and Mr. Kellogg are presented herein as adjusted for subsequent stock dividends.

(3) As disclosed in a Schedule 13G dated January 23, 2018, Neil Subin succeeded to the position of President and Manager of Milfam, LLC which serves as manager, general partner or investment advisor of a number of entities formerly managed by the late Lloyd Miller, III. He also serves as trustee of a number of Miller family trusts, controls such shares through a number of trusts and wholly-owned corporations. Based on a Schedule 13 G/A filed on February 8, 2022, in which Mr. Subin disclosed that he exercises sole dispositive and voting control over 1,740,789 of such shares and shared dispositive and voting control over 101,298 of such shares and disclosed that such ownership does not include Common Shares owned by Alimco Financial Corporation. Mr. Subin also disclosed in the filing that certain entities held by or for the benefit of the family of Mr. Miller hold approximately 94% of the outstanding shares of common stock of Alimco Financial Corporation and both Mr. Subin and Alimco Financial Corporation disclaim beneficial ownership of the securities reported by the other reporting person.

(4) Based on Schedule 13G/A filed on February 14, 2022 jointly with Nantahala Capital Management, LLC, Wilmot B. Harkey and Daniel Mack.

As of April 26, 2022, there were 14,816,757 Common Shares issued and outstanding held by 135 registered shareholders. Of those Common Shares issued and outstanding, 14,816,241 Common Shares were registered in the United States (130 registered shareholders).

The voting rights of our major shareholders do not differ from the voting rights of holders of our shares who are not major shareholders.

The IAT Group may be considered to control our company as a result of, among other things, its proportionate ownership of our Common Shares.

There are no arrangements known to us, the operation of which may at a subsequent date result in a change in the control of our company.

B. Related Party Transactions

In the normal course of operations, we enter into transactions with related parties, which include affiliates in which we have a significant equity interest (10% or more) or have the ability to influence their operating and financing policies through significant shareholding, representation on the board of directors, corporate charter and/or bylaws. The related parties also include, among other things, the Company’s directors, Chairman, President, Chief Executive Officer and Chief Financial Officer. This section does not include disclosure, if any, respecting open market transactions, whereby a related party acts as an investor of the Company's securities or the bonds of Merkanti Holding plc.

We had the following transactions with related parties:

Years ended December 31:	**2021**	**2020**	**2019**
		(In thousands)	
Fee income	$ 1	$ 9	$ 10
Interest income	—	86	31
Dividends received	198	—	—
Royalty expenses	(700)	(660)	(210)
Credit losses on corporate guarantees	—	—	(3,134) [(1)]
Reversal of (expense of) ECL allowance	—	15	(16)
Fee expenses	—	(80)	—
Reimbursements of expenses, primarily including employee benefits and lease and office expenses	(1,007)	(276)	(811)

Note:
(1) Reversed during the year ended December 31, 2020.

We have, from time to time, entered into arrangements with a company owned by our Chairman to assist us to comply with various local regulations and requirements, including the recently introduced economic substance legislation for offshore jurisdictions, as well as fiscal efficiency. These arrangements are also utilized to aid in the divestment of financially or otherwise distressed or insolvent assets or businesses that are determined to be unsuitable for our ongoing operations. These arrangements are implemented at cost and no economic benefit is received by, or accrued, by our Chairman or the company controlled by him. Pursuant to this arrangement, as at December 31, 2021, we held: (i) an indemnification asset of $6.8 million relating to a secured indemnity provided by such company to our subsidiary to comply with local regulations and requirements, in an amount equal to the amount advanced to it, for certain short-term intercompany balances involving certain of our subsidiaries and another subsidiary that was put into dissolution by us in 2019; (ii) a loan to such company of $0.8 million, which was made in 2019 in order to facilitate the acquisition of securities for our benefit. The loan initially bore interest at 6.3% and subsequently became non-interesting bearing; and (iii) current account receivables of $46.9 million. We also had current accounts payable of $25,000 due to the aforesaid affiliate as at December 31, 2021.

In addition, pursuant to this arrangement, during 2021, 2020 and 2019, we reimbursed such company $1.0 million, $0.3 million and $0.8 million (as set forth in the table above), respectively, at cost for expenses, primarily consisting of employee benefits and lease and office expenses. Furthermore, during 2019, we sold a non-core metals processing business to a company controlled by our Chairman for nominal consideration, which represented the arm's length transaction price. This metals processing business operated out of a leased property with leased equipment. Over the past fifteen years, the landlord of the land and equipment refused to incur any capital expenditures or to make any necessary improvement to the facility. Without these necessary capital upgrades and improvements, the subsidiary's maintenance costs increased and productivity decreased such that it could no longer be operated on a profitable or sustainable basis. After reporting a net loss in 2018, it continued to report losses in 2019, which resulted in the subsidiary having negative net equity on a consolidated basis. As a result, the transaction did not result in the transfer of any net economic benefit to the company controlled by our Chairman and the sale for nominal consideration resulted in the recognition of a non-cash accounting gain of $0.9 million in 2019. Subsequent to the sale, this former subsidiary entered into an insolvency administration process. During 2019, we recognized credit losses of $3.1 million on corporate guarantees issued to certain trading partners of this former subsidiary prior to its disposition. During 2020, the provision for credit losses on the corporate guarantees was reversed and recognized in profit or loss.

As set forth in the table above, we had royalty expenses of $0.7 million in each of 2021 and 2020 and $0.2 million in 2019, that were paid to a company in which we hold a minority interest and that is a subsidiary of the operator of the underlying mine.

Please see Note 25 to our audited consolidated financial statements for the year ended December 31, 2021 for further information.

C. Interests of Experts and Counsel

Not applicable.

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ITEM 8: FINANCIAL INFORMATION

A. Consolidated Statements and Other Financial Information

Our consolidated financial statements have been prepared in compliance with IFRS. Please see "*Item 18: Financial Statements*".

Legal Proceedings

We are subject to routine litigation incidental to our business and are named from time to time as a defendant and are a plaintiff from time to time in various legal actions arising in connection with our activities, certain of which may include large claims for punitive damages. Further, due to the size, complexity and nature of our operations, various legal and tax matters are outstanding from time to time, including periodic audit by various tax authorities.

We and certain of our subsidiaries have been named as defendants in a legal action relating to an alleged guarantee of the former parent of the group in the amount of approximately $68.4 million (€43.8 million) as at December 31, 2021. We believe that such claim is without merit and intend to vigorously defend such claim. In the second half of 2021, we were informed of a proposed amendment to the claim which, if allowed, would increase the amount to approximately $131.0 million (€91.0 million) as at December 31, 2021. Currently, based upon the information available to management, management does not believe that there will be a material adverse effect on our financial condition or results of operations as a result of this action. However, due to the inherent uncertainty of litigation, we cannot provide certainty as to the outcome.

Currently, based upon information available to us, we do not believe any such matters would have a material adverse effect upon our financial condition or results of operations as at December 31, 2021. However, due to the inherent uncertainty of litigation, we cannot provide certainty as to their outcome. If our current evaluations are materially incorrect or if we are unable to resolve any of these matters favourably, there may be a material adverse impact on our financial performance, cash flows or results of operations. Please see Note 23 to our audited consolidated financial statements for the year ended December 31, 2021 for further information.

Dividend Distributions

On April 30, 2021, we announced that our board of directors approved the following stock dividends that have been distributed to holders of our Common Shares:

- a 9% stock dividend was distributed on May 31, 2021, to shareholders of record as at May 14, 2021, where such holders received 9 Common Shares for every 100 Common Shares held on the record date; and

- an 8% stock dividend was distributed on November 30, 2021, to shareholders of record as at November 15, 2021, where such holders received 8 Common Shares for every 100 Common Shares held on the record date.

The above stock dividends received requisite stock exchange approvals. No fractional shares were issued by us in connection with such stock dividends.

We did not declare or pay any cash dividends to our shareholders in 2020.

On April 30, 2021, we announced that our board of directors approved a cash dividend policy, which is intended to maximize potential future dividends to holders of our Common Shares. On February 9, 2022, we announced that our board of directors declared a cash dividend of $0.25 (US$0.18) per Common Share pursuant to this policy, which was paid in US dollars on March 4, 2022 to shareholders of record on February 21, 2022.

On April 29, we announced that our board of director declared a cash dividend of $0.34 (US$0.27) per Common Share, which will be paid in US dollars on May 23, 2022 to shareholders of record on May 10, 2022.

Based upon a review of our financial position, operating results, ongoing working capital requirements and other factors, our board of directors may from time to time and if deemed advisable by it, declare and pay cash dividends to holders. The timing, payment and amount of any dividends paid on our Common Shares may be determined by our board of directors from time to time, based upon considerations such as our cash flow, results of operations and financial condition, the need for funds to finance ongoing operations and such other business considerations as our board of directors considers relevant.

B. Significant Changes

Except as disclosed elsewhere in this annual report, we have not experienced any significant changes since the date of our audited consolidated financial statements included in this annual report.

ITEM 9: THE OFFER AND LISTING

A. Offer and Listing Details

Our Common Shares are quoted on the New York Stock Exchange, referred to as the "NYSE", currently under the symbol "SRL".

The transfer of our Common Shares is managed by our transfer agent, Computershare, 480 Washington Boulevard, Jersey City, NJ 07310 (Tel: 201-680-5258; Fax: 201-680-4604).

B. Plan of Distribution

Not applicable.

C. Markets

See "– *A. Offer and Listing Details*".

D. Selling Shareholders

Not applicable.

E. Dilution

Not applicable.

F. Expenses of the Issue

Not applicable.

ITEM 10: ADDITIONAL INFORMATION

A. Share Capital

Not applicable.

B. Memorandum and Articles of Association

We are an exempted company organized under the Cayman Act. Our registered office is located at P. O. Box 31119 Grand Pavilion, Hibiscus Way, 802 West Bay Road, Grand Cayman, KY1 – 1205 Cayman Islands. Pursuant to Section 4 of our Articles, the objects for which our company is established are unrestricted and we have full power and authority to carry out any object not prohibited by the Cayman Act, as amended from time to time, or any other law of the Cayman Islands.

The following are summaries of material provisions of our Articles insofar as they relate to our Common Shares.

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Board of Directors

Please see "*Item 6: Directors, Senior Management and Employees – C. Board Practices*".

Common Shares

General. Our authorized capital consists of US$450,000 divided into 300,000,000 Common Shares of US$0.001 par value each and 150,000,000 preference shares divided into US$0.001 par value each. No preference shares were issued and outstanding as of the date hereof. There are no limitations imposed by our Articles on the rights of non-resident or foreign shareholders to hold or exercise voting rights on our shares. In addition, there are no provisions in our Articles governing the ownership threshold above which shareholder ownership must be disclosed.

Dividends. Holders of our Common Shares may receive dividends when, as and if declared by our board of directors, subject to the preferential rights of any preference shares. Under the Cayman Act, dividends may be declared and paid only out of funds legally available therefor, namely out of either profit or our share premium account, and provided further that a dividend may not be paid if it would result in our company being unable to pay its debts as they fall due in the ordinary course of business. Our Articles provide that our directors may declare and pay a distribution in money or by distribution of specific assets.

Voting. Holders of our Common Shares are entitled to receive notice of and to attend all general meetings of shareholders or separate meetings of holders of Common Shares and are entitled to one vote per share at any such meeting.

A quorum required for a general meeting of shareholders consists of at least two shareholders present or by proxy, representing not less than 20% of the total voting power entitled to vote on the resolutions to be considered at a meeting, unless only one shareholder is entitled to vote on such resolutions in which case the quorum required shall be only the one shareholder.

An ordinary resolution to be passed by the shareholders requires the affirmative vote of a simple majority of the votes cast by those shareholders entitled to vote who are present in person or by proxy at a general meeting. Holders of our Common Shares may, among other things, divide or consolidate their shares by ordinary resolution. In general and subject to applicable law, all matters will be determined by a majority of votes cast other than fundamental changes with respect to our company. Various extraordinary corporate transactions including any merger, amalgamation, continuance to another jurisdiction, voluntary winding-up by the court, amendment to the Articles, change of company name or removal of a director must be approved by the shareholders by way of a special resolution. A special resolution is a resolution passed by a majority of not less than two-thirds of such shareholders who, being entitled to do so, vote in person or by proxy at a general meeting of the Company, or approved in writing by all of the shareholders entitled to vote at a general meeting of the Company. Under the Cayman Act, there is no specific requirement to obtain shareholder approval in connection with the sale, lease or exchange of all, or substantially all, of a corporation's property.

General Meetings of Shareholders and Shareholder Proposals. Our Articles provide that we may hold an annual general meeting in each year and shall specify the meeting as such with notices calling it, and the annual general meeting shall be held at such time and place as may be determined by our directors. Our directors may convene a meeting of our shareholders with at least 10 days' prior notice.

Cayman Islands exempted companies are not required by the Cayman Act to call annual general meetings of shareholders. Our Articles provide that so long as the Company's shares are listed on the NYSE, we shall hold annual general meetings as required under the applicable rules and regulations of the NYSE.

Cayman Islands law provides shareholders with only limited rights to requisition a general meeting, and does not provide shareholders with any right to put any proposal before a general meeting. However, these rights may be provided in a company's articles of association. Our Articles allow shareholders representing in aggregate 20% or more of the voting rights in respect of the matter for which the meeting is requisitioned, to be held within four months of receipt of the requisition. As an exempted Cayman Islands company, we are not obliged under the Cayman Act to call shareholders' annual general meetings. Under our Articles, directors may be removed by special resolution of our shareholders.

Directors' Power to Issue Shares. Our Articles authorize our board of directors to issue additional Common Shares from time to time as our board shall determine, to the extent of available authorized but unissued shares. Our board of directors may also issue preference shares from time to time in one or more classes or series, each of such class or series to have such voting powers (full or limited or

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without voting powers) designations, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof as are stated and expressed, or in any resolution providing for the issue of such class or series adopted by our board.

Our board of directors may also approve the issuance of options, rights or warrants that are exercisable into our shares for such consideration and on such terms as the board may determine.

Variation of Rights. The rights attached to any class or series of our shares (unless otherwise provided by the terms of issue of the shares of that class or series), whether or not our company is being wound-up, may only be varied with the consent in writing of the holders of a majority of the issued shares of that class or series or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class or series.

Liquidation. The holders of our Common Shares have the right on the winding up, liquidation or dissolution of the Company to participate in the surplus assets of the Company, subject to the rights of any issued and outstanding preference shares.

Redemption, Repurchase and Surrender. We may issue shares on terms that such shares are subject to redemption, at our option or at the option of the holders thereof, on such terms and in such manner as may be determined, before the issue of such shares, by our board of directors or by a special resolution of our shareholders. We may also repurchase any of our shares provided that the manner and terms of such purchase have been approved by our board of directors or are otherwise authorized by our Articles. Under the Cayman Act, the redemption or purchase of any of our shares may be paid out of our profits or out of the proceeds of a fresh issue of shares made for the purpose of such redemption or repurchase, or out of capital (including share premium account and capital redemption reserve) if we can, immediately following such payment, pay our debts as they fall due in the ordinary course of business. In addition, under the Cayman Act, no such share may be redeemed or repurchased: (a) unless it is fully paid up; (b) if such redemption or repurchase would result in there being no shares outstanding; or (c) if the Company has commenced liquidation.

Anti-Takeover Provisions. Our Articles contain certain provisions that would have an effect of delaying, deferring or preventing a change in control of our company, including provisions that:

- authorize our directors to issue preference shares in one or more classes or series and to designate the price, rights, preferences, rights and restrictions of such preference shares without any further vote or action by our shareholders;

- limit the ability of shareholders to requisition and convene general meetings of shareholders; and

- restrict the nomination of directors without advance notice. In the case of an annual meeting, notice must be given to us not less than 30 nor more than 65 days prior to the date of such meeting; provided that if the meeting is to be held on a date that is less than 50 days after the date on which the first public announcement of the date of such meeting was made, notice may be given no later than the close of business on the 10th day following such announcement. In the case of a special meeting called for the purpose of electing directors that is not also an annual meeting, notice must be provided to us no later than the close of business on the 15th day following the day on which the first public announcement of the date of such special meeting was made. Additionally, our Articles contain a provision requiring a minimum threshold to requisition a special meeting. Such restrictions may make it more difficult to effect changes to our management.

However, under the Cayman Act and applicable Cayman laws, our directors may only exercise the rights and powers granted to them under our Articles for a proper purpose and for what they believe in good faith to be in the best interests of our company.

Calls on Shares. Our board of directors may from time to time make calls upon shareholders for any amounts unpaid on their shares. The shares that have been called upon and remain unpaid are subject to forfeiture. All of our Common Shares are fully paid.

Exempted Company. We are an exempted company with limited liability under the Cayman Act. The Cayman Act distinguishes between ordinary resident companies and exempted companies. Any company that is registered in the Cayman Islands but conducts business mainly outside of the Cayman Islands may apply to be registered as an exempted company. Unlike ordinary resident companies, among other things, an exempted company does not have to file an annual return of its shareholders with the Registrar of Companies, is not required to have its register of members open to inspection, does not have to hold an annual general meeting, may issue no par value, negotiable or bearer shares and may register by way of continuation in another jurisdiction and be deregistered in the Cayman Islands.

C. Material Contracts

There have been no material contracts outside of the ordinary course of business to which we were a party in the last two years.

D. Exchange Controls

There are no exchange control regulations or currency restrictions in the Cayman Islands. Under Cayman Islands law, there are no restrictions on the export or import of capital, including foreign exchange controls or restrictions that affect the remittance of dividends, interest or other payments to non-resident holders of our Common Shares. Please see "*E. Taxation – Cayman Islands Taxation*" for further information.

The Bank is subject to regulations and restrictions imposed in Europe and Malta. In addition, a portion of our cash is held in the PRC in RMB. Please see "*Item 4: Information on the Company – B. Business Overview – Regulation*" for further information.

The government of the PRC imposes controls on the convertibility of the RMB into foreign currencies and the remittance of currency out of the PRC. Please see "*Item 3: Key Information – D. Risk Factors – Risk Factors Relating to Our Business*" for further information.

E. Taxation

The following is a general summary of certain Cayman Islands and United States federal income tax consequences relevant to an investment in our Common Shares. The discussion is not intended to be, nor should it be construed as, legal or tax advice to any particular prospective purchaser. The discussion is based on laws and relevant interpretations thereof in effect as of the date of this annual report, all of which are subject to change or different interpretations, possibly with retroactive effect. The discussion does not address U.S. state or local tax laws, or tax laws of jurisdictions other than the Cayman Islands and the United States. You should consult your own tax advisors with respect to the consequences of acquisition, ownership and disposition of our Common Shares.

Cayman Islands Taxation

The Cayman Islands currently levies no taxes on individuals or corporations based upon profits, income, gains or appreciation and there is no taxation in the nature of inheritance tax or estate duty or withholding tax applicable to us or to any holder of our Common Shares. There are no other taxes likely to be material to us levied by the Government of the Cayman Islands except for stamp duties which may be applicable on instruments executed in, or after execution brought within, the jurisdiction of the Cayman Islands. No stamp duty is payable in the Cayman Islands on the issue of shares by, or any transfers of shares of, Cayman Islands companies (except those which hold interests in land in the Cayman Islands). The Cayman Islands is not party to any double tax treaties that are applicable to any payments made to or by our company. There are no exchange control regulations or currency restrictions in the Cayman Islands.

Payments of dividends and capital in respect of our Common Shares will not be subject to taxation in the Cayman Islands and no withholding will be required on the payment of a dividend or capital to any holder of our Common Shares, as the case may be, nor will gains derived from the disposal of our Common Shares be subject to Cayman Islands income or corporation tax.

Material United States Federal Income Tax Consequences

The following is a discussion of certain United States federal income tax matters under current law, generally applicable to a U.S. Holder (as defined below) of our Common Shares who holds such shares as capital assets for United States federal income tax purposes (generally, property held for investment). This discussion does not address all aspects of United States federal income tax matters and does not address consequences particular to persons subject to certain special provisions of United States federal income tax law, such as those described below. In addition, this discussion does not cover any state, local or non-United States tax consequences.

The following discussion is based upon the Internal Revenue Code of 1986, as amended, referred to as the "Code", Treasury Regulations (whether final, temporary, or proposed) published by the Internal Revenue Service, referred to as the "IRS", rulings and published administrative positions of the IRS, court decisions, and the Canada-United States Income Tax Convention (1980), as amended, in each case, as in effect currently, and any or all of which could be materially and adversely changed, possibly on a retroactive basis, at any time. In addition, this discussion does not consider the potential effects, whether adverse or beneficial, of any recently proposed legislation that, if enacted, could be applied, possibly on a retroactive basis, at any time. No assurance can be given that the IRS will

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agree with the statements and conclusions herein, or will not take, or that a court will not adopt, a position contrary to any position taken herein.

The following discussion is for general information only and is not intended to be, nor should it be construed to be, legal, business or tax advice to any holder or prospective holder of our Common Shares and no opinion or representation with respect to the United States federal income tax consequences to any such holder or prospective holder is hereby made. Accordingly, holders and prospective holders of our Common Shares are urged to consult their own tax advisors with respect to the United States federal, state and local tax consequences, and any non-United States tax consequences of purchasing, owning and disposing of our Common Shares.

U.S. Holders

As used in this discussion, a “U.S. Holder” is a beneficial owner of our Common Shares that for United States federal income tax purposes, is: (i) an individual who is a citizen or resident of the United States; (ii) a corporation, or any other entity taxable as a corporation for United States federal tax purposes, that is created or organized in or under the laws of the United States, any state in the United States, or the District of Columbia; (iii) an estate, the income of which is subject to United States federal income tax without regard to its source; or (iv) a trust if (1) a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust or (2) the trust has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. person.

This summary does not purport to address all material United States federal income tax consequences that may be relevant to a U.S. Holder and does not take into account the specific circumstances of any particular holder, some of which (such as tax-exempt entities, qualified retirement plans, individual retirement accounts, other tax-deferred accounts or government organizations, banks or other financial institutions, insurance companies, broker-dealers, traders in securities that elect to use a mark-to-market method of accounting for their securities holdings, regulated investment companies, real estate investment trusts, U.S. expatriates, investors liable for the alternative minimum tax, partnerships and other pass-through entities, investors that own or are treated as owning (by vote or value) 10% or more of our outstanding Common Shares, investors that hold our Common Shares as part of a straddle, hedge, conversion or constructive sale transaction or other integrated transaction, U.S. holders whose functional currency is not the United States dollar, and persons required to accelerate the recognition of any item of gross income with respect to our Common Shares as a result of such income being recognized on an applicable financial statement) may be subject to special tax rules. This summary does not address holders who acquired their shares through the exercise of employee stock options or otherwise as compensation.

If an entity that is classified as a partnership for United States federal income tax purposes holds our Common Shares, the United States federal income tax treatment of a partner will generally depend on the status of the partner and the activities of the partnership. Partnerships holding our Common Shares and partners in such partnerships should consult their tax advisors as to the particular United States federal income tax consequences of owning and disposing of the Common Shares.

Distributions With Respect to Common Shares

Subject to the “Passive Foreign Investment Company” rules discussed below, the gross amount of a distribution paid to a U.S. Holder with respect to the Common Shares (including amounts withheld for Canadian taxes, if any) will be subject to United States federal income taxation as dividends to the extent paid out of our current or accumulated earnings and profits, as determined under United States federal income tax principles. Such dividends will generally not be eligible for the dividends-received deduction allowed to corporations. Distributions that are taxable as dividends and that meet certain requirements will be “qualified dividend income” and will generally be taxed to U.S. Holders who are individuals at preferential tax rates for long-term capital gains. Distributions in excess of our current and accumulated earnings and profits will be treated first as a tax-free return of capital to the extent of the U.S. Holder’s tax basis in the Common Shares and, to the extent in excess of such tax basis, will be treated as gain from a sale or exchange of such shares. There can be no assurance that we will maintain calculations of our earnings and profits in accordance with United States federal income tax principles. U.S. Holders should therefore assume that any distribution with respect to the Common Shares will constitute dividend income.

Sale or Other Disposition of Common Shares

Subject to the “Passive Foreign Investment Company” rules discussed below, upon a sale, exchange, or other disposition of the Common Shares, a U.S. Holder will generally recognize a capital gain or loss for United States federal income tax purposes in an amount equal to the difference between the amount realized on the sale or other disposition and the U.S. Holder’s adjusted tax basis in such shares. Such gain or loss generally will be a United States source gain or loss and will be treated as a long-term capital gain or loss if the U.S. Holder’s holding period of the shares exceeds one year. Preferential tax rates apply to long-term capital gains of a U.S. Holder that is an individual. The deductibility of capital losses is subject to significant limitations.

Foreign Tax Credit

Dividends paid by us generally will constitute income from non-United States sources and will be subject to various classification rules and other limitations for United States foreign tax credit purposes. Subject to generally applicable limitations under United States federal income tax law, withholding tax imposed on such dividends, if any, will generally be treated as a foreign income tax eligible for credit against a U.S. Holder’s United States federal income tax liability (or at a U.S. Holder’s election if it does not elect to claim a foreign tax credit for any foreign taxes paid during the taxable year, all foreign income taxes paid may instead be deducted in computing such U.S. Holder’s taxable income). The rules governing the foreign tax credit are complex and U.S. Holders should consult their own tax advisors regarding the availability of the foreign tax credit under their particular circumstances.

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Passive Foreign Investment Company

We do not believe that we are currently a passive foreign investment company, referred to as a "PFIC". However, since PFIC status depends upon the composition of a corporation's income and assets and the market value of its assets and shares from time to time, there is no assurance that we will not be considered a PFIC for any taxable year. If we were treated as a PFIC for any taxable year during which a U.S. Holder held our Common Shares, we generally would continue to be treated as a PFIC with respect to that U.S. Holder for all succeeding years during which the U.S. Holder holds the shares, even if we ceased to meet the threshold requirements for PFIC status, and certain adverse United States federal income tax consequences would apply to the U.S. Holder.

A non-U.S. corporation is a PFIC for any taxable year in which either (i) 75% or more of its gross income consists of "passive income" or (ii) 50% or more of the average quarterly gross value of its assets consists of assets that produce, or are held for the production of, "passive income". For this purpose, subject to certain exceptions, passive income includes interest, dividends, rents, royalties, and gains from transactions in commodities. A non-U.S. corporation is treated as owning its proportionate share of the assets and earning its proportionate share of the income of any other corporation in which it owns, directly or indirectly, 25% or more (by value) of the stock (with special look-through rules for partnerships owned by a non-United States corporation).

If we are treated as a PFIC for any taxable year, gains recognized by a U.S. Holder on a sale or other disposition of our Common Shares would be allocated ratably over the U.S. Holder's holding period for the shares. The amount allocated to the taxable year of the sale or other disposition and to any year before we became a PFIC would be taxed as ordinary income. The amount allocated to each other taxable year would be subject to tax at the highest rate in effect for individuals or corporations, as applicable, and an interest charge would be imposed on the amount allocated to such taxable year. Further, any distribution with respect to the Common Shares in excess of 125% of the average of the annual distributions on shares received by the U.S. Holder during the preceding three years or the U.S. Holder's holding period, whichever is shorter, would be subject to United States federal income taxation as described above.

For any taxable year in which a U.S. Holder owns shares in a PFIC that is a shareholder of a corporation that is a PFIC (a "Subsidiary PFIC"), the U.S. Holder would generally be deemed to own its proportionate interest (by value) in the Subsidiary PFIC and be subject to the PFIC rules described above with respect to the Subsidiary PFIC regardless of such U.S. Holder's percentage ownership in the first-tier PFIC. These rules would apply to our subsidiaries if we were classified as a PFIC.

Certain elections might be available to U.S. Holders that may mitigate some of the adverse consequences resulting from PFIC status, but may not be available for a Subsidiary PFIC.

If a U.S. Holder owns our Common Shares during any year in which we are a PFIC, the holder generally must file an annual report on IRS Form 8621 (or any successor form), generally with the holder's federal income tax return for that year.

U.S. Holders and prospective holders should consult their own tax advisors regarding the potential application of the PFIC rules to their ownership of our Common Shares, the availability and advisability of making any PFIC elections, and any PFIC filing obligations.

Medicare Tax

A U.S. Holder that is an individual or estate, or a trust that does not fall into a special class of trusts that is exempt from such tax, may be subject to a 3.8% Medicare tax. For an individual, the tax is imposed on the lesser of (1) the U.S. Holder's "net investment income" for the relevant taxable year or (2) the excess of the U.S. Holder's modified adjusted gross income for the taxable year over a certain threshold (which is between US$125,000 and US$250,000, depending on the individual's filing status). For an estate or trust, the tax is imposed on the lesser of (1) the U.S. Holder's "undistributed net investment income" for the relevant taxable year or (2) the excess of the estate's or trust's adjusted gross income for the taxable year, over the dollar amount at which the highest tax bracket for the year begins. A holder's net investment income will generally include its dividend income and its net gains from the disposition of securities. If you are a U.S. Holder that is an individual, estate or trust, you are urged to consult your own tax advisor regarding the applicability of this Medicare tax.

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Information Reporting and Backup Withholding

Certain categories of U.S. Holders must file information returns with respect to their investment in, or involvement in, a non-United States corporation. For example, U.S. Holders that hold "specified foreign financial assets" in excess of certain threshold amounts must comply with certain reporting obligations. "Specified foreign financial assets" include not only financial accounts maintained in foreign financial institutions, but also, unless held in accounts maintained by a United States financial institution, any stock or security issued by a non-United States person, any financial instrument or contract held for investment that has an issuer or counterparty other than a U.S. person, and any interest in a non-United States entity. U.S. Holders may be subject to these reporting requirements unless their Common Shares are held in an account at a United States financial institution. Penalties for failure to comply with these reporting requirements can be substantial. U.S. Holders should consult with their own tax advisors regarding the requirements of filing information returns and, if applicable, filing obligations relating to these rules.

Dividends paid on, and proceeds from the sale or other taxable disposition of, our Common Shares to a U.S. Holder generally may be subject to United States federal information reporting requirements and may be subject to backup withholding (currently at the rate of 24%) unless the U.S. Holder provides an accurate taxpayer identification number or otherwise demonstrates that it is exempt. The amount of any backup withholding collected from a payment to a U.S. Holder will generally be allowed as a credit against the U.S. Holder's United States federal income tax liability and may entitle the U.S. Holder to a refund, provided that certain required information is timely submitted to the IRS.

F. Dividends and Paying Agents

Not applicable.

G. Statement by Experts

Not applicable.

H. Documents on Display

Documents and agreements concerning our company may be inspected at Unit 803, Dina House, Ruttonjee Centre, 11 Duddell Street, Hong Kong, SAR China.

We file reports and other information with the SEC. The SEC maintains an Internet site that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC. Our filings with the SEC are available to the public over the Internet at such website at http://www.sec.gov.

I. Subsidiary Information

For a list of our significant wholly-owned direct and indirect subsidiaries and significant non-wholly-owned subsidiaries, please see "*Item 4: Information on the Company – C. Organizational Structure*".

ITEM 11: QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to various market risks from changes in interest rates, foreign currency exchange rates and equity prices that may affect our results of operations and financial condition and, consequently, our fair value. Generally, our management believes that our current financial assets and financial liabilities, due to their short-term nature, do not pose significant financial risks. We use various financial instruments to manage our exposure to various financial risks. The policies for controlling the risks associated with financial instruments include, but are not limited to, standardized company procedures and policies on matters such as hedging of risk exposures, avoidance of undue concentration of risk and requirements for collateral (including letters of credit) to mitigate credit risk. We have risk managers to perform audits and checking functions to ensure that company procedures and policies are complied with.

We use derivative instruments to manage certain exposures to commodity price and currency exchange rate risks. The use of derivative instruments depends on our management's perception of future economic events and developments. These types of derivatives are often very volatile, as they are highly leveraged, given that margin requirements are relatively low in proportion to their notional amounts.

Many of our strategies, including the use of derivative instruments and the types of derivative instruments selected by us, are based on historical trading patterns and correlations and our management's expectations of future events. However, these strategies may not be fully effective in all market environments or against all types of risks. Unexpected market developments may affect our risk management strategies during this time, and unanticipated developments could impact our risk management strategies in the future. If any of the variety of instruments and strategies we utilize are not effective, we may incur losses.

Please refer to Note 26 of our audited consolidated financial statements for the year ended December 31, 2021, for a qualitative and quantitative discussion of our exposure to market risks and the sensitivity analysis of interest rate, currency and other price risks at December 31, 2021.

ITEM 12: DESCRIPTION OF SECURITIES OTHER THAN EQUITY SECURITIES

Not applicable.

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PART II

ITEM 13: DEFAULTS, DIVIDEND ARREARAGES AND DELINQUENCIES

None.

ITEM 14: MATERIAL MODIFICATIONS TO RIGHTS OF SECURITY HOLDERS AND USE OF PROCEEDS

None.

ITEM 15: CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Disclosure controls and procedures are controls and other procedures that are designed to ensure that information required to be disclosed in our company's reports filed or submitted under the *Securities Exchange Act of 1934* is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in our company's reports filed under the *Securities Exchange Act of 1934* is accumulated and communicated to management, including our company's Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

As required by Rule 13a-15 under the *Securities Exchange Act of 1934*, we have carried out an evaluation of the effectiveness of the design and operation of our company's disclosure controls and procedures as of the end of the period covered by this annual report on Form 20-F, being December 31, 2020. This evaluation was carried out by our Chief Executive Officer (being our principal executive officer) and Chief Financial Officer (being our principal financial officer). Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures are effective.

Report of Management on Internal Control over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rule 13a-15(f) or 13d-15(f) under the *Securities Exchange Act of 1934*, as amended. Our internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of consolidated financial statements for external purposes in accordance with IFRS. Our internal control over financial reporting includes those policies and procedures that:

1. pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of our assets and our consolidated entities;

2. provide reasonable assurance that transactions are recorded as necessary to permit preparation of the consolidated financial statements in accordance with IFRS and that receipts and expenditures of our company are being made only in accordance with authorizations of management and our directors; and

3. provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the consolidated financial statements.

Management, including our Chief Executive Officer and Chief Financial Officer, conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2021. In conducting this evaluation, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control — Integrated Framework (2013).*

Based on this evaluation, management concluded that, as of December 31, 2021, our internal control over financial reporting was effective.

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Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during the year ended December 31, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Controls

Internal control over financial reporting has inherent limitations. Internal control over financial reporting is a process that involves human diligence and compliance and is subject to lapses in judgment and breakdowns resulting from human failures. Internal control over financial reporting also can be circumvented by collusion or improper management override. Because of such limitations, there is a risk that material misstatements will not be prevented or detected on a timely basis by internal control over financial reporting. However, these inherent limitations are known features of the financial reporting process. Therefore, it is possible to design into the process safeguards to reduce, though not eliminate, this risk.

ITEM 16: [RESERVED]

ITEM 16A: AUDIT COMMITTEE FINANCIAL EXPERT

Silke Stenger was appointed Chair of our Audit Committee with effect from July 14, 2017. Our board of directors had determined that Ms. Stenger qualified as an "audit committee financial expert" and was "independent", as such terms are used in Section 303A.02 of the NYSE Listed Company Manual.

ITEM 16B: CODE OF ETHICS

Code of Ethics and Code of Conduct

Our board of directors encourages and promotes a culture of ethical business conduct through the adoption and monitoring of our codes of ethics and conduct, the insider trading policy and such other policies as may be adopted from time to time.

Our board of directors adopted a written Code of Business Conduct and Ethics and Insider Trading Policy on July 12, 2017, referred to as the "Code of Ethics". Since such adoption, our board of directors has conducted an assessment of its performance, including the extent to which the board and each director comply therewith. It is intended that such assessment will be conducted annually.

A copy of our Code of Ethics is available online at our website at www.scullyroyalty.com. A copy of the Code of Ethics is filed as Exhibit 11.1 to this Annual Report on Form 20-F.

We will provide a copy of the Code of Ethics to any person without charge, upon request. Requests can be sent by mail to: Unit 803, Dina House, Ruttonjee Centre, 11 Duddell Street, Hong Kong, SAR China.

ITEM 16C: PRINCIPAL ACCOUNTANT FEES AND SERVICES

Audit Fees

The aggregate fees for audit services rendered for the audit of our annual financial statements for the year ended December 31, 2021 by Smythe LLP were $490,000 (before goods and services tax). The aggregate fees for audit services rendered for the audit of our annual financial statements for the year ended December 31, 2020 by Smythe LLP were $442,000 (before goods and services tax).

Audit-Related Fees

During each of the years ended December 31, 2021 and 2020, no fees were billed, respectively, by Smythe LLP for services that were reasonably related to the performance of the audit of our financial statements and that were not reported under the category "Audit Fees" above.

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Tax Fees

During the fiscal year ended December 31, 2021, no fees were billed by Smythe LLP for tax, compliance, tax advice and tax planning. During the fiscal year ended December 31, 2020, no fees were billed by BDO LLP for tax, compliance, tax advice and tax planning.

All Other Fees

During the fiscal year ended December 31, 2021, $3,000 was billed by Smythe LLP for services not related to audit or tax. During the fiscal year ended December 31, 2020, $nil fees were billed by BDO LLP for services not related to audit or tax.

Audit Committee Pre-approval Policies and Procedures

The Audit Committee pre-approves all services provided by our independent auditors. All of the services and fees described under the categories of "Audit-Related Fees", "Tax Fees" and "All Other Fees" were reviewed and approved by the Audit Committee before the respective services were rendered and none of such services were approved by the Audit Committee pursuant to paragraph (c)(7)(i)(c) of Rule 2-01 of Regulation S-X.

ITEM 16D: EXEMPTIONS FROM THE LISTING STANDARDS FOR AUDIT COMMITTEES

Not applicable.

ITEM 16E: PURCHASES OF EQUITY SECURITIES BY THE ISSUER AND AFFILIATED PURCHASERS

In 2020, neither we nor any affiliated purchaser (as defined in the *Securities Exchange Act of 1934*) purchased any of our Common Shares.

ITEM 16F: CHANGE IN REGISTRANT'S CERTIFYING ACCOUNTANT

Not applicable.

ITEM 16G: CORPORATE GOVERNANCE

Our Common Shares are listed on the NYSE. Summarized below are the significant differences between our corporate governance rules and the corporate governance rules applicable to U.S. domestic issuers under the listing standards of the NYSE:

- Section 303A.03 of the NYSE's Listed Company Manual requires the non-management directors of a listed company to meet at regularly scheduled executive sessions without management.

  While our independent directors (all of whom are non-management directors) meet regularly for committee meetings at which they are all present without non-independent directors or management in attendance, they do not generally hold other regularly scheduled meetings at which non-independent directors and members of management are not in attendance.

- Section 303A.08 of the NYSE's Listed Company Manual requires shareholder approval of all equity compensation plans and material revisions to such plans.

Our current stock option has been approved by our shareholders. However, our plans do not specifically require shareholder approval of material revisions.

ITEM 16H: MINE SAFETY DISCLOSURE

Not applicable.

ITEM 17: FINANCIAL STATEMENTS

Not applicable. Please see "*Item 18: Financial Statements*".

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ITEM 18: FINANCIAL STATEMENTS

The following attached audit reports and financial statements are incorporated herein:

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Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of Scully Royalty Ltd.

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated statement of financial position of Scully Royalty Ltd. And its subsidiaries (the "Company") as of December 31, 2021 and 2020, the related consolidated statements of operations, comprehensive income (loss), changes in equity and cash flows, for the years ended December 31, 2021 and 2020, and the related notes (collectively referred to as the "consolidated financial statements").

In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as at December 31, 2021 and 2020, and the results of its operations and its cash flows for the years ended December 31, 2021 and 2020, in conformity with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board.

We also have audited the adjustments to the 2019 consolidated financial statements to retrospectively apply the stock dividend, as described in Notes 17 and 21. In our opinion, such adjustments are appropriate and have been properly applied. We were not engaged to audit, review, or apply any procedures to the 2019 consolidated financial statements of the Company other than with respect to the adjustments and, accordingly, we do not express an opinion or any other form of assurance on the 2019 consolidated financial statements taken as a whole.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the consolidated financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the consolidated financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

Assessment of the recoverable amounts of non-financial assets: interest in the Scully iron ore mine, hydrocarbon properties and power plant

As discussed in Notes 11 and 12 to the consolidated financial statements, the Company has interests in the Scully iron ore mine of $206.4 million, hydrocarbon properties of $68.4 million, and power plant assets of $25.8 million as at December 31, 2021. An indicator of impairment was identified for these assets as a result of the Company's market capitalization being significantly lower than the net assets of the Company throughout 2021. Management estimated the recoverable amounts of these non-financial assets using forecasted production and sales levels, future prices of the underlying commodities, expected reserves, asset retirement obligations, future development and operating costs, inflation rates, and discount rates.

We identified the assessment of the recoverable amounts in these non-financial assets as a critical audit matter as auditing the estimates and assumptions are subject to a high degree of auditor judgment in applying audit procedures and in evaluation of the results of those procedures. This resulted in an increased extent of audit effort including reliance on fair value specialists.

Our audit procedures related to the assessment of future production and sales levels, future prices of the underlying commodities, expected reserves, asset retirement obligations, future development and operating costs, inflation rates, and the selection of the discount rates included the following, among others:

- We evaluated the estimate of forecasted production and sales levels by comparing historical estimates to actual results.

- With the assistance of fair value specialists, we evaluated the reasonability of the valuation methodology and significant assumptions made by comparing the source information underlying the determination of the discount rates and developing a range of independent estimates and comparing those to the discount rates used by management.

- We used the work of management's specialists in performing the procedures to evaluate the reasonability of the estimates of used to determine the recoverable value of the Company's interest in these assets. As a basis for using the work of management's specialists, we ensured:

  - The specialists' qualifications were appropriate, and the Company's relationship with the specialists was assessed for biases.

  - We evaluated the methods and assumptions used by the specialists, tested the data used by the specialists and performed an assessment of the specialists' findings.

  - We evaluated whether the significant assumptions used, such as expected reserves, inflation rates, future development and operating costs, were reasonable considering the past performance of the Company, consistency with industry pricing forecasts and whether they were consistent with evidence obtained in other areas of the audit.

Fair value of investment properties

As discussed in Note 10 to the consolidated financial statements, the Company has investment properties of $34.4 million as at December 31, 2021. The Company has elected the fair value model for investment properties where these assets are measured at fair value subsequent to initial recognition on the consolidated statements of financial position. Management makes estimates of future expected market rents and revenues, vacancy rates, operating costs, and discount rates in estimating the fair values.

We identified the fair value of investment properties as a critical audit matter as auditing these estimates and assumptions require a high degree of judgment as the estimations made by management contains significant measurement uncertainty. This resulted in an increased extent of audit effort, including the use of fair value specialists.

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Our audit procedures related to the future expected market rents and revenues, vacancy rates, operating costs, and discount rates included the following, among others:

- Tested management's future expected market rents and revenues, vacancy rates, operating costs and discount rates through independent analysis and comparison to external sources including objective contractual information, and observable economic indicators, where applicable.

- Evaluated management's ability to accurately estimate fair value and future expected market rents and revenues, vacancy rates and operating costs by comparing management's historical fair value estimates and forecasts to actual results.

- With the assistance of fair value specialists, we evaluated the reasonableness of the valuation methodology and determination of discount rates by testing the source information underlying the determination of discount rates, developing a range of independent estimates and comparing those to the capitalization rates and discount rates used, and considering recent market transactions.

- We used the work of management's specialists in performing the procedures to evaluate the reasonableness of the estimates, we ensured:

  – The specialists' qualifications were appropriate, and the Company's relationship with the specialists was assessed for biases.

  – We evaluated the methods and assumptions used by the specialists, tests of data used by the specialists and performed an assessment of the specialists' findings.

  – We evaluated whether the significant assumptions used were reasonable considering the past performance of the Company, consistency with industry and whether they were consistent with evidence obtained in other areas of the audit.

/s/ Smythe LLP
Chartered Professional Accountants

We have served as the Company's auditor since 2020.

Vancouver, Canada
April 29, 2022

Report of Independent Registered Public Accounting Firm

Shareholders and Board of Directors
Scully Royalty Ltd.
Hong Kong, China

Opinion on the Consolidated Financial Statements

We have audited, before the effects on earnings per share of the adjustment to retrospectively account for the stock dividend that occurred in 2021 as described in Notes 17 and 21 to the consolidated financial statements, the accompanying consolidated statements of operations, comprehensive income (loss), changes in equity, and cash flows and the related notes (collectively referred to as the "consolidated financial statements") for the year ended December 31, 2019 of Scully Royalty Ltd. (the "Company"). In our opinion, the consolidated financial statements present fairly, in all material respects, the results of its operations and its cash flows for the year ended December 31, 2019, in conformity with International Financial Reporting Standards as issued by the International Accounting Standards Board.

We were not engaged to audit, review, or apply any procedures to the retrospective restatement of earnings per share arising from the stock dividend that occurred in 2021, as described in Notes 17 and 21 to the consolidated financial statements and, accordingly, we do not express an opinion or any other form of assurance about whether such restatements are appropriate and have been properly applied. Those adjustments were audited by Smythe LLP.

Adoption of New Accounting Standard

As discussed in Note 2 to the consolidated financial statements, effective on January 1, 2019, the Company changed its method of accounting for leases due to the adoption of IFRS 16, Leases.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's consolidated financial statements based on our audit. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audit we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audit included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audit provides a reasonable basis for our opinion.

/s/ BDO LLP

BDO LLP

We have served as the Company's auditor from 2019 through 2020.
London, United Kingdom
May 11, 2020

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SCULLY ROYALTY LTD.

CONSOLIDATED STATEMENTS OF FINANCIAL POSITION
(Canadian Dollars in Thousands)

	Notes	December 31, 2021	December 31, 2020
ASSETS			
Current Assets			
Cash		$ 54,873	$ 63,552
Securities	6	19,256	18,497
Trade receivables	7	4,164	4,755
Tax receivables		1,092	282
Other receivables	8	64,446	39,518
Inventories	9	1,100	1,413
Restricted cash		142	175
Deposits, prepaid and other		581	1,019
Total current assets		145,654	129,211
Non-current Assets			
Securities	6	3,625	3,721
Loan receivable		—	1,237
Real estate for sale		12,867	13,954
Investment property	10	34,430	36,908
Property, plant and equipment	11	49,065	51,883
Interests in resource properties	12	254,706	261,355
Deferred income tax assets	13	9,619	10,856
Total non-current assets		364,312	379,914
		$ 509,966	$ 509,125
LIABILITIES AND EQUITY			
Current Liabilities			
Account payables and accrued expenses	14	$ 11,346	$ 15,680
Income tax liabilities		1,002	457
Total current liabilities		12,348	16,137
Non-current Liabilities			
Bonds payable	15,24	35,227	38,053
Loan payable		6,817	5,223
Decommissioning obligations	16	15,096	14,072
Deferred income tax liabilities	13	67,461	66,115
Other		483	801
Total non-current liabilities		125,084	124,264
Total liabilities		137,432	140,401
Equity			
Capital stock, at par value of US$0.001 per share and fully paid	17	19	16
Additional paid-in capital	17	312,468	312,471
Treasury stock	17	(2,643)	(2,643)
Contributed surplus		18,988	16,627
Retained earnings		9,078	1,378
Accumulated other comprehensive income		27,690	33,695
Shareholders' equity		365,600	361,544
Non-controlling interests		6,934	7,180
Total equity		372,534	368,724
		$ 509,966	$ 509,125

The accompanying notes are an integral part of these consolidated financial statements.

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SCULLY ROYALTY LTD.

CONSOLIDATED STATEMENTS OF OPERATIONS
For the Years Ended December 31, 2021, 2020 and 2019
(Canadian Dollars in Thousands, Except Share and per Share Amounts)

	Notes	2021	2020	2019
Revenue	18	$ 71,291	$ 59,432	$ 113,267
Costs and expenses:				
Costs of sales and services	18	30,918	26,870	96,561
Selling, general and administrative	18	21,144	19,901	22,573
Selling, general and administrative - share-based compensation	19	2,497	—	—
Finance costs		1,935	1,881	1,243
Credit losses (reversal), net	18	88	(3,108)	13,398
Exchange differences on foreign currency transactions, net (gain) loss		(2,838)	2,709	(3,724)
		53,744	48,253	130,051
Income (loss) before income taxes		17,547	11,179	(16,784)
Income tax expense:				
Income taxes	20	(2,289)	(4,893)	(482)
Resource property revenue taxes	20	(7,887)	(6,074)	(1,137)
	20	(10,176)	(10,967)	(1,619)
Net income (loss) for the year		7,371	212	(18,403)
Net loss (income) attributable to non-controlling interests		193	157	(150)
Net income (loss) attributable to owners of the parent company		$ 7,564	$ 369	$ (18,553)
Earnings (loss) per share:				
Basic	21	$ 0.51	$ 0.03 *	$ (1.26)*
Diluted	21	$ 0.51	$ 0.03 *	$ (1.26)*
Weighted average number of common shares outstanding				
– Basic	21	14,779,302	14,779,302 *	14,765,938 *
– Diluted	21	14,908,312	14,779,302 *	14,765,938 *

* The amounts have been restated for the stock dividends distributed in the year ended December 31, 2021 (see Notes 17 and 21).

The accompanying notes are an integral part of these consolidated financial statements.

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SCULLY ROYALTY LTD.

CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
For the Years Ended December 31, 2021, 2020 and 2019
(Canadian Dollars in Thousands)

	2021	2020	2019
Net income (loss) for the year	$ 7,371	$ 212	$ (18,403)
Other comprehensive (loss) income, net of income taxes:			
Items that will be reclassified subsequently to profit or loss			
Exchange differences arising from translating financial statements of foreign operations	(6,217)	7,219	(13,197)
Reclassification adjustment for exchange differences to statements of operations for subsidiaries deconsolidated	—	215	(1,758)
Net exchange difference	(6,217)	7,434	(14,955)
Fair value (loss) gain on securities at fair value through other comprehensive income	(57)	150	(70)
Reclassification of reversal of impairment charge to statement of operations	219	(97)	66
Net fair value gain (loss) on securities at fair value through other comprehensive income	162	53	(4)
	(6,055)	7,487	(14,959)
Total comprehensive income (loss) for the year	1,316	7,699	(33,362)
Comprehensive loss attributable to non-controlling interests	243	233	138
Comprehensive income (loss) attributable to owners of the parent company	$ 1,559	$ 7,932	$ (33,224)

The accompanying notes are an integral part of these consolidated financial statements.

SCULLY ROYALTY LTD.

CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY
For the Years Ended December 31, 2021, 2020 and 2019
(Canadian Dollars in Thousands)

	Capital Stock and Additional Paid-In Capital*		Treasury Stock*		Contributed Surplus		Accumulated Other Comprehensive Income (Loss)				
	Number of Shares	Amount	Number of Shares	Amount	Share-based Compensation	Retained Earnings	Securities at Fair Value Through Other Comprehensive Income	Currency Translation Adjustments	Share-holders' Equity	Non-controlling Interests	Total Equity
Balance at January 1, 2019	12,600,448	$ 312,148	(65,647)	$ (2,643)	$ 16,735	$ 19,333	$ (141)	$ 40,944	$ 386,376	$ 8,030	$ 394,406
Net (loss) income	—	—	—	—	—	(18,553)	—	—	(18,553)	150	(18,403)
Exercise of stock options	20,000	339	—	—	(108)	—	—	—	231	—	231
Issuance of shares in a subsidiary to a non-controlling interest	—	—	—	—	—	229	—	—	229	510	739
Net fair value loss	—	—	—	—	—	—	(4)	—	(4)	—	(4)
Net exchange differences	—	—	—	—	—	—	—	(14,667)	(14,667)	(288)	(14,955)
Balance at December 31, 2019	12,620,448	312,487	(65,647)	(2,643)	16,627	1,009	(145)	26,277	353,612	8,402	362,014
Net income (loss)	—	—	—	—	—	369	—	—	369	(157)	212
Issuance of shares in a subsidiary to a non-controlling interest	—	—	—	—	—	—	—	—	—	8	8
Dividends paid	—	—	—	—	—	—	—	—	—	(37)	(37)
Disposition of a subsidiary	—	—	—	—	—	—	—	—	—	(960)	(960)
Net fair value gain	—	—	—	—	—	—	53	—	53	—	53
Net exchange differences	—	—	—	—	—	—	—	7,510	7,510	(76)	7,434
Balance at December 31, 2020	12,620,448	312,487	(65,647)	(2,643)	16,627	1,378	(92)	33,787	361,544	7,180	368,724
Net income (loss)	—	—	—	—	—	7,564	—	—	7,564	(193)	7,371
Shares issued from stock dividends (Note 17)	2,236,133	—	(11,632)	—	—	—	—	—	—	—	—
Forfeiture of stock options	—	—	—	—	(136)	136	—	—	—	—	—
Share-based compensation	—	—	—	—	2,497	—	—	—	2,497	—	2,497
Dividends payable to non-controlling interest	—	—	—	—	—	—	—	—	—	(3)	(3)
Net fair value gain	—	—	—	—	—	—	162	—	162	—	162
Net exchange differences	—	—	—	—	—	—	—	(6,167)	(6,167)	(50)	(6,217)
Balance at December 31, 2021	14,856,581	$ 312,487	(77,279)	$ (2,643)	$ 18,988	$ 9,078	$ 70	$ 27,620	$ 365,600	$ 6,934	$ 372,534

*See Note 17.

The accompanying notes are an integral part of these consolidated financial statements.

SCULLY ROYALTY LTD.
CONSOLIDATED STATEMENTS OF CASH FLOWS
For the Years Ended December 31, 2021, 2020 and 2019
(Canadian Dollars in Thousands)

	Notes	2021	2020	2019
Cash flows from operating activities:				
Net income (loss) for the year		$ 7,371	$ 212	$ (18,403)
Adjustments for:				
Depreciation, depletion and amortization		11,023	11,470	8,287
Exchange differences on foreign currency transactions		(2,838)	2,709	(3,724)
Loss (gain) on securities	18	2,320	(758)	(931)
Gain on derivative contracts, net	18	(1,376)	—	—
Loss (gain) on dispositions of subsidiaries, net	18	—	546	(2,243)
Share-based compensation	19	2,497	—	—
Deferred income taxes	20	2,074	4,798	98
Market value increase on commodity inventories	18	—	—	(160)
Interest accretion		332	143	743
Change in fair value of investment property and real estate held for sale	18	(407)	(757)	(3,122)
Change in fair value of a loan payable measured at FVTPL	18	1,616	549	979
Credit losses (reversal), net	18	88	(3,108)	13,398
(Reversal of) write-downs of inventories	18	(19)	469	1,822
Write-offs of intangible assets and prepaid		—	25	18
Gains on settlements and derecognition of liabilities	18	(390)	(2,600)	(1,168)
Changes in operating assets and liabilities, net of effects of acquisitions and dispositions:				
Short-term securities		(3,949)	(2,608)	(6,384)
Receivables		(24,489)	(33,847)	(466)
Inventories		333	517	1,551
Restricted cash		20	(60)	159
Deposits, prepaid and other		415	97	(468)
Assets held for sale		—	—	396
Account payables and accrued expenses		(1,685)	521	(157)
Income tax liabilities		563	26	(35)
Other		(136)	385	3
Cash flows used in operating activities		(6,637)	(21,271)	(9,807)
Cash flows from investing activities:				
Purchases of property, plant and equipment, net		(982)	(227)	(720)
Proceeds from sales of investment property		11	4,564	—
Increase in loan receivables, net		—	(265)	(843)
Acquisition of indemnification asset		—	—	(6,737)
Dispositions of subsidiaries, net of cash disposed		—	(873)	(1,902)
Other		—	220	—
Cash flows (used in) provided by investing activities		(971)	3,419	(10,202)
Cash flows from financing activities:				
Issuance of bonds payable	24	—	—	36,511
Payments of commissions, fees and expenses on issuance of bonds payable	24	—	—	(1,078)
Reductions in lease liabilities	24	(424)	(451)	(872)
Exercise of stock options		—	—	231
Dividends paid to non-controlling interests		—	(30)	—
Other		—	(17)	—
Cash flows (used in) provided by financing activities		(424)	(498)	34,792
Exchange rate effect on cash		(647)	3,628	(4,269)
(Decrease) increase in cash		(8,679)	(14,722)	10,514
Cash and cash equivalents, beginning of year		63,552	78,274	67,760
Cash and cash equivalents, end of year		$ 54,873	$ 63,552	$ 78,274
Supplemental cash flows disclosures (see Note 24)				
Interest received		$ 221	$ 484	$ 1,282
Dividends received		244	11	—
Interest paid		(1,747)	(1,880)	(342)
Income taxes paid		(9,526)	(3,730)	(780)

The accompanying notes are an integral part of these consolidated financial statements.

SCULLY ROYALTY LTD.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2021, 2020 and 2019
(Canadian Dollars in Thousands)

Note 1. Nature of Business

Scully Royalty Ltd. ("Scully" or the "Company") is incorporated under the laws of the Cayman Islands. Scully and the entities it controls are collectively known as the "Group" in these consolidated financial statements. The Group's core asset is a 7% net revenue royalty interest in the Scully iron ore mine in Newfoundland & Labrador, Canada. Scully is listed on the New York Stock Exchange under the symbol SRL. The Company's primary business office is Suite 803, 11 Duddell Street, Dina House, Ruttonjee Centre, Central, Hong Kong SAR China.

Note 2. Basis of Presentation and Summary of Significant Accounting Policies

A. Basis of Presentation

Basis of Accounting

These consolidated financial statements have been prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board (the "IASB"). Scully complies with all the requirements of IFRS. The principal accounting policies applied in the preparation of these consolidated financial statements are set out below. These policies have been consistently applied.

These consolidated financial statements were prepared using going concern, accrual (except for cash flow information) and historical cost (except for investment property and certain financial assets and financial liabilities which are measured at fair value and certain inventories that are measured at fair value less costs to sell) bases.

In assessing the Company's ability to continue as a going concern and the appropriateness of assuming the going concern basis in the preparation of its consolidated financial statements, management considered the impact and potential impact from the outbreak of a novel coronavirus ("COVID-19") in 2019 and the subsequent spread of the virus globally through 2020 and 2021 (see Note 2D(v)).

The presentation currency of these consolidated financial statements is the Canadian dollar ($), rounded to the nearest thousand (except per share amounts and currency rates), unless otherwise indicated.

Principles of Consolidation

These consolidated financial statements include the accounts of Scully and entities it controls. The Company controls an investee if and only if it has all the following: (a) power over the investee; (b) exposure, or rights, to variable returns from its involvement with the investee; and (c) the ability to use its power over the investee to affect the amount of its returns. When the Group holds, directly or indirectly, more than 50% of the voting power of an investee, it is presumed that the Group controls the investee, unless it can be clearly demonstrated that this is not the case. Subsidiaries are consolidated from the date of their acquisition, being the date on which the Group obtains control, and continue to be consolidated until the date that such control ceases. All intercompany balances and transactions, including unrealized profits arising from intragroup transactions, have been eliminated in full. Unrealized losses are eliminated unless the transaction provides evidence of an impairment of the asset transferred.

On the acquisition date, a non-controlling interest is measured at either its fair value or its proportionate share in the recognized amounts of the subsidiary's identifiable net assets, on a transaction-by-transaction basis. Subsequently, the non-controlling interest increases or decreases for its share of changes in equity since the acquisition date.

After initial consolidation of a subsidiary, when the proportion of equity held by non-controlling interests changes, the Group, as long as it continues to control the subsidiary, adjusts the carrying amounts of the controlling and non-controlling interests to reflect the changes in their relative interests in the subsidiary. The Group recognizes directly in equity any difference between the amount by which the non-controlling interests are adjusted and the fair value of the consideration paid or received and attributes such difference to the owners of Scully.

SCULLY ROYALTY LTD.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2021, 2020 and 2019
(Canadian Dollars in Thousands)

Note 2. Basis of Presentation and Summary of Significant Accounting Policies (continued)

When the Group loses control of a subsidiary it: (a) derecognizes (i) the assets (including any goodwill) and liabilities of the subsidiary at their carrying amounts at the date when control is lost and (ii) the carrying amount of any non-controlling interests in the former subsidiary at the date when control is lost (including any components of other comprehensive income attributable to them); (b) recognizes (i) the fair value of the consideration received, if any, from the transaction, event or circumstances that resulted in the loss of control, (ii) if the transaction, event or circumstances that resulted in the loss of control involves a distribution of shares of the subsidiary to owners in their capacity as owners, that distribution and (iii) any investment retained in the former subsidiary at its fair value at the date when control is lost; (c) reclassifies to profit or loss, or transfers directly to retained earnings if required by IFRS, the amounts recognized in other comprehensive income in relation to the subsidiary; and (d) recognizes any resulting difference as a gain or loss under costs of sales and services in profit or loss attributable to the owners of Scully.

The financial statements of Scully and its subsidiaries used in the preparation of these consolidated financial statements are prepared as of the same date, using uniform accounting policies for like transactions and other events in similar circumstances.

Foreign Currency Translation

The presentation currency of the Group's consolidated financial statements is the Canadian dollar.

Scully conducts its business throughout the world through its foreign operations. Foreign operations are entities that are subsidiaries or branches, the activities of which are based or conducted in countries or currencies other than those of Scully. Functional currency is the currency of the primary economic environment in which an entity operates and is normally the currency in which the entity primarily generates and expends cash. Foreign currency is a currency other than the functional currency of the entity. The functional currencies of the Company and its subsidiaries and branches primarily comprise the Canadian dollar, Euro ("EUR" or "€") and United States dollar ("US$").

Reporting foreign currency transactions in the functional currency

A foreign currency transaction is a transaction that is denominated or requires settlement in a foreign currency. A foreign currency transaction is recorded, on initial recognition in an entity's functional currency, by applying to the foreign currency amount the spot exchange rate between the functional currency and the foreign currency at the date of the transaction. At the end of each reporting period: (a) foreign currency monetary items are translated using the closing rate; (b) non-monetary items denominated in a foreign currency that are measured in terms of historical cost are translated using the exchange rate at the date of the transaction; and (c) foreign currency non-monetary items that are measured at fair value are translated using the exchange rates at the date when the fair value was determined.

Exchange differences arising on the settlement of monetary items or on translating monetary items at rates different from those at which they were translated on initial recognition during the period or in previous periods are recognized in profit or loss in the period in which they arise, except for exchange differences arising on a monetary item that forms part of a reporting entity's net investment in a foreign operation which are initially recorded in other comprehensive income in the consolidated financial statements and reclassified from equity to profit or loss on disposal of the net investment.

When a gain or loss on a non-monetary item is recognized in other comprehensive income, any exchange component of that gain or loss is recognized in other comprehensive income. Conversely, when a gain or loss on a non-monetary item is recognized in profit or loss, any exchange component of that gain or loss is recognized in profit or loss.

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Note 2. Basis of Presentation and Summary of Significant Accounting Policies (continued)

Use of a presentation currency other than the functional currency

When an entity presents its financial statements in a currency that differs from its functional currency, the results and financial position of the entity are translated into the presentation currency using the following procedures: (a) assets and liabilities for each statement of financial position presented are translated at the closing rate at the date of the statement of financial position; (b) income and expenses for each statement of operations presented are translated at exchange rates at the dates of the transactions or, for practical reasons, the average exchange rates for the periods when they approximate the exchange rates at the dates of the transactions; (c) individual items within equity are translated at either the historical exchange rates when practical or at the closing exchange rates at the date of the statement of financial position; and (d) all resulting exchange differences are recognized in other comprehensive income.

The following table sets out exchange rates for the translation of the Euro and United States dollar, which represented the major trading currencies of the Group, into the Canadian dollar:

	EUR	US$
Closing rate at December 31, 2021	1.4391	1.2678
Average rate for the year 2021	1.4828	1.2535
Closing rate at December 31, 2020	1.5608	1.2732
Average rate for the year 2020	1.5298	1.3415
Closing rate at December 31, 2019	1.4583	1.2988
Average rate for the year 2019	1.4856	1.3269

Fair Value Measurement

Certain assets and liabilities of the Group are measured at fair value (see Note 2B).

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. A fair value measurement is for a particular asset or liability. Therefore, when measuring fair value, the Group takes into account the characteristics of the asset or liability if market participants would take those characteristics into account when pricing the asset or liability at the measurement date. A fair value measurement assumes that the transaction to sell the asset or transfer the liability takes place either:

(a) in the principal market for the asset or liability; or

(b) in the absence of a principal market, in the most advantageous market for the asset or liability.

The Group measures the fair value of an asset or a liability using the assumptions that market participants would use when pricing the asset or liability, assuming that market participants act in their economic best interest.

The Group uses valuation techniques that are appropriate in the circumstances and for which sufficient data is available to measure fair value, maximizing the use of relevant observable inputs and minimizing the use of unobservable inputs. IFRS 13, *Fair Value Measurement* ("IFRS 13"), establishes a fair value hierarchy that categorizes the inputs to valuation techniques used to measure fair value into three levels:

Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities that the entity can access at the measurement date.

Level 2 inputs are inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly.

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Note 2. Basis of Presentation and Summary of Significant Accounting Policies (continued)

Level 3 inputs are unobservable inputs for the asset or liability.

Assessing the significance of a particular input to the fair value measurement in its entirety requires judgment, considering factors specific to the asset or liability.

Non-current Assets Held for Sale

A non-current asset (or disposal group) is classified as held for sale if its carrying amount will be recovered principally through a sale transaction rather than through continuing use. For this to be the case, the asset (or disposal group) must be available for immediate sale in its present condition subject only to terms that are usual and customary for the sale of such asset (or disposal group), the appropriate level of management must be committed to a plan to sell the asset (or disposal group) and an active program to locate a buyer and complete the plan must have been initiated. Further, the asset (or disposal group) must be actively marketed for sale at a price that is reasonable in relation to its current fair value and the sale is highly probable to complete within one year from the date of classification, except as permitted under certain events and circumstances. If the aforesaid criteria are no longer met, the Group ceases to classify the asset (or disposal group) as held for sale.

Non-current assets (and disposal groups) classified as held for sale are measured at the lower of their carrying amounts and fair values less costs to sell. The Group does not depreciate or amortize a non-current asset while it is classified as held for sale.

Use of Estimates and Assumptions and Measurement Uncertainty

The timely preparation of the consolidated financial statements in conformity with IFRS requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Management's best estimates are based on the facts and circumstances available at the time estimates are made, historical experience, general economic conditions and trends and management's assessment of probable future outcomes of these matters. Actual results could differ from these estimates and such differences could be material. For critical judgments in applying accounting policies and major sources of estimation uncertainty. See Notes 2C and 2D.

B. Significant Accounting Policies

(i) Financial Instruments

Financial assets and financial liabilities are recognized in the consolidated statement of financial position when the Group becomes a party to the financial instrument contract. A financial asset is derecognized either when the Group has transferred the financial asset and substantially all the risks and rewards of ownership of the financial asset or when the contractual rights to the cash flows expire. A financial liability is derecognized when the obligation specified in the contract is discharged, cancelled or expired.

The Group classifies its financial assets into the following measurement categories: (a) subsequently measured at fair value (either through other comprehensive income ("FVTOCI") or through profit or loss ("FVTPL") and (b) subsequently measured at amortized cost. The classification of financial assets depends on the Group's business model for managing the financial assets and the terms of the contractual cash flows. The Group classifies its financial liabilities as subsequently measured at amortized cost, except for financial liabilities at FVTPL. Change in the fair value of a loan payable measured at FVTPL is included in costs of sales and services.

Regular way purchases and sales of financial assets are accounted for at the settlement date.

Note 2. Basis of Presentation and Summary of Significant Accounting Policies (continued)

When a financial asset or financial liability is recognized initially, the Group measures it at its fair value plus, in the case of a financial asset or financial liability not at FVTPL, transaction costs that are directly attributable to the acquisition or issue of the financial asset or financial liability. Transaction costs related to the acquisition or issue of a financial asset or financial liability at FVTPL are expensed as incurred. The subsequent measurement of a financial instrument and the recognition of associated gains and losses are determined by the financial instrument classification.

A gain or loss on a financial asset or financial liability classified as at FVTPL is recognized in profit or loss for the period in which it arises. A gain or loss on an asset measured at FVTOCI is recognized in other comprehensive income, except for impairment losses, until the financial asset is derecognized, at which time the cumulative gain or loss previously recognized in accumulated other comprehensive income is recognized in profit or loss for the period. For financial assets and financial liabilities carried at amortized cost, a gain or loss is recognized in profit or loss when the financial asset or financial liability is derecognized or impaired and through the amortization process.

Net gains or net losses on financial instruments at FVTPL do not include interest or dividend income.

Whenever quoted market prices are available, bid prices are used for the measurement of fair value of financial assets while ask prices are used for financial liabilities. When the market for a financial instrument is not active, the Group establishes fair value by using a valuation technique. Valuation techniques include using recent arm's length market transactions between knowledgeable, willing parties, if available; reference to the current fair value of another financial instrument that is substantially the same; discounted cash flow analysis; option pricing models; and other valuation techniques commonly used by market participants to price the financial instrument.

(ii) Cash

Cash include cash on hand and cash at banks which have maturities of three months or less from the date of acquisition and are generally interest-bearing.

Restricted cash refers to money that is held for a specific purpose and therefore not available to the Group for immediate or general business use. Restricted cash is accounted for as a separate item from cash on the Group's consolidated statements of financial position.

(iii) Securities

Investments in equity securities are measured at FVTPL.

Debt securities which are held within a business model whose objective is to collect the contractual cash flows and sell the debt securities, and have contractual cash flows that are solely payments of principal and interest on the principal outstanding are measured at FVTOCI. A gain or loss on a financial asset measured at FVTOCI is recognized in other comprehensive income, except for impairment gains or losses and foreign exchange gains and losses, until the financial asset is derecognized. When the financial asset is derecognized, the cumulative gain or loss previously recognized in other comprehensive income is reclassified from equity to profit or loss as a reclassification adjustment. Interest calculated using the effective interest method is recognized in profit or loss. Debt securities which are not held within a business model whose objective is to collect the contractual cash flows and sell the debt securities, or that do not have contractual cash flows that are solely payments of principal and interest on the principal outstanding are measured at FVTPL.

Gains and losses on sales of securities are calculated on the average cost basis.

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Note 2. Basis of Presentation and Summary of Significant Accounting Policies (continued)

(iv) Securities and Financial Liabilities – Derivatives

A derivative is a financial instrument or other contract with all three of the following characteristics: (a) its value changes in response to the change in a specified interest rate, financial instrument price, product price, foreign exchange rate, index of prices or rates, credit rating or credit index, or other variable; (b) it requires no initial net investment or an initial net investment that is smaller than would be required for other types of contracts that would be expected to have a similar response to changes in market factors; and (c) it is settled at a future date. A derivative financial instrument is either exchange-traded or negotiated. A derivative financial instrument is included in the consolidated statements of financial position as a security (i.e. financial asset) or a financial liability and measured at FVTPL. The recognition and measurement of a derivative financial instrument does not apply to a contract that is entered into and continues to be held for the purpose of the receipt or delivery of a non-financial item in accordance with the Group's expected purchase, sale or usage requirements, unless the Group, as allowed under IFRS 9, *Financial Instruments* ("IFRS 9"), designates the contract as measured at FVTPL if it eliminates or significantly reduces a measurement inconsistency.

Where the Group has both the legal right and intent to settle derivative assets and liabilities simultaneously with the counterparty, the net fair value of the derivative financial instruments is reported as an asset or liability, as appropriate.

Changes in the fair values of derivative financial instruments that do not qualify for hedge accounting are recognized in profit or loss as they arise.

(v) Receivables

Generally, trade and other receivables are measured at amortized cost.

Receivables are net of an allowance for credit losses, if any. The Group performs ongoing credit evaluations of its customers and recognizes a loss allowance for expected credit losses. Receivables are considered past due on an individual basis based on the terms of the contracts.

(vi) Allowance for Credit Losses

The Group recognizes and measures a loss allowance for expected credit losses on a financial asset which is measured at amortized cost or at FVTOCI, including a lease receivable, a contract asset or a loan commitment and a financial guarantee contract. The impairment methodology applied depends on whether there has been a significant increase in credit risk since initial recognition. To assess whether there is a significant increase in credit risk, the Group compares the risk of a default occurring on the asset as at the reporting date with the risk of default as at the date of initial recognition based on all information available, and reasonable and supportive forward-looking information.

When there is a significant increase in credit risk or for credit-impaired financial assets, the loss allowance equals the lifetime expected credit losses which is defined as the expected credit losses that result from all possible default events over the expected life of a financial instrument. If, at the reporting date, the credit risk on a financial asset has not increased significantly since initial recognition, the Group measures the loss allowance for the financial instrument at an amount equal to the 12-month expected credit losses which is defined as the portion of lifetime expected credit losses that represent the expected credit losses that result from default events on the financial instrument that are possible within the 12 months after the reporting date.

As required by IFRS 9, the Group always measures the loss allowance at an amount equal to lifetime expected credit losses for trade receivables and contract assets that result from transactions that are within the scope of IFRS 15, *Revenue from Contracts with Customers* ("IFRS 15").

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Note 2. Basis of Presentation and Summary of Significant Accounting Policies (continued)

The Group's allowance for credit losses is maintained at an amount considered adequate to absorb expected or estimated credit-related losses. Such allowance reflects management's best estimate of the losses in the Group's financial assets and judgments about economic conditions. Estimates and judgments could change in the near term, and could result in a significant change to a recognized allowance. An allowance for credit losses is increased by provisions, which are recognized in profit or loss and reduced by write-offs net of any recoveries. Write-offs are generally recorded after all reasonable restructuring or collection activities have taken place and there is no realistic prospect of recovery.

(vii) Inventories

Inventories principally consist of raw materials, work-in-progress, and finished goods. Inventories, other than commodities products, are recorded at the lower of cost and net realizable value. Cost, where appropriate, includes an allocation of manufacturing overheads incurred in bringing inventories to their present location and condition and is assigned by using the first-in, first-out or weighted average cost formula, depending on the class of inventories. Net realizable value represents the estimated selling price less all estimated costs of completion and costs to be incurred in marketing, selling and distribution. The amount of any write-down of inventories to net realizable value and all losses of inventories are recognized as an expense in the period the write-down or loss occurs. The reversal of a write-down of inventories arising from an increase in net realizable value is recognized as a reduction in the amount of costs of sales and services in the period in which the reversal occurs.

Commodity products acquired by the Group as a broker-trader in the Group's merchant banking activities with the purpose of selling in the near future and generating a profit from fluctuations in price or broker-traders' margin are measured at fair value less costs to sell. Fair values of the Group's inventories are determined by reference to their contractual selling prices or quoted prices in marketplaces in the absence of a contract (Level 1 of the fair value hierarchy), in accordance with IFRS 13.

(viii) Real Estate for Sale

Real estate for sale is real estate intended for sale in the ordinary course of business or in the process of construction or development for such sale. The Group's real estate for sale forms part of the security package for the €25,000 in principal amount of bonds (see Note 15) issued by Merkanti Holding plc ("Merkanti Holding") in the year ended December 31, 2019, and to the extent that any sales of these properties, in whole or in part, cause the security to fall below a certain ratio, proceeds of said sale, up to an amount of the collateral shortfall, are required to be placed as cash collateral with the bondholder trustee until maturity.

Real estate for sale is measured at the lower of cost (on a specific item basis) and net realizable value. Net realizable value is estimated by reference to sale proceeds of similar properties sold in the ordinary course of business less all estimated selling expenses around the reporting date, or by management estimates based on prevailing market conditions. The amount of any write-down of properties to net realizable value is recognized as an expense in the period the write-down occurs. The reversal of a write-down arising from an increase in net realizable value is recognized in the period in which the reversal occurs.

All of the Group's real estate is located in Europe.

(ix) Investment Property

Investment property is property that is held for generating rental income or for capital appreciation or both, rather than for: (a) use in the production or supply of goods or services or for administrative purposes; or (b) sale in the ordinary course of business. The Group's investment property comprises freehold land and buildings. The Group's investment property forms part of the security package for the €25,000 in principal amount of bonds (see Note 15) issued by Merkanti Holding in the year ended December 31, 2019. Investment property is initially recognized at cost including related transaction costs. After initial recognition, investment property is measured at fair value, with changes in fair value recognized in profit or loss in the period in which they arise.

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Note 2. Basis of Presentation and Summary of Significant Accounting Policies (continued)

The Group determines fair value without any deduction for transaction costs it may incur on sale or other disposal. Fair value of the Group's investment property is based on valuations prepared annually by external evaluators in accordance with guidance issued by the International Valuation Standards Council and reviewed by the Group, or these valuations are updated by management when there are no significant changes in the inputs to the valuation prepared by external evaluators in the preceding year, in accordance with guidance on fair value in IFRS 13.

(x) Property, Plant and Equipment

Property, plant and equipment are carried at cost, net of accumulated depreciation and, if any, accumulated impairment losses. The initial cost of an item of property, plant and equipment comprises its purchase price or construction cost, any costs directly attributable to bringing the asset into operation, the initial estimate of any decommissioning obligation, if any, and, for qualifying assets, borrowing costs. The purchase price or construction cost is the aggregate amount paid and the fair value of any other consideration given to acquire the asset. Where an item of property, plant and equipment or part of the item that was separately depreciated is replaced and it is probable that future economic benefits associated with the replacement item will flow to the Group, the cost of the replacement item is capitalized and the carrying amount of the replaced asset is derecognized. All other replacement expenditures are recognized in profit or loss when incurred.

Inspection costs associated with major maintenance programs are capitalized and amortized over the period to the next inspection. All other maintenance costs are expensed as incurred.

When a right-of-use asset is acquired under a lease contract, the asset is measured at cost at the commencement date. The cost of the right-of-use asset comprises: (a) the amount of the initial measurement of the lease liability; (b) any lease payments made at or before the commencement date, less any lease incentives received; (c) any initial direct costs incurred by the Group; and (d) an estimate of costs to be incurred by the Group in dismantling and removing the underlying asset, restoring the site on which it is located or restoring the underlying asset to the condition required by the terms and conditions of the lease, unless those costs are incurred to produce inventories. After the commencement date, the Group measures the right-of-use asset applying a cost model whereby the Group measures the right-of-use asset at cost less any accumulated depreciation and any accumulated impairment losses and adjusts it for any remeasurement of the lease liabilities reflecting any reassessment, lease modifications or revised in-substance fixed lease payments.

The Group elected to apply IFRS 16, *Leases* ("IFRS 16"), retrospectively, with the cumulative effect of the initial application of the new standard recognized at the date of initial application, being January 1, 2019. For further discussion, see Note 2B(xiv) below. The difference between the carrying amount of property, plant and equipment applying IAS 17, *Leases,* at the end of 2018 immediately preceding the date of initial application and the carrying amount in the consolidated statement of financial position at the date of initial application is reconciled as follows:

Carrying amount of property, plant and equipment as at December 31, 2018	$	58,325
Adjustment for the lease liabilities under IFRS 16 on the date of initial application		2,911
Carrying amount of property, plant and equipment recognized on the initial adoption of IFRS 16 as at January 1, 2019	$	61,236

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Note 2. Basis of Presentation and Summary of Significant Accounting Policies (continued)

The depreciable amounts of the Group's property, plant, and equipment (i.e. the costs of the assets less their residual values) are depreciated according to the following estimated useful lives and methods, other than the right-of-use assets which are depreciated from lease commencement dates to the earlier of the end of their useful lives or the end of their lease terms:

	Lives	Method
Processing plant and equipment	5 to 20 years	straight-line
Refinery and power plants	20 to 30 years	straight-line
Office equipment and other	3 to 10 years	straight-line
Office premises	2 to 10 years	straight-line

Depreciation expense is included in costs of sales and services or selling, general and administrative expense, whichever is appropriate.

The residual value and the useful life of an asset are reviewed at least at each financial year-end and, if expectations differ from previous estimates, the changes, if any, are accounted for as a change in an accounting estimate in accordance with IAS 8, *Accounting Policies, Changes in Accounting Estimates and Errors* ("IAS 8"). The depreciation method applied to an asset is reviewed at least at each financial year-end and, if there has been a significant change in the expected pattern of consumption of the future economic benefits embodied in the asset, the method is changed to reflect the changed pattern.

The carrying amount of an item of property, plant and equipment is derecognized upon disposal or when no future economic benefits are expected to arise from the continued use of the asset. Any gain or loss arising on derecognition of the asset (calculated as the difference between the net disposal proceeds and the carrying amount of the item) is included in profit or loss in the period in which the item is derecognized.

(xi) Interests in Resource Properties

The Group's interests in resource properties are mainly comprised of an interest in the Scully iron ore mine, and to a lesser extent, exploration and evaluation assets (comprising hydrocarbon probable reserves and hydrocarbon undeveloped lands) and hydrocarbon development and production assets.

(a) Exploration and evaluation assets

Exploration and evaluation costs, including the costs of acquiring undeveloped land and drilling costs are initially capitalized until the drilling of the well is complete and the results have been evaluated in order to determine the technical feasibility and commercial viability of the asset. Technical feasibility and commercial viability are considered to be determinable when proved and/or probable reserves are determined to exist. When proved and/or probable reserves are found, the drilling costs and the costs of associated hydrocarbon undeveloped lands are reclassified to hydrocarbon development and production assets or from hydrocarbon undeveloped lands to hydrocarbon probable reserves. The cost of hydrocarbon undeveloped land that expires or any impairment recognized during a period is charged to profit or loss. Pre-licence costs are recognized in profit or loss as incurred.

(b) Hydrocarbon development and production assets and an iron ore royalty interest

(1) Recognition and measurement

Interests in resource properties are initially measured at cost and subsequently carried at cost less accumulated depletion and, if any, accumulated impairment losses.

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Note 2. Basis of Presentation and Summary of Significant Accounting Policies (continued)

The cost of an interest in resource property includes the initial purchase price and directly attributable expenditures to find, develop, construct and complete the asset. This cost includes reclassifications from exploration and evaluation assets, installation or completion of infrastructure facilities such as platforms, pipelines and the drilling of development wells, including unsuccessful development or delineation wells. Any costs directly attributable to bringing the asset to the location and condition necessary to operate as intended by management and result in an identifiable future benefit are also capitalized. These costs include an estimate of decommissioning obligations and, for qualifying assets, capitalized borrowing costs.

(2) Subsequent costs

Costs incurred subsequent to the determination of technical feasibility and commercial viability and the costs of replacing parts of property are capitalized only when they increase the future economic benefits embodied in the specific asset to which they relate. Such capitalized costs generally represent costs incurred in developing proved reserves and bringing in, or enhancing production from, such reserves and are accumulated on a field or geotechnical area basis. All other expenditures are recognized in profit or loss as incurred. The costs of periodic servicing of the properties are recognized in costs of sales and services as incurred.

The carrying amount of any replaced or sold component is derecognized.

(3) Depletion

The carrying amount of an interest in a resource property is depleted using the unit of production method by reference to the ratio of production in the period to the related reserves.

For interests in hydrocarbon development and production assets, depletion is calculated based on proved producing reserves, taking into account estimated future development costs necessary to bring those reserves into production and the estimated salvage values of the assets at the end of their estimated useful lives. Future development costs are estimated taking into account the level of development required to continue to produce the reserves. Reserves for hydrocarbon development and production assets are estimated annually by independent qualified reserve evaluators and represent the estimated quantities of natural gas, natural gas liquids and crude oil which geological, geophysical and engineering data demonstrate with a specified degree of certainty to be recoverable in future years from known reservoirs and which are considered commercially producible. For depletion purposes, relative volumes of petroleum and natural gas production and reserves are converted at the energy equivalent conversion rate of six thousand cubic feet of natural gas to one barrel of crude oil.

For the interest in an iron ore mine, depletion is calculated based on proved and probable reserves. The estimate of the reserves of iron ore is reviewed whenever significant new information about the reserve is available, or at least at each financial year-end.

(xii) Impairment of Non-financial Assets

The Group reviews the carrying amounts of its non-financial assets at each reporting date to determine whether there is any indication of impairment. If any such indication exists, an asset's recoverable amount is estimated.

The recoverable amount is the higher of an asset's fair value less costs of disposal and value in use. Where an individual asset does not generate separately identifiable cash flows, an impairment test is performed at the cash-generating unit ("CGU") level. A CGU is the smallest identifiable group of assets that generates cash inflows that are largely independent of the cash inflows from other assets or groups of assets. Where the carrying amount of an asset (or CGU) exceeds its recoverable amount, the asset (or CGU) is considered impaired and written down to its recoverable amount. In assessing value in use, the estimated future cash flows are discounted to their present value using a discount rate that reflects current market assessments of the time value of money and the risks specific to the asset. In determining fair value less costs of disposal, an appropriate valuation model is used. These calculations are corroborated by external valuation metrics or other available fair value indicators wherever possible.

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Note 2. Basis of Presentation and Summary of Significant Accounting Policies (continued)

An assessment is made at the end of each reporting period whether there is an indication that previously recognized impairment losses no longer exist or have decreased. If such indication exists, an estimate of the asset's (or CGU's) recoverable amount is reviewed. A previously recognized impairment loss is reversed to the extent that the events or circumstances that triggered the original impairment have changed. The reversal is limited so that the carrying amount of the asset does not exceed its recoverable amount, nor exceed the carrying amount that would have been determined, net of depreciation, depletion and amortization, had no impairment loss been recognized for the asset in prior periods. A reversal of an impairment loss for a CGU is allocated to the assets of the CGU pro-rata with the carrying amounts of those assets.

The Group's interest in iron ore mine is assessed at the end of each reporting period whether there is any indication that the interest may be impaired. Impairment is recognized if the recoverable amount, determined as its value in use, is less than the carrying value. The Group's interest in the iron ore mine is an individual asset which generates cash flows that are completely independent of those from other assets. As a result, the interest in the iron ore mine is tested for impairment on a standalone basis.

Hydrocarbon probable reserves are tested for impairment when they are reclassified to hydrocarbon development and production assets or when indicators exist that suggest the carrying amount may exceed the recoverable amount. For purposes of impairment testing, hydrocarbon probable reserves are grouped with related producing resource properties as a CGU with common geography and geological characteristics.

Undeveloped lands are evaluated for indicators separately from hydrocarbon development and production assets and hydrocarbon probable reserves. Impairment is assessed by comparing the carrying amount of undeveloped lands to values determined by an independent land evaluator based on recent market transactions. Management also takes into account future plans for those properties, the remaining terms of the leases and any other factors that may be indicators of potential impairment.

(xiii) Financial Liabilities

The Group measures financial liabilities at either amortized cost or FVTPL. Financial liabilities are measured at amortized cost, unless either it is held for trading and hence required to be measured at FVTPL or the group elects to measure the financial liability at FVTPL where permitted by IFRS 9.

(xiv) Leases

At the commencement date of a lease contract under which the Group is the lessee, the Group recognizes a right-of-use asset and a lease liability which is measured at the present value of the lease payments that are not paid at that date, discounted using the interest rate implicit in the lease (or if the rate cannot be readily determined, the Group company's incremental borrowing rate). After the commencement date, the Group (a) measures the lease liability by (i) increasing the carrying amount to reflect interest on the lease liability; (ii) reducing the carrying amount to reflect the lease payments made; and (iii) remeasuring the carrying amount to reflect any reassessment or lease modifications or to reflect revised in-substance fixed lease payments; and (b) recognizes in profit or loss, unless the costs are included in the carrying amount of another asset, both (i) interest on the lease liability and (ii) variable lease payments not included in the measurement of the lease liability in the period in which the event or condition that triggers those payments occur.

The Group has elected not to apply IFRS 16 to short-term leases and leases for which the underlying asset is of low value and, as such, recognizes the lease payments associated with those leases as an expense on a straight-line basis.

The right-of-use assets are included in property, plant and equipment (see Note 2B (x)) and the lease liabilities are included in account payables and accrued expenses under current liabilities and/or other long-term liabilities.

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Note 2. Basis of Presentation and Summary of Significant Accounting Policies (continued)

Amendments to IFRS 16 on COVID-19-related Rent Concessions

In May 2020, the IASB issued amendments to IFRS 16 and provided a practical expedient that permits lessees (not lessors) to account for certain rent concessions in profit or loss as if they were not lease modifications. The practical expedient only applies to rent concessions occurring as a direct consequence of the COVID-19 pandemic and only if certain conditions are met. The amendments only apply to reduction in lease payments which affects only payments due on or before June 30, 2021. The amendments are effective for annual reporting periods beginning on or after June 1, 2020, with earlier application permitted.

Management elected to apply the amendments to IFRS 16 in the year ended December 31, 2020. The Group has applied the practical expedient to all rent concessions that meet the criteria. When applying the practical expedient, the rent relief is treated as a variable rent expense in profit or loss against the lease liability to derecognize the part of the lease liability that has been forgiven or waived. See Note 14.

(xv) Provisions, Financial Guarantee Contracts and Contingencies

Provisions are recognized when the Group has a present obligation as a result of a past event, it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation and a reliable estimate can be made of the amount of the obligation. Provisions are measured at management's best estimate of the expenditure required to settle the obligation at the reporting date. Where appropriate, the future cash flow estimates are adjusted to reflect risks specific to the liability. If the effect of the time value of money is material, provisions are determined by discounting the expected future cash flows at a pre-tax rate that reflects current market assessments of the time value of money and the risks specific to the liability. Where discounting is used, the increase in the provision due to the passage of time is recorded as accretion and included in finance costs on the consolidated statements of operations.

A financial guarantee contract is initially recognized at fair value. If the guarantee is issued to an unrelated party on a commercial basis, the initial fair value is likely to equal the premium received. If no premium is received, the fair value must be determined using a method that quantifies the economic benefit of the guarantee to the holder. At the end of each subsequent reporting period, financial guarantees are measured at the higher of: (i) the amount of the loss allowance, and (ii) the amount initially recognized less cumulative amortization, where appropriate.

Contingent liabilities are possible obligations whose existence will only be confirmed by future events not wholly within the control of the Group. Contingent liabilities, other than those assumed in connection with business combinations which are measured at fair value at the acquisition date, are not recognized in the consolidated financial statements but are disclosed unless the possibility of an outflow of economic resources is considered remote. Legal costs in connection with a loss contingency are recognized in profit or loss when incurred.

The Group does not recognize a contingent or reimbursement asset unless it is virtually certain that the contingent or reimbursement asset will be received.

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Note 2. Basis of Presentation and Summary of Significant Accounting Policies (continued)

(xvi) Decommissioning Obligations

The Group provides for decommissioning, restoration and similar liabilities (collectively, decommissioning obligations) on its resource properties, facilities, production platforms, pipelines and other facilities based on estimates established by current legislation and industry practices. The decommissioning obligation is initially measured at fair value and capitalized to interests in resource properties or property, plant and equipment as an asset retirement cost. The liability is estimated by discounting expected future cash flows required to settle the liability using a pre-tax rate that reflects current market assessments of the time value of money and the risks specific to the liability. The estimated future asset retirement costs are adjusted for risks such as project, physical, regulatory and timing. The estimates are reviewed periodically. Changes in the provision as a result of changes in the estimated future costs or discount rates are added to or deducted from the asset retirement cost in the period of the change. The liability accretes for the effect of time value of money until it is settled. The capitalized asset retirement cost is amortized through depreciation, depletion and amortization over the estimated useful life of the related asset. Actual asset retirement expenditures are recorded against the obligation when incurred. Any difference between the accrued liability and the actual expenditures incurred is recorded as a gain or loss in the settlement period.

(xvii) Own Equity Instruments

The Group's holdings of its own equity instruments, including common stock and preferred stock, are presented as "treasury stock" and deducted from shareholders' equity at cost and in the determination of the number of equity shares outstanding. No gain or loss is recognized in profit or loss on the purchase, sale, re-issue or cancellation of the Group's own equity instruments.

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Note 2. Basis of Presentation and Summary of Significant Accounting Policies (continued)

(xviii) Revenue Recognition

The Group recognizes revenue, excluding interest and dividend income and other such income from financial instruments recognized in accordance with IFRS 9, upon transfer of promised goods or services to customers in amounts that reflect the consideration to which the Group expects to be entitled in exchange for those goods or services based on the following five step approach:

Step 1: Identify the contracts with customers;
Step 2: Identify the performance obligations in the contract;
Step 3: Determine the transaction price;
Step 4: Allocate the transaction price to the performance obligations in the contract; and
Step 5: Recognize revenue when (or as) the entity satisfies a performance obligation.

The Group typically satisfies its performance obligations upon shipment of the goods, or upon delivery, as the services are rendered or upon completion of services depending on whether the performance obligations are satisfied over time or at a point in time. The Group primarily acts as principal in contracts with its customers. The Group does not have material obligations for returns, refunds and other similar obligations, nor warranties and related obligations.

For performance obligations that the Group satisfies over time, the Group typically uses time-based measures of progress because the Group is providing a series of distinct services that are substantially the same and have the same pattern of transfer.

For performance obligations that the Group satisfies at a point in time, the Group typically uses shipment or delivery of goods and/or services in evaluating when a customer obtains control of promised goods or services.

A significant financing component exists and is accounted for if the timing of payments agreed to by the parties to the contract provides the customer or the Group with a significant benefit of financing the transfer of goods and services to the customer. As a practical expedient, the Group does not adjust the promised amount of consideration for the effects of a significant financing component if the Group expects, at contract inception, that the period between when the Group transfers a promised good or service to a customer and when the customer pays for that good or service will be one year or less.

The incremental costs of obtaining contracts with customers and the costs incurred in fulfilling contracts with customers that are directly associated with the contract are recognized as an asset (hereinafter, "assets arising from contract costs") if those costs are expected to be recoverable, which are included in other long-term assets in the consolidated statements of financial position. The incremental costs of obtaining contracts are those costs that the Group incurs to obtain a contract with a customer that they would not have incurred if the contract had not been obtained. As a practical expedient, the Group recognizes the incremental costs of obtaining a contract as an expense when incurred if the amortization period of the asset that the entity otherwise would have recognized is one year or less. Assets arising from contract costs are amortized using the straight-line method over their estimated contract periods.

The Group exercises judgments in determining the amount of the costs incurred to obtain or fulfil a contract with a customer, which includes, but is not limited to (a) the likelihood of obtaining the contract, (b) the estimate of the profitability of the contract, and (c) the credit risk of the customer. An impairment loss will be recognized in profit or loss to the extent that the carrying amount of the asset exceeds (a) the remaining amount of consideration that the entity expects to receive in exchange for the goods or services to which the asset relates, less (b) the costs that relate directly to providing those goods or services and that have not been recognized as expenses.

Further details of the Group's recognition policies on revenue from contracts with customers and other sources of revenue and income are as follows:

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Note 2. Basis of Presentation and Summary of Significant Accounting Policies (continued)

(a) Royalty – Royalty revenue are based on iron ore sold and shipped by an operator and are measured at the fair value of the consideration received or receivable. The Group recognizes revenue from these sales when control over the iron ore transfers to the operator's customers. Royalty revenue are recognized in an amount that reflects the consideration which the Group is entitled under the mineral sublease and for which collectability is reasonably assured.

(b) Industrial and other goods and products – Industrial and other goods and products primarily include natural gas, power and electricity, food products and metals. Revenue from sale of industrial and other goods and products are recognized when products have been delivered, the amount of revenue can be reliably measured and collectability is reasonably assured. Customer credit worthiness is assessed prior to agreement signing, as well as throughout the contract duration. Generally, the Group's sale transactions of industrial and other goods and products do not involve deliveries of multiple services and products and a financing component. They occur at different points in time and/or over different periods of time which is a significant judgment for the Group.

(c) Rental income – Lease payments from properties letting under operating leases are recognized as rental income over the lease term on either a straight–line basis or another systematic basis that is more representative of the pattern in which benefit from the use of the underlying leased asset is diminished. Contingent rentals are recognized in the accounting period in which they are earned.

(d) Property management – Income from provision of property and facilities management services is recognized when the services are rendered.

(e) Property sales – Gains on sales of properties are recognized when the control over the ownership or physical possession of the property is transferred to the customers, which is the point in time when the Group satisfies its performance obligations under the contracts.

(f) Financial services – Interest income from merchant banking business is accrued on a time basis using the effective interest method. Fee income is realized as earned unless it is an integral part of a financing in which case it is amortized over the period of the loan using the effective interest method.

(g) Investment income – Dividend income from equity investments is recognized when the right to receive payment is established. Interest income from financial investments is recognized using the effective interest method.

(xix) Costs of Sales and Services

Costs of sales and services comprise costs of sales and services of sales and services.

Costs of sales and services include the costs of goods (royalty, goods and products and services, real estate for sale, medical instruments and supplies) sold. The costs of goods sold include both the direct cost of materials and indirect costs, freight charges, purchasing and receiving costs, inspection costs, distribution costs and a provision for warranty when applicable.

Other comprises other expenses and other income relating to or arising from the Group's goods and services, which include write-downs of inventories and real estate for sale, net loss on securities and investment property, credit losses on financial assets, change in fair value of investment property, commodity inventories and a loan payable measured at FVTPL. Other also includes gains or losses on dispositions of subsidiaries and non-currency derivative contracts.

The reversal of write-downs of inventories and real estate for sale and credit losses reduces costs of sales and services.

(xx) Employee Benefits

Wages, salaries, bonuses, social security contributions, paid annual leave and sick leave are accrued in the period in which the associated services are rendered by employees of the Group. The employee benefits are included in costs of sales and services or selling, general and administrative expenses, as applicable.

Note 2. Basis of Presentation and Summary of Significant Accounting Policies (continued)

(xxi) Share-Based Compensation

The cost of equity-settled transactions with employees is measured by reference to the fair value of the equity instruments on the date at which the equity instruments are granted and is recognized as an expense over the vesting period, which ends on the date on which the relevant employees become fully entitled to the award. Fair value is determined by using an appropriate valuation model. At each reporting date before vesting, the cumulative expense is calculated, representing the extent to which the vesting period has expired and management's best estimate of the achievement or otherwise of non-market conditions and the number of equity instruments that will ultimately vest. The movement in cumulative expense since the previous reporting date is recognized in profit or loss, with a corresponding amount in equity.

When the terms of an equity-settled award are modified or a new award is designated as replacing a cancelled or settled award, the cost based on the original award terms continues to be recognized over the original vesting period. In addition, an expense is recognized over the remainder of the new vesting period for the incremental fair value of any modification, based on the difference between the fair value of the original award and the fair value of the modified award, both as measured on the date of the modification. No reduction is recognized if this difference is negative. When an equity-settled award is cancelled other than by forfeiture when the vesting conditions are not satisfied, it is treated as if it had vested on the date of cancellation and any cost not yet recognized in profit or loss for the award is expensed immediately.

Share-based compensation expenses are included in selling, general and administrative expenses. When stock options are exercised, the exercise price proceeds together with the amount initially recorded in contributed surplus are credited to capital stock and additional paid-in capital.

(xxii) Finance Costs

Finance costs comprise interest expense on borrowings, accretion of the discount on provisions, decommissioning obligations and other liabilities and charges and fees relating to factoring transactions.

Shares and debt issued are recorded at the amount of proceeds received, net of direct issue costs (transaction costs). The transaction costs attributable to debt issued are amortized over the debt term using the effective interest method.

(xxiii) Income Taxes

Income tax expense (recovery) comprises current income tax expense (recovery) and deferred income tax expense (recovery) and includes all domestic and foreign taxes which are based on taxable profits. The current income tax provision is based on the taxable profits for the period. Taxable profit differs from income before income taxes as reported in the consolidated statements of operations because it excludes items of income or expense that are taxable or deductible in other periods and items that are never taxable or deductible. The Group's liability for current income tax is calculated using tax rates that have been enacted or substantively enacted by the reporting date. Deferred income tax is provided, using the liability method, on all temporary differences at the reporting date between the tax bases of assets and liabilities and their carrying amounts in the consolidated statement of financial position.

Deferred income tax liabilities are recognized for all taxable temporary differences:

- except where the deferred income tax liability arises on goodwill that is not tax deductible or the initial recognition of an asset or liability in a transaction that is not a business combination and, at the time of the transaction, affects neither the accounting profit nor taxable profit or loss.

- in respect of taxable temporary differences associated with investments in subsidiaries and branches, except where the Group is able to control the timing of the reversal of the temporary differences and it is probable that the temporary differences will not reverse in the foreseeable future.

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Note 2. Basis of Presentation and Summary of Significant Accounting Policies (continued)

Deferred income tax assets are recognized for all deductible temporary differences, carry-forward of unused tax credits and unused tax losses, to the extent that it is probable that taxable profit will be available against which the deductible temporary differences and the carry-forward of unused tax credits and unused tax losses can be utilized:

- except where the deferred income tax asset arises from the initial recognition of an asset or liability in a transaction that is not a business combination and, at the time of the transaction, affects neither the accounting profit nor taxable profit or loss.

- in respect of deductible temporary differences associated with investments in subsidiaries and branches, deferred tax assets are recognized only to the extent that it is probable that the temporary differences will reverse in the foreseeable future.

On the reporting date, management reviews the Group's deferred income tax assets to determine whether it is probable that the benefits associated with these assets will be realized. The Group also reassesses unrecognized deferred income tax assets. The review and assessment involve evaluating both positive and negative evidence. The Group recognizes a previously unrecognized deferred income tax asset to the extent that it has become probable that future taxable profit will allow the deferred income tax asset to be recovered.

Deferred income tax assets and liabilities are measured at the tax rates that are expected to apply in the year when the asset is realized or the liability is settled, based on tax rates and tax laws that have been enacted or substantively enacted at the reporting date. Tax relating to items recognized in other comprehensive income or equity is recognized in other comprehensive income or equity and not in profit or loss.

Deferred income tax assets and liabilities are offset when there is a legally enforceable right to set off current income tax assets against current income tax liabilities, and when they relate to income tax levied by the same taxation authority and the Group intends to settle its current income tax assets and liabilities on a net basis.

Withholding taxes (which include withholding taxes payable by a subsidiary on distributions to the Group) are treated as income taxes when they have the characteristics of an income tax. This is considered to be the case when they are imposed under government authority and the amount payable is calculated by reference to revenue derived.

The Group includes interest charges and penalties on current income tax liabilities as a component of interest expense.

(xxiv) Earnings Per Share

Basic earnings per share is determined by dividing net income attributable to ordinary equity holders of Scully by the weighted average number of common shares outstanding during the period, net of treasury stock.

Diluted earnings per share is determined using the same method as basic earnings per share, except that the weighted average number of common shares outstanding includes the effect of dilutive potential ordinary shares. For the purpose of calculating diluted earnings per share, the Group assumes the exercise of its dilutive options with the assumed proceeds from these instruments regarded as having been received from the issue of common shares at the average market price of common shares during the period. The difference between the number of common shares issued and the number of common shares that would have been issued at the average market price of common shares during the period is treated as an issue of common shares for no consideration and added to the weighted average number of common shares outstanding. The amount of the dilution is the average market price of common shares during the period minus the issue price and the issue price includes the fair value of services to be supplied to the Group in the future under the share-based payment arrangement. Potential ordinary shares are treated as dilutive when, and only when, their conversion to ordinary shares would decrease earnings per share or increase loss per share from continuing operations.

Note 2. Basis of Presentation and Summary of Significant Accounting Policies (continued)

When share-based payments are granted during the period, the shares issuable are weighted to reflect the portion of the period during which the options are outstanding. The shares issuable are also weighted to reflect forfeitures occurring during the period. When stock options are exercised during the period, shares issuable are weighted to reflect the portion of the period prior to the exercise date and actual shares issued are included in the weighted average number of shares outstanding from the exercise date.

The earnings per share information in prior years are retrospectively adjusted to reflect the impact of stock dividends.

C. Critical Judgments in Applying Accounting Policies

In the process of applying the Group's accounting policies, management makes various judgments, apart from those involving estimations under Note 2D below that can significantly affect the amounts it recognizes in the consolidated financial statements. The following are the critical judgments that management has made in the process of applying the Group's accounting policies and that have the most significant effects on the amounts recognized in the consolidated financial statements:

(i) Identification of Cash-generating Units

The Group's assets are aggregated into CGUs, for the purpose of assessing and calculating impairment of non-financial assets, based on their ability to generate largely independent cash flows. The determination of CGUs requires judgment in defining the smallest identifiable group of assets that generate cash inflows that are largely independent of the cash inflows from other assets or groups of assets. CGUs have been determined based on similar geological structure, shared infrastructure, geographical proximity, product type and similar exposure to market risks. In the event facts and circumstances surrounding factors used to determine the Group's CGUs change, the Group will re-determine the groupings of CGUs.

(ii) Impairment and Reversals of Impairment on Non-Financial Assets

The carrying amounts of the Group's non-financial assets, other than deferred tax assets, are reviewed at the end of each reporting period to determine whether there is an indication of impairment or reversal of previously recorded impairment. If such indication exists, the recoverable amount is estimated.

Determining whether there are any indications of impairment or impairment reversals requires significant judgment of external factors, such as an extended change in prices or margins for iron ore, hydrocarbon commodities or refined products, a significant change in an asset's market value, a significant revision of estimated volumes, revision of future development costs, a change in the entity's market capitalization or significant changes in the technological, market, economic or legal environment that would have an impact on the Company's CGUs. Given that the calculations for recoverable amounts require the use of estimates and assumptions, including forecasts of commodity prices, market supply and demand, product margins and in the case of the Group's iron ore interest, power plant and hydrocarbon properties, expected production volumes, it is possible that the assumptions may change, which may impact the estimated life of the CGU and may require a material adjustment to the carrying values of non-financial assets.

Impairment losses recognized in prior years are assessed at the end of each reporting period for indications that the impairment has decreased or no longer exists. An impairment loss is reversed only to the extent that the carrying amount of the asset or CGU does not exceed the carrying amount that would have been determined, net of depreciation, depletion and amortization, if no impairment loss had been recognized.

See Notes 11 and 12.

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Note 2. Basis of Presentation and Summary of Significant Accounting Policies (continued)

(iii) Valuation of Investment Property

Investment properties are included in the consolidated statement of financial position at their market value, unless their fair value cannot be reliably determined at that time. The market value of investment properties is assessed annually by an independent qualified valuer, who is an authorized expert for the valuation of developed and undeveloped land in Germany, after taking into consideration the net income with inputs on realized basic rents, operating costs and damages and defects. The assumptions adopted in the property valuations are based on the market conditions existing at the end of the reporting period, with reference to current market sales prices and the appropriate capitalization rate. Changes in any of these inputs or incorrect assumptions related to any of these items could materially impact these valuations.

(iv) Assets Held for Sale and Discontinued Operations

The Group applies judgment to determine whether an asset (or disposal group) is available for immediate sale in its present condition and that its sale is highly probable and therefore should be classified as held for sale at the date of the statement of financial position. In order to assess whether it is highly probable that the sale can be completed within one year, or the extension period in certain circumstances, management reviews the business and economic factors, both macro and micro, which include the industry trends and capital markets, and the progress towards a sale transaction. It is also open to all forms of sales, including exchanges of non-current assets for other non-current assets when the exchange will have commercial substance in accordance with IAS 16, *Property, Plant and Equipment* (“IAS 16”).

In 2019, the Group disposed of its interests in two product lines in Europe which management considered not to be discontinued operations because (i) they did not form separate segments or CGUs, (ii) they did not have financial results which could be clearly identified from the rest of the Group, (iii) each of them was not a separate major geographical area, and (iv) the dispositions were not part of a single coordinated plan to dispose of them. Management, when exercising its judgments in terms of their respective contribution to the Group’s net loss, total assets and net assets, concluded that these disposed product lines were not separate major lines of business or geographical area of operations. Based on the Group’s consolidated financial statements as of June 30, 2019 (the latest publicly available financial results prior to their dispositions), the net income or loss of these disposed units represented 2% and 7%, of the combined reported loss of all entities that reported a loss and each of them represented 1% of consolidated total assets and less than 1% of consolidated net assets of the Group. The combined revenue (third parties only), loss before taxes, income tax expense and net loss, respectively, was $81,766, ($63), ($575) and ($638) during the year of 2019 to the dates of their dispositions, which were included in the Group’s continuing operations for the year ended December 31, 2019. The net gain on dispositions of these entities was $207.

(v) Credit Losses and Impairment of Receivables

Pursuant to IFRS 9, the Group applies credit risk assessment and valuation methods to its trade and other receivables under IFRS 9 which establishes a single forward-looking expected loss impairment model.

The Group measures the loss allowance for a financial instrument at an amount equal to the lifetime expected credit losses if the credit risk on the financial instrument has increased significantly since initial recognition. The objective of the impairment requirements is to recognize lifetime expected credit losses for all financial instruments for which there have been significant increases in credit risk since initial recognition — whether assessed on an individual or collective basis — considering all reasonable and supportable information, including that which is forward-looking.

At each reporting date, management assesses whether the credit risk on a financial instrument that is measured at amortized cost or at FVTOCI has increased significantly since initial recognition. When making the assessment, management uses the change in the risk of a default occurring over the expected life of the financial instrument instead of the change in the amount of expected credit losses. To make that assessment, management compares the risk of a default occurring on the financial instrument as at the reporting date with the risk of a default occurring on the financial instrument as at the date of initial recognition and considers reasonable and supportable information, that is available without undue cost or effort, that is indicative of significant increases in credit risk since initial recognition.

Note 2. Basis of Presentation and Summary of Significant Accounting Policies (continued)

Allowance for credit losses is maintained at an amount considered adequate to absorb the expected credit losses. Such allowance for credit losses reflects management's best estimate of changes in the credit risk on the Group's financial instruments and judgments about economic conditions. The assessment of allowance for credit losses is a complex process, particularly on a forward-looking basis; which involves a significant degree of judgment and a high level of estimation uncertainty. The input factors include the assessment of the credit risk of the Group's financial instruments, legal rights and obligations under all the contracts and the expected future cash flows from the financial instruments, which include inventories, mortgages and other credit enhancement instruments. The major source of estimation uncertainty relates to the likelihood of the various scenarios under which different amounts are expected to be recovered through the security in place on the financial assets. The expected future cash flows are projected under different scenarios and weighted by probability, which involves the exercise of significant judgment. Estimates and judgments could change in the near-term and could result in a significant change to a recognized allowance.

D. Major Sources of Estimation Uncertainty

The timely preparation of the consolidated financial statements requires management to make judgments, estimates and assumptions that affect the application of accounting policies and the reported amounts of assets, liabilities, income and expenses.

The major assumptions about the future and other major sources of estimation uncertainty at the end of the reporting period that have a significant risk of resulting in a material adjustment to the carrying amounts of assets and liabilities within the next financial year are discussed below. These items require management's most difficult, subjective or complex estimates. Actual results may differ materially from these estimates.

(i) Interests in Resource Properties and Reserve Estimates

The Group had interests in resource properties mainly comprised of an interest in the Scully iron ore mine, and to a lesser extent, hydrocarbon properties, with an aggregate carrying amount of $254,706 as at December 31, 2021.

Generally, estimation of reported recoverable quantities of proved and probable reserves of resource properties include judgmental assumptions regarding production profile, prices of products produced, exchange rates, remediation costs, timing and amount of future development costs and production, transportation and marketing costs for future cash flows. It also requires interpretation of geological and geophysical models and anticipated recoveries. The economical, geological and technical factors used to estimate reserves may change from period to period. Changes in reported reserves can impact the carrying amounts of the Group's interests in resource properties and/or related property, plant and equipment, the recognition of impairment losses and reversal of impairment losses, the calculation of depletion and depreciation, the provision for decommissioning obligations and the recognition of deferred income tax assets or liabilities due to changes in expected future cash flows. During the year ended December 31, 2021, the Group did not recognize any impairment in respect of its interest in resource properties.

The Group's iron ore reserves are estimates of the amount of product that can be economically and legally extracted from the Group's mining properties. Reserve and resource estimates are an integral component in the determination of the commercial viability of the Group's interest in the iron ore mine, amortization calculations and impairment analyses. In calculating reserves and resources, estimates and assumptions are required about a range of geological, technical and economic factors, including quantities, grades, production techniques, production decline rates, recovery rates, production costs, commodity demand, commodity prices and exchange rates. In addition, future changes in regulatory environments, including government levies or changes in the Group's rights to exploit the resource imposed over the producing life of the reserves and resources may also significantly impact estimates.

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Note 2. Basis of Presentation and Summary of Significant Accounting Policies (continued)

The Group's hydrocarbon reserves represent the estimated quantities of petroleum, natural gas and natural gas liquids which geological, geophysical and engineering data demonstrate with a specified degree of certainty to be economically recoverable in future years from known reservoirs and which are considered commercially producible. Such reserves may be considered commercially producible if management has the intention of developing and producing them and such intention is based upon: (a) a reasonable assessment of the future economics of such production; (b) a reasonable expectation that there is a market for all or substantially all the expected hydrocarbon production; and (c) evidence that the necessary production, transmission and transportation facilities are available or can be made available. Reserves may only be considered proven and probable if producibility is supported by either production or conclusive formation tests. The recoverable quantities of reserves and estimated cash flows from the Group's hydrocarbon interests are independently evaluated by reserve engineers at least annually.

Included in interests in resource properties as at December 31, 2021, were exploration and evaluation assets with an aggregate carrying amount of $17,007. Exploration and evaluation assets are assessed for impairment when facts and circumstances suggest that the carrying amount of an exploration and evaluation asset may exceed its recoverable amount and upon reclassification to hydrocarbon development and production assets. If such indicators exist, impairment, if any, is determined by comparing the carrying amounts to the recoverable amounts. The measurement of the recoverable amount involves a number of assumptions, including the timing, likelihood and amount of commercial production, further resource assessment plans and future revenue and costs expected from the asset, if any.

See Note 12.

(ii) Impairment of Other Non-Financial Assets

The Group had property, plant and equipment aggregating $49,065 as at December 31, 2021, consisting mainly of a power plant and a natural gas processing facility. Impairment of the Group's non-financial assets is evaluated at the CGU level. In testing for impairment, the recoverable amounts of the Company's CGUs are determined as the higher of their values in use and fair values less costs of disposal. In the absence of quoted market prices, the recoverable amount is based on estimates of future production rates, future product selling prices and costs, discount rates and other relevant assumptions. Increases in future costs and/or decreases in estimates of future production rates and product selling prices may result in a write-down of the Group's property, plant and equipment. See Note 11.

(iii) Taxation

The Group is subject to tax in a number of jurisdictions and judgment is required in determining the worldwide provision for income taxes. Deferred income taxes are recognized for temporary differences using the liability method, with deferred income tax liabilities generally being provided for in full (except for taxable temporary differences associated with investments in subsidiaries and branches where the Group is able to control the timing of the reversal of the temporary differences and it is probable that the temporary differences will not reverse in the foreseeable future) and deferred income tax assets being recognized to the extent that it is probable that future taxable profits will be available against which the temporary differences can be utilized.

The Group recognized deferred income tax assets of $9,619 as at December 31, 2021. In assessing the realizability of deferred income tax assets, management considers whether it is probable that some portion or all of the deferred income tax assets will be realized. The ultimate realization of deferred income tax assets is dependent upon the generation of future taxable income in Malta and Canada during the periods in which temporary differences become deductible or before tax loss and tax credit carry-forwards expire. Management considers the future reversals of existing taxable temporary differences, projected future taxable income, taxable income in prior years and tax planning strategies in making this assessment. Unrecognized deferred income tax assets are reassessed at the end of each reporting period.

The Group does not recognize the full deferred tax liability on taxable temporary differences associated with investments in subsidiaries and branches where the Group is able to control the timing of the reversal of the temporary differences and it is probable that the temporary differences will not reverse in the foreseeable future. The Group may change its investment decision in its normal course of business, thus resulting in additional income tax liabilities.

Note 2. Basis of Presentation and Summary of Significant Accounting Policies (continued)

The operations and organization structures of the Group are complex, and related tax interpretations, regulations and legislation are continually changing. The Group companies' income tax filings are subject to audit by taxation authorities in numerous jurisdictions. There are audits in progress and items under review, some of which may increase the Group's income tax liabilities. In addition, the companies have filed appeals and have disputed certain issues. While the results of these items cannot be ascertained at this time, the Group believes that the Group has an adequate provision for income taxes based on available information.

(iv) Contingencies

Pursuant to IAS 37, *Provisions, Contingent Liabilities and Contingent Assets,* the Group does not recognize a contingent liability. By their nature, contingencies will only be resolved when one or more future events occur or fail to occur. The assessment of contingencies inherently involves the exercise of significant judgment and estimates of the outcome of future events. If it becomes probable that an outflow of future economic benefits will be required for an item previously accounted for as a contingent liability, an accrual or a provision is recognized in the consolidated financial statements in the period in which the change in probability occurs. See Note 23 for further disclosures on contingencies.

(v) Pandemic COVID-19 and Going Concern

The COVID-19 pandemic has led the world into a new era of uncertainties. The pandemic is dynamic and expanding and its ultimate scope, duration and effects are currently uncertain. The impact of the pandemic and the global response thereto has, among other things, significantly disrupted global economic activity, negatively impacted gross domestic product and caused significant volatility in financial markets; although a number of developed vaccines have been proven to be safe and effective in protecting against COVID-19, which provides optimism that the pandemic's impact may start to wane in 2022, though there was another wave of outbreak of variants of COVID-19 in late 2021 and early 2022.

While various countries have implemented stimulus packages and other fiscal measures to attempt to reduce the impact of the pandemic on their economies, the impact of the pandemic on global economic activity and markets both in the short and longer term is uncertain at this time. The magnitude and duration of the disruption and resulting decline in business activity resulting from the COVID-19 pandemic is currently uncertain. While the Group expects that there will likely be some negative impact on its results of operations, cash flows and financial position from the pandemic beyond the near-term, the extent to which the COVID-19 pandemic impacts the Group's business, operations and financial results will depend on numerous evolving factors that management may not be able to accurately predict, including: the duration and scope of the pandemic; governmental, business and individuals' actions that have been and continue to be taken in response to the pandemic; the impact of the pandemic on economic activity and actions taken in response thereto; the effect on the Group's customers, including the borrowers and customers of the Group's banking subsidiary; its impacts on suppliers; and the impact of the pandemic on counterparties and their ability to carry out their obligations to the Group.

The Group's results of operations, cash flows and financial position will likely be adversely affected by the pandemic beyond near-term. However, management does not believe the pandemic will have significant impact on the going concern of the Group in the foreseeable future, which is considered to be 12 months from the date of approval of these consolidated financial statements, as the Group currently has sufficient cash, good working capital position and steady cash inflows from operations. Management has performed stress tests on their forecasts with various assumptions and the results showed that the Group would be able to withstand any significant impact on operations within the aforesaid timeframe.

Given the dynamic nature of these circumstances and the worldwide nature of the Company's business and operations, the duration of any business disruption and the related financial impact due to the COVID-19 pandemic cannot be reasonably estimated at this time but could materially affect the Group's business results of operations and financial condition. Ultimately, the severity of the impact of the pandemic on the Group's business and going concern basis will depend on a number of factors, including, the duration and severity of the pandemic and the impact and new developments concerning the global severity of, and actions to be taken to contain the outbreak.

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Note 2. Basis of Presentation and Summary of Significant Accounting Policies (continued)

Management took into consideration all of these various factors and risks when concluding on the Company's ability to continue as a going concern and the appropriateness of this presentation when preparing these consolidated financial statements.

E. Future Accounting Changes

In January 2020, the IASB issued the final amendments in *Classification of Liabilities as Current or Non-Current (Amendments to IAS 1)* which affect the presentation of liabilities in the statement of financial position. The amendments clarify that the classification of liabilities as current or non-current should be based on rights that are in existence at the end of the reporting period and align the wording in all affected paragraphs to refer to the "right" to defer settlement by at least twelve months and make explicit that only rights in place "at the end of the reporting period" should affect the classification of a liability; clarify that classification is unaffected by expectations about whether an entity will exercise its right to defer settlement of a liability; and make clear that settlement refers to the transfer to the counterparty of cash, equity instruments, other assets or services. The changes in *Classification of Liabilities as Current or Non-current – Deferral of Effective Date (Amendment to IAS 1)* defers the effective date of *the January 2020 Classification of Liabilities as Current or Non-Current (Amendments to IAS 1)* to annual reporting periods beginning on or after January 1, 2023. Earlier application of the January 2020 amendments is permitted. Management is currently assessing the impacts of the amended standard.

In May 2020, the IASB issued amendments to IAS 37, *Provisions, Contingent Liabilities and Contingent Assets* ("IAS 37"). The amendments clarify that for the purpose of assessing whether a contract is onerous, the cost of fulfilling the contract includes both the incremental costs of fulfilling that contract and an allocation of other costs that relate directly to fulfilling contracts. The amendments are effective for contracts for which an entity has not yet fulfilled all its obligations on or after January 1, 2022. Earlier application is permitted. Management is currently assessing the impacts of the amended standard and does not expect that there will be material effects from these amendments on the Group's consolidated financial statements.

In May 2020, the IASB issued further amendments to IFRS 3, *Business Combinations* ("IFRS 3") which update references in IFRS 3 to the revised *2018 Conceptual Framework*. To ensure that this update in referencing does not change which assets and liabilities qualify for recognition in a business combination, or create new Day 2 gains or losses, the amendments introduce new exceptions to the recognition and measurement principles in IFRS 3. An acquirer should apply the definition of a liability in IAS 37, rather than the definition in *the Conceptual Framework,* to determine whether a present obligation exists at the acquisition date as a result of past events. For a levy in the scope of IFRIC 21, *Levies* ("IFRIC 21"), the acquirer should apply the criteria in IFRIC 21 to determine whether the obligating event that gives rise to a liability to pay the levy has occurred by the acquisition date. In addition, the amendments clarify that the acquirer should not recognize a contingent asset at the acquisition date. The amendments to IFRS 3 are effective for business combinations occurring in reporting periods starting on or after January 1, 2022. Earlier application is permitted. Management is currently assessing the impacts of the amended standard and does not expect that there will be material effects from these amendments on the Group's consolidated financial statements.

In May 2020, the IASB issued *Property, Plant and Equipment-Proceeds before Intended Use*, which made amendments to IAS 16. The amendments prohibit a company from deducting from the cost of property, plant and equipment amounts received from selling items produced while the company is preparing the asset for its intended use. Instead, a company will recognize such sales proceeds and related cost in profit or loss. The amendments are effective for annual periods beginning on or after January 1, 2022. Early application is permitted. Management is currently assessing the impacts of the amended standard and does not expect that there will be material effects from these amendments on the Group's consolidated financial statements.

In May 2020, the IASB issued *Annual Improvements to IFRS Standards 2018-2020* which contain an amendment to IFRS 9. The amendment clarifies which fees an entity includes when it applies the "10 per cent" test in paragraph B3.3.6 of IFRS 9 in assessing whether to derecognize a financial liability. An entity includes only fees paid or received between the entity (the borrower) and the lender, including fees paid or received by either the entity or the lender on the other's behalf. The amendment is effective for annual reporting periods beginning on or after January 1, 2022. Management is currently assessing the impacts of the amended standard and does not expect that there will be material effects from these amendments on the Group's consolidated financial statements.

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Note 2. Basis of Presentation and Summary of Significant Accounting Policies (continued)

In February 2021, the IASB issued narrow-scope amendments to IAS 1, *Presentation of Financial Statements*, IFRS Practice Statement 2, *Making Materiality Judgements*, and IAS 8. The amendments are effective for annual periods beginning on or after January 1, 2023, although earlier application is permitted. The amendments will require the disclosure of material accounting policy information rather than disclosing significant accounting policies and clarifies how to distinguish changes in accounting policies from changes in accounting estimates. Management is currently assessing the impacts of the amended standards and does not expect that there will be material effects from these amendments on the Group's consolidated financial statements.

In May 2021, the IASB issued targeted amendments to IAS 12, *Income Taxes*. The amendments are effective for annual periods beginning on or after January 1, 2023, although earlier application is permitted. With a view to reducing diversity in reporting, the amendments will clarify that companies are required to recognize deferred taxes on transactions where both assets and liabilities are recognized, such as leases and asset retirement (decommissioning) obligations. Management is currently assessing the impacts of the amended standard and does not expect that there will be material effects from these amendments on the Group's consolidated financial statements.

Note 3. Disclosure on the Group's Objectives, Policies and Processes for Managing Its Capital Structure

The Group's objectives when managing capital are to: (a) safeguard the entity's ability to continue as a going concern so that it can continue to provide returns for shareholders and benefits for other stakeholders; (b) provide an adequate return to shareholders by pricing products and services commensurately with the level of risk; and (c) maintain a flexible capital structure which optimizes the cost of capital at acceptable risk.

The Group allocates capital in proportion to risk. The Group manages the capital structure and makes adjustments to it in light of changes in economic conditions and the risk characteristics of the underlying assets. In order to maintain or adjust the capital structure, the Group may adjust the amount of dividends paid to shareholders, return capital to shareholders, issue new shares, or issue new debt.

Consistent with others in its industry, the Group monitors its capital on the basis of the debt-to-adjusted capital ratio and long-term debt-to-equity ratio. The debt-to-adjusted capital ratio is calculated as net debt divided by adjusted capital. Net debt is calculated as total debt less cash. Adjusted capital comprises all components of shareholders' equity. The long-term debt-to-equity ratio is calculated as long-term debt divided by shareholders' equity.

As at December 31:	**2021**	**2020**
Total debt	$ 35,227	$ 38,053
Less: cash	(54,873)	(63,552)
Net debt	Not applicable	Not applicable
Shareholders' equity	365,600	361,544
Net debt-to-adjusted capital ratio	Not applicable	Not applicable

As at December 31:	**2021**	**2020**
Long-term debt	$ 35,227	$ 38,053
Shareholders' equity	365,600	361,544
Long-term debt-to-equity ratio	0.10	0.11

The above tables do not include: (i) a non-interest bearing long-term loan payable of $6,817 as at December 31, 2021 (2020: $5,223), which does not have a fixed repayment date; and (ii) long-term lease liabilities of $476 as at December 31, 2021 (2020: $791).

During 2021, the Group's strategy, which was unchanged from 2020, was to maintain the debt-to-adjusted capital ratio and the long-term debt-to-equity ratio at a manageable level. The ratios were stable between 2021 and 2020.

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Note 4. Assets Classified as Held for Sale

Year 2021: None

Year 2020: None

Year 2019: In March 2019, the Group commenced to liquidate a subsidiary on a voluntary basis (see Note 28). The liquidation process of the subsidiary was completed by December 31, 2019 and included in the consolidated statement of cash flows as changes in assets held for sale for the year ended December 31, 2019 after the commencement of its voluntary liquidation.

Note 5. Business Segment Information

The Group's assets include its iron ore royalty, financial services and other resource interests and other proprietary investments. In addition, the Group owns other merchant banking assets and seeks to invest in businesses or assets whose intrinsic value is not properly reflected. The Group's investing activities are generally not passive. The Group actively seeks investments where its financial expertise and management can add or unlock value.

The Group currently has three separate and independently managed operating subgroups underneath its corporate umbrella. In reporting to management, the Group's operating results are currently categorized into the following operating segments: Royalty, Industrial, Merchant Banking and All Other segments which include corporate activities.

Basis of Presentation

In reporting segments, certain of the Group's business lines have been aggregated where they have similar economic characteristics and are similar in each of the following areas: (a) the nature of the products and services; (b) the methods of distribution; and (c) the types or classes of customers/clients for the products and services.

The Group's Royalty segment includes an interest in the Scully iron ore mine in the Province of Newfoundland and Labrador, Canada. The Group's Industrial segment includes multiple projects in resources and services around the globe. It seeks opportunities to benefit from long-term industrial and services assets, including natural gas, with a focus on East Asia. The Group's Merchant Banking segment has a subsidiary with its bonds listed on the Malta Stock Exchange and comprises regulated merchant banking businesses with a focus on Europe. In addition, the Merchant Banking segment holds two industrial real estate parks in Europe.

The All Other segment includes the Group's corporate and small entities whose quantitative amounts do not exceed 10% of any of the Group's: (a) reported revenue; (b) net income; or (c) total assets.

The accounting policies of the operating segments are the same as those described in the summary of significant accounting policies in Note 2B. The chief operating decision maker evaluates performance on the basis of income or loss from operations before income taxes and does not consider acquisition accounting adjustments in assessing the performance of the Group's reporting segments. The segment information presented below is prepared according to the following methodologies: (a) revenue and expenses directly associated with each segment are included in determining pre-tax earnings; (b) intersegment sales and transfers are accounted for as if the sales or transfers were to third parties at current market prices; (c) certain selling, general and administrative expenses paid by corporate, particularly incentive compensation and share-based compensation, are not allocated to reporting segments; (d) all intercompany investments, receivables and payables are eliminated in the determination of each segment's assets and liabilities; (e) deferred income tax assets and liabilities are not allocated; and (f) gains or losses on dispositions of subsidiaries which include reclassification of realized cumulative translation adjustments from equity to profit or loss on disposals of subsidiaries, write-offs of intercompany accounts, changes in intercompany account balances and cash used (received) in acquisition (disposition) of a subsidiary are allocated to corporate and included within the Group's All Other segment.

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Note 5. Business Segment Information (continued)

Segment Operating Results

	Year ended December 31, 2021				
	Royalty	Industrial	Merchant Banking	All Other	Total
Revenue from external customers	$ 40,335	$ 23,428	$ 6,527	$ 1,001	$ 71,291
Intersegment sale	—	3,385	6,663	4,371	14,419
Interest expense	2	202	1,715	16	1,935
Depreciation, depletion and amortization	4,911	5,754	357	1	11,023
Income (loss) before income taxes	26,892	(4,739)	736	(5,342)	17,547

	Year ended December 31, 2020				
	Royalty	Industrial	Merchant Banking	All Other	Total
Revenue from external customers	$ 31,360	$ 17,666	$ 10,406	$ —	$ 59,432
Intersegment sale	—	62	2,927	737	3,726
Interest expense	—	31	1,834	16	1,881
Depreciation, depletion and amortization	5,225	5,833	410	2	11,470
Income (loss) before income taxes	25,293	(1,229)	832	(13,717)	11,179

	Year ended December 31, 2019				
	Royalty	Industrial	Merchant Banking	All Other	Total
Revenue from external customers	$ 5,496	$ 100,184	$ 7,565	$ 22	$ 113,267
Intersegment sale	—	6	3,455	948	4,409
Interest expense	—	323	601	26	950
Depreciation, depletion and amortization	1,628	6,340	261	58	8,287
Income (loss) before income taxes	4,419	(15,840)	4,800	(10,163)	(16,784)

	As at December 31, 2021				
	Royalty	Industrial	Merchant Banking	All Other	Total
Segment assets	$ 216,900	$ 148,426	$ 96,934	$ 47,706	$ 509,966

	As at December 31, 2020				
	Royalty	Industrial	Merchant Banking	All Other	Total
Segment assets	$ 226,645	$ 153,240	$ 107,440	$ 21,800	$ 509,125

	As at December 31, 2021				
	Royalty	Industrial	Merchant Banking	All Other	Total
Segment liabilities	$ 49,566	$ 44,703	$ 42,480	$ 683	$ 137,432

	As at December 31, 2020				
	Royalty	Industrial	Merchant Banking	All Other	Total
Segment liabilities	$ 53,519	$ 36,437	$ 49,645	$ 800	$ 140,401

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Note 5. Business Segment Information (continued)

	Year ended December 31, 2021				
	Royalty	Industrial	Merchant Banking	All Other	Total
Cash provided by (used in) operating activities	$ 27,400	$ 1,836	$ 260	$ (36,133)	$ (6,637)
Cash used in investing activities	—	(1)	(970)	—	(971)
Cash used in financing activities	—	(208)	(216)	—	(424)
Exchange rate effect on cash	(2)	476	(3,389)	2,268	(647)
Change in cash	$ 27,398	$ 2,103	$ (4,315)	$ (33,865)	$ (8,679)

	Year ended December 31, 2021				
	Royalty	Industrial	Merchant Banking	All Other	Total
Cash provided by (used in) operating activities	$ 11,394	$ 2,298	$ (3,620)	$ (31,343)	$ (21,271)
Cash (used in) provided by investing activities	—	(111)	4,185	(655)	3,419
Cash provided by (used in) financing activities	80	(284)	(197)	(97)	(498)
Exchange rate effect on cash	(35)	1,461	4,055	(1,853)	3,628
Change in cash	$ 11,439	$ 3,364	$ 4,423	$ (33,948)	$ (14,722)

	Year ended December 31, 2020				
	Royalty	Industrial	Merchant Banking	All Other	Total
Cash (used in) provided by operating activities	$ (98)	$ 1,678	$ (2,685)	$ (8,702)	$ (9,807)
Cash used in investing activities	—	(7,262)	(1,174)	(1,766)	(10,202)
Cash (used in) provided by financing activities	—	(532)	35,133	191	34,792
Exchange rate effect on cash	—	(2,710)	(1,771)	212	(4,269)
Change in cash	$ (98)	$ (8,826)	$ 29,503	$ (10,065)	$ 10,514

Geographic Information

Due to the highly integrated nature of international products and services, merchant banking activities and markets, and a significant portion of the Group's activities requiring cross-border coordination in order to serve the Group's customers and clients, the methodology for allocating the Group's profitability to geographic regions is dependent on estimates and management judgment.

Geographic results are generally determined as follows:

Segment	Basis for attributing revenue
Royalty	Locations of operations
Industrial	Locations of external customers or the reporting units, whichever is appropriate
Merchant Banking	Locations of external customers or the reporting units, whichever is appropriate
All Other	Locations of the reporting units

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Note 5. Business Segment Information (continued)

Due to the nature of cross-border business, the Group presents its geographic information by geographic regions, instead of by countries. The following table presents revenue from external customers by geographic region of such customers, locations of operations or the reporting units, whichever is appropriate:

Years ended December 31:	2021	2020	2019
Canada	$ 56,609	$ 39,493	$ 13,730
Africa	3,971	3,358	4,114
Americas	5,263	8,877	5,880
Asia	286	604	1,909
Europe	5,162	7,100	87,634
	$ 71,291	$ 59,432	$ 113,267

Except for the geographic concentrations as indicated in the above table and a customer in the Royalty segment located in Canada representing approximately 56%, 53% and 5%, respectively, and a customer of a former subsidiary in the Industrial segment located in Slovakia representing approximately nil%, nil% and 13%, respectively, of the Group's revenue for the years ended December 31, 2021, 2020 and 2019, there were no other revenue concentrations during the years ended December 31, 2021, 2020 and 2019.

The following table presents non-current assets other than financial instruments, deferred income tax assets and other non-current assets by geographic area based upon the location of the assets.

As at December 31:	2021	2020
Canada	$ 276,081	$ 284,151
Americas	5	6
Africa	25,835	27,641
Asia	1	5
Europe	49,146	52,297
	$ 351,068	$ 364,100

Note 6. Securities

As at December 31:	2021	2020
Short-term securities		
Equity securities at FVTPL, publicly traded	$ 4,939	$ 2,509
Investment funds at FVTPL, unlisted	2,761	4,096
Debt securities at FVTPL, unlisted	770	873
Debt securities at FVTOCI, publicly traded	10,786	11,019
	$ 19,256	$ 18,497
Long-term securities		
Equity securities in an affiliate at FVTPL, unlisted	$ 3,625	$ 3,721

Investment funds comprise capital provision investments which are financial assets measured at FVTPL. They are related to the provision of capital in connection with litigation finance and represent the Group's contributions plus or minus fair valuation adjustments.

Debt securities at FVTOCI included sovereign bonds issued by a government of $10,461 and $10,845 respectively, as at December 31, 2021 and 2020, which represented 54% and 59%, respectively, of total short-term securities.

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Note 7. Trade Receivables

As at December 31:	2021	2020
Trade receivables, gross amount	$ 4,300	$ 4,803
Less: Allowance for expected credit losses	(136)	(48)
Trade receivables, net amount	$ 4,164	$ 4,755

All trade receivables comprise accounts from contracts with customers.

As at December 31, 2021, the Group recognized a loss allowance of $136 (2020: $48) against its trade receivables. The movements in the loss allowance during the years ended December 31, 2021 and 2020 were as follows:

	Equal to lifetime expected credit Losses Financial assets that are credit-impaired at year-end
Loss allowance: as at January 1, 2020	$ 46
Additions for the year	2
Loss allowance: as at December 31, 2020	48
Additions for the year	124
Charge-off for the year	(32)
Exchange effect	(4)
Loss allowance: as at December 31, 2021	$ 136

In accordance with IFRS 9, management reviews the expected credit losses for the following twelve months based upon, among other things, the credit-worthiness of the exposure, collateral and other risk mitigation instruments, and the nature of the underlying business transaction.

For further discussions on credit risk, see Note 26.

Note 8. Other Receivables

As at December 31:	2021	2020
Royalty receivables	$ 5,837	$ 10,108
Interest receivables	364	185
Contract assets under contracts with customers	575	106
Loans and current accounts* (net of allowance of $nil as of both December 31, 2021 and 2020, respectively)	47,745	21,620
Indemnification asset*	6,756	6,756
Other	3,169	743
	$ 64,446	$ 39,518

* The Group had various amounts owing from an affiliate controlled by the Chairman of the Company (see Note 25).

Other receivables primarily arise in the normal course of business and are expected to be collected within one year from the reporting date.

Royalty receivables were due from a customer in the Royalty segment (see Note 5) and were collected in January the following year.

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Note 8. Other Receivables (continued)

Contract assets

The movements of contract assets under contracts with customers for the years ended December 31, 2021 and 2020 were as follows:

	2021	2020
Balance, beginning of the year	$ 106	$ —
Reclassification to revenues	(106)	—
A change in the time frame for a right to consideration to become unconditional	575	106
Balance, end of the year	$ 575	$ 106

For further discussions on credit risk, see Note 26.

Note 9. Inventories

As at December 31:	2021	2020
Raw materials	$ 991	$ 1,358
Work-in-progress	109	55
	$ 1,100	$ 1,413

Note 10. Investment Property

All of the Group's investment property is located in Europe and forms part of the security granted in connection with bonds issued by a subsidiary of the Group (see Note 15).

Changes in investment property included in non-current assets:	2021	2020
Balance, beginning of year	$ 36,908	$ 38,205
Change in fair value during the year	407	760
Disposals	(7)	(4,567)
Currency translation adjustments	(2,878)	2,510
Balance, end of year	$ 34,430	$ 36,908

The amounts recognized in profit or loss in relation to investment property during the years ended December 31, 2021, 2020 and 2019 are as follows:

Years ended December 31:	2021	2020	2019
Rental income	$ 1,381	$ 1,376	$ 1,652
Direct operating expenses (including repairs and maintenance) arising from investment property during the year	709	216	266

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Note 11. Property, Plant and Equipment

The following changes in property, plant and equipment were recorded during the year ended December 31, 2021:

Costs	Opening balance	Additions	Disposals	Currency translation adjustments	Ending balance
Refinery and power plants	$ 65,913	$ —	$ —	$ (171)	$ 65,742
Processing plant and equipment	3,399	—	—	2	3,401
Office equipment	1,036	988	(118)	(126)	1,780
Right-of-use assets*	1,792	84	(263)	(90)	1,523
	$ 72,140	$ 1,072	$ (381)	$ (385)	$ 72,446

Accumulated depreciation	Opening balance	Additions	Disposals	Currency translation adjustments	Ending balance
Refinery and power plants	$ 17,286	$ 2,586	$ —	$ (33)	$ 19,839
Processing plant and equipment	1,771	385	—	2	2,158
Office equipment	517	129	(31)	(62)	553
Right-of-use assets*	683	436	(263)	(25)	831
	20,257	$ 3,536	$ (294)	$ (118)	23,381
Net book value	$ 51,883				$ 49,065

* Primarily consisting of office premises.

The following changes in property, plant and equipment were recorded during the year ended December 31, 2020:

Costs	Opening balance	Additions	Disposals	Currency translation adjustments	Ending balance
Refinery and power plants	$ 66,701	$ 25	$ —	$ (813)	$ 65,913
Processing plant and equipment	3,307	88	—	4	3,399
Office equipment	920	116	(69)	69	1,036
Right-of-use assets*	1,554	368	(210)	80	1,792
	$ 72,482	$ 597	$ (279)	$ (660)	$ 72,140

Accumulated depreciation	Opening balance	Additions	Disposals	Currency translation adjustments	Ending balance
Refinery and power plants	$ 14,883	$ 2,716	$ —	$ (313)	$ 17,286
Processing plant and equipment	1,454	314	—	3	1,771
Office equipment	366	157	(37)	31	517
Right-of-use assets*	366	514	(210)	13	683
	17,069	$ 3,701	$ (247)	$ (266)	20,257
Net book value	$ 55,413				$ 51,883

* Primarily consisting of office premises.

As at December 31, 2021, the net book value of right-of-use assets was $692 (2020: $1,109).

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Note 11. Property, Plant and Equipment (continued)

As of December 31, 2021, the Group owned a power plant which had a carrying amount of $25,835 (2020: $27,642). Pursuant to an assessment study of which the expected future cash flows were discounted at pre-tax rate of 7.4% (2020: 7.2%), management concluded that there was no impairment loss on December 31, 2021. Numerous variables were utilized for this assessment, including inflation expectations, performance of contracts, discount rates, and maintenance costs. Any change in these assumptions and variables could have an impact on the valuation of the asset. If the discount rate had been 1.0% higher, there would have been no change to the Group's net income for the year ended December 31, 2021.

During the year ended December 31, 2021, 2020 and 2019 respectively, no expenditures were recognized in the carrying amounts of items of property, plant and equipment in the course of their construction.

Note 12. Interests in Resource Properties

The Group's interests in resource properties as at December 31, 2021 and 2020 comprised the following:

	2021	2020
Iron ore royalty interest	$ 206,439	$ 211,350
Hydrocarbon development and production assets	31,260	32,998
Exploration and evaluation assets – hydrocarbon probable reserves	12,367	12,367
Exploration and evaluation assets – hydrocarbon undeveloped lands	4,640	4,640
	$ 254,706	$ 261,355

The movements in the iron ore royalty interest and hydrocarbon development and production assets included in non-current assets during the year ended December 31, 2021 were as follows:

Costs	Opening balance	Decommissioning obligations	Ending balance
Iron ore royalty interest	$ 218,203	$ —	$ 218,203
Hydrocarbon development and production assets	45,754	838	46,592
	$ 263,957	$ 838	$ 264,795

Accumulated depreciation	Opening balance	Additions	Ending balance
Iron ore royalty interest	$ 6,853	$ 4,911	$ 11,764
Hydrocarbon development and production assets	12,756	2,576	15,332
	19,609	$ 7,487	27,096
Net book value	$ 244,348		$ 237,699

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Note 12. Interests in Resource Properties (continued)

The movements in the iron ore royalty interest and hydrocarbon development and production assets included in non-current assets during the year ended December 31, 2020 were as follows:

Costs	Opening balance	Decommissioning obligations	Ending balance
Iron ore royalty interest	$ 218,203	$ —	$ 218,203
Hydrocarbon development and production assets	46,700	(946)	45,754
	$ 264,903	$ (946)	$ 263,957

Accumulated depreciation	Opening balance	Additions	Ending balance
Iron ore royalty interest	$ 1,628	$ 5,225	$ 6,853
Hydrocarbon development and production assets	10,212	2,544	12,756
	11,840	$ 7,769	19,609
Net book value	$ 253,063		$ 244,348

The movements in exploration and evaluation assets presented as hydrocarbon probable reserves and undeveloped lands during the years ended December 31, 2021 and 2020 were as follows:

	2021		2020	
	Probable reserves	Undeveloped lands	Probable reserves	Undeveloped lands
Balance, beginning of year	$ 12,367	$ 4,640	$ 12,367	$ 4,640
Additions	—	—	—	—
Disposal	—	—	—	—
Balance, end of year	$ 12,367	$ 4,640	$ 12,367	$ 4,640

Iron ore royalty interest

The Group derives revenue from a mining sub-lease of the lands upon which the Scully iron ore mine is situated in the Province of Newfoundland and Labrador, Canada. The sub-lease commenced in 1956 and expires in 2055. The iron ore deposit is currently sub-leased to a third-party entity under certain lease agreements which will also expire in 2055. Pursuant and subject to the terms of the lease agreements, the Group collects royalty payments directly from a third-party operator based on a pre-determined formula, with a minimum payment of $3,250 per year.

Management performed assessments on December 31, 2021, 2020 and 2019 utilizing the value-in-use methodology using a pre-tax discount rate of 8.08%, 6.43% and 8.30%, respectively, and concluded that there was no impairment on those dates.

Hydrocarbon properties

The Group owns hydrocarbon properties in western Canada. The majority of such operations are located in the Deep Basin fairway of the Western Canada Sedimentary Basin. The Group's hydrocarbon development and production assets include producing natural gas wells, non-producing natural gas wells, producing oil wells and non-producing oil wells, but do not include a land position that includes net working interests in undeveloped acreage and properties containing probable reserves only, both of which are included in exploration and evaluation assets.

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Note 12. Interests in Resource Properties (continued)

The recoverable amounts of the Group's hydrocarbon CGUs are determined whenever facts and circumstances provide impairment indicators. CGUs are mainly determined based upon the geographical region of the Group's producing properties. An impairment is recognized if the carrying value of a CGU exceeds the recoverable amount for that CGU. The Group determines the recoverable amount by using the greater of fair value less cost to sell and the value-in-use. Value-in-use is generally the future cash flows expected to be derived from production of proven and probable reserves estimated by the Company's third-party reserve evaluators. These third-party reserve engineers take many data points and forecasts into consideration when estimating the value-in-use of the CGU, including best estimates of future natural gas prices, production based on current estimates of recoverable reserves and resources, exploration potential, future operating costs, non-expansionary capital expenditures and inflation.

Management performed assessments on December 31, 2021, 2020 and 2019, respectively, on its hydrocarbon properties utilizing the value-in-use methodology using a pre-tax discount rate of 10.0% and concluded that there was no impairment on these dates. If the discount rate had been 1.0% higher, there would have been no financial impact on the Group's net income in the year ended December 31, 2021.

Note 13. Deferred Income Tax Assets and Liabilities

The tax effect of temporary differences and tax loss carry-forwards that give rise to significant components of the Group's deferred income tax assets and liabilities are as follows:

As at December 31:	2021	2020
Non-capital tax loss carry-forwards	$ 18,692	$ 24,677
Interests in resource properties	(59,864)	(62,418)
Other assets	(5,655)	(7,251)
Other liabilities	(11,015)	(10,267)
	$ (57,842)	$ (55,259)
Presented on the consolidated statements of financial position as follows:		
Deferred income tax assets	$ 9,619	$ 10,856
Deferred income tax liabilities	(67,461)	(66,115)
Net	$ (57,842)	$ (55,259)

As at December 31, 2021, the Group had estimated accumulated non-capital losses, which expire in the following countries and regions as follows. Management is of the opinion that not all of these non-capital losses are probable to be utilized in the future.

Country / Region	Gross amount	Amount for which no deferred income tax asset is recognized	Expiration dates
Canada	$ 4,628	$ 15	2037-2041
U.S.A.	84	—	Indefinite
Germany	423	—	Indefinite
Malta	92,417	63,628	Indefinite
Africa	26,310	—	Indefinite

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Note 13. Deferred Income Tax Assets and Liabilities (continued)

The utilization of the deferred tax assets is dependent on future taxable profits in excess of the profits arising from the reversal of existing taxable temporary differences and the Group companies have suffered losses in either the current or preceding period(s) in the tax jurisdictions to which the deferred tax assets relate.

The Group companies' income tax, value-added tax and payroll tax filings are also subject to audit by taxation authorities in numerous jurisdictions. There are audits in progress and items under review, some of which may increase the Group's income tax, value-added tax and payroll tax liability. If it is probable that management's estimate of the future resolution of these matters changes, the Group will recognize the effects of the changes in its consolidated financial statements in the appropriate period relative to when such changes occur.

Note 14. Account Payables and Accrued Expenses

As at December 31:	**2021**	**2020**
Trade and account payables	$ 6,579	$ 9,923
Interest payables	482	521
Value-added, goods and services and other taxes (other than income taxes)	1,550	1,194
Compensation	272	289
Contract liabilities under contracts with customers	1,864	2,767
Lease liabilities	291	384
Provision for a financial loss	283	575
Due to an affiliate (see Note 25)	25	27
	$ 11,346	$ 15,680

Trade payables arise from the Group's day-to-day activities. The Group's expenses for services and other operational expenses are included in account payables. Generally, these payables and accrual accounts do not bear interest and have a maturity of less than one year.

Contract liabilities under contracts with customers

The movements of contract liabilities under contracts with customers for the years ended December 31, 2021 and 2020 were as follows:

	2021	**2020**
Balance, beginning of the year	$ 2,767	$ 4,637
Considerations received	614	2,329
Reclassification to profit or loss upon satisfaction of performance obligations	(1,517)	(1,715)
Write-off	—	(2,600)
Other adjustments	—	116
Balance, end of the year	$ 1,864	$ 2,767

The Group expects to recognize the contract liabilities as revenue upon satisfaction of performance obligations in the following years:

	2021	**2020**
Year 1 after the year-end (included in current liabilities)	$ 1,864	$ 2,767
	$ 1,864	$ 2,767

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Note 14. Account Payables and Accrued Expenses (continued)

Lease liabilities

Future lease payments included in the measurement of the lease liabilities as at December 31, 2021 are as follows:

Years ending December 31:	Principal	Interest	Total
2022	$ 291	$ 23	$ 314
2023	233	13	246
2024	243	3	246
	$ 767	$ 39	$ 806

As at December 31, 2021, the principal amounts of the lease liabilities were presented in the consolidated statement of financial position as follows:

Current liabilities	$ 291
Non-current liabilities	476
	$ 767

As at December 31, 2021, the lease liabilities, which principally comprised office premises (see Note 11), have varying terms and are subject to the customary practices in the local regions. The Group expects to pay for these future lease payments from cash flow from operations. Management does not expect material exposure arising from variable lease payments, extension options and termination options, residual value guarantees and leases not yet commenced to which the Group is committed.

The Group recognized the following associated with its lease liabilities for the year ended December 31, 2021, 2020 and 2019:

	2021	2020	2019
Interest expense	$ 42	$ 59	$ 71
Expense relating to short-term leases with payments directly charged to profit or loss	358	533	881
Expense relating to leases of low-value assets with payments directly charged to profit or loss	115	—	—
Expense relating to variable lease payments not included in the measurement of lease liabilities	—	—	—
Total cash outflows for leases	939	1,043	1,824
Gain on COVID-19-related rent concessions	—	(6)	—
Depreciation charge for right-of-use assets (see Note 11)	436	514	738
Carrying amount of right-of-use assets at the end of the reporting period (see Note 11)	692	1,109	1,188

Note 15. Bonds Payable

In August 2019, a subsidiary completed a public issue of bonds with an aggregate nominal amount of $36,511 (€25,000), less commissions and issuance costs totalling $1,078 (€738). The bonds are redeemable in August 2026, interest payable in August each year at a nominal interest rate of 4.00% (or an effective interest rate of 4.41%) and secured by the Group's investment property and real estate for sale under the German Law Mortgages and Pledges. To the extent that any sales of these properties, in whole or in part, cause the security to fall below a certain ratio, proceeds of said sale, up to an amount of the collateral shortfall, are required to be placed as cash collateral with the bondholder trustee until maturity. As at December 31, 2021, the carrying and nominal amounts of the bonds payable were $35,227 (€24,478) and $35,978 (€25,000), respectively.

For the movements of bonds payable in the years ended December 31, 2021, 2020 and 2019, see Note 24.

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Note 15. Bonds Payable (continued)

As at December 31, 2021, the contractual maturities of the bonds payable are as follows:

Years ending December 31:	Principal	Interest	Total
2022	$ —	$ 1,439	$ 1,439
2023	—	1,439	1,439
2024	—	1,439	1,439
2025	—	1,439	1,439
2026	35,978	1,439	37,417
	$ 35,978	$ 7,195	$ 43,173

Note 16. Decommissioning Obligations

	2021	2020
Decommissioning obligations, beginning of year	$ 14,072	$ 15,018
Changes in estimates	838	(946)
Accretion	186	—
Decommissioning obligations, end of year	$ 15,096	$ 14,072

Decommissioning obligations represent the present value of estimated remediation and reclamation costs associated with hydrocarbon properties and property, plant and equipment. As at December 31, 2021 and 2020, management revised its estimates of the expected decommissioning obligations related to its hydrocarbon production and processing assets. The Group discounted the decommissioning obligations using an average discount rate of 1.20% (2020: 0.70)%, which is the risk-free rate in Canada for blended government securities and inflation of 1.95% (2020: 0.70)%.

The Group's decommissioning obligations are unsecured and will be funded from future cash flows from operations.

Note 17. Shareholders' Equity

Capital Stock

The authorized share capital of Scully is US$450,000 divided into 300,000,000 common shares of US$0.001 par value each and 150,000,000 preference shares divided into US$0.001 par value each.

Holders of common shares may receive dividends declared by the Company in accordance with the Company's memorandum and articles of association, subject to any preferential dividend rights of any other classes or series of preference shares issued and outstanding. Holders of common shares are entitled to one vote per share at any general or special meeting of shareholders. The holders of common shares have the right on the winding up or dissolution of the Company to participate in the surplus assets of the Company in accordance with the provisions of the memorandum and articles of association of the Company, subject to the rights of any issued and outstanding preference shares.

The movements of total capital stock for the years ended December 31, 2021 and 2020 were as follows:

	Number of Shares	Capital Stock at Par Value	Additional Paid-in Capital	Total Capital Stock
Balance, January 1 and December 31, 2020	12,620,448	$ 16	$ 312,471	$ 312,487
Stock dividends*	2,236,133	3	(3)	—
Balance, December 31, 2021	14,856,581	$ 19	$ 312,468	$ 312,487

* 9% stock dividends were distributed on May 31, 2021 to shareholders of record as at May 14, 2021 and 8% stock dividends were distributed on November 30, 2021 to shareholders of record as at November 15, 2021. No fractional shares were issued by the Company in connection with such stock dividends.

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Note 17. Shareholders' Equity (continued)

Treasury Stock

As at December 31:	2021	2020
Total number of common shares held as treasury stock	77,279 *	65,647
Total carrying amount of treasury stock	$ 2,643	$ 2,643

* 11,632 common shares were received as stock dividends during the year ended December 31, 2021.

All of the Company's treasury stock is held by the Company itself.

Note 18. Consolidated Statements of Operations Information

Revenue

The Group's revenue comprised:

Years ended December 31:	2021	2020	2019
Royalty, goods and products and services	$ 60,201	$ 48,441	$ 101,013
Interest	405	531	1,057
Dividends	244	—	—
Gain on securities, net	—	758	931
Other, including medical and real estate sectors	10,441	9,702	10,266
Revenue	$ 71,291	$ 59,432	$ 113,267

The revenue of $60,201 from royalty, goods and products and services for the year ended December 31, 2021 comprised royalty revenue of $40,137, natural gas of $13,236, power and electricity of $2,927, food products of $2,721 and fees of $1,180.

The revenue of $48,441 from royalty, goods and products and services for the year ended December 31, 2020 comprised royalty revenue of $31,448, natural gas of $7,584, power and electricity of $3,358, food products of $4,602 and fees of $1,449.

The revenue of $101,013 from royalty, goods and products and services for the year ended December 31, 2019 comprised metals of $77,527, natural gas of $7,712, royalty revenue of $5,687, power and electricity of $4,075, fees of $3,547 and food products of $2,465.

A metals processing business was disposed of in September 2019. Another metal processing business which comprised two subsidiaries was disposed of in October 2019. See Note 2C(iv).

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Note 18. Consolidated Statements of Operations Information (continued)

Costs and Expenses

The Group's costs of sales and services comprised:

Years Ended December 31:	**2021**	**2020**	**2019**
Royalty, goods and products and services	$ 22,933	$ 22,102	$ 95,189
Market value increase on commodity inventories	—	—	(160)
(Reversal of) write-down of inventories	(19)	469	1,822
Gain on derivative contracts, net	(1,376)	—	(122)
Fair value gain on investment property, net of write-down of real estate for sale	(407)	(757)	(3,122)
Loss (gain) on dispositions of subsidiaries, net	—	546	(2,243)
Gains on settlements and derecognition of liabilities	(390)	(2,600)	(1,168)
Change in fair value of loan payable measured at FVTPL	1,616	549	979
Losses on securities, net	2,320	—	—
Other, including medical and real estate sectors	6,241	6,561	5,386
Total costs of sales and services	$ 30,918	$ 26,870	$ 96,561

The Group's net loss (gain) on dispositions of subsidiaries comprised:

Years Ended December 31:	**2021**	**2020**	**2019**
Net assets (liabilities) in excess of considerations received	$ —	$ 331	$ (485)
Reclassification adjustment for the exchange differences upon dispositions of subsidiaries	—	215	(1,758)
Loss (gain) on dispositions of subsidiaries, net (see Note 28)	$ —	$ 546	$ (2,243)

The Group included the following items in costs of sales and services:

Years ended December 31:	**2021**	**2020**	**2019**
Inventories as costs of goods sold (including depreciation expenses allocated to costs of goods sold)	$ 3,488	$ 5,041	$ 72,414

The Group's credit losses comprised:

Years ended December 31:	**2021**	**2020**	**2019**
Credit losses on loans and receivables and guarantees, net of reversal	$ 88	$ (3,108)	$ 13,398

During the year ended December 31, 2019, the credit losses included $6,057 due from a former consolidated entity and also included losses of $3,200 relating to the consideration from the sale of a subsidiary, which was no longer expected to be received, and $3,134 on certain corporate guarantees (see Note 25). During the year ended December 31, 2020, the provision for the corporate guarantees were reversed and recognized in profit or loss.The credit losses were recognized on the financial assets that were credit-impaired at the reporting date.

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Note 18. Consolidated Statements of Operations Information (continued)

The Group's selling, general and administrative expenses comprised:

Years ended December 31:	2021	2020	2019
Compensation (wages and salaries)	$ 4,551	$ 4,083	$ 6,762
Legal and professional	6,395	6,794	5,050
Accounting	1,238	1,294	1,965
Consulting and fees	3,423	2,836	2,365
Depreciation and amortization	481	557	502
Office	948	708	874
Reimbursement of expenses (net of recovery)	1,018	257	749
Other	3,090	3,372	4,306
	$ 21,144	$ 19,901	$ 22,573

Additional information on the nature of costs and expenses

Years Ended December 31:	2021	2020	2019
Depreciation, depletion and amortization	$ 11,023	$ 11,470	$ 8,287
Employee benefits expenses*	6,922	7,253	13,727

* Employee benefits expenses do not include the directors' fees of the Company. For directors' fees, see Note 25.

Note 19. Share-Based Compensation

The 2017 Equity Incentive Plan, referred to as the "2017 Plan", was adopted by the Company on July 14, 2017.

Pursuant to the terms of the 2017 Plan, the board of directors, the Compensation Committee or such other committee as is appointed by the board of directors to administer the Incentive Plan, may grant stock options, restricted stock rights, restricted stock, performance share awards, performance share units and stock appreciation rights under the 2017 Plan, establish the terms and conditions for those awards, construe and interpret the 2017 Plan and establish the rules for the 2017 Plan's administration. Such awards may be granted to employees, non-employee directors, officers or consultants or any affiliate or any person to whom an offer of employment with the Group or any affiliate is extended. Such committee has the authority to determine which employees, non-employee directors, officers, consultants and prospective employees should receive such awards.

In July 2019, stock options to purchase 20,000 of the Company's common shares at US$8.76 per share were exercised. The closing price of the Company's common share was US$14.76 per share on the date of the exercise. These numbers were not adjusted for the stock dividends issued in 2021.

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Note 19. Share-Based Compensation (continued)

In April 2021, the Company's Board of Directors authorized an amendment to the 2017 Plan to: (i) increase the number of common shares of the Company available for Awards (as defined in the 2017 Plan) thereunder by 1,326,591 common shares from 575,403 to 1,901,994 common shares; and (ii) increase the annual limitations on grants of Awards to Covered Employees (as defined in the 2017 Plan) to 400,000 common shares of the Company in any fiscal year (425,000 common shares during the fiscal year when such participant's employment commences). The Company's Compensation Committee and Board of Directors also approved grants of stock options entitling the holders thereof to acquire up to 1,307,000 common shares of the Company, which options will have a term of 10 years, be granted effective on the second business day after the date of the Company's 2020 Annual Report on Form 20-F and have an exercise price equal to the closing price of the Company's common shares on such date (which was US$13.15 per common share). Vesting of these Awards became effective upon ratification of the amendments to the 2017 Plan at the annual meeting of the Company's shareholders on December 29, 2021. These numbers were not adjusted for the stock dividends issued in 2021.

The following table is a summary of the changes in stock options granted under the plans:

	2017 Plan	
	Number of options	Weighted average exercise price per share (US$)
Outstanding as at January 1, 2019	450,000	8.76
Forfeited	(4,000)	8.76
Exercised	(20,000)	8.76
Outstanding as at December 31, 2019 and 2020	426,000	8.76
Forfeited	(32,500)	8.76
Granted	1,307,000	13.15
Adjustments for stock dividends issued in 2021	301,322	Not applicable
Outstanding as at December 31, 2021	2,001,822	10.31
As at December 31, 2021:		
Options exercisable	2,001,822	10.31
Options available for granting in future periods	213,659	

The following table summarizes information about stock options outstanding and exercisable as at December 31, 2021:

	Options Outstanding and Exercisable	
Exercise Price per Share (US$)*	Number	Weighted average remaining contractual life (in years)
$7.44	463,226	5.92
$11.17	1,538,596	9.33
Total	2,001,822	8.54

*The exercise price per share has been adjusted to reflect the effects of the stock dividends distributed in the year ended December 31, 2021. See Note 17.

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Note 19. Share-Based Compensation (continued)

The following table summarizes the share-based compensation expenses recognized by the Group in its consolidated statements of operations:

Years ended December 31:	**2021**	**2020**	**2019**
Share-based compensation expenses arising from stock options granted by the Company	$ 2,497	$ —	$ —

The weighted average assumptions and inputs used in calculating the fair value of the stock options granted on May 4, 2021 and approved by a shareholder meeting on December 29, 2021, using the Black-Scholes-Merton formula were as follows:

	2021
Number of options granted (on a post-stock dividend basis)	1,538,596
Vesting requirements	Immediately
Contractual life	9.33 years
Method of settlement	In equity
Exercise price per share	US$11.17
Market price per share on grant date	US$10.01
Expected volatility	39.24%
Expected option life	9.33 years
Expected dividends	8.00%
Risk-free interest rate	1.48%
Fair value of option granted (per option)	$1.62 (US$1.27)

The expected volatility was determined based on the historical price movement of comparable companies over the expected option life, with adjustments for underlying businesses. The stock option holders are not entitled to dividends or dividend equivalents until the options are exercised.

Note 20. Income Taxes

The components of income tax expense comprised:

Years ended December 31:	**2021**	**2020**	**2019**
Current taxes	$ (215)	$ (95)	$ (384)
Deferred taxes	(2,074)	(4,798)	(98)
Resource property expense	(7,887)	(6,074)	(1,137)
	$ (10,176)	$ (10,967)	$ (1,619)

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Note 20. Income Taxes (continued)

A reconciliation of income (loss) before income taxes to the provision for income taxes in the consolidated statements of operations is as follows:

Years ended December 31:	2021	2020	2019
Income (loss) before income taxes	$ 17,547	$ 11,179	$ (16,784)
Computed (expense) recovery of income taxes	$ (5,982)	$ (6,521)	$ 4,743
Decrease (increase) in income taxes resulting from:			
Effect of change in income tax rate	—	(13)	891
Other non-taxable income	160	(1)	24
Revisions to prior years	351	(21)	88
Capital gains and losses on dispositions, net	83	35	(7,663)
Resource property revenue taxes	(5,758)	(4,433)	(830)
Unrecognized losses in current year	(199)	(1)	(228)
Previously unrecognized deferred income tax assets, net	302	113	1,229
Permanent differences	(262)	(92)	(178)
Other non-taxable income	1,156	—	—
Other, net	(27)	(33)	305
Income tax expense	$ (10,176)	$ (10,967)	$ (1,619)

The income tax recovery and expense were computed using the domestic rate in each individual jurisdiction. Scully has a zero tax rate under its tax jurisdiction.

Note 21. Earnings (Loss) Per Share

Earnings (loss) per share data for the years ended December 31, 2021, 2020 and 2019 are summarized as follows:

	2021	2020	2019
Basic income (loss) attributable to holders of common shares	$ 7,564	$ 369	$ (18,553)
Effect of dilutive securities:	—	—	—
Diluted income (loss)	$ 7,564	$ 369	$ (18,553)

	Number of Shares		
	2021	2020*	2019*
Weighted average number of common shares outstanding - basic	14,779,302	14,779,302	14,765,938
Effect of dilutive securities:			
Options	129,010	—	—
Weighted average number of common shares outstanding - diluted	14,908,312	14,779,302	14,765,938

* The numbers have been restated for the stock dividends issued in 2021. See Note 17.

	2021	2020	2019
Earnings (loss) per share — basic and diluted	$ 0.51	$ 0.03	$ (1.26)

In 2021, 2020 and 2019, the Group's potential ordinary shares include stock options outstanding.

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Note 21. Earnings (Loss) Per Share (continued)

As at both December 31, 2020 and 2019, there were 501,485 stock options (which were adjusted for the stock dividends issued in 2021) outstanding that could potentially dilute basic earnings per share in the future, but were not included in the calculation of diluted earnings per share because they were antidilutive for the year ended December 31, 2019.

Note 22. Dividends Paid

The Company did not declare nor pay dividends during the years ended December 31, 2021, 2020 and 2019 other than the stock dividend issued during the year ended December 31, 2021, as described in Note 17. See Note 29.

Note 23. Commitments and Contingencies

Litigation

The Group is subject to routine litigation incidental to its business and is named from time to time as a defendant and is a plaintiff from time to time in various legal actions arising in connection with its activities, certain of which may include large claims for punitive damages. Further, due to the size, complexity and nature of the Group's operations, various legal and tax matters are outstanding from time to time, including periodic audit by various tax authorities.

The Company and certain subsidiaries have been named as defendants in a legal action relating to an alleged guarantee of the former parent of the Group in the amount of approximately $68,363 (€43,800) as at December 31, 2020. The Group believes that such claim is without merit and intends to vigorously defend such claim. In 2021, the Group was informed of a proposed amendment to the claim which, if allowed, would increase the amount to approximately $130,951 (€90,995) as at December 31, 2021. Currently, based upon the information available to management, management does not believe that there will be a material adverse effect on the Group's financial position or results of operations as a result of this action. However, due to the inherent uncertainty of litigation, the Company cannot provide certainty as to the outcome.

Currently, based upon information available, management does not believe any such matters would have a material adverse effect upon the Group's financial condition or results of operations as at December 31, 2021. However, due to the inherent uncertainty of litigation, there cannot be certainty as to the eventual outcome of any case. If management's current assessments are incorrect or if management is unable to resolve any of these matters favourably, there may be a material adverse impact on the Group's financial performance, cash flows or results of operations.

Rights to Subscribe to Shares in Subsidiaries

During 2017, two subsidiaries of the Group entered into agreements with third-party employee incentive corporations whereby the latter were granted the rights to buy up to 10% of the share capital of the subsidiaries on a diluted basis at a price to be no less or more than the then existing net tangible asset value. The rights expire in 2027. Certain rights which were issued in January 2020, and the underlying agreements, were cancelled in April 2021. Management determined the fair value of the rights to be $nil at the time of their issuance. The issuance of such rights does not have financial impact on the assets and liabilities of the Group until exercised.

Note 24. Consolidated Statements of Cash Flows – Supplemental Disclosure

Interest paid and received, dividends received and income taxes paid are classified as operating activities. Dividends paid are classified as financing activities. Income taxes paid include the payments of advance tax prepayments and are net of tax cash refunds.

There are no circumstances in which cash held by an entity are not available for use by the Group other than amounts presented as restricted cash. See "Currency Risk" in Note 26.

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Note 24. Consolidated Statements of Cash Flows – Supplemental Disclosure (continued)

Consolidated cash flows statement – reconciliation of liabilities arising from financing activities

Years ended December 31:	2021	2020	2019
Bonds payable, opening balance	$ 38,053	$ 35,418	$ —
Cash flows	—	—	35,433
Non-cash changes:			
Accretion	145	143	533
Cumulative translation adjustments	(2,971)	2,492	(548)
Bonds payable, ending balance (see Note 15)	$ 35,227	$ 38,053	$ 35,418

Years ended December 31:	2021	2020	2019
Lease liabilities, opening balance	$ 1,175	$ 1,196	$ —
Cash flows	(466)	(510)	(943)
Non-cash changes:			
Initial adoption of IFRS 16	—	—	2,911
Additions	84	368	1,583
Dispositions of subsidiaries	—	—	(487)
Accretion	42	59	71
COVID-19 related rent concessions	—	(6)	—
Termination	—	—	(1,809)
Cumulative translation adjustments	(68)	68	(130)
Lease liabilities, ending balance (see Note 14)	$ 767	$ 1,175	$ 1,196

Non-cash transactions

Non-cash transactions during the year ended December 31, 2021: (i) an internal reorganization of the Group's structure resulted in a net recovery of deferred income tax by $1,156; and (ii) a subsidiary of the Group derecognized a liability of $390 for a consideration of $nil.

Non-cash transactions during the year ended December 31, 2020: (i) a subsidiary of the Group settled a liability of $391 by delivering shares of one of its subsidiaries; and (ii) the Group received additional shares in a majority-owned subsidiary as price adjustment for liability settlements in 2019.

Non-cash transactions during the year ended December 31, 2019: (i) a subsidiary of the Group settled liabilities of $1,128 by delivering shares of one of its subsidiaries; and (ii) the acquisition of a non-controlling interest in the aforementioned subsidiary by an offset of a receivable of $390.

Note 25. Related Party Transactions

In the normal course of operations, the Group enters into transactions with related parties, which include affiliates in which the Group has a significant equity interest (10% or more) or has the ability to influence their operating and financing policies through significant shareholding, representation on the board of directors, corporate charter and/or bylaws. The related parties also include, among other things, the Company's directors, President, Chief Executive Officer and Chief Financial Officer. This section does not include disclosure, if any, respecting open market transactions, whereby a related party acts as an investor of the Company's securities or the bonds of Merkanti Holding.

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Note 25. Related Party Transactions (continued)

The Group had the following transactions with its related parties:

Years ended December 31:	2021	2020	2019
Fee income	$ 1	$ 9	$ 10
Interest income	—	86	31
Dividends received	198	—	—
Royalty expenses	(700)	(660)	(210)
Credit losses on corporate guarantees	—	—	(3,134)*
Reversal of (expense of) ECL allowance, net	—	15	(16)
Fee expenses	—	(80)	—
Reimbursements of expenses, primarily including employee benefits and lease and office expenses	(1,007)	(276)	(811)

* The provision for credit losses was reversed during the year ended December 31, 2020

From time to time the Group has entered into arrangements with a company controlled by the Group's Chairman to assist the Group to comply with various local regulations and requirements, including the newly introduced economic substance legislation for offshore jurisdictions, as well as fiscal efficiency. These arrangements are utilized to aid in the divestment of financially or otherwise distressed or insolvent assets or businesses that are determined to be unsuitable for the Group's ongoing operations. These arrangements are implemented at cost and no economic benefit is received by, or accrued, by the Group's Chairman or the company controlled by him. Pursuant to this arrangement, as at December 31, 2021, the Group held: (i) an indemnification asset of $6,756 (2020: $6,756) (see Note 8) relating to a secured indemnity provided by such company to a subsidiary of the Group to comply with local regulations and requirements, in an amount equal to the amount advanced to it, for certain short-term intercompany balances involving certain of the Group's subsidiaries and another subsidiary that was put into dissolution by the Group in 2019; (ii) a loan to such company of $819 (2020: $818) (see Note 8) which was made in the year ended December 31, 2019 in order to facilitate the acquisition of securities for the Group's benefit. The loan initially bore interest at 6.3% and subsequently became non-interest bearing; and (iii) current account receivables of $46,926 (2020: $20,802) (see Note 8). The Group also had current account payables of $25 (2020: $27) due to the aforesaid affiliate as at December 31, 2021 (see Note 14).

In addition, pursuant to this arrangement, during the year ended December 31, 2021, 2020 and 2019, the Group reimbursed such company $1,007, $276 and $811 (as set forth in the table above), respectively, at cost for expenses, primarily consisting of employee benefits and lease and office expenses. Furthermore, during the year ended December 31, 2019, the Group sold a non-core metals processing business to a company controlled by its Chairman for nominal consideration (€1.00), which represented the arm's length transaction price. This metals processing business operated out of a leased property with leased equipment. Over the past fifteen years, the landlord of the land and equipment refused to incur any capital expenditures or to make any necessary improvement to the facility. Without these necessary capital upgrades and improvements, the subsidiary's maintenance costs increased and productivity decreased such that it could no longer be operated on a profitable or sustainable basis. After reporting a net loss in the year ended December 31, 2018, it continued to report losses in the year ended December 31, 2019, which resulted in the subsidiary having negative net equity on a consolidated basis. As a result, the transaction did not result in the transfer of any net economic benefit to the company controlled by the Group's Chairman and the sale for nominal consideration resulted in the recognition of a non-cash accounting gain of $906 in the year ended December 31, 2019. Subsequent to the sale, this former subsidiary entered into an insolvency administration process. During the year ended December 31, 2019, the Group recognized credit losses of $3,134 on corporate guarantees issued to certain trading partners of this former subsidiary prior to its disposition. During the year ended December 31, 2020, the provision for credit losses on the corporate guarantees was reversed and recognized in profit or loss.

As set forth in the table above, the Group had royalty expenses of $700, $660 and $210, respectively, in the year ended December 31, 2021, 2020 and 2019 that were paid to a company in which it holds a minority interest and that is a subsidiary of the operator of the underlying mine.

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Note 25. Related Party Transactions (continued)

During the year ended December 31, 2019, the Group's Executive Chairman was a subscriber in the issuance of public bonds by Merkanti Holding in the amount of $455 (€316), which represented approximately 1.25% of the total offering and total bonds outstanding as at both December 31, 2021 and 2020.

Key management personnel

The Group's key management personnel comprise the members of its Board of Directors, President, Chief Executive Officer and Chief Financial Officer of SRL. The remuneration of key management personnel of the Group on an accrual basis was as follows:

Years ended December 31:	2021	2020	2019
Short-term employee benefits	$ 1,288 *	$ 1,413 *	$ 1,451 **
Post-employment benefits	80	—	—
Directors' fees	659	579	531
Share-based compensation***	1,087	—	—
Total	$ 3,114	$ 1,992	$ 1,982

* Net of salary and expenses.
** Included the net pay and expenses.
***Amounts computed based on fair values using the Black-Scholes-Merton formula. (See Note 19).

Note 26. Financial Instruments

The fair values of the Group's financial instruments as at December 31, 2021 and 2020, other than those with carrying amounts that approximate their fair values due to their short-term nature, are summarized as follows:

	2021		2020	
As at December 31:	Carrying Amount	Fair Value	Carrying Amount	Fair Value
Financial Assets:				
FVTPL:				
Equity securities	$ 8,564	$ 8,564	$ 6,230	$ 6,230
Debt securities	—	—	873	873
Investment funds	3,531	3,531	4,096	4,096
Long-term loan receivable	—	—	1,237	1,237
FVTOCI:				
Debt securities	10,786	10,786	11,019	11,019
Financial Liabilities:				
Financial liabilities measured at amortized cost:				
Bonds payable	$ 35,227	$ 36,693	$ 38,053	$ 39,024
FVTPL:				
Loan payable	6,817	6,817	5,223	5,223

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Note 26. Financial Instruments (continued)

Fair value of a financial instrument represents the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction in the principal (or most advantageous) market at the measurement date under current market conditions regardless of whether that price is directly observable or estimated using a valuation technique. The price for a transaction which takes place under duress or the seller is forced to accept the price in the transaction might not represent the fair value of an asset or a liability. The best evidence of fair value is published price quotations in an active market. When the market for a financial asset or financial liability is not active, the Group establishes fair value by using a valuation technique. The valuation technique used maximizes the use of inputs observed in active markets, and minimizes the use of inputs generated by the Group. Internally generated inputs take into account factors that market participants would consider when pricing the financial instruments, such as liquidity and credit risks. Use of judgment is significantly involved in estimating fair value of financial instruments in inactive markets and actual results could materially differ from the estimates. To value longer-term transactions and transactions in less active markets for which pricing information is not generally available, unobservable inputs may be used.

The fair values of financial assets measured at FVTPL and FVTOCI are based on quoted market prices (Level 1 fair value hierarchy) or a valuation method with observable inputs (Level 2 fair value hierarchy). For investments in certain specialized debt securities and investment funds which are measured at FVTPL, their fair values are based on a valuation model with inputs that are unobservable (Level 3 fair value hierarchy). Generally, the Group relies on legally protected information to arrive at their valuations and, as a result, is precluded from disclosing individual asset valuations publicly. The carrying amounts of cash and restricted cash, short-term receivables and account payables and accrued expenses, due to their short-term nature and normal trade credit terms, approximate their fair values.

The fair values of derivative financial instruments are based on quoted market prices when possible; and if not available, estimates from third-party brokers. These broker estimates are corroborated with multiple sources and/or other observable market data utilizing assumptions that market participants would use when pricing the asset or liability, including assumptions about risk and market liquidity (Level 2 fair value hierarchy). Inputs may be readily observable or market-corroborated.

The fair values of the bonds payable are based on the quoted market price from the Malta Stock Exchange at which the bonds are traded (Level 1 fair value hierarchy). The fair value of the loan payable is estimated using an appropriate valuation method. Inputs to the valuation technique are unobservable (Level 3 fair value hierarchy).

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Note 26. Financial Instruments (continued)

The following tables present the Group's financial instruments measured at fair value in the consolidated statements of financial position classified by level of the fair value hierarchy as at December 31, 2021 and 2020, respectively:

As at December 31, 2021	Level 1	Level 2	Level 3	Total
Financial Assets:				
FVTPL:				
Equity securities	$ 4,939	$ 3,625	$ —	$ 8,564
Investment funds	—	—	3,531	3,531
FVTOCI:				
Debt securities	10,786	—	—	10,786
Total	$ 15,725	$ 3,625	$ 3,531	$ 22,881
Financial Liabilities:				
FVTPL:				
Loan payable	$ —	$ —	$ 6,817	$ 6,817

As at December 31, 2020	Level 1	Level 2	Level 3	Total
Financial Assets:				
FVTPL:				
Equity securities	$ 2,509	$ 3,721	$ —	$ 6,230
Debt securities	—	—	873	873
Investment funds	—	—	4,096	4,096
Long-term loan receivable	—	—	1,237	1,237
FVTOCI:				
Debt securities	11,019	—	—	11,019
Total	$ 13,528	$ 3,721	$ 6,206	$ 23,455
Financial Liabilities:				
FVTPL:				
Loan payable	$ —	$ —	$ 5,223	$ 5,223

As at December 31, 2021 and 2020, the Group held an investment in a privately held company which was measured at FVTPL. The fair value was determined using discounted cash flows at prevailing market rates of interest for similar instruments with observable inputs (Level 2 fair value hierarchy).

As at December 31, 2021 and 2020, a subsidiary of the Group had a loan payable with a former subsidiary which is non-interest bearing, is without recourse to the Group and has no fixed repayment date. The loan payable was measured at FVTPL at its initial recognition, as permitted under IFRS, on a fair value basis in accordance with a documented investment strategy. The undiscounted contractual amount due out of surplus cash of the subsidiary is $53,336 (US$42,070) and is expected to be repaid in greater than 12 years. As at December 31, 2021, the difference between the carrying amount of the loan payable and the amount the Group would be contractually required to pay at maturity was $46,519. The fair value is determined using a discount rate for similar instruments with unobservable inputs (Level 3 fair value hierarchy), which included the sale price, demand for products, production and labour costs in the future periods. The actual repayment may be significantly different from both the carrying amount and the amount due at maturity. Sensitivity to changes in the discount rate is included under "Interest Rate Risk" in this Note 26.

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Note 26. Financial Instruments (continued)

Generally, management of the Group believes that current financial assets and financial liabilities, due to their short-term nature, do not pose significant financial risks. The Group uses various financial instruments to manage its exposure to various financial risks. The policies for controlling the risks associated with financial instruments include, but are not limited to, standardized company procedures and policies on matters such as hedging of risk exposure, avoidance of undue concentration of risk and requirements for collateral (including letters of credit and bank guarantees) to mitigate credit risk. The Group has risk managers and other personnel to perform checking functions and risk assessments so as to ensure that the Group's procedures and policies are complied with.

Many of the Group's strategies, including the use of derivative instruments and the types of derivative instruments selected by the Group, are based on historical trading patterns and correlations and the Group's management's expectations of future events. However, these strategies may not be fully effective in all market environments or against all types of risks. Unexpected market developments may affect the Group's risk management strategies during the period, and unanticipated developments could impact the Group's risk management strategies in the future. If any of the variety of instruments and strategies the Group utilizes is not effective, the Group may incur losses.

The Group does not trade in financial instruments, including derivative financial instruments, for speculative purposes.

The nature of the risks that the Group's financial instruments are subject to as at December 31, 2021 is set out in the following table:

	Risks				
			Market risks		
Financial instrument	**Credit**	**Liquidity**	**Currency**	**Interest rate**	**Other price**
Cash and restricted cash	X		X	X	
Equity securities			X		X
Debt securities	X			X	X
Investment funds					
Derivative securities and financial liabilities	X	X	X		X
Receivables	X		X		
Account payables and accrued expenses		X	X		
Bonds payable		X		X	X
Loan payable				X	

A sensitivity analysis for each type of market risk to which the Group is exposed on its financial instruments at the end of the reporting period is provided, showing how profit or loss and equity would have been affected by changes in the relevant risk variable that were reasonably possible at that date. These ranges of parameters are estimated by management, which are based on the facts and circumstances available at the time estimates are made, and an assumption of stable socio-economic and geopolitical states. No unusual nor exceptional events, for example, natural disasters or human-made crises and calamities, are taken into consideration when the sensitivity analysis is prepared. Actual occurrence could differ from these assumptions and such differences could be material.

Credit risk

Credit risk is the risk that one party to a financial instrument will cause a financial loss for the other party by failing to discharge an obligation. Financial instruments which potentially subject the Group to credit risk consist of cash and restricted cash, derivative financial instruments, debt securities, receivables and committed transactions (including loan commitments and financial guarantee contracts). The Group has deposited cash and entered into derivative financial instrument contracts with reputable financial institutions with high credit ratings and management believes the risk of loss from these counterparties to be remote.

Note 26. Financial Instruments (continued)

Most of the Group's credit exposure is with counterparties in the merchant banking businesses and are subject to normal industry credit risk. The Group has receivables from various entities and credit risk from trade receivables is mitigated since they are credit insured, covered by letters of credit, bank guarantees and/or other credit enhancements. The Group routinely monitors credit risk exposure, including sector, geographic and corporate concentrations of credit and set and regularly review counterparties' credit limits based on rating agency credit ratings and/or internal assessments of the customers and industry analysis. The Group also uses factoring and credit insurances to manage credit risk. Management believes that these measures minimize the Group's overall credit risk; however, there can be no assurance that these processes will protect the Group against all losses from non-performance.

The Group measures the loss allowance for a financial instrument at an amount equal to the lifetime expected credit losses or 12-month expected credit losses (see Note 2B(vi)).

At each reporting date, the Group assesses whether the credit risk on a financial instrument that is measured at amortized cost or at FVTOCI has increased significantly since initial recognition. When making the assessment, the Group uses the change in the risk of a default occurring over the expected life of the financial instrument instead of the change in the amount of expected credit losses. To make that assessment, the Group compares the risk of a default occurring on the financial instrument as at the reporting date with the risk of a default occurring on the financial instrument as at the date of initial recognition and considers reasonable and supportable information, that is available without undue cost or effort, that is indicative of significant increases in credit risk since initial recognition. The Group assumes that the credit risk on a financial instrument has not increased significantly since initial recognition if the financial instrument is determined to have low credit risk at the reporting date.

Under IFRS 9, there is a rebuttable presumption that the credit risk on a financial asset has increased significantly since initial recognition when contractual payments are more than 30 days past due; although, this rebuttable presumption is not an absolute indicator that lifetime expected credit losses should be recognized, but is presumed to be the latest point at which lifetime expected credit losses should be recognized even when using forward-looking information (including macroeconomic factors on a portfolio level).

The credit risk on a financial instrument is considered low if the financial instrument has a low risk of default, the borrower has a strong capacity to meet its contractual cash flow obligations in the near term and adverse changes in economic and business conditions in the longer term may, but will not necessarily, reduce the ability of the borrower to fulfil its contractual cash flow obligations.

Financial instruments are not considered to have low credit risk when they are regarded as having a low risk of loss simply because of the value of collateral and the financial instrument without that collateral would not be considered low credit risk. Financial instruments are also not considered to have low credit risk simply because they have a lower risk of default than the Group's other financial instruments or relative to the credit risk of the jurisdiction within which the Group operates.

To determine whether a financial instrument has low credit risk, the Group may use its internal credit risk ratings or other methodologies that are consistent with a globally understood definition of low credit risk and that consider the risks and the type of financial instruments that are being assessed. Generally, an external rating of "investment grade" is an example of a financial instrument that may be considered as having low credit risk. Financial instruments are considered to have low credit risk from a market participant perspective taking into account all of the terms and conditions of the financial instrument.

A financial asset is credit-impaired when one or more events that have a detrimental impact on the estimated future cash flows of that financial asset have occurred. Evidence that a financial asset is credit-impaired include observable data about the following events: (a) significant financial difficulty of the issuer or the borrower; (b) a breach of contract, such as a default or past due event; (c) the lender(s) of the borrower, for economic or contractual reasons relating to the borrower's financial difficulty, having granted to the borrower a concession(s) that the lender(s) would not otherwise consider; (d) it is becoming probable that the borrower will enter bankruptcy or other financial reorganization; (e) the disappearance of an active market for that financial asset because of financial difficulties; or (f) the purchase or origination of a financial asset at a deep discount that reflects the incurred credit losses. It may not be possible to identify a single discrete event; instead, the combined effect of several events may have caused financial assets to become credit-impaired.

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Note 26. Financial Instruments (continued)

The Group adopts the presumption in IFRS 9 as its accounting policy that default does not occur later than when a financial asset is 90 days past due, unless it has reasonable and supportable information to demonstrate that a more lagging default criterion is more appropriate. The definition of default used for these purposes is applied consistently to all financial instruments unless information becomes available that demonstrates that another default definition is more appropriate for a particular financial instrument.

The average contractual credit period for trade receivables is 25-45 days and up to 180 days for certain sales.

The maximum credit risk exposure as at December 31, 2021 is as follows:

Cash and restricted cash	$ 55,015
Debt securities measured at FVTOCI	10,786
Trade and other receivables	68,610
Amounts recognized in the consolidated statement of financial position	134,411
Guarantees	—
Maximum credit risk exposure	$ 134,411

See sub-heading of “Concentration risk” in this note on credit risk concentration.

Liquidity risk

Liquidity risk is the risk that an entity will encounter difficulty in meeting obligations associated with financial liabilities that are settled by delivering cash or another financial asset. The Group requires liquidity specifically to fund capital requirements, satisfy financial obligations as they become due, and to operate its merchant banking business. The Group puts in place an actively managed production and capital expenditure budgeting process for major capital programs. The Group’s approach to managing liquidity is to ensure, as far as possible, that it always has sufficient liquidity to meet its liabilities when they fall due, under normal and stress conditions, without incurring unacceptable losses. The Group maintains an adequate level of liquidity, with a portion of its assets held in cash. It is the Group’s policy to invest cash in bank deposits for a period of less than three months. The Group may also invest in cash deposits with an original maturity date of more than three months so as to earn higher interest income.

Generally, trade payables are due within 90 days and other payables and accrued expenses are due within one year. As at December 31, 2021, the Group had long-term bonds payable with interest payable annually and repayment of principal due in 2026. The timing of future payments is based on the Group’s historical payment patterns and management’s interpretation of contractual arrangements. The actual cash outflows might occur significantly earlier than indicated in the payment projection or be amounts significantly different from those indicated in the payment projection.

Currency risk

Currency risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in foreign exchange rates. The Group operates internationally and is exposed to risks from changes in foreign currency exchange rates, particularly the Euro, U.S. dollar and Hong Kong dollar. Currency risk arises principally from future trading transactions, and recognized assets and liabilities. In order to reduce the Group's exposure to foreign currency risk on material contracts (including intercompany loans) denominated in foreign currencies (other than the functional currencies of the Group companies), the Group may use foreign currency forward contracts and options to protect its financial positions. As at December 31, 2021 and 2020, the Group did not have any foreign currency derivative financial instruments (foreign currency forward contracts and options) outstanding.

Note 26. Financial Instruments (continued)

The Group holds cash balances in renminbi (“RMB”) in the People’s Republic of China (“PRC”). The PRC imposes controls on the convertibility of RMB, the official currency of the PRC, into foreign currencies. The value of RMB is subject to changes in the central government policies and to international economic and political developments affecting supply and demand in the PRC foreign exchange trading system market. In the PRC, certain foreign exchange transactions are required by law to be transacted only by authorized financial institutions at exchange rates set by the People’s Bank of China (the “PBOC”).

The Group does not have any material exposure to highly inflationary foreign currencies.

Sensitivity analysis:

At December 31, 2021, if the U.S. dollar had weakened 10% against the Group companies' functional currencies with all other variables held constant, net income for the year ended December 31, 2021 would have decreased by $481. Conversely, if the U.S. dollar had strengthened 10% against the Group companies' functional currencies with all other variables held constant, net income for the year ended December 31, 2021 would have increased by $496. The reason for such change is mainly due to certain U.S. dollar denominated financial instrument assets (net of liabilities) held by entities whose functional currencies were not the U.S. dollar. There would have been no material impact arising from financial instruments on other comprehensive income in either case.

At December 31, 2021, if the Euro had weakened 10% against the Group companies' functional currencies with all other variables held constant, net income for the year ended December 31, 2021 would have increased by $3,568. Conversely, if the Euro had strengthened 10% against the Group companies' functional currencies with all other variables held constant, net income for the year ended December 31, 2021 would have decreased by $3,568. The reason for such change is mainly due to certain Euro denominated financial instrument liabilities (net of assets) owed by entities whose functional currencies were not the Euro. There would have been no impact arising from financial instruments on other comprehensive income in either case.

At December 31, 2021, if the Hong Kong dollar had weakened 10% against the Group companies' functional currencies with all other variables held constant, net income for the year ended December 31, 2021 would have decreased by $5,134. Conversely, if the Hong Kong dollar had strengthened 10% against the Group companies' functional currencies with all other variables held constant, net income for the year ended December 31, 2021 would have increased by $5,134. The reason for such change is mainly due to certain Hong Kong dollar denominated financial instrument assets held by entities whose functional currencies were not the Hong Kong dollar. There would have been no impact arising from financial instruments on other comprehensive income in either case.

Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates. Short-term financial assets and financial liabilities are generally not exposed to significant interest rate risk because of their short-term nature. As at December 31, 2021, the Group had long-term bonds payable measured at amortized cost which bear a fixed interest rate.

Sensitivity analysis:

At December 31, 2021, if benchmark interest rates (such as IBORs or prime rates) at that date had been 100 basis points (1.00%) per annum lower with all other variables held constant, net income for the year ended December 31, 2021 would have decreased by $710. Conversely, if the benchmark interest rate had been 100 basis points per annum higher with all other variables held constant, net income for the year ended December 31, 2021 would have increased by $614. The reason for such change is mainly due to the loan payable measured at FVTPL. There would have been no impact arising from financial instruments on the Group's other comprehensive income in either case.

Note 26. Financial Instruments (continued)

Other price risk

Other price risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices (other than those arising from interest rate risk or currency risk), whether those changes are caused by factors specific to the individual financial instrument or its issuer or by factors affecting all similar financial instruments traded in the market. The Group's other price risk includes equity price risk whereby the Group's investments in equities of other entities that are classified as held for trading are subject to market price fluctuations.

Sensitivity analysis:

At December 31, 2021, if equity prices in general had weakened 10% with all other variables held constant, net income for the year ended December 31, 2021 would have decreased by $684. Conversely, if equity prices in general had strengthened 10% with all other variables held constant, net income for the year ended December 31, 2021 would have increased by $684. There would have been no impact on other comprehensive income in either case.

In addition, the Group buys and sells futures contracts on the London Metal Exchange and enters into financial derivative contracts (e.g. futures and swaps) with banks, customers and brokers. Management uses the financial derivative contracts to manage the price fluctuations for its own account or for customers. As at December 31, 2021 and 2020, the Group did not have any outstanding derivative financial instruments. As these future contracts are to hedge against the Group's physical inventory position, any change in the fair value of the future contracts will offset the change in the fair value, though in opposite direction, of the physical inventories. As a result, the sensitivity analysis of the price risk arising from the future contracts on the Group is not applicable.

Concentration risk

Management determines the concentration risk threshold amount as any single financial asset (or liability) exceeding 10% of total financial assets (or liabilities) in the Group's consolidated statement of financial position.

In the PRC, foreign exchange transactions are required by law to be transacted only by authorized financial institutions at exchange rates set by the PBOC. Remittances in currencies other than RMB by the Group in the PRC must be processed through the PBOC or other PRC foreign exchange regulatory bodies and require certain supporting documentation in order to effect the remittance. If such foreign exchange control system prevents the Group from obtaining sufficient foreign currencies to satisfy its currency demands, the Group may not be able to pay dividends in foreign currencies and the Group's ability to fund its business activities that are conducted in foreign currencies could be adversely affected.

As at December 31, 2021, royalty receivables due from a customer in the Royalty segment (see Note 8) represented 9% of total financial receivables, and an indemnification asset and receivables due from an affiliate (see Note 8) represented 79% of total financial receivables and 37% of total financial assets.

Except as disclosed in the preceding paragraph, at December 31, 2021, there were no customer, company or entity holding financial assets or liabilities exceeding the threshold amounts.

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Note 26. Financial Instruments (continued)

Additional disclosure

In addition to information disclosed elsewhere in these consolidated financial statements, the Group had significant items of income, expense, and gains and losses resulting from financial assets and financial liabilities which were included in profit or loss for the years ended December 31, 2021, 2020 and 2019 as follows:

	2021	2020	2019
Interest income on financial assets not at FVTPL	$ 191	$ 483	$ 955
Interest income on financial assets classified at FVTPL	214	48	102
Total interest income	$ 405	$ 531	$ 1,057
Interest expense on financial liabilities not at FVTPL	$ 1,730	$ 1,856	$ 710
Interest expense on financial liabilities classified at FVTPL	18	25	30
Total interest expense	$ 1,748	$ 1,881	$ 740
Dividend income on financial assets at FVTPL	$ 244	$ —	$ —
Dividend income on financial assets classified not at FVTPL	—	—	—
Net (loss) gain on financial assets at FVTPL	(722)	692	1,142
Loss on loan payable at FVTPL	(1,616)	(549)	(979)
Reversal of (impairment) on securities measured at FVTOCI	—	3	(3)

Note 27. Fair Value Disclosure for Non-financial Assets

The following tables present non-financial assets which are measured at or based on fair value in the consolidated statements of financial position, classified by level of the fair value hierarchy:

Assets measured at fair value on a recurring basis as at December 31, 2021:

	Level 1	Level 2	Level 3
Investment property	$ —	$ —	$ 34,430

Assets measured at fair value on a recurring basis as at December 31, 2020:

	Level 1	Level 2	Level 3
Investment property	$ —	$ —	$ 36,908

The fair values of investment property are measured using an income approach which includes the following inputs: land value, realized basic rents, operating costs, discount rates and damages and defects (level 3 fair value hierarchy). The valuation approach was consistent for both 2021 and 2020. Both the 2021 and 2020 valuations were performed by an independent external valuator who is an authorized expert for the valuation of developed and undeveloped land in Germany and holds recognized and relevant professional qualifications and has recent experience in the location and category of the investment property being valued.

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Note 28. Significant Subsidiaries

A subsidiary is an entity that is controlled by Scully. The following table shows the Company's direct and indirect significant subsidiaries as at December 31, 2021. The table excludes subsidiaries which only hold intercompany assets and liabilities and do not have an active business as well as subsidiaries whose results and net assets did not materially impact the consolidated results and net assets of the Group.

Subsidiaries	Country of Incorporation	Proportion of Interest *
Merkanti Holding plc.	Malta	99.96%
1178936 B.C. Ltd.	Canada	100%
Merkanti (A) International Ltd.	Malta	99.96%
Merkanti (D) International Ltd.	Malta	99.96%

* The Group's proportional voting interests are identical to its proportional beneficial interests, except that it holds a 99.68% proportional beneficial interest in each of Merkanti (A) International Ltd. and Merkanti (D) International Ltd.

As at December 31, 2021, the Group controlled entities in which the Group held more than 50% of the voting rights and did not control any entities in which the Group held 50% or less of the voting rights. The Group's proportional voting interests in the subsidiaries are identical to its proportional beneficial interests except as described above.

As at December 31, 2021, none of the non-controlling interests are material to the Group. As at December 31, 2021, there were no significant restrictions (statutory, contractual and regulatory restrictions, including protective rights of non-controlling interests) on Scully's ability to access or use the assets and settle the liabilities of the Group except for amounts presented as restricted cash. See "Currency Risk" in Note 26.

During the year ended December 31, 2020, the Group disposed of a wholly-owned subsidiary and a majority-owned subsidiary, resulting in a net loss of $546 which was included in the consolidated statement of operations.

During the year ended December 31, 2020, Merkanti Holding issued 20,000 shares to an outside party for a cash consideration of $8 and a receivable of $23 (which was collected in January 2022), resulting in the Group's shareholding in Merkanti Holding reduced from 100% to 99.96%.

During the year ended December 31, 2019, the Group put a subsidiary into a voluntary dissolution (see Note 4), sold the shares of certain manufacturing/processing subsidiaries and abandoned certain inactive subsidiaries, resulting in a net gain of $2,243 (see Note 18) which was included in the consolidated statement of operations. In addition, the Group issued shares in a subsidiary to a third-party, resulting in a gain of $229 which was credited to retained earnings directly.

During the year ended December 31, 2017, two subsidiaries, pursuant to the terms of respective option deeds (see Note 23), issued shares to the non-controlling interests. These share issuances were accounted for as equity transactions and were credited to non-controlling interests directly and the shares so issued represented less than 0.5% of the ownership of each such subsidiary as of December 31, 2021. In January 2020, certain rights to purchase shares in the entities with pre-determined prices were issued, exercisable until 2026. In April 2020, those rights were cancelled. For further details, see Note 23.

SCULLY ROYALTY LTD.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2021, 2020 and 2019
(Canadian Dollars in Thousands)

Note 29. Subsequent Events

Business Combination

In March 2022, the Company announced that its subsidiary, Merkanti Holding, the parent of Merkanti Bank Ltd. ("Merkanti Bank") had signed a definitive agreement to acquire Sparkasse (Holdings) Malta Ltd. a company registered in Malta ("Sparkasse Holdings"), the parent of Sparkasse Bank Malta plc ("Sparkasse Bank").

Merkanti Holding is acquiring Sparkasse Holdings and the total consideration is approximately equal to the net tangible asset value of Sparkasse Holdings, less certain adjustments, and includes (i) a cash payment at closing of the transaction, (ii) three consecutive annual payments of €2.5 million; and (iii) a contingent payment, payable solely upon the recovery (if any) of an asset of Sparkasse Bank which was previously written off in its entirety. The consideration is expected to be satisfied through cash on hand and available liquidity within the Group.

Upon closing of this transaction, and subject to regulatory approval, it is the intention to merge Sparkasse Bank and Merkanti Bank, in order to form a larger independent financial institution. The transaction is conditional upon the satisfaction of certain customary conditions precedent such as regulatory approval from various regulators, including the European Central Bank, the Malta Financial Services Authority and the Central Bank of Ireland. The acquisition is currently expected to be concluded in the second half of calendar year 2022.

Cash Dividend

In February 2022, the Company declared its first dividend of $3,714($0.25 (US$0.18) per share), which was paid on March 4, 2022.

On April 29, the Company announced that its board of directors declared a cash dividend of $0.34 (US$0.27) per share, which will be paid in US dollars on May 23, 2022 to shareholders of record on May 10, 2022.

Note 30. Approval of Consolidated Financial Statements

These consolidated financial statements were approved by the Board of Directors and authorized for issue on April 29, 2022.

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ITEM 19: EXHIBITS

Exhibits Required by Form 20-F

Exhibit Number	Description
1.1	Amended and Restated Memorandum and Articles of Association adopted on July 12, 2017. Incorporated by reference from our Form 6-K dated July 14, 2017.
1.2	Extract of Amendments to the Amended and Restated Articles of Association adopted on May 31, 2019. Incorporated by reference from our Form 6-K dated June 21, 2019.
2.1	Description of Common Shares. Incorporated by reference from our Annual Report on Form 20-F for the year ended December 31, 2019 dated May 11, 2020.
4.1	Amended and Restated 2017 Equity Incentive Plan.
4.2	Amended and Restated Arrangement Agreement dated June 7, 2017 among MFC Bancorp Ltd., MFC Bancorp Ltd. and MFC 2017 II Ltd. Incorporated by reference from our Form 6-K dated June 14, 2017.
8.1	List of significant subsidiaries of Scully Royalty Ltd. as at December 31, 2020.
11.1	Code of Business Conduct and Ethics and Insider Trading Policy. Incorporated by reference from our Annual Report on Form 20-F for the year ended December 31, 2017 dated April 10, 2018.
12.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
12.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
13.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
13.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
23.1	Consent of Smythe LLP, independent registered public accounting firm
23.2	Consent of BDO LLP, independent registered public accounting firm
101.INS	XBRL Instance Document.
101.SCH	XBRL Taxonomy Extension Schema Document.
101.CAL	XBRL Taxonomy Extension Calculation Document.
101.DEF	XBRL Taxonomy Extension Definition Document.
101.LAB	XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.

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SIGNATURES

The registrant hereby certifies that it meets all of the requirements for filing on Form 20-F and that it has duly caused and authorized the undersigned to sign this annual report on its behalf.

Date: April 29, 2022

SCULLY ROYALTY LTD.

/s/ Samuel Morrow
Samuel Morrow
President, Chief Executive Officer
& Chief Financial Officer

Exhibit 4.1

SCULLY ROYALTY LTD. EQUITY INCENTIVE PLAN

SCULLY ROYALTY LTD.
(FORMERLY, MFC BANCORP LTD.)

Amended and Restated 2017 Equity Incentive Plan

ARTICLE 1
ESTABLISHMENT, PURPOSE, EFFECTIVE DATE AND EXPIRATION DATE

1.1 **Establishment**. Scully Royalty Ltd., a company organized under the laws of the Cayman Islands (the "Company"), has established this 2017 Equity Incentive Plan (the "Plan"), which permits the grant of Options, Restricted Stock Rights, Restricted Stock, Performance Shares, Performance Share Units and Stock Appreciation Rights.

1.2 **Purpose**. The purpose of the Plan is to promote the long-term success of the Company and the creation of shareholder value by (a) encouraging Employees, Officers, Consultants and non-Employee Directors to focus on critical long-range objectives, (b) encouraging the attraction and retention of qualified Employees, Officers, Consultants and non-Employee Directors and (c) linking such person directly to shareholder interests through increased stock ownership. The Plan is further intended to provide flexibility to the Company in its ability to attract, retain and motivate individuals upon whose judgment, interest and special effort the successful conduct of the Company's operation is largely dependent.

1.3 **Effective Date**. The Plan is effective as of July 14, 2017 (the "Effective Date").

1.4 **Expiration Date**. The Plan will expire on, and no Award may be granted under the Plan after, the tenth (10^{th}) anniversary of the Effective Date unless holders of the Shares vote to approve an extension of the Plan prior to such expiration date. Any Awards outstanding on the tenth (10^{th}) anniversary of the Effective Date (or such later expiration date as approved by the Company's shareholders) shall remain in force according to the terms of the Plan and the applicable Award Agreement.

ARTICLE 2
DEFINITIONS

2.1 **Definitions**. When a word or phrase appears in this Plan with the initial letter capitalized, and the word or phrase does not commence a sentence, the word or phrase will generally be given the meaning ascribed to it in this Section 2.1 unless a clearly different meaning is required by the context. The following words and phrases will have the following meanings:

(a) "*Affiliate*" means a corporation or other entity that, directly or through one or more intermediaries, controls, is controlled by or is under common control with, the Company.

(b) "*Annual Meeting*" means the regular annual general meeting of the Company's shareholders.

(c) "*Award*" means any right granted under the Plan, including an Option, Restricted Stock Right, Restricted Stock, Performance Share, Performance Share Unit or Stock Appreciation Right granted pursuant to the Plan.

(d) "*Award Agreement*" means a written agreement, contract, certificate or other instrument or document evidencing the terms and conditions of an Award granted under the Plan which may, in the discretion of the Company, be transmitted electronically to any Participant. Each Award Agreement shall be subject to the terms and conditions of the Plan.

(e) "*Board*" means the Board of Directors of the Company, as constituted from time to time.

(f) "*Cause*" means a determination by the Committee that a Participant (i) has been convicted of, or entered a plea of *nolo contendere* to, a crime that constitutes a felony (or equivalent) under federal, state or provincial law, (ii) has engaged in willful gross misconduct in the performance of a Participant's duties to the Company or an Affiliate, (iii) has committed a material breach of any written agreement with the Company or any Affiliate with respect to confidentiality, noncompetition, non-solicitation or similar restrictive covenant, or (iv) has engaged in any other conduct which would constitute "cause" under any applicable laws, provided that, in the event that a Participant is a party to an employment agreement with the Company or any Affiliate that defines a termination on account of "Cause" (or a term having similar meaning), such definition shall apply as the definition of a termination on account of "Cause" for such Participant for the purposes hereof.

(g) "*Change in Control*" has the meaning set forth in Section 11.1 hereof.

(h) "*Code*" means the Internal Revenue Code of 1986, as amended. All references to the Code shall be interpreted to include a reference to any applicable regulations, rulings or other official guidance promulgated pursuant to such section of the Code.

(i) "*Committee*" means the Company's Compensation Committee or any such committee as may be designated by the Board to administer the Plan, provided that at all times the membership of such committee shall not be less than two (2) members of the Board and each Committee member must be: (i) a "non-employee director" (as defined in Rule 16b-3 under the Exchange Act) if required to meet the conditions of exemption for the Awards under the Plan from Section 16(b) of the Exchange Act; (ii) an "outside director" as defined in Section 162(m) of the Code and the regulations issued thereunder, to the extent such section is applicable to the Company; and (iii) an "independent director" as defined by the New York Stock Exchange (or any successor or replacement thereof) so long as the Company's Shares are quoted or listed thereon.

(j) "*Company*" means Scully Royalty Ltd. (formerly, MFC Bancorp Ltd.), or any successor thereof, as provided in Section 18.10.

(k) "*Constructive Termination*" means the Termination of Employment by a Participant within sixty (60) days following the occurrence of any one or more of the following events without the Participant's written consent: (i) any one or more of a reduction in position, title (for Vice Presidents or above), overall responsibilities, level of authority, level of reporting (for Vice Presidents or above), base compensation, annual incentive compensation opportunity, aggregate employee benefits, or (ii) a requirement that the Participant's location of employment be relocated by more than one hundred (100) kilometers: provided that, in the event that a Participant is a party to an employment agreement with the Company or any Affiliate (or a successor entity) that defines a termination on account of "Constructive Termination", "Good Reason" or "Breach of Agreement" (or a term having a similar meaning), such definition shall apply as the definition of "Constructive Termination" for purposes of this Plan in respect of such Participant only. A Constructive Termination shall be communicated by written notice to the Committee, and shall be deemed to occur on the date such notice is delivered to the Committee, unless the circumstances giving rise to the Constructive Termination are cured within five (5) business days of such notice.

(l) "*Consultant*" means a consultant or adviser who provides services to the Company or an Affiliate as an independent contractor and not as an Employee; provided however that a Consultant may become a Participant pursuant to this Plan only if he or she (i) is a natural person and (ii) provides bona fide services to the Company or an Affiliate.

(m) "*Covered Employee*" means, if applicable to the Company, an Employee who is, or could be, a "covered employee" as defined by Section 162(m) of the Code, as interpreted by *Internal Revenue Service* Notice 2007-49.

(n) "*Director*" means a member of the Board.

(o) "*Disability*" means that the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment; provided, however, for purposes of determining the term of an Incentive Stock Option pursuant to Section 6.2(c)(iii) hereof, the term Disability shall have the meaning ascribed to it under Section 22(e)(3) of the Code. The determination of whether an individual has a Disability shall be determined under procedures established by the Committee. Except in situations where the Committee is determining Disability for purposes of the term of an Incentive Stock Option pursuant to Section 6.2(c)(iii) hereof within the meaning of Section 22(e)(3) of the Code, the Committee may rely on any determination that a Participant is disabled for purposes of benefits under any long-term disability plan maintained by the Company or any Affiliate in which a Participant participates.

(p) "*Effective Date*" has the meaning set forth in Section 1.3 hereof.

(q) "*Employee*" means any person, including an Officer or Director, employed by the Company or an Affiliate; provided, that, for purposes of determining eligibility to receive Incentive Stock Options, an Employee shall mean an employee of the Company or a parent or subsidiary corporation within the meaning of Section 424 of the Code. Mere service as a Director or payment of a director's fee by the Company or an Affiliate shall not be sufficient to constitute "employment" by the Company or an Affiliate.

(r) "*Exchange Act*" means the United States Securities Exchange Act of 1934, as amended.

(s) "*Fair Market Value*" means the market price of one Share, determined by the Committee as follows:

(i) If the Share was traded on the New York Stock Exchange, then the Fair Market Value shall be equal to the closing price reported for such date by the New York Stock Exchange;

(ii) If the Share was traded on a United States or Canadian stock exchange, but was not traded on the New York Stock Exchange, on the date in question, then the Fair Market Value shall be equal to the closing price reported for such date by the applicable composite-transactions report;

(iii) If the Share was traded over-the-counter on the date in question, then the Fair Market Value shall be equal to the last transaction price quoted for such date by the OTC Bulletin Board or, if not so quoted, shall be equal to the mean between the last reported representative bid and asked prices quoted for such date by the principal automated inter-dealer quotation system on which the Share is quoted or, if the Share is not quoted on any such system, by the "Pink Sheets" published by the National Quotation Bureau, Inc.; or

(iv) If none of the foregoing provisions is applicable, then the Fair Market Value shall be determined by the Committee in good faith on such basis as it deems appropriate.

In all cases, the determination of Fair Market Value by the Committee shall be conclusive and binding on all persons.

(t) "*Grant Date*" means the date the Committee approves the Award or a date in the future on which the Committee determines the Award will become effective.

(u) "*Incentive Stock Option*" means an Option that is intended to meet the requirements of Section 422 of the Code or any successor provision thereto.

(v) "*Non-Qualified Stock Option*" means an Option that by its terms does not qualify or is not intended to qualify as an Incentive Stock Option.

(w) "*Officer*" means a person who is an officer of the Company within the meaning of Section16 of the Exchange Act and the rules and regulations promulgated thereunder.

(x) "*Option*" means an Incentive Stock Option or a Non-Qualified Stock Option.

(y) "*Optionee*" means an individual or estate which holds an Option or SAR.

(z) "*Participant*" means an individual who, as an Employee, Officer or non-Employee Director of, or Consultant to, the Company or any Affiliate, has been granted an Award under the Plan.

(aa) "*Performance-Based Award*" means an Award granted to select Covered Employees pursuant to Articles 7, 8 and 9 that is subject to the terms and conditions set forth in Article 10. All Performance-Based Awards are intended to qualify as "performance-based compensation" exempt from the deduction limitations imposed by Section 162(m) of the Code, if applicable.

(bb) "*Performance Criteria*" means the criteria, or any combination of criteria, that the Committee selects for the purposes of establishing the Performance Goal or Performance Goals for a Participant during a Performance Period. The Performance Criteria that will be used to establish Performance Goals are limited to the following: (a) net earnings or net income (before or after taxes); (b) basic or diluted earnings per share (before or after taxes); (c) net revenue or net revenue growth; (d) gross revenue; (e) gross profit or gross profit growth; (f) net operating profit (before or after taxes); (g) return on assets, capital, invested capital, equity, or sales; (h) cash flow (including, but not limited to, operating cash flow, free cash flow, and cash flow return on capital); (i) earnings before or after taxes, interest, depreciation and/or amortization; (j) gross or operating margins; (k) improvements in capital structure; (l) budget and expense management; (m) productivity ratios; (n) economic value added or other value added measurements; (o) share price (including, but not limited to, growth measures and total shareholder return); (p) expense targets; (q) operating efficiency; (r) cost containment or reduction; (s) working capital targets; (t) enterprise or book value; (u) safety record; (v) completion of acquisitions or business expansion; (w) project milestones; (x) strategic plan development; and (y) implementation and achievement of synergy targets.

(cc) "*Performance Goals*" means the goal or goals established in writing by the Committee for a Performance Period based on the Performance Criteria. Depending on the Performance Criteria used to establish Performance Goals, the Performance Goals may be expressed in terms of overall Company performance, or the performance of a division, Affiliate, or an individual. The Performance Goals may be stated in terms of absolute levels or relative to another company or companies or to an index or indices.

(dd) "*Performance Period*" means one or more periods of time, which may be of varying and overlapping durations, as the Committee may select, over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant's right to, and the payment of, a Performance-Based Award.

(ee) "*Performance Share*" means a right granted to a Participant to receive a payment in the form of Shares, the payment of which is contingent upon achieving certain Performance Goals established by the Committee.

(ff) "*Performance Share Unit*" means a right granted to a Participant to receive a payment in the form of Shares, cash, or a combination thereof, the payment of which is contingent upon achieving certain Performance Goals established by the Committee.

(gg) "*Plan*" means this Scully Royalty Ltd. 2017 Equity Incentive Plan.

(hh) "*Restricted Period*" means the period during which Restricted Stock, Restricted Stock Rights, Performance Shares, or Performance Share Units are subject to restrictions pursuant to the provisions of the Plan or an Award Agreement.

(ii) "*Restricted Stock*" means Shares granted to a Participant pursuant to Article 7 that is subject to certain restrictions and to the risk of forfeiture.

(jj) "*Restricted Stock Agreement*" means the agreement between the Company and the recipient of Restricted Stock which contains the terms, conditions and restrictions pertaining to such Restricted Stock.

(kk) "*Restricted Stock Award*" means an award of Restricted Stock.

(ll) "*Restricted Stock Right*" means the right granted to a Participant pursuant to Article 7 to receive cash or Stock in the future, the payment of which is subject to certain restrictions and to the risk of forfeiture.

(mm) "*Securities Act*" means the United States Securities Act of 1933, as amended.

(nn) "*Separation from Service*" means either: (i) the termination of a Participant's employment with the Company and all Affiliates due to death, retirement or other reasons; or (ii) a permanent reduction in the level of bona fide services the Participant provides to the Company and all Affiliates to an amount that is 20% or less of the average level of bona fide services the Participant provided to the Company and all Affiliates in the immediately preceding 36 months, with the level of bona fide service calculated in accordance with Treasury Regulation Section 1.409A-1(h)(1)(ii).

Solely for purposes of determining whether a Participant has a "Separation from Service", a Participant's employment relationship is treated as continuing while the Participant is on sick leave, or other bona fide leave of absence (if the period of such leave does not exceed six months, or if longer, so long as the Participant's right to reemployment with the Company or an Affiliate is provided either by statute or contract).

If the Participant's period of leave exceeds six months and the Participant's right to reemployment is not provided either by statute or by contract, the employment relationship is deemed to terminate on the first day immediately following the expiration of such six-month period. Whether a Termination of Employment has occurred will be determined based on all of the facts and circumstances and in accordance with regulations issued by the United States Treasury Department pursuant to Section 409A of the Code.

In the case of a non-Employee Director, Separation from Service means that such Director has ceased to be a member of the Board.

(oo) "*Shares*" means the common shares of US$0.001 par value each in the capital of the Company and such other securities or property as may become the subject of Awards under the Plan, or may become subject to such Awards, pursuant to an adjustment made under Section 5.3 hereof.

(pp) "*Stock Appreciation Right*" or "*SAR*" means the right to receive a payment equal to the excess of the Fair Market Value of one Share on the date of exercise of the SAR over the grant price of the SAR as determined pursuant to Article 9 and the applicable Award Agreement.

(qq) "*Termination of Employment*" means: (i) in the context of an Award that is subject to the requirements of Section 409A of the Code, a "Separation from Service"; and (ii) in the case of any other Award, "Termination of Employment" will be given its natural meaning.

(rr) "*Triggering Event*" means (i) the Termination of Employment of a Participant by the Company or an Affiliate (or any successor thereof) other than on account of death, Disability or Cause, (ii) the occurrence of a Constructive Termination or (iii) any failure by the Company (or a successor entity) to assume, replace, convert or otherwise continue any Award in connection with a Change in Control (or another corporate transaction or other change effecting the Shares) on the same terms and conditions as applied immediately prior to such transaction, except for equitable adjustments to reflect changes in Shares pursuant to Section 5.3 of this Plan.

2.2 **Gender and Number**. Except when otherwise indicated by the context, words in the masculine gender when used in this Plan document will include the feminine gender, the singular includes the plural, and the plural includes the singular.

ARTICLE 3
ELIGIBILITY AND PARTICIPATION

3.1 **General Eligibility**. Awards may be made only to those Participants who, on the Grant Date of the Award, are (i) Employees, Officers or non-Employee Directors of the Company or one of its Affiliates on the Grant Date of the Award or (ii) Consultants who render or have rendered bona fide services (other than services in connection with the offering or sale of securities of the Company or one of its Affiliates in a capital-raising transaction or as a market maker or promoter of securities of the Company or one of its Affiliates) to the Company or one of its Affiliates and who are elected to participate in the Plan by the Committee; provided, however, that a person who is otherwise an Eligible Person under clause (ii) above may participate in this Plan only if such participation would not adversely affect either the Company's eligibility to use Form S-8 to register under the Securities Act the offering and sale of Shares issuable under this Plan by the Company or the Company's compliance with any other applicable laws. A Participant may, if otherwise eligible, be granted additional awards if the Committee shall so determine.

3.2 **Actual Participation**. Subject to the provisions of the Plan, the Committee may, from time to time, select from among all eligible individuals, those to whom Awards will be granted and will determine the nature and amount of each Award.

ARTICLE 4
ADMINISTRATION

4.1 **Administration by the Committee**. The Committee shall be responsible for the administration of the Plan. The Committee, by majority action thereof, is authorized to interpret the Plan, to prescribe, amend, and rescind rules and regulations relating to the Plan, to provide for conditions and assurances deemed necessary or advisable to protect the interests of the Company, and to make all other determinations necessary for the administration of the Plan, but only to the extent not contrary to the express provisions of the Plan. Determinations, interpretations, or other actions made or taken by the Committee in good faith pursuant to the provisions of the Plan shall be final, binding and conclusive for all purposes of the Plan.

4.2 **Authority of the Committee**. The Committee shall have the authority, in its sole discretion, to determine the Participants who: (i) are entitled to receive Awards under the Plan; (ii) the types of Awards; (iii) the times when Awards shall be granted; (iv) the number of Awards; (v) the purchase price or exercise price, if any; (vi) the period(s) during which such Awards shall be exercisable (whether in whole or in part); (vii) the restrictions applicable to Awards; (viii) the form of each Award Agreement, which need not be the same for each Participant; (ix) the other terms and provisions of any Award (which need not be identical); and (x) the schedule for lapse of forfeiture restrictions or restrictions in exercisability of an Award and accelerations or waivers thereof, based in each case on such considerations as the Committee in its sole discretion determines. The Committee shall have the authority to modify existing Awards, subject to Article 15 of this Plan. Notwithstanding the foregoing, the Committee will not have the authority to accelerate the vesting or waive the forfeiture of any Performance-Based Awards other than as provided in an Award Agreement or to reprice any previously granted Option.

4.3 **Award Agreement**. Each Award shall be evidenced by an Award Agreement that shall specify the type of Award granted and such other provisions and restrictions applicable to such Award as the Committee, in its discretion, shall determine.

4.4 **Decisions Binding**. The Committee shall have the authority to interpret the Plan and, subject to the provisions of the Plan, any Award Agreement, and all decisions and determinations by the Committee with respect to the Plan are final, binding and conclusive on all parties. No member of the Committee shall be liable for any act, omission, interpretation, construction or determination made in good faith with respect to the Plan or any Award granted under the Plan and all such persons shall be entitled to indemnification and reimbursement by the Company in respect of any claim, loss, damage or expense (including, without limitation, attorney's fees) arising or resulting therefrom to the fullest extent permitted by law and/or under any directors and officers liability insurance coverage that may be in effect from time to time.

4.5 **Reliance on Experts**. In making any determination or in taking or not taking any action under this Plan, the Committee may obtain and may rely upon the advice of experts, including Employees and professional advisors to the Company. No Director, Officer or agent of the Corporation or any of its Affiliates shall be liable for any such action or determination taken or made or omitted in good faith.

4.6 **Delegation**. The Committee may delegate ministerial, non-discretionary functions to individuals who are Officers or Employees of the Company or any of its Affiliates or to third parties.

ARTICLE 5
SHARES SUBJECT TO THE PLAN

5.1 **Number of Shares**. Subject to adjustment provided in Section 5.3, the total number of Shares subject to all Awards under the Plan shall be two million, two hundred thirty nine thousand and twenty seven (2,239,027). Notwithstanding the above, the maximum number of Shares that may be issued as Incentive Stock Options under the Plan shall be four hundred thousand (400,000). The Shares to be delivered under the Plan may consist, in whole or in part, of authorized but unissued Shares or Shares purchased on the open market or treasury Shares not reserved for any other purpose.

5.2 **Availability of Shares for Grant**. Subject to the express provisions of the Plan, if any Award granted under the Plan terminates, expires, lapses for any reason, or is paid in cash, any Shares subject to or surrendered for such Award will again be Shares available for the grant of an Award. The exercise of a stock-settled SAR or broker-assisted "cashless" exercise of an Option (or a portion thereof) will reduce the number of Shares available for issuance pursuant to Section 5.1 by the entire number of Shares subject to that SAR or Option (or applicable portion thereof), even though a smaller number of Shares will be issued upon such an exercise. Also, Shares tendered to pay the exercise price of an Option or tendered or withheld to satisfy a tax withholding obligation arising in connection with an Award will not become available for grant or sale under the Plan.

5.3 **Adjustment in Capitalization**. In the event of any change in the outstanding Shares by reason of a stock dividend (other than in the ordinary course) or split, recapitalization, merger, consolidation, combination, reorganization, exchange of shares, or other similar corporate change, the aggregate number of Shares available under the Plan and subject to each outstanding Award, and the stated exercise prices and the basis upon which the Awards are measured, shall be adjusted appropriately by the Committee, whose determination shall be conclusive; provided, however, that fractional Shares shall be rounded to the nearest whole Share. Moreover, in the event of such transaction or event, the Committee, in its sole discretion, may provide in substitution for any or all outstanding Awards under the Plan such alternative consideration (including cash) as it, in good faith, may determine to be equitable under the circumstances and may require in connection therewith the surrender of all Awards so replaced. Any adjustment to an Incentive Stock Option shall be made consistent with the requirements of Section 424 of the Code. Further, with respect to any Option or Stock Appreciation Right that otherwise satisfies the requirements of the stock rights exception to Section 409A of the Code, any adjustment pursuant to this Section 5.3 shall be made consistent with the requirements of the final regulations promulgated pursuant to Section 409A of the Code.

5.4 **Limitations on Number of Shares Subject to Awards**. Notwithstanding any provision in this Plan document to the contrary, and subject to any applicable adjustment upon the occurrence of any of the events indicated in Section 5.3:

(a) *Annual Limitations*.

(i) the maximum number of Shares subject to Options and Stock Appreciation Rights that may be granted to any one Participant, who is a Covered Employee, during any of the Company's fiscal years shall be four hundred thousand (400,000); and

(ii) the maximum number of Shares that may be granted to any one Participant, who is a Covered Employee, during any of the Company's fiscal years with respect to one or more Awards shall be four hundred thousand (400,000) except that grants to a Participant in the fiscal year in which his or her service first commences shall not relate to more than four hundred and twenty five thousand (425,000) Shares.

(b) *Additional Limitations for non-employee Directors*.

(i) the aggregate fair value of Awards granted under all security-based compensation arrangements of the Company to any one (1) non-employee Director entitled to receive a benefit under the Plan, within any one (1) year period, cannot exceed US$100,000, valued on a Black-Scholes basis and as determined by the Committee; and

(ii) the aggregate number of securities issuable to all non-employee Directors entitled to receive a benefit under the Plan, under all security-based compensation arrangements of the Company, cannot exceed one percent (1%) of the Company's issued and outstanding Shares.

5.5 **Reservation of Shares; No Fractional Shares; Minimum Issue**. The Company shall at all times reserve a number of Shares sufficient to cover the Company's obligations and contingent obligations to deliver Shares with respect to Awards then outstanding under the Plan (exclusive of any dividend equivalent obligations to the extent the Company has the right to settle such rights in cash). No fractional Shares shall be delivered under the Plan. The Committee may pay cash in lieu of any fractional Shares in settlements of Awards under the Plan. The Committee may from time to time impose a limit (of not greater than 100 Shares) on the minimum number of Shares that may be purchased or exercised as to Awards granted under the Plan unless (as to any particular Award) the total number purchased or exercised is the total number at the time available for purchase or exercise under the Award.

ARTICLE 6
STOCK OPTIONS

6.1 **Grant of Options**. Subject to the provisions of Article 5 and this Article 6, the Committee, at any time and from time to time, may grant Options to such Participants and in such amounts as it shall determine.

(a) *Exercise Price.* No Option shall be granted at an exercise price that is less than the Fair Market Value of one Share on the Grant Date.

(b) *Time and Conditions of Exercise*. The Committee shall determine the time or times at which an Option may be exercised in whole or in part provided that the term of any Option granted under the Plan shall not exceed ten (10) years. The Committee shall also determine the performance or other conditions, if any, that must be satisfied before all or part of an Option may be exercised.

(c) *Payment*. The Committee shall determine the methods by which the exercise price of an Option may be paid, the form of payment, including, without limitation, cash, promissory note, Shares held for longer than six (6) months (through actual tender or by attestation), any net-issuance arrangement or other property acceptable to the Committee (including broker-assisted "cashless exercise" arrangements), and the methods by which Shares shall be delivered or deemed to be delivered to Participants.

(d) *Evidence of Grant*. All Options shall be evidenced by a written Award Agreement. The Award Agreement shall reflect the Committee's determinations regarding the exercise price, time and conditions of exercise, forms of payment for the Option and such additional provisions as may be specified by the Committee.

(e) *No Repricing of Options*. The Committee shall not reprice any Options previously granted under the Plan.

6.2 **Incentive Stock Options**. Incentive Stock Options shall be granted only to Participants who are Employees and the terms of any Incentive Stock Options granted pursuant to the Plan must comply with the following additional provisions of this Section 6.2:

(a) *Exercise Price.* Subject to Section 6.2(e), the exercise price per Share shall be set by the Committee, provided that the exercise price for any Incentive Stock Option may not be less than the Fair Market Value as of the date of the grant.

(b) *Exercise*. In no event may any Incentive Stock Option be exercisable for more than ten (10) years from the date of its grant.

(c) *Lapse of Option*. An Incentive Stock Option shall lapse in the following circumstances:

(i) The Incentive Stock Option shall lapse ten (10) years from the date it is granted, unless an earlier time is set in the Award Agreement.

(ii) The Incentive Stock Option shall lapse ninety (90) days following the effective date of the Participant's Termination of Employment for any reason other than the Participant's death or Disability, unless otherwise provided in the Award Agreement.

(iii) If the Participant has a Termination of Employment on account of Disability or death before the Option lapses pursuant to paragraph (i) or (ii) above, the Incentive Stock Option shall lapse, unless it is previously exercised, on the earlier of (a) the scheduled expiration date of the Option; or (b) six (6) months after the date of the Participant's Termination of Employment on account of Disability or death. Upon the Participant's Disability or death, any Incentive Stock Options exercisable at the Participant's Disability or death may be exercised by the Participant's legal representative or representatives, by the person or persons entitled to do so pursuant to the Participant's last will and testament, or, if the Participant fails to make testamentary disposition of such Incentive Stock Option or dies intestate, by the person or persons entitled to receive the Incentive Stock Option pursuant to the applicable laws of descent and distribution.

(d) *Individual Dollar Limitation*. The aggregate Fair Market Value (determined as of the time an Award is made) of all Shares with respect to which Incentive Stock Options are first exercisable by a Participant in any calendar year may not exceed US$100,000 or such other limitation as imposed by Section 422(d) of the Code, or any successor provision. To the extent that Incentive Stock Options are first exercisable by a Participant in excess of such limitation, the excess shall be considered Non-Qualified Stock Options. In reducing the number of options treated as Incentive Stock Options to meet the US$100,000 limit, the most recently granted Options shall be reduced first. To the extent a reduction of simultaneously granted Options is necessary to meet the US$100,000 limit, the Committee may, in the manner and to the extent permitted by law, designate which Shares are to be treated as Shares acquired pursuant to the exercise of an Incentive Stock Option.

(e) *Ten Percent Owners*. An Incentive Stock Option shall not be granted to any individual who, at the Grant Date, owns (or is deemed to own under Section 424(d) of the Code) outstanding Shares possessing more than ten percent of the total combined voting power of all classes of stock of the Company unless such Option is granted at a price that is not less than 110% of Fair Market Value on the Grant Date and the Option is exercisable for no more than five (5) years from the Grant Date.

(f) *Right to Exercise*. Except as provided in Section 6.2(c)(iii), during a Participant's lifetime, an Incentive Stock Option may be exercised only by the Participant.

ARTICLE 7
RESTRICTED STOCK RIGHTS AND RESTRICTED STOCK

7.1 **Grant of Restricted Stock Rights and Restricted Stock**. Subject to the provisions of Article 5 and this Article 7, the Committee, at any time and from time to time, may grant Restricted Stock Rights or Restricted Stock to such Participants and in such amounts as it shall determine.

7.2 **Restricted Stock Rights**

(a) *Voting Rights.* During the Restricted Period, Participants holding the Restricted Stock Rights granted hereunder shall have no voting rights or rights to dividends with respect to the Shares subject to such Restricted Stock Rights prior to the issuance of such Shares pursuant to the Plan.

(b) *Form and Timing of Payment*. Payment for any vested Restricted Stock Rights Award issued pursuant to this Article 7 shall be made in one lump sum payment of Shares, cash or a combination thereof, equal to the Fair Market Value (determined as of a specified date) of a specified number of Shares. As a general rule, the Shares payable under any Restricted Stock Award shall be made on or before March 15 of the calendar year following the calendar year in which the Restricted Stock Rights vest.

7.3 **Grant of Restricted Stock**.

(a) *Issuance and Restrictions.* Restricted Stock shall be subject to such restrictions on transferability and other restrictions as the Committee may impose (including, without limitation, limitations on the right to vote, and dividends on, Restricted Stock). These restrictions may lapse separately or in combination at such times and pursuant to such circumstances, as the Committee determines at the time of the grant of the Award or thereafter.

(b) *Restricted Stock Agreement*. Each grant of Restricted Stock under the Plan shall be evidenced by a Restricted Stock Agreement between the recipient and the Company. Such shares of Restricted Stock shall be subject to all applicable terms of the Plan and may be subject to any other terms that are not inconsistent with the Plan. The provisions of the various Restricted Stock Agreements entered into under the Plan need not be identical.

(c) *Payment for Awards*. Subject to the following sentence, Restricted Stock may be sold or awarded under the Plan for such consideration as the Committee may determine, including (without limitation) cash, cash equivalents, past services and future services. To the extent that an Award consists of newly issued shares of Restricted Stock, the Award recipient shall furnish consideration with a value not less than the par value (if any) of such Restricted Stock in the form of cash, cash equivalents, Shares or past services rendered to the Company (or an Affiliate), as the Committee may determine.

(d) *Vesting*. Each Award of Restricted Stock may or may not be subject to vesting. Vesting shall occur, in full or in installments, upon satisfaction of the conditions specified in the Restricted Stock Agreement. A Restricted Stock Agreement may provide for accelerated vesting in the event of the Participant's death, Disability or retirement or other events. The Committee may determine, at the time of granting shares of Restricted Stock or thereafter, that all or part of such Restricted Stock shall become vested in the event of a Change in Control.

(e) *Voting and Dividend Rights*. Subject to the terms and restrictions of any Restricted Stock Agreement, the holders of Restricted Stock awarded under the Plan shall have the same voting, dividend and other rights as the Company's other shareholders.

(f) *Restrictions on Transfer of Restricted Stock*. Restricted Stock shall be subject to such rights of repurchase, rights of first refusal or other restrictions as the Committee may determine. Such restrictions shall be set forth in the applicable Restricted Stock Agreement and shall apply in addition to any general restrictions that may apply to all holders of Restricted Stock.

(g) *Forfeiture.* Except as otherwise determined by the Committee at the time of the grant of the Restricted Stock Award in a Restricted Stock Agreement or thereafter, upon Termination of Employment or the failure to satisfy one or more Performance Criteria during the applicable Restriction Period, Restricted Stock that is at that time subject to restrictions shall be forfeited.

(h) *Certificates for Restricted Stock.* Restricted Stock granted pursuant to the Plan may be evidenced in such manner as the Committee shall determine. If certificates representing shares of Restricted Stock are registered in the name of the Participant, the certificates must bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock, and the Company may, in its discretion, retain physical possession of the certificate until such time as all applicable restrictions lapse.

ARTICLE 8
PERFORMANCE SHARES AND PERFORMANCE SHARE UNITS

8.1 **Grant of Performance Shares or Performance Share Units**. Subject to the provisions of Article 5 and this Article 8, Performance Shares or Performance Share Units may be granted to Participants at any time and from time to time as shall be determined by the Committee. The Committee shall have complete discretion in determining the number of Performance Shares or Performance Share Units granted to each Participant.

8.2 **Value of Performance Shares or Performance Share Units**. Each Performance Share and each Performance Share Unit shall have a value determined by the Committee at the time of grant. The Committee shall set goals (including Performance Goals) for a particular period (including a Performance Period) in its discretion which, depending on the extent to which the goals are met, will determine the ultimate value of the Performance Share or Performance Share Units to the Participant.

8.3 **Form and Timing of Payment**. Payment for vested Performance Shares shall be made in Shares. Payments for vested Performance Share Units shall be made in cash, Shares or a combination thereof as determined by the Committee. All payments for Performance Shares and Performance Share Units shall be made in a lump sum. As a general rule, payment for Performance Shares or Performance Share Units shall be made on or before March 15 of the calendar year following the calendar year in which the right to the payment of the Performance Shares or Performance Share Units arises.

ARTICLE 9
STOCK APPRECIATION RIGHTS

9.1 **Grant of Stock Appreciation Rights**. Subject to the provisions of Article 5 and this Article 9, Stock Appreciation Rights may be granted to Participants at any time and from time to time as shall be determined by the Committee. SARs may be granted in connection with the grant of an Option, in which case the exercise of SARs will result in the surrender of the right to purchase the Shares under the Option as to which the SARs were exercised. When SARs are granted in connection with the grant of an Incentive Stock Option, the SARs shall have such terms and conditions as shall be required by Section 422 of the Code. Alternatively, SARs may be granted independently of Options.

9.2 **Exercisability of SARs**. SARs granted under the Plan shall be exercisable at such times and be subject to such restrictions and conditions as the Committee shall in each instance approve, which need not be the same for all Participants; provided, however, that no SAR shall be exercisable later than ten (10) years from the Grant Date.

9.3 **Exercise of SARs**. Upon exercise of the SAR or at a fixed date after all or part of the SAR becomes exercisable, the Participant shall be entitled to receive payment of an amount determined by multiplying (a) the difference, if any, of the Fair Market Value of a Share on the date of exercise over the price of the SAR fixed by the Committee at the Grant Date, which shall not be less than the Fair Market Value of a Share at the Grant Date, by (b) the number of Shares with respect to which the SAR is exercised.

9.4 **Form and Timing of Payment**. Payment for SARs shall be made in Shares and/or cash, as determined by the Committee, and shall be payable at the time specified in the Award Agreement for such SARs.

ARTICLE 10
PERFORMANCE-BASED AWARDS

10.1 **Grant of Performance-Based Awards**. Options granted to any Covered Employees pursuant to Article 6 and SARs granted to Covered Employees pursuant to Article 9 should, by their terms, qualify for the "performance-based compensation" exception to the deduction limitations of Section 162(m) of the Code. The Committee, in the exercise of its complete discretion, also may choose to qualify some or all of the Restricted Stock Rights or Restricted Stock Awards granted to Covered Employees pursuant to Article 7 and/or some or all of the Performance Shares or Performance Share Units granted to Covered Employees pursuant to Article 8 for the "performance-based compensation" exception to the deduction limitations of Section 162(m) of the Code. If the Committee, in its discretion, decides that a particular Award to a Covered Employee should qualify as "performance-based compensation," the Committee will grant a Performance-Based Award to the Covered Employee and the provisions of this Article 10 shall supersede any contrary provision contained in Articles 7, 8 or 9. If the Committee concludes that a particular Award to a Covered Employee should not be qualified as "performance-based compensation," the Committee may grant the Award without satisfying the requirements of Section 162(m) of the Code and the provisions of this Article 10 shall not apply.

10.2 **Applicability**. This Article 10 shall apply only to Awards to those Covered Employees (if any) selected by the Committee to receive Performance-Based Awards and only if, and to the extent that, the Company is subject to Section 162(m) of the Code. The designation of a Covered Employee as a Participant for any Performance Period shall not in any manner entitle the Participant to receive a Performance-Based Award for such Performance Period. Moreover, designation of a Covered Employee as a Participant for a particular Performance Period shall not require designation of such Covered Employee as a Participant for any subsequent Performance Period.

10.3 **Committee Discretion with Respect to Performance-Based Awards**. With regard to a particular Performance Period, the Committee shall have full discretion to select the length of the Performance Period, the type of Performance-Based Awards to be issued, the kind and/or level of the Performance Goal or Goals and whether the Performance Goal or Goals apply to the Company, an Affiliate, or any division or business unit thereof or the Participant or any group of Participants.

10.4 **Establishment of Performance Goals**. The Performance Goals for any Performance-Based Award granted pursuant to this Article 10 shall be established by the Committee in writing not later than ninety (90) days after the commencement of the Performance Period for such Award; provided that (a) the outcome must be substantially uncertain at the time the Committee establishes the Performance Goals, and (b) in no event will the Committee establish the Performance Goals for any Performance-Based Award after twenty-five percent (25%) of the Performance Period for such Award has elapsed. For purposes of this Article 10, the applicable Performance Period may not be less than three (3) months or more than ten (10) years.

10.5 **Performance Evaluation; Adjustment of Goals**. At the time that a Performance-Based Award is first issued, the Committee, in the Award Agreement or in another written document, shall specify whether performance will be evaluated including or excluding the effect of any of the following events that occur during the Performance Period: (i) judgments entered or settlements reached in litigation; (ii) the write-down of assets; (iii) the impact of any reorganization or restructuring; (iv) the impact of changes in tax laws, accounting principles, regulatory actions or other laws affecting reported results; (v) extraordinary non-recurring items, as described under generally accepted accounting principles applicable to the Company and/or in management's discussion and analysis of financial condition and results of operations appearing in the Company's annual report to shareholders for the applicable year; (vi) the impact of any mergers, acquisitions, spin-offs or other divestitures; and (vii) foreign exchange gains and losses.

The inclusion or exclusion of the foregoing items shall be expressed in a form that satisfies the requirements of Section 162(m) of the Code. The Committee, in its discretion, also may, within the time prescribed by Section 162(m) of the Code, adjust or modify the calculation of Performance Goals for such Performance Period in order to prevent the dilution or enlargement of the rights of Participants: (i) in the event of, or in anticipation of, any unusual or extraordinary corporate item, transaction, event, or development; or (ii) in recognition of, or in anticipation of, any other unusual or nonrecurring events affecting the Company, or the financial statements of the Company, or in response to, or in anticipation of, changes in applicable laws, regulations, accounting principles, or business conditions.

10.6 **Adjustment of Performance-Based Awards**. The Committee shall have the sole discretion to adjust the determinations of the degree of attainment of the pre-established Performance Goals. Notwithstanding any provision herein to the contrary, the Committee may not make any adjustment or take any other action with respect to any Performance-Based Award that will increase the amount payable under any such Award. The Committee shall retain the sole discretion to adjust Performance-Based Awards downward or to otherwise reduce the amount payable with respect to any Performance-Based Award.

10.7 **Payment of Performance-Based Awards**. Unless otherwise provided in the relevant Award Agreement, a Participant must be an Employee of the Company or an Affiliate on the day a Performance-Based Award for such Performance Period is paid to the Participant. Furthermore, a Participant shall be eligible to receive payment pursuant to a Performance-Based Award for a Performance Period only if the Performance Goals for such Performance Period are achieved.

10.8 **Certification by Committee**. Notwithstanding any provisions to the contrary, the payment of a Performance-Based Award shall not occur until the Committee certifies, in writing, that the pre-established Performance Goals and any other material terms and conditions precedent to such payment have been satisfied.

10.9 **Maximum Award Payable**. In accordance with Section 5.4, the maximum Performance-Based Award payable to any one participant for a Performance Period shall not exceed the limitation set forth in such section.

ARTICLE 11
CHANGE IN CONTROL

11.1 **Definition of Change in Control**. With respect to a particular Award granted under the Plan, a "Change in Control" shall be deemed to have occurred as of the first day, after the date of grant of the particular Award, that any one or more of the following conditions shall have been satisfied:

(a) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act (a "Person")) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 35% or more of either (1) the then-outstanding Shares of the Company (the "Outstanding Company Common Shares") or (2) the combined voting power of the then-outstanding voting securities of the Company entitled to vote generally in the election of Directors (the "Outstanding Company Voting Securities"); provided, however, that, for purposes of this definition, the following acquisitions shall not constitute a Change in Control; (i) any acquisition directly from the Company, (ii) any acquisition by the Company, (iii) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any Affiliate or a successor, or (iv) any acquisition by any entity pursuant to a transaction that complies with subsections (c)(1), (2) and (3) of this Section 11.1;

(b) Individuals who, as of the Effective Date, constitute the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a Director subsequent to the Effective Date whose election, or nomination for election by the Company's shareholders, was approved by a vote of at least two-thirds of the Directors then comprising the Incumbent Board (including for these purposes, the new members whose election or nomination was so approved, without counting the member and his predecessor twice) shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a person other than the Board;

(c) Consummation of a reorganization, merger, statutory share exchange or consolidation or similar corporate transaction involving the Company or any of its Affiliates, a sale or other disposition of all or substantially all of the assets of the Company, or the acquisition of assets or stock of another entity by the Company or any of its Affiliates (each, a "Business Combination"), in each case unless, following such Business Combination, (1) all or substantially all of the individuals and entities that were the beneficial owners of the Outstanding Company Common Shares and the Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than fifty percent (50%) of the then-outstanding shares of common stock and the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the entity resulting from such Business Combination (including, without limitation, an entity that, as a result of such transaction, owns the Company or all or substantially all of the Company's assets directly or through one or more subsidiaries (a "Resulting Parent")) in substantially the same proportions as their ownership immediately prior to such Business Combination of the Outstanding Company Common Shares and the Outstanding Company Voting Securities, as the case may be, (2) no person (excluding any entity resulting from such Business Combination or a Resulting Parent or any employee benefit plan (or related trust) of the Company or such entity resulting from such Business Combination or Resulting Parent) beneficially owns, directly or indirectly, thirty percent (35%) or more of, respectively, the then-outstanding shares of common stock of the entity resulting from such Business Combination or the combined voting power of the then-outstanding voting securities of such entity, except to the extent that the ownership in excess of 35% existed prior to the Business Combination, and (3) at least a majority of the members of the board of directors or trustees of the entity resulting from such Business Combination or a Resulting Parent were members of the Incumbent Board at the time of the execution of the initial agreement or of the action of the Board providing for such Business Combination; or

(d) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company other than in the context of a transaction that does not constitute a Change in Control under clause (c) above.

11.2 **Effect of Change in Control**. Other than as otherwise expressly provided in an Award Agreement (in which case the terms of such Award Agreement will govern), notwithstanding any other term or provision of this Plan, if a Triggering Event shall occur within the 12-month period following a Change in Control, then, effective immediately prior to such Triggering Event, (i) each outstanding Option and Stock Appreciation Right, to the extent that it shall not otherwise have become vested and exercisable, shall automatically become fully and immediately vested and exercisable, without regard to any otherwise applicable vesting requirement, (ii) each share of Restricted Stock or Restricted Stock Right shall become fully and immediately vested and all forfeiture and transfer restrictions thereon shall lapse, and (iii) each outstanding Performance Share or Performance Share Unit shall become immediately payable.

11.3 **Board Discretion**. Except as otherwise provided in an Award Agreement, in this Plan or a Participant's employment or other agreement with the Company or an Affiliate, the Board has the sole and absolute discretion to fully or partially vest and make exercisable any outstanding Award upon the closing of a transaction that results in a Change in Control. In addition, in the event of a Change in Control, the Committee may in its discretion and upon at least ten (10) days' advance notice to the affected persons, cancel any outstanding Awards and pay to the holders thereof, in cash or Shares, or any combination thereof, the value of such Awards based upon the price per Share received or to be received by other shareholders of the Company in the event. In the case of any Option or Stock Appreciation Right with an exercise price that equals or exceeds the price paid for a Share in connection with the Change in Control, the Committee may cancel the Option or Stock Appreciation Right without the payment of consideration therefor.

ARTICLE 12
NON-TRANSFERABILITY

12.1 **General**. Unless otherwise determined by the Committee, including as set forth in an Award Agreement, no Award granted under the Plan may be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated, other than by will or by the laws of descent and distribution, until the termination of any Restricted Period or Performance Period as determined by the Committee.

12.2 **Beneficiary Designation**. Notwithstanding Section 12.1, a Participant may, in the manner determined by the Committee, designate a beneficiary to exercise the rights of the Participant and to receive any distribution with respect to any Award upon the Participant's death. A beneficiary, legal guardian, legal representative, or other person claiming any rights pursuant to the Plan is subject to all terms and conditions of the Plan and any Award Agreement applicable to the Participant, except to the extent the Plan and Award Agreement otherwise provide, and to any additional restrictions deemed necessary or appropriate by the Committee. If no beneficiary has been designated or survives the Participant, payment shall be made to the person entitled thereto pursuant to the Participant's will or the laws of descent and distribution. Subject to the foregoing, a beneficiary designation may be changed or revoked by a Participant at any time provided the change or revocation is provided to the Committee.

12.3 **Share Certificates**. Notwithstanding anything herein to the contrary, the Company shall not be required to issue or deliver any certificates evidencing Shares pursuant to the exercise of any Award, unless and until the Committee has determined, with advice of counsel, that the issuance and delivery of such certificates is in compliance with all applicable laws, regulations of governmental authorities and, if applicable, the requirements of any exchange or quotation system on which the Shares are listed, quoted or traded. All Share certificates delivered pursuant to the Plan are subject to any stop-transfer orders and other restrictions as the Committee deems necessary or advisable to comply with federal, state, provincial or foreign jurisdiction, securities or other laws, rules and regulations and the rules of any national securities exchange or automated quotation system on which the Shares are listed, quoted, or traded. The Committee may place legends on any Share certificate to reference restrictions applicable to the Shares. In addition to the terms and conditions provided herein, the Board may require that a Participant make such reasonable covenants, agreements, and representations as the Board, in its discretion, deems advisable in order to comply with any such laws, regulations, or requirements.

ARTICLE 13
FORFEITURE

13.1 **Forfeiture Events**. The Committee will specify in an Award Agreement at the time of the Award that the Participant's rights, payments and benefits with respect to an Award shall be subject to reduction, cancellation, forfeiture or recoupment upon the occurrence of certain specified events, in addition to any otherwise applicable vesting or performance conditions of an Award. Such events shall include, but shall not be limited to, Termination of Employment for Cause, violation of material Company policies, fraud, breach of noncompetition, confidentiality or other restrictive covenants that may apply to the Participant or other conduct by the Participant that is detrimental to the business or reputation of the Company.

13.2 **Clawback**. Notwithstanding any other provisions in the Plan, any Award which is subject to recovery under any law, government regulation or stock exchange listing requirement, will be subject to such deductions and clawback as may be required to be made pursuant to such law, government regulation or stock exchange listing requirement (or any policy adopted by the Company pursuant to any such law, government regulation or stock exchange listing requirement).

13.3 **Termination Events**. Unless otherwise provided by the Committee and set forth in an Award Agreement, if a Participant's employment with the Company or any Affiliate shall be terminated for Cause, the Committee may, in its sole discretion, immediately terminate such Participant's right to any further payments, vesting or exercisability with respect to any Award in its entirety. The Committee shall have the power to determine whether the Participant has been terminated for Cause and the date upon which such termination for Cause occurs. Any such determination shall be final, conclusive and binding upon the Participant. In addition, if the Company shall reasonably determine that a Participant has committed or may have committed any act which could constitute the basis for a termination of such Participant's employment for Cause, the Committee may suspend the Participant's rights to exercise any option, receive any payment or vest in any right with respect to any Award pending a determination by the Committee of whether an act has been committed which could constitute the basis for the Termination of Employment for "Cause" as provided in this Section 13.3.

ARTICLE 14
SUBSTITUTION OF AWARDS

14.1 **Substitution of Awards**. Any Award may be granted under this Plan in substitution for Awards held by any individual who is an employee of another corporation who is about to become an Employee as the result of a merger, consolidation or reorganization of the corporation with the Company, or the acquisition by the Company of the assets of the corporation, or the acquisition by the Company of stock of the corporation as the result of which such corporation becomes an Affiliate or a subsidiary of the Company. The terms and conditions of the Awards so granted may vary from the terms and conditions set forth in this Plan to such extent as the Committee at the time of granting the Award may deem appropriate to conform, in whole or in part, to the provisions of the Award in substitution for which they are granted. However, in the event that the Award for which a substitute Award is being granted is an Incentive Stock Option, no variation shall adversely affect the status of any substitute Award as an Incentive Stock Option under the Code. In addition, in the event that the award for which a substitute Award is being granted is a Non-Qualified Stock Option or a Stock Appreciation Right that otherwise satisfies the requirements of the "stock rights exception" to Section 409A of the Code, no variation shall adversely affect the status of any substitute Award under the stock rights exception to Section 409A of the Code.

ARTICLE 15
AMENDMENT, MODIFICATION, AND TERMINATION

15.1 **Amendment, Modification and Termination**. The Board may at any time, and from time to time, terminate, amend or modify the Plan, in whole or in part; provided however, that any such action of the Board shall be subject to approval of the shareholders to the extent required by law, regulation, any stock exchange rule for any exchange on which Shares are listed or Section 15.2 hereof. Notwithstanding the above, to the extent permitted by law, the Board may delegate to the Committee the authority to approve non-substantive amendments to the Plan. No amendment, modification, or termination of the Plan or any Award under the Plan shall in any manner materially adversely affect any Award theretofore granted under the Plan without the consent of the holder thereof (unless such change is required in order to cause the benefits under the Plan to qualify as performance-based compensation within the meaning of Section 162(m) of the Code and applicable interpretive authority thereunder).

15.2 **Shareholder Approval Requirements**. Except as provided in Section 5.3, neither the Board nor the Committee may, without the approval of the shareholders,

(a) reduce the purchase price or exercise price of any outstanding Award, including any Option or SAR (or the cancellation and re-grant of an Award resulting in a lower exercise price or purchase price);

(b) extend the expiry date of any outstanding Option or SAR except as permitted under Section 6.1(b) and Section 9.2, as applicable;

(c) amend the Plan to remove or to exceed the participation limits described in Section 5.4, including but not limited to those applicable to non-Employee Directors;

(d) increase the number of Shares available under the Plan (other than any adjustment as provided in Section 5.3);

(e) grant Options with an exercise price that is below Fair Market Value on the Grant Date;

(f) cancel any Option or SAR in exchange for cash or any other Award or in exchange for any Option or SAR with an exercise price that is less than the exercise price of the original Option or SAR; or

(g) amend this Article 15 other than amendments of a clerical nature.

ARTICLE 16
TAX WITHHOLDING

16.1 **Tax Withholding**. The Company shall have the power to withhold, or require a Participant to remit to the Company, an amount sufficient to satisfy federal, state, provincial and local withholding tax requirements on any Award under the Plan. To the extent that alternative methods of withholding are available under applicable tax laws, the Company shall have the power to choose among such methods.

16.2 **Form of Payment**. To the extent permissible under applicable tax, securities, and other laws, the Company may, in its sole discretion, permit the Participant to satisfy a tax withholding requirement by (a) using already owned Shares that have been held by the Participant for at least six (6) months; (b) a broker-assisted "cashless" transaction; (c) directing the Company to apply Shares to which the Participant is entitled pursuant to the Award to satisfy the required minimum statutory withholding amount; or (d) a personal check or other cash equivalent acceptable to the Company.

ARTICLE 17
INDEMNIFICATION

17.1 **Indemnification**. Each person who is or shall have been a member of the Committee or of the Board shall be indemnified and held harmless by the Company against and from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by him in connection with or resulting from any claim, action, suit, or proceeding to which he may be a party or in which he may be involved by reason of any action taken or failure to act under the Plan and against and from any and all amounts paid by him in settlement thereof, with the Company's approval, or paid by him in satisfaction of any judgment in any such action, suit, or proceeding against him, provided he shall give the Company an opportunity, at its own expense, to handle and defend the same before he undertakes to handle and defend it on his own behalf. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such person may be entitled under the Company's articles of incorporation, bylaws, resolution or agreement, as a matter of law, or otherwise, or any power that the Company may have to indemnify him or hold him harmless.

ARTICLE 18
GENERAL PROVISIONS

18.1 **No Right to Continued Employment/No Additional Rights/Participants**. Nothing in the Plan, in the grant of any Award or in any Award Agreement shall confer upon any Participant any right to continue employment or a contractual relationship with the Company or any of its Affiliates, or interfere in any way with the right of the Company or any of its Affiliates to terminate the Participant's employment or other service relationship for any reason at any time. The grant of an Award under the Plan shall not confer any rights upon the Participant holding such Award other than such terms, and subject to such conditions, as are specified in the Plan as being applicable to such type of Award (or to all Awards) or as are expressly set forth in the Award Agreement.

18.2 **No Rights to Awards**. No Participant, Employee, or other person shall have any claim to be granted any Award pursuant to the Plan, and neither the Company nor the Committee is obligated to treat Participants, Employees, and other persons uniformly.

18.3 **Funding**. The Company shall not be required to segregate any of its assets to ensure the payment of any Award under the Plan. Neither the Participant nor any other persons shall have any interest in any fund or in any specific asset or assets of the Company or any other entity by reason of any Award, except to the extent expressly provided hereunder. The interests of each Participant and former Participant hereunder are unsecured and shall be subject to the general creditors of the Company. The Plan is not intended to be subject to the Employee Retirement Security Act of 1974, as amended.

18.4 **Requirements of Law**. The granting of Awards and the issuance of Shares under the Plan shall be subject to all applicable laws, rules, and regulations, including without limitation Canadian securities laws and United States federal and state securities laws, and to such approvals by any governmental agencies or national securities exchanges as may be required. The Committee may impose such restrictions and/or conditions on any Shares as it may deem advisable, including without limitation restrictions under the Securities Act, under the requirements of any exchange upon which such Shares are then listed, under any blue sky or other securities laws applicable to such Shares. The Company shall be under no obligation to register pursuant to the Securities Act or applicable Canadian securities laws any of the Shares paid pursuant to the Plan. If the Shares paid pursuant to the Plan may in certain circumstances be exempt from registration pursuant to the Securities Act or applicable Canadian securities laws, the Company may restrict the transfer of such Shares in such manner as it deems advisable to ensure the availability of any such exemption. With respect to any Participant who is, on the relevant date, obligated to file reports pursuant to Section 16 of the Exchange Act, transactions pursuant to this Plan are intended to comply with all applicable conditions of Rule 16b-3 or its successors pursuant to the Exchange Act. Notwithstanding any other provision of the Plan, the Committee may impose such conditions on the exercise of any Award as may be required to satisfy the requirements of Rule 16b-3 or its successors pursuant to the Exchange Act. To the extent any provision of the Plan or action by the Committee fails to so comply, it shall be void to the extent permitted by law and voidable as deemed advisable by the Committee.

18.5 **Governing Law**. The Plan and all agreements into which the Company and any Participant enter pursuant to the Plan shall be construed in accordance with and governed by the laws of the Cayman Islands.

18.6 **No Shareholders Rights**. No Award gives the Participant any of the rights of a shareholder of the Company unless and until Shares are in fact issued to such person in connection with such Award.

18.7 **Adoption of Other Plans**. The adoption of the Plan shall not preclude the Company from establishing any other forms of share incentive or other compensation or benefit program for Employees, Officers, non-Employee Directors and Consultants of the Company or any Affiliate.

18.8 **No Corporate Action Restriction**. The existence of the Plan, the Award Agreements and the Awards granted hereunder shall not limit, affect or restrict in any way the right or power of the Board or the shareholders of the Company to make or authorize: (a) any adjustment, recapitalization, reorganization or other change in the capital structure or business of the Company or any Affiliate, (b) any merger, amalgamation, consolidation or change in the ownership of the Company or any Affiliate, (c) any issue of bonds, debentures, capital, preferred or prior preference stock ahead of or affecting the capital stock (or the rights thereof) of the Company or any Affiliate, (d) any dissolution or liquidation of the Company or any Affiliate, (e) any sale or transfer of all or any part of the assets or business of the Company or any Affiliate, or (f) any other corporate act or proceeding by the Company or any Affiliate. No Participant, beneficiary or any other person shall have any claim under any Award or Award Agreement against any member of the Board or the Committee, or the Company or any Employees, Officers or agents of the Company or any Affiliate, as a result of any such action.

18.9 **Titles and Headings**. The titles and headings of the Articles in the Plan are for convenience of reference only and, in the event of any conflict, the text of the Plan, rather than such titles or headings, shall control.

18.10 **Successors and Assigns**. The Plan shall be binding upon and inure to the benefit of the successors and permitted assigns of the Company, including without limitation, whether by way of merger, consolidation, operation of law, assignment, purchase, or other acquisition of substantially all of the assets or business of the Company, and any and all such successors and assigns shall absolutely and unconditionally assume all of the Company's obligations under the Plan.

18.11 **Severability**. If any provision of the Plan or any Award Agreement shall be determined to be illegal or unenforceable by any court of law in any jurisdiction, the remaining provisions hereof and thereof shall be severable and enforceable in accordance with their terms, and all provisions shall remain enforceable in any other jurisdiction.

18.12 **Survival of Provisions**. The rights, remedies, agreements, obligations and covenants contained in or made pursuant to this Plan, any agreement and any notices or agreements made in connection with this Plan shall survive the execution and delivery of such notices and agreements and the delivery and receipt of such Shares if required by Section 12.3, shall remain in full force and effect.

ARTICLE 19
EXECUTION

19.1 To record the adoption of the Plan by the Board on December 29, 2021, the Company has caused its authorized officer and/or director to execute the same.

SCULLY ROYALTY LTD.

By: */s/Michael Smith*
Name: Michael Smith
Title: Chairman

EXHIBIT 8.1

SCULLY ROYALTY LTD.

LIST OF SIGNIFICANT SUBSIDIARIES AS AT DECEMBER 31, 2021

Subsidiaries	Country of Incorporation	Proportion of Interest(1)
Merkanti Holding plc.	Malta	99.96%
1178936 B.C. Ltd.	Canada	100%
Merkanti (A) International Ltd.	Malta	99.96%
Merkanti (D) International Ltd.	Malta	99.96%

Note:
(1) Our proportional voting interests are identical to our proportional beneficial interests, except that we hold a 99.68% proportional beneficial interest in each of Merkanti (A) International Ltd. and Merkanti (D) International Ltd.

EXHIBIT 12.1

CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Samuel Morrow, certify that:

1. I have reviewed this annual report on Form 20-F of Scully Royalty Ltd.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;

4. The company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:

    a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c. Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d. Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and

5. The company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):

    a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and

    b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

Date: April 29, 2022

By: */s/ Samuel Morrow*
Samuel Morrow
Title: Chief Executive Officer

EXHIBIT 12.2

CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Samuel Morrow, certify that:

1. I have reviewed this annual report on Form 20-F of Scully Royalty Ltd.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;

4. The company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:

    a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c. Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d. Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and

5. The company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):

    a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and

    b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

Date: April 29, 2022

By: */s/ Samuel Morrow*
Samuel Morrow
Title: Chief Financial Officer

EXHIBIT 13.1

CERTIFICATION

PURSUANT TO

18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the annual report of Scully Royalty Ltd. (the "Company") on Form 20-F for the year ended December 31, 2021, as filed with the Securities and Exchange Commission on the date hereof (the "Annual Report"), I, Samuel Morrow, as Chief Executive Officer of the Company, hereby certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(i) the Annual Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(ii) the information contained in the Annual Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: April 29, 2022

/s/ Samuel Morrow

By: Samuel Morrow
Title: Chief Executive Officer

EXHIBIT 13.2

CERTIFICATION

PURSUANT TO

18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the annual report of Scully Royalty Ltd. (the "Company") on Form 20-F for the year ended December 31, 2021, as filed with the Securities and Exchange Commission on the date hereof (the "Annual Report"), I, Samuel Morrow, as Chief Financial Officer of the Company, hereby certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(i) the Annual Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(ii) the information contained in the Annual Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: April 29, 2022

/s/ Samuel Morrow

By: Samuel Morrow
Title: Chief Financial Officer

Exhibit 23.1

Consent of Independent Registered Accounting Firm

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 (No. 333-261724) of Scully Royalty Ltd. of our report dated April 29, 2022, with respect to the consolidated financial statements of the Company, which is included in this Annual Report on Form 20-F.

/s/ *Smythe LLP*

Smythe LLP
Chartered Professional Accountants

Vancouver, British Columbia
April 29, 2022

Exhibit 23.2

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Scully Royalty Ltd.
Hong Kong, China

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 (No. 333-261724) of Scully Royalty Limited of our report dated May 11, 2020, relating to the consolidated financial statements which appear in this Annual Report on Form 20-F.

/s/ BDO LLP

BDO LLP
London, United Kingdom

April 29, 2022

SUPERIOR COURT

(*Commercial Division*)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

No: 500-11-048114-157

DATE: March 14, 2018

PRESIDED BY: THE HONOURABLE STEPHEN W. HAMILTON, J.S.C.

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:

BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATIOIN
8568391 CANADA LIMITED
CLIFFS QUÉBEC IRON MINING ULC
WABUSH IRON CO. LIMITED
WABUSH RESOURCES INC.
Petitioners

and
THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP
BLOOM LAKE RAILWAY COMPANY LIMITED
WABUSH MINES
ARNAUD RAILWAY COMPANY
WABUSH LAKE RAILWAY COMPANY LIMITED
Mises en cause

and
FTI CONSULTING CANADA INC.
Monitor

and
0778539 B.C. LTD
Respondent

JH5439

JUDGMENT ON WABUSH IRON CO. LIMITED AND WABUSH RESOURCES INC.'S AMENDED MOTION FOR DIRECTIONS AND THE ISSUANCE OF A SAFEGUARD ORDER (#607)

INTRODUCTION

[1] The parties have a dispute as to whether any Minimum Royalty Payments were payable under the mining lease dated September 2, 1959, for the period after the mine was permanently idled.

CONTEXT

1. The contracts

[2] As part of its plan to develop the natural resources of Labrador, the government of Newfoundland and Labrador created a Crown corporation called the Newfoundland and Labrador Corporation Limited ("Nalco") in 1951 and granted it a number of concessions, including a mineral concession over 21,900 square miles of land in Newfoundland and Labrador.[1] The mineral concession included the area known as the Wabush Deposit, an area rich in iron ore.

[3] There were a series of contracts starting in the 1950's involving the following parties:

- The government of Newfoundland and Labrador;
- Nalco (which transferred its rights to Knoll Lake Minerals Limited on June 17, 1964[2]);
- Canadian Javelin Foundries & Machine Works Limited (later known as Canadian Javelin Limited, Javelin International Ltd., Nalcap Holdings Inc., MFC Industrial Ltd., MFC Bancorp Ltd., and now 0778539 B.C. Ltd.) ("MFC"); and
- Wabush Iron Co. Limited, Wabush Resources Inc. and Wabush Mines, as well as their predecessors in title and their partners.

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1 *The Newfoundland and Labrador Corporation Limited Act, 1951*, S.N.L. 1951, c. 88 as amended.
2 Exhibit R-12.

[4] The relevant contracts can be summarized as follows:

- On March 11, 1954, Nalco granted MFC exploration rights and the right to obtain mineral leases in 2,900 square miles of land in Labrador, including the Wabush Deposit;

- On May 26, 1956, the government of Newfoundland and Labrador leased the Wabush Deposit to Nalco for 99 years;[3]

- On the same date, Nalco sub-leased the Wabush Deposit to MFC, also for 99 years;[4]

- On June 28, 1957, MFC entered into mining leases with Pickands Mather & Co and the Steel Company of Canada ("Stelco") for the westerly portion of the Wabush Deposit, and with Wabush Iron for the easterly portion of that deposit. Pickands Mather, Stelco and Wabush Iron also had options to lease further land;

- On September 2, 1959, Pickands Mather and Stelco assigned their mining lease to Wabush Iron, and Wabush Iron entered into an Amendment and Consolidation of Mining Leases with MFC covering all of the Wabush Deposit (the "1959 Lease");[5]

- On September 4, 1959, the government of Newfoundland and Labrador, Nalco, MFC and Wabush Iron entered into a statutory agreement which formalized the prior contracts;[6]

- On June 28, 1960, the government of Newfoundland and Labrador, Nalco, MFC, Pickands Mather, Stelco and Wabush Iron entered into a Statutory Lease Agreement that amended the various leases between the parties;[7]

- MFC and Wabush Iron further amended the 1959 Lease on July 19, 1960[8] and August 8, 1961;[9]

- On November 27, 1987[10] and on June 8, 1989,[11] Nalcap Holdings and the then owners of the Wabush mine (Wabush Iron, Stelco and Dofasco Inc.) changed certain royalty provisions in the September 2, 1959 mining lease.

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3 Exhibit R-6.
4 Exhibit R-7.
5 Exhibit R-5.
6 Exhibit R-8.
7 Exhibit R-9.
8 Exhibit R-10.
9 Exhibit R-11.

[5] Under the September 2, 1959 lease, Wabush Iron was required to pay the following amounts to MFC:[12]

- An annual rent of $ 360;
- Earned Royalties payable on a quarterly basis for each Gross Ton of Iron Ore Products shipped from the Mine; and
- A quarterly Minimum Royalty calculated as follows:

> Provided, however, that, for each calendar quarter during which this Indenture remains in effect after January 1, 1960, and regardless of whether the Lessee shall conduct on the Demised Premises any mining or other operations, the Lessee shall, on the Quarterly Payment Dates, pay the Lessor a quarterly minimum royalty (hereinafter called 'Minimum') equal to one-quarter of an amount calculated at the rate of thirty cents (30¢), Canadian Funds, per Gross Ton on the following tonnages:

During 1960-1964, inclusive	1,500,000 Gross Tons per year
During 1965-1966, inclusive	6,000,000 Gross Tons per year
During 1967-1968, inclusive	8,000,000 Gross Tons per year
During 1969 and each year thereafter	10,000,000 Gross Tons per year

[6] The schedule of tonnages was amended on August 8, 1961 as follows:[13]

During 1960-1964, inclusive,	1,500,000 Gross Tons per year
During 1965-1966, inclusive,	6,000,000 Gross Tons per year
During 1967	8,000,000 Gross Tons per year
During 1968	8,333,000 Gross Tons per year
During 1969-1972, inclusive,	10,333,000 Gross Tons per year
During 1973 and each year thereafter	10,833,000 Gross Tons per year

[7] This provision was renumbered as Section A.3 and the introductory paragraph was replaced by amendment on November 27, 1987:

> 3. For each calendar quarter during which this Indenture remains in effect, and regardless of whether the Lessee shall conduct on the Demised Premises any mining or other operations, the Lessee shall, on the Quarterly Payment Dates, pay the Lessor a quarterly minimum royalty (hereinafter called 'Minimum') equal to one-quarter of an amount calculated at the rate of thirty cents ($.30), Canadian Funds, per Gross Ton on the following tonnages.[14]

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[10] Exhibit R-13.
[11] Exhibit R-14.
[12] Exhibit R-5, Section A.1.
[13] Exhibit R-11, Section 1(a).
[14] Exhibit R-13, Section III.

[8] The payment of the Minimum Royalty is subject to a number of conditions. The condition which is relevant to the present dispute is as follows:

> (f) When the Lessee shall have paid to the Lessor Minimum for which it has not taken credit, and such payments equal or exceed that figure determined by multiplying the tonnage of Iron Ore Products which can be produced from the remaining proven ore in the Demised Premises by the rate of thirty (30¢) per Gross Ton thereof, then, and in that event, the Lessee shall be under no further obligation to pay Minimum to the Lessor. The quantity of the remaining proven ore will be established in accordance with operating estimates customary in the iron ore industry. Any dispute which may arise hereunder with respect to the rights and limitations herein set forth, shall be submitted to arbitration as hereinafter provided.[15]

[9] In the event that the lessee is in default to pay any rents or royalties, the 1959 Lease terminates after a 60 day notice:

> 4. That if and whenever any of the rents or royalties hereby reserved or any part thereof shall be in arrears for thirty (30) days or if any covenant or condition herein contained shall not have been duly performed or observed, the Lessor, upon giving sixty (60) days' notice in writing to the Lessee that such rents or royalties have not been paid and demanding payment thereof or that any covenant or condition has not been performed or observed, may, at any time thereafter, if such payment is not made or such covenant or condition is not performed or observed within such period of notice, enter into and upon the Demised Premises or any part thereof and thereupon this demise shall absolutely determine subject to the same obligations on the part of the Lessee as if such determination had been effected by the Lessee pursuant to the provisions of Clause 1 of this Part C and without prejudice to the right of action of the Lessor in respect of any breach of the Lessee's covenants herein contained.[16]

[10] Further, the 1959 Lease provides that the leased area reverts to the lessor if the lessee brings a mine into production and then ceases to operate it for ten consecutive years:

> 9. That where the Lessee has brought a mine into production in the Demised Premises, the Demised Premises shall revert to the Lessor if the mine has ceased to operate for ten (10) consecutive years.[17]

[11] This clause was amended on June 28, 1960 as follows:

> 9. Where the Lessee has brought a mine into production on the Demised Premises, the Demised Premises shall revert to the Lessor if operations at such

15 Exhibit R-5, Section A.1 (f).
16 Exhibit R-5, Section C.4.
17 Exhibit R-5, Section C.9.

> mine are discontinued and thereafter in and during any period of ten (10) consecutive years no substantial mining operations are carried on anywhere on the Demised Premises.'[18]

[12] The consequences of the termination of the 1959 Lease include the lessor's right to purchase buildings, plant, machinery, articles and things of the lessee on the property :

> 3. That it shall be lawful for the Lessee to remove all buildings, plant, machinery and all articles and things of the Lessee in and upon or under the Demised Premises at any time within six (6) months after the determination of the tenancy; provided that the Lessor shall have the right by notice in writing to the Lessee to purchase all or any part of the said properties, articles and things at the then reasonable market price, to be determined, failing agreement thereon between the parties, by arbitration as hereinafter provided.[19]

2. The facts

[13] The Wabush mine began its operations in 1965.

[14] One portion of the property was leased by Wabush Iron in 1959. The other portion was leased by Pickands Mather and Stelco, who transferred the lease to Wabush Iron. Wabush Iron later transferred the lease to Wabush Mines, which was initially an unincorporated joint venture of Wabush Iron, Pickands Mather (later Dofasco) and Stelco. The partners were bought out in 2010. The current partners of Wabush Mines are Wabush Iron and Wabush Resources.

[15] Mining operations at the Wabush mine were suspended in March 2014 on the basis that they were not economically sustainable. Mining operations were permanently idled in November 2014.

[16] On May 20, 2015, Wabush Iron and Wabush Resources applied for and were granted Court protection under the *Companies' Creditors Arrangement Act*.[20]

[17] On August 24, 2015, Wabush Mines paid by wire transfer an amount of $750,000 as the Minimum Royalty for the period from April 1, 2015 to June 30, 2015.[21] This is the amount that Wabush Mines had been paying since it suspended operations in March 2014.

[18] MFC sent a notice of default on September 3, 2015.[22]

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18 Exhibit R-9, Section 2(d).
19 Exhibit R-5, Section C.3.
20 R.S.C. 1985, c. C-36 as amended.
21 Exhibit R-16.
22 Exhibit R-15.

[19] The subsequent correspondence back and forth between the parties and with the Monitor shows that the dispute at this time related to two issues:

1. MFC argued that Wabush Mines underpaid on August 24, 2015 because it did not take into consideration the amendment on August 8, 1961 which increased the tonnage on which the Minimum Royalty Payments were calculated from 10,000,000 Gross Tons to 10,833,000 Gross Tons,[23] which had the effect of increasing the quarterly Minimum Royalty Payments from $750,000 to $812,250.[24]

2. The Monitor argued that Wabush Mines was only required to pay the *pro rata* portion of the Minimum Royalty Payment for the period straddling the Initial Order on May 20, 2015, and that the portion for the period prior to the Initial Order was a pre-filing debt that would be dealt with in the plan.[25]

[20] Wabush Mines paid the difference of $62,250 to MFC to resolve the first issue.[26] It has since abandoned the second issue.

[21] On November 23, 2015, Wabush Mines served its Motion for Directions and the Issuance of a Safeguard Order (#247) in which it sought:

1. A declaration that (a) the expression "remaining proven ore" in the 1959 Lease means "iron ore that could be extracted in an economically viable or profitable manner" and that (b) in light of the current market condition, there is no "remaining proven iron ore" at the Wabush mine, such that (c) Wabush Mines is not required to pay any Minimum Royalty; and

2. A safeguard order effectively suspending any obligation to pay the Minimum Royalty until 21 days after the Court issues its judgment on the Motion for Directions.

[22] The Motion for Directions was contested by MFC.

[23] The parties came to an agreement with respect to the safeguard order requested by Wabush Mines. Pursuant to that agreement, the Court issued the following safeguard orders on December 4, 2015:

> **ORDERS** that until such time as the Court renders judgment with respect to the Motion, the Wabush CCAA Parties shall give 14 day prior notice to MFC before dismantling or destroying the infrastructure or fixtures at the Wabush mine, in

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23 Exhibit R-11, par. 1(a), amending Exhibit R-5, Section A.1.

24 Exhibit R-17. The actual calculation should be ¼ x $0.30 x 10,833,000 = $812,475, but the parties acted on the basis that the proper amount was $812,250.

25 Exhibit R-18. This argument has been abandoned by Wabush Mines.

26 Exhibit R-18.

order to allow MFC to take whatever proceedings it considers appropriate to protect its rights;

ORDERS the Wabush CCAA Parties to deposit the sum of $812,250 per quarter with the Monitor in respect of the quarters ending October 25th, 2015 and following, to be held pending final judgment by the Court on the Motion;

ORDERS that MFC is required to seek an order to lift the stay of proceedings prior to taking any action to terminate the Sublease or enforce any right thereunder.

[24] Starting with the October 25, 2015 payment, the Monitor set aside $812,500 per quarter and as of December 1, 2017 it held the sum of $6,543,349.42 including interest.[27]

[25] Further, Wabush Mines gave notice to MFC with respect to its attempts to sell the assets on the Wabush mine site. MFC did not exercise its right to purchase any assets.

[26] On September 19, 2016, MFC filed a Motion to Partially Lift the Stay of Proceedings, to Vary a Court Order, to Obtain Payment of Sums of Money Held in Trust by the Monitor, to Terminate a Sub-Lease and for Additional Relief (#380). In its motion, MFC asks the Court to do the following:

1. Declare that the 1959 Lease is terminated;

2. Order the Monitor to pay to MFC the amounts that it holds as Minimum Royalties;

3. Reserve the rights of MFC to acquire assets of Wabush Mines in accordance with its existing contractual rights;

4. Order the Monitor to provide MFC with copies of the proofs of claim filed by Cliffs Natural Resources (the ultimate parent of Wabush Mines) and related parties; and

5. Order the Monitor to suspend consideration of any liquidation proposals until final judgment on the motion.

[27] The issue with respect to the proofs of claim was resolved. Moreover, the Monitor considered liquidation proposals but, as mentioned above, advised MFC of any developments in that regard so that MFC could exercise its rights.

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[27] This represents eight quarterly payments of $812,250 plus interest. The eight quarterly payments are those which may be due from October 25, 2015 (covering the period July 1, 2015 to September 30, 2015) to July 25, 2017 (covering the period from April 1, 2017 to June 30, 2017).

[28] MFC filed its Contestation of Wabush Mines' Motion for Directions on April 5, 2017 (#492). It asks for the dismissal of the Motion for Directions and for the payment to MFC of all amounts paid in trust to the Monitor since December 4, 2015.

[29] On June 2, 2017, the Wabush Iron and Wabush Resources signed an Asset Purchase Agreement for the sale of the Wabush mine to Tacora Resources Inc., a subsidiary of MagGlobal LLC.[28] The Court issued an order approving the sale on June 26, 2017 and the sale closed on July 18, 2017.

[30] On July 25, 2017, the Monitor transferred the quarterly Minimum Royalty payment of $812,250 for the period from April 1, 2017 to June 30, 2017 to its trust account. On the same date, Tacora paid $812,475 directly to MFC under protest.[29]

[31] Tacora assumed the 1959 Lease and resolved whatever issues it had with MFC. In particular, MFC agreed to credit Tacora with the sum of $812,475 if MFC is paid the full amount it is claiming in this litigation.[30]

[32] As a result, the dispute between Wabush Mines and MFC is now limited to the question of who is entitled to the amounts held in trust by the Monitor as Minimum Royalties for the period from July 1, 2015 to June 30, 2017.

[33] Since MFC asks in its Contestation for an order that the Monitor pay to MFC the amounts that it holds as Minimum Royalties, it is no longer necessary to proceed on the MFC Motion to Partially Lift the Stay.

[34] Similarly, Wabush Iron and Wabush Resources filed an Amended Motion for Directions at the hearing to seek a declaration that the amounts held in trust by the Monitor are not due to MFC and should be transferred by the Monitor to its general trust account. Further, they argue that the payment on July 25, 2017 should be reimbursed even if the Court concludes that Wabush Mines is generally obliged to pay the Minimum Royalty Payments, because the sale to Tacora closed on July 18, 2017.

ISSUES IN DISPUTE

[35] The Court has identified the following issues:

1. What is the proper interpretation of the cap on Minimum Royalties under Article A.1(f) of the 1959 Lease?

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28 Exhibit R-28.
29 Tacora appears to have calculated the amount correctly.
30 MFC produced an extract from its contract with Tacora.

2. What was the amount of the cap in the period between July 1, 2015 and June 30, 2017?

3. Is Wabush Mines responsible for all or a portion of the Minimum Royalty Payment paid on July 25, 2017?

ANALYSIS

1. Proper interpretation of the cap on Minimum Royalties under Article A.1(f) of the 1959 Lease

[36] Section 11 of the 1959 Lease Agreement provides as follows:

> 11. This Indenture shall be construed and interpreted in accordance with the laws of the Province of Newfoundland, Canada.

[37] Wabush Mines produced the report of Kevin F. Stamp, Q.C., who is licensed and qualified to practice law in the Province of Newfoundland and Labrador since 1978.[31] His report was not contested by MFC and he did not testify at the trial.

[38] Stamp came to the following conclusion on the applicable principles of contractual interpretation under the law of Newfoundland and Labrador:

> The meaning to be attributed to the term "remaining proven ore", undefined in the 1959 Amendment and Consolidation, may be informed and established by evidence of the history of the transaction, the factual matrix surrounding and the genesis and aim of the agreement. Clearly, the existence and prevalence of mining industry terms of art, trade practices, standards or usages, all of which are outside the mandate of this opinion, may also be aids to interpretation of the term including whether the term incorporates or implies an element of economic viability.[32]

[39] His report focused on the interpretation "remaining proven ore", but the principles he set out are of general application.

a. *Language of the 1959 Lease*

[40] The first step in the analysis is the language of Article A.1(f) and the way that it operates, in the context of the 1959 Lease as a whole.

[41] Article A.1(f) of the 1959 Lease provides as follows:

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31 Exhibit R-22.

32 *Id.*, p. 3.

(f) When the Lessee shall have paid to the Lessor Minimum for which it has not taken credit, and such payments equal or exceed that figure determined by multiplying the tonnage of Iron Ore Products which can be produced from the remaining proven ore in the Demised Premises by the rate of thirty (30¢) per Gross Ton thereof, then, and in that event, the Lessee shall be under no further obligation to pay Minimum to the Lessor. The quantity of the remaining proven ore will be established in accordance with operating estimates customary in the iron ore industry. Any dispute which may arise hereunder with respect to the rights and limitations herein set forth, shall be submitted to arbitration as hereinafter provided.

[Emphasis added]

[42] It creates a cap on the Minimum Royalties paid and not credited under the 1959 Lease. The cap is equal to 30¢ per Gross Ton of "Iron Ore Products which can be produced from the remaining proven ore in the Demised Premises".

[43] MFC argues that the cap is reached when the quantity of "remaining proven ore" falls below the quantities set out in Article A.1, as amended in August 1961 (i.e. 10,833,000 today).[33] That is not how the cap operates. Those quantities are used to calculate the Minimum Royalties and are not relevant to the cap.[34]

[44] What does the expression "Iron Ore Products which can be produced from the remaining proven ore" mean?

[45] The expression uses the present tense "can be produced" which suggests a present ability to produce, as opposed to "could be produced" which is conditional or "will be produced" which is future. This suggests that the expression "Iron Ore Products which can be produced from the remaining proven ore" is limited to products that can be produced in present circumstances.

[46] It is not enough to say that there is iron ore in the ground and therefore that Iron Ore Products can be produced. The present ability to produce must necessarily include economic factors. No one will produce Iron Ore Products from the remaining proven ore if they will not make a profit doing so. This supports the proposition that no Iron Ore Products can be produced from the remaining ore if it is not profitable to do so.

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33 Paragraphs 47 to 52 of the MFC Plan of Arguments dated December 4, 2017.

34 As an example, if 60 million Gross Tons of Iron Ore Products can be produced from 200 million Gross Tons of remaining proven ore, then the cap is 30¢ per Gross Ton times 60 million Gross Tons or $18 million. If nothing is being produced, the lessee would be required to pay Minimum Royalties of 30¢ per Gross Ton per year on 10,833,000 Gross Tons, or $3,249,900 per year, for 5.5 years until it had paid a total of $18 million.

[47] There are a number of other provisions in the 1959 Lease which relate to the economics of the deal and thereby provide the context in which the cap in Article A.1(f) must be interpreted:

- It is a long term arrangement. The 1959 Lease expires on May 20, 2055, which is the balance of the 99 year term under the sub-lease in favour of MFC (Preamble);

- The annual rent is only $360 per year, less sums expended on the prospecting, exploration, development or mining of the Demised Premises (Preamble). This amount is paid on a regular basis and is not subject to any cap, although the amounts paid are not significant;

- The Earned Royalty is based on the quantity of Iron Ore Products shipped during the quarter. The rate is 7% of the Seven Islands Price or 75¢ per Gross Ton, whichever is higher (Article A.1).[35] "Iron Ore Products" are defined as follows:

  > "Iron Ore Products" shall mean and include iron ore, crude iron-bearing material and any metal, material or composition produced from iron ore or crude iron-bearing material.

- The Minimum Royalty is based on a defined number of Gross Tons, increasing to 10,000,000 by 1969 (Article A.1).[36] The number of Gross Tons on which the Minimum Royalty is payable is reduced proportionately if U.S. steel production falls below 85% of the rated capacity for that year (Article A.1(d));

- The rate for the Minimum Royalty is 30¢ per Gross Ton per year or ¼ of 30¢ (7½¢) per Gross Ton per quarter (Article A.1);

- The Minimum Royalty payable any quarter is reduced by any Earned Royalty paid for the quarter (Article A.1(a));

- The lessee is given a credit for any Minimum Royalties paid against future Earned Royalties (Article A.1(c)). It is only the paid and uncredited Minimum Royalties which are counted against the cap;

- The lessee can terminate the lease on 60 days' notice and on payment of all amounts due plus an amount increasing to $1,600,000 in 1964, less sums expended on the prospecting, exploration, development or mining of the Demised Premises and amounts paid as royalties or otherwise (Article C.1);

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35 This amount was amended by the November 1987 agreement (Exhibit R-13).

36 These amounts were amended in 1961 (Exhibit R-11).

- The landlord can terminate the lease on 60 days' notice for failure to pay the rents or royalties (Article C.4); and

- Where the lessee has brought a mine into operation and the mine has ceased to operate for ten consecutive years, the Demised Premises shall revert to the landlord (Article C.9).

[48] These provisions all work together:

- If the lessee suspends operations while Iron Ore Products can be produced from the remaining proven ore, there are a number of consequences:
    - the lessee has the option of terminating the lease on 30 days' notice;
    - if the lessee does not terminate the lease, it must pay Minimum Royalties (up to the cap) until it resumes operations;
    - the amount of the Minimum Royalty may be adjusted if the lessee has suspended operations because of a decline in demand;
    - if the lessee resumes operations, it gets credit for the Minimum Royalties paid against future Earned Royalties;
    - if operations remain suspended for 10 years, the lease terminates.

- If the lessee ceases operations when no Iron Ore Products can be produced from the remaining proven ore, then the cap is zero. This means that the lessee is not required to pay Minimum Royalties, and may continue to occupy the premises for 10 years without paying any royalties.

[49] It makes sense that the Minimum Royalties are only payable when Iron Ore Products can be produced from the remaining proven ore but they are not being produced or are not being produced in sufficient quantities. When those Iron Ore Products are produced in the future, they will attract Earned Royalties. Article A.1(c) gives the lessee a credit for any Minimum Royalties paid against future Earned Royalties. That credit is meaningless if there are no Earned Royalties in the future.

[50] Moreover, the combined effect of Articles A.1(f) and A.1(c) is to ensure that the lessee only pays the royalty once. The lessee gets credit for the Minimum Royalty paid against future Earned Royalties and does not have to pay any Minimum Royalty beyond the Iron Ore Products that will attract Earned Royalties in the future. The Minimum Royalty is not meant to be paid instead of Earned Royalties but rather in anticipation of Earned Royalties.

[51] MFC objects to the idea that the lessee can occupy the premises for 10 years without paying any royalties. However, this result is not unreasonable in the context where (1) it is a 99 year lease, so 10 years is not that long, (2) the lessee continues to pay the agreed rent, and (3) the mine cannot be operated profitably, so no one else would be prepared to pay royalties. Moreover, if iron ore prices increase and operations become profitable again, the lessee will either resume operations and pay Earned Royalties or remain closed and pay Minimum Royalties. If the lessee resumes operations without having paid any Minimum Royalties, MFC ends up in the same situation as if Minimum Royalties had been paid, because any Minimum Royalties paid would be offset against Earned Royalties that become due.

[52] MFC also argues that the 1959 Lease guaranteed it a revenue stream for the duration of the 1959 Lease, or at least as long as Wabush Mines was in possession of the mine. The Court does not agree. Rent was guaranteed. Earned Royalties are only payable if there is production. Minimum Royalties are payable if there is no production, but only up to the cap. Once the lessee reaches the cap, it continues in possession of the mine without paying any royalties for the remainder of the 10 years.[37]

[53] The Court therefore concludes on a review of the 1959 Lease that the cap at any point in time is based on the quantity of Iron Ore Products that can produced in the circumstances existing at that time. That notion includes both that there must be remaining proven iron ore and that the production of Iron Ore Products from the remaining proven ore must be profitable in the circumstances at that time.

b. Extrinsic Evidence

[54] The only extrinsic evidence presented to the Court which could be relevant to the interpretation of the 1959 Lease was evidence as to the pricing of iron ore.

[55] This evidence is relevant in that the pricing of iron ore prior to 1959 might give some sense for what the parties anticipated might happen after 1959.

[56] The U.S. Geological Survey data shows that the price for iron ore (in constant dollars) was volatile. It fluctuated between 1900 and 1945, with a high of $47.45 in 1900 and a low of $23.03 in 1926. The price increased every year from 1947 to 1958 before leveling off, with the result that the price almost doubled from 1947 to 1959.[38]

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[37] See the example in footnote 34, where the Minimum Royalties reach the cap after 5.5 years. In that scenario, the lessee stays in possession of the mine without paying any royalties for another 4.5 years.

[38] Exhibit R-26. See also Crédit Suisse, "Long Run Commodity Prices: Where Do We Stand?", 27 July 2011 (Exhibit R-25).

[57] It is likely that the parties assumed that the price of iron ore would continue to rise, although they would have been aware that the price had fluctuated in the past and might fluctuate in the future. The 1959 Lease recognizes that the lessee may suspend production at the mine for a period of up to 10 years. It also includes a mechanism to adjust the Minimum Royalties if demand for steel fell by more than 15%.

[58] This evidence is consistent with the Court's interpretation of the clause.

c. Expert evidence on "remaining proven ore"

[59] In interpreting Article A.1(f), both parties focused on the term "remaining proven ore" and more specifically the word "ore".

[60] The 1959 Lease uses the term "remaining proven ore" only twice, both in Article A.1(f). It does not define the term, and provides only that:

> The quantity of the remaining proven ore will be established in accordance with operating estimates customary in the iron ore industry.

[61] Moreover, there was no applicable statutory or regulatory definition in 1959.

[62] The principal arguments at trial focused on how the term "remaining proven ore", as a term of art in the mining industry, would have been understood in 1959. The reference in Article A.1(f) that "The quantity of the remaining proven ore will be established in accordance with operating estimates customary in the iron ore industry" certainly makes evidence from industry experts relevant in the interpretation of the term "remaining proven ore".

[63] Both parties called industry experts to testify at the trial. They focused on the expression "remaining proven ore" and not on how the expression is used in the 1959 Lease. Wabush Mines argued that "ore" meant "a body of rock containing iron minerals which could be mined and processed at a profit", whereas MFC argued that "ore" does not include any reference to profitability and means only "a natural mineral compound, of the elements of which one at least is a metal". Put simply, the debate is whether the definition of "ore" includes only geological factors, or whether it includes both geological and economic factors.

[64] Christopher J. Lattanzi, P. Eng., was called by Wabush Mines. He produced a report dated October 11, 2016[39] and a second report dated December 20, 2016.[40]

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[39] Exhibit R-23.
[40] Exhibit R-24.

[65] In his first report, Lattanzi reviewed the relevant literature and referred to his personal experience. His analysis focused on the words "ore" and "proven". The word "remaining" is clear and does not give rise to any controversy. He concluded that the word "ore" meant a body of mineralized rock which could be mined and processed at a profit:

> 15. From a review of the relevant literature, it is evident that, between 1900 and 1959, there was no universally accepted definition of the word "ore" within the mining industry in North America. It is equally clear, however, that the preponderance of opinion favoured a definition that embodied the concept of profit, under which "ore" would be defined as a body of mineralized rock which could be mined and processed at a profit. The strongest proponent of such a definition was J.F. Kemp, who wrote, in 1909: "The test of yielding a metal or metals at a profit seems to me, in the last analysis, to be the only feasible one to employ."[41]

[66] He also concluded that the word "proven" meant that the estimates of tonnage and grade were accurate to within reasonably close limits such that there was little risk that those estimates would not be realized in practice:

> 17. A review of the relevant literature also reveals that there was no universally accepted system of classifying reserves, in terms of the degree of confidence or reliability to be placed in the estimates of tonnage and grade. Following the publication by the U.S. Geological Service of a proposed three-tiered classification system in 1943, however, much of the discussion seems to have centred around nomenclature. There appears to have been general agreement that the terms "measured reserves", "proved reserves" or "proven reserves" meant that the estimates of tonnage and grade were accurate to within reasonably close limits and, hence, that there was little risk that those estimates would not be realized in practice.[42]

[67] Lattanzi came to the following overall conclusion as to the meaning of "remaining proven ore":

> 18. On the basis of the discussion contained in this report, it is my opinion that, 1959, the majority of practitioners within the mining industry would have construed the term "Proven Iron Ore" to mean:
>
> > "A body of rock containing iron minerals which could be mined and processed at a profit, and for which the tonnage and grade have been estimated to a high level of confidence, such that there is reasonable commercial assurance that those estimates will be realized in practice to a low margin of error."[43]

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41 Exhibit R-23, par. 15.
42 *Id.*, par. 17.
43 *Id.*, par. 18.

[68] MFC called Eugene J. Puritch, P. Eng. He filed a report dated November 3, 2016.[44]

[69] Puritch took a very similar approach to Lattanzi: he reviewed much of the same literature and he applied his personal experience.

[70] He concluded as follows with respect to the word "ore":

> 13. Based on a review of relevant literature between 1900 and 1959, there was no widely accepted evident definition of the word "ore" within the mining industry in North America. It is also apparent that during this period the word "ore" was a loosely defined term that generally meant a natural mineral compound, of the elements of which one at least is a metal. [...]
>
> 14. It is evident that during 1956 to 1959, the generally accepted definitions for the words "proven" and "ore" were not clear and any inference that these terms meant a definition of profitability is unsupported. In that era, there was no direct link between the word "ore" and profitability. One must have been surely aware that all mining operations were in business with the goal of being profitable while they pursued the extraction of ore. It was not until 1984 in National Policy 2-A, Guide for Mining Engineers, Geologists and Prospectors, where the term "ore" was specifically defined as "a natural aggregate of one or more minerals, which at some specified time and place may be mined and sold at a profit, or from which some part may be profitably separated."[45]

[71] He added the following with respect to the word "proven";

> 15. The misinterpretation by Mr. Lattanzi of the term "proven" to infer profitability prior to 1960 is unfounded. At no place in his referenced documents during that era does the term proven apply directly to profitability. The definition of the term "proven" instead, is properly interpreted to mean metalliferous continuity established by sampling in mine workings, trenches and bore-holes. [...][46]

[72] He therefore came to a different conclusion with respect to the term "remaining proven ore":

> 17. On the basis of the discussion contained in this report, it is my opinion that, in 1959, the majority of mining professionals would have interpreted the term "proven ore" to mean:

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44 Exhibit D-1.
45 *Id.*, par. 13-14.
46 *Id.*, par. 15.

> "A natural mineral compound, of the elements of which one at least is a metal where there is practically no risk of failure of continuity"[47]

[73] Lattanzi filed his second report to respond to Puritch's report. He reviews the Puritch report and concludes:

> 54. [...] I conclude, therefore, that the continuous preponderance of professional opinion, from 1920 to 1970, was that "ore" meant material that could be mined and processed at a profit. There is nothing in the Puritch report which, to my mind, gainsays that opinion.[48]

[74] The Court concludes that there is little dispute as to the word "proven". Both experts agree that "proven" refers to a high degree of certainty that the iron ore is present. Further, both experts agree that "proven" does not incorporate any notion of profitability. Puritch is mistaken when he states in paragraph 15 of his report that Lattanzi concludes that "proven" implies profitability. As Lattanzi states in paragraph 44 of his second report:

> 44. Paragraph 15 of the Puritch report states: "The misrepresentation by Mr. Lattanzi of the term "proven" to infer profitability prior to 1960 is unfounded." Nowhere, however, does the Lattanzi report assert that "proven" implies profitability, and the criticism at paragraph 15 of the Puritch report is misplaced. There is no dispute that the word "proven", in the context of "proven ore", denotes the highest level of geological confidence and, hence, the lowest risk, in the estimates made of the tonnage and grade of the mineral deposit in question. It is the word "ore" which, in my opinion, as of 1959, denoted profitability.[49]

[75] The issue, therefore, is whether the word "ore" includes the notion of profitability.

[76] Both experts agree that, between 1900 and 1959, there was no universally accepted definition of the word "ore" within the mining industry in North America. The difference between the two experts is that Lattanzi concludes that the majority of practitioners within the mining industry would have included the notion of profit whereas Puritch concludes that the majority would not have included the notion of profit.

[77] The Court notes as a preliminary matter that it is not necessary to establish a universally accepted definition or even a generally accepted one. The standard for the interpretation of the contract remains the civil standard of balance of probabilities, and any evidence that helps the Court decide which interpretation is more likely is admissible. As such, evidence that a majority of industry participants thought that the expression meant one thing or the other is relevant. Evidence that everyone thought it meant one thing would obviously carry more weight.

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47 *Id.*, par. 17.
48 Exhibit R-24, par. 54.
49 *Id.*, par. 44.

[78] Further, National Policy Statement 2-A includes the following definition of "Ore":

> "Ore" means a natural aggregate of one or more minerals which, at a specified time and place, may be mined and sold at a profit, or from which some part may be profitably separated.[50]

[79] However, National Policy Statement 2-A was adopted in 1982, almost 25 years after the 1959 Lease. Moreover, the adoption of a definition by a regulatory body does not necessarily mean that the definition was the majority view prior to its adoption. As such, National Policy Statement 2-A has very limited relevance in interpreting the language in the 1959 Lease.

[80] The Court is satisfied, based on a review of the reports and the testimony of Lattanzi and Puritch and the authorities that they cite, that the majority view in 1959 was that the word "ore" included the notion that it could be mined at a profit. That conclusion is based on the following elements:

- Albert H. Fay, in the 1920 edition of his *Glossary of the Mining and Mineral Industry* first published in 1918, compiles four definitions of the "ore" from different sources. Three of the four definitions include the notion of profit, including J.F. Kemp, who proposed the following definition of "ore" in 1909:

  > A metalliferous mineral or an aggregate of metalliferous minerals, more or less mixed with gangue, which from the stand point of the miner, can be won at a profit, or from the stand point of the metallurgist can be treated as a profit. The test of yielding a metal or metals at a profit seems to me, in the last analysis, to be the only feasible one to employ.

- In his 1956 *Dictionary of Geological Terms*, C.M. Rice defines "ore" by reproducing three of Fay's definitions (including two that include the notion of profit);

- Herbert Cox sent a questionnaire to a group of Canadian mining companies to get information about current usage in Canada of the term "ore" in or shortly before 1968 and published his findings in 1968 in a paper entitled "Definition of Ore and Classification of Ore Reserves". Since there is nothing that suggests a change in the definition between 1959 and 1968, the Court will treat the results of the Cox survey as relevant to the interpreting what the parties meant in 1959. Cox reports that all 29 replies received chose a definition that included the notion of profit. Based on his findings, Cox proposed the following definition that he hoped would be generally acceptable:

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50 Exhibit D-4.

> Ore is a natural aggregate of one or more minerals, which may be mined and sold at a profit or from which some part may be profitably extracted.

[81] The Court concludes that, on the balance of probabilities, the expert evidence favours the interpretation of the word "ore" that includes the notion of profit.

d. Conclusion

[82] In the final analysis, it does not matter whether the Court adopts the Lattanzi definition or the Puritch definition of "ore":

- On the Lattazi definition, there is no "remaining proven ore" if it cannot be mined profitably; or

- On the Puritch definition, it is "remaining proven ore" whether or not it is profitable to mine it, but, on the Court's interpretation of "can be produced", no Iron Ore Products can be produced from the "remaining proven ore" if it is not profitable to do so.

[83] On either definition, the question of whether it is profitable to mine the iron ore is relevant to the cap.

[84] The result is as follows:

- If the mine is closed because the iron ore deposit is exhausted, there is no Minimum Royalty payable because there is no remaining proven ore.

- If the mine is closed temporarily for economic or other reasons but it can be mined profitably, the Minimum Royalty is payable during the closure because there is remaining proven ore and Iron Ore Products can be produced from the remaining proven ore. The Minimum Royalty paid will be credited against the Earned Royalties payable when operations resume.

- If the mine is closed in circumstances where it cannot be mined profitably, then no Minimum Royalty is payable either because there is no remaining proven ore or because no Iron Ore Products can be produced from the remaining proven ore. If circumstances change and the mine is reopened, then the Earned Royalties will be payable in full, and the landlord will end up in exactly the same position as if the Minimum Royalties had been paid.

- In any of these scenarios, if the mine remains closed for 10 years, the landlord has the right to terminate the lease and take the premises back.

2. Amount of the cap in the period between July 1, 2015 and June 30, 2017

[85] There is no debate as to the quantity of mineral material in the ground.

[86] A revised ore estimate was prepared in July 2010 which gave estimated ore reserves as of July 1, 2010 of 208,464,200 metric tonnes of proven reserves and 22,400,000 metric tonnes of probable reserves, for a total of 230,864,200 metric tonnes.[51]

[87] The estimate was updated based on the annual depletion of the proven reserves. The updated estimates as of December 31, 2014 are 176.7 million metric tonnes of proven (measured), and 22.8 million metric tonnes of probable (indicated), for a total of 199.5 million metric tonnes.[52]

[88] Wabush Mines pleads that it was not economically viable to mine the material, and it cites its own experience and its decision to first suspend and then permanently cease operations of the mine. As a result, either (1) the material is not remaining proven ore, or (2) no Iron Ore Products can be produced from the remaining proven ore.

[89] Wabush Mines produced the Cliffs Eastern Canadian Iron Ore Quarterly Business Reviews for the fourth quarter of 2012 and 2013 and the first quarter of 2014[53] to show the financial information that was relied upon in making the decision to discontinue operations at the Wabush mine:

- Loss on sales of $58.2 million before selling, general and administrative and other expenses of $21.5 million in 2012;[54]
- Loss on sales of $75.6 million before selling, general and administrative and other expenses of $196.7 million in 2013;[55] and
- Loss on sales of $24.8 million before selling, general and administrative and other expenses of $38.3 million in the first quarter of 2014.[56]

[90] Clifford Smith of Wabush Mines testified that the main factor contributing to these losses was the depressed price of iron ore in the global market. The data on the pricing of iron ore shows that iron ore reached its highest level on record in 2012 before falling precipitously.[57] Smith testified that the price dropped from a high of $150 per tonne

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51 Exhibit D-2.
52 Exhibit D-2A.
53 Exhibit R-27.
54 *Id.*, 4Q12, p. 19.
55 *Id.*, 4Q13, p. 18.
56 *Id.*, 1Q14, p. 17.
57 Exhibits R-25 and R-26.

down to $30 per tonne. He also testified that the quality of the ore body was deteriorating after 50 years of mining and that Wabush Mines had a high cost structure. Wabush Mines had been working on cost reduction over the prior three years, but it was not enough. Wabush Mines had also invested in some new mining equipment and had installed a manganese separator on a trial basis on one processing line in 2009 or 2010.

[91] As a result of these losses, the operations were idled in March 2014 and Wabush Mines began its attempts to sell the mine or to attract a new investor. The mine was closed in November 2014 when the initial attempts to sell were unsuccessful. The sales process continued after the mine was closed. It was not successful in finding a buyer until June 2017.

[92] These financial difficulties are reflected in the reclassification of the reserves as mineralized material in February 2014.

[93] Cliffs Natural Resources Inc. is the ultimate parent of Wabush Mines. It is an international mining and natural resources company incorporated in Ohio with its headquarters in Cleveland. It is a public company and its shares are traded on the New York Stock Exchange. As such, it is governed by the rules of the U.S. Securities and Exchange Commission ("SEC").

[94] Industry Guide 7 of the SEC requires issuers to use the following definition of "Reserve":

> That part of a mineral deposit which could be economically and legally extracted or produced at the time of the reserve determination.[58]

[95] In its 2013 Annual Report, which was signed on February 14, 2014, Cliffs used the following definitions:

> Reserves are defined by SEC Industry Standard Guide 7 as that part of a mineral deposit that could be economically and legally extracted and produced at the time of the reserve determination. All reserves are classified as proven or probable and are supported by life-of-mine plans.[59]
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> …
>
> "Mineralized material" is a concentration or occurrence of natural, solid, inorganic or fossilized organic material in or on the Earth's crust in such form and quantity and of such a grade or quality that it has reasonable prospects for economic extraction. Mineralized material has been delineated by appropriate sampling to

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58 "SEC Industry Guide 7: Description of Property by Issuers Engaged or to be Engaged in Significant Mining Operations" (Exhibit R-29), par. (a)(1).

59 Exhibit R-19, p. 36.

> establish continuity and support an estimate of tonnage with an average grade of the selected metals, minerals or quality. We have various properties in either advanced exploration, development or operational stages that contain considerable amounts of mineralized material that could eventually be converted into reserves given favorable operating and market conditions. Future production from mineralized material would require additional economic and engineering studies, permitting and significant capital expenditures before any potential value could be realized. A deposit of mineralized material does not qualify as a reserve until a comprehensive evaluation, based upon unit costs, grade, recoveries and other material factors, concludes both economic and legal feasibility. Further, for new projects a "final" or "bankable" feasibility study is required prior to the reporting of mineral reserves.
>
> Readers are cautioned not to assume that any of these mineralized materials will ever be converted into mineral reserves. Our mineralized material estimates contain only material classified as measured or indicated. Materials classified as inferred have a greater amount of uncertainty as to their future ability to be upgraded and are not included in the estimates reported.[60]

[96] With respect to Wabush, the reserves were reclassified as mineralized material:

> In the second quarter of 2013, we idled the pellet plant at Pointe Noire and decided to produce only an iron ore concentrate from our Wabush facility. Subsequently, on February 11, 2014, we announced that we made the decision to idle all production at our Wabush mine by the end of the first quarter of 2014. As a result, the reserves previously reported for Wabush are now included in our Mineralized Material estimates.[61]

[97] In other words, Cliffs downgraded the Wabush mine from "a mineral deposit that could be economically and legally extracted and produced at the time of the reserve determination" to a mineral deposit that "has reasonable prospects for economic extraction". While it is true that the decision to close the mine was subjective and unilateral, the decision to reclassify the mineral deposit was made pursuant to Cliffs' legal obligation in accordance with SEC rules. Moreover, it goes against the interest of Cliffs. The Court accepts that it was done in good faith and not as an attempt to avoid paying the Minimum Royalty.

[98] MFC argues that the reclassification under SEC rules adopted in 1981 "is clearly contrary to what the parties to the Sublease agreed to in 1959" and "cannot amend the terms of the valid and binding Sublease".[62] These arguments miss the point. MFC is right that the subsequent securities rules in Canada and the United States are of little use in interpreting the 1959 Lease. But the reclassification cannot be contrary to the 1959 Lease and does not amend it. The reclassification is merely a fact in 2014 which

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60 *Id.*, p. 40.
61 *Id.*, p. 38.
62 MFC Plan of Arguments, *supra* note 33, par.59-60.

provides evidence as to the economic viability of the mining operations in February 2014. The economic viability of the mining operations in 2014 is relevant to the application of the 1959 Lease, interpreted independently of the reclassification.

[99] The reclassification was done after the announcement in February 2014 that the operations would be idled in March 2014. At the same time, Wabush Mines began its attempts to sell the mine or to attract a new investor. The mine was closed in November 2014 when the initial attempts to sell were unsuccessful. The prospects for economic extraction were further lowered when the mine was closed.

[100] MFC reclassified the Wabush mine as a discontinued operation in November 2015. The MFC press release recognized that the short term outlook for iron ore prices was not favourable but that the mine remained an interesting long-term opportunity:

> Iron ore prices have declined globally and the short-term outlook is not favorable. But, most importantly, we do not have any debt on this property. While we believe that the mine presents an interesting longt-term opportunity, now is the time for conservatism and prudence while we focus on our efforts. As such, we have initiated a rationalization process and, therefore, have reclassified the mine and our interest in another iron ore property as discontinued operations. We will be responsible stewards of our capital.[63]

[101] All of this evidence confirms that iron ore could not be economically extracted from the Wabush mine in the period between July 1, 2015 and June 30, 2017, which is the focus of this litigation. Lattanzi concluded in his testimony that it was "highly highly unlikely" that Wabush Mines can extract ore at a profit during the relevant period.

[102] MFC pleads that the sale to Tacora in July 2017 disproves all of this. Tacora was willing to pay $70 million[64] for the Wabush mine and it has announced plans to resume production.

[103] MFC produced an analysis of the Wabush mine prepared by Maptek NA for MagGlobal, Tacora's parent, dated March 18, 2017, which estimates the total proven mineral reserves at 333.2 million tonnes and concludes as follows:

> The Scully mine in Newfoundland-Labrador Canada has had significant historical production. The property was closed in 2013 due to supressed iron ore prices and limited low manganese ore remaining within the existing pits. MagGlobal's potential acquisition of the property along with the installation of the manganese reduction circuit will open up significant iron resources that could not be

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63 "MFC Industrial Reports Results for the First Nine Months Of 2015", press release dated November 16, 2015 (Exhibit R-20), p. 3.

64 Tacora paid cash of $2,050,000, assumed Cure Costs valued at $18,745,926.76, and became responsible for the Environmental Liabilities estimated at $49.7 million (Exhibit R-28 and the Monitor's 37th Report).

> considered as ore historically at the operation. Maptek's review of the geology, mineral resource model, as well as new pit designs have proven that significant, economic mineral reserves remain on the property.[65]

[104] Tacora anticipates making a $250 million capital investment, including the installation of the remaining manganese reduction lines. Tacora has also renegotiated the collective agreement to make it more flexible. The other factor that is relevant to the reopening of the mine is that iron ore prices have rebounded from a low of $30 per tonne to $71 per tonne.

[105] The Court is satisfied that the economics changed from the July 2015 to June 2017 period to the present, and that what was not economically viable between July 2015 and June 2017 now is.

[106] Therefore, the Court is satisfied, on the basis of the Lattanzi definition of "ore", there was no "remaining proven ore" between July 1, 2015 and June 30, 2017, or, using the Puritch definition of "ore", no Iron Ore Products can be produced from the "remaining proven ore" between July 1, 2015 and June 30, 2017. Either way, no Minimum Royalties were payable between July 1, 2015 and June 30, 2017.

[107] Further, the Court notes that if Minimum Royalties were payable between July 1, 2015 and June 30, 2017, the result would be that Wabush Mines would pay over $6.5 million in Minimum Royalties for the period between July 1, 2015 and June 30, 2017 on the iron ore reserves and that Tacora would pay Earned Royalties on the same iron ore reserves when they are extracted. Tacora would get no credit for the Minimum Royalties paid by Wabush Mines, with the result that MFC would receive both the Minimum Royalties and the Earned Royalties on the same iron ore. That was never the intention under the 1959 Lease. Moreover, it would be particularly inequitable for MFC to receive this double payment in an insolvency where other creditors of Wabush Mines are receiving substantially less than they are owed.

3. Wabush Mines' responsibility for the Minimum Royalty Payment due July 25, 2017

[108] Given the conclusion to which the Court has come on the main issue in this litigation, the Minimum Royalty payment made on July 25, 2017 will be remitted by the Monitor to Wabush Mines.

[109] Had the Court concluded that Wabush Mines was required to pay the Minimum Royalty, it would have been invited to consider the additional issue of whether Wabush

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65 Exhibit D-6. This document was not filed as an expert report and its author did not testify. Larry Lehtinen, the CEO of MagGlobal and Tacora, testified. The Court treats this report as a document received by MagGlobal on which MagGlobal based its decision to purchase the Wabush mine, but it does not prove its contents.

Mines was responsible for the Minimum Royalty payment on July 25, 2017, given that the sale to Tacora closed on July 18, 2017.

[110] The Minimum Royalty payment on July 25, 2017 was for the period from April 1, 2017 to June 30, 2017, prior to the sale to Tacora, so it would appear that Wabush Mines would be responsible for that payment.

[111] However, the issue involves the determination of the respective obligations of Wabush Mines and Tacora under the Asset Purchase Agreement. It would not be appropriate for the Court to comment further on that issue without the participation of Tacora in the litigation.

FOR THESE REASONS, THE COURT:

[112] **GRANTS** the Amended Motion for Directions (#607);

[113] **DECLARES** that the terms "remaining proven ore" used in Section C.5 of the Wabush Sublease mean:

> "Iron ore that could be extracted in an economically viable or profitable manner"

[114] **DECLARES** that in light of the market conditions between July 1, 2015 and June 30, 2017, there was no "remaining proven iron ore" at the Wabush mine and no Iron Ore Products can be produced from the "remaining proven ore";

[115] **DECLARES** that Wabush Mine was entitled not to pay the Minimum Royalty Payment set forth in the 1959 Lease for the period between July 1, 2015 and June 30, 2017;

[116] **DECLARES** that the Deposit Amounts, including any interest since December 1, 2017, are not due to MFC;

[117] **ORDERS** the Monitor to transfer the Deposit Amounts, including any interest since December 1, 2017, to the general trust account opened by the Monitor in connection with the restructuring of the Wabush CCAA Parties;

[118] **THE WHOLE WITH COSTS,** including the fees of the expert Christopher J. Lattanzi, P. Eng.

Stephen W. Hamilton, J.S.C.

Me Bernard Boucher
BLAKE, CASSELS & GRAYDON LLP
For Wabush Iron Co. Limited and Wabush Resources Inc.

Me Gary Rivard
BCF Business Law
For 0778539 B.C. Ltd.

Dates of hearing: December 4 and 5, 2017

6-K 1 tm2136392d1_6k.htm FORM 6-K

U.S. SECURITIES AND EXCHANGE COMMISSION

Washington D.C. 20549

FORM 6-K

REPORT OF FOREIGN PRIVATE ISSUER PURSUANT TO RULE 13a-16 OR 15d-16 UNDER THE SECURITIES EXCHANGE ACT OF 1934

For the month of December, 2021

Commission File No.: 001-04192

SCULLY ROYALTY LTD.

(Translation of Registrant's name into English)

Unit 803, Dina House, Ruttonjee Centre, 11 Duddell Street, Central, Hong Kong SAR, China
(Address of office)

Indicate by check mark whether the registrant files or will file annual reports under cover of Form 20-F or Form 40-F.

☒ Form 20-F		☐ Form 40-F

Indicate by check mark whether the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(1): ☐

Note: Regulation S-T Rule 101(b)(1) only permits the submission in paper of a Form 6-K if submitted solely to provide an attached annual report to security holders.

Indicate by check mark whether the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(7): ☐

Note: Regulation S-T Rule 101(b)(7) only permits the submission in paper of a Form 6-K if submitted to furnish a report or other document that the registrant foreign private issuer must furnish and make public under the laws of the jurisdiction in which the registrant is incorporated, domiciled or legally organized (the registrant's "home country"), or under the rules of the home country exchange on which the registrant's securities are traded, as long as the report or other document is not a press release, is not required to be and has not been distributed to the registrant's security holders, and, if discussing a material event, has already been the subject of a Form 6-K submission or other Commission filing on EDGAR.

Report for the Six Months Ended June 30, 2021

(December 29, 2021)

All references in this document to "$" and "dollars" are to Canadian dollars, all references to "US$" are to United States dollars and all references to "Euro" or "€" are to the European Union Euro, unless otherwise indicated.

Unless the context otherwise indicates, references herein to "we", "us", "our", the "Company" or "SRL" are to Scully Royalty Ltd. and its consolidated subsidiaries. Unless otherwise indicated, references herein to numbers of our common shares of US$0.001 par value each, referred to as the "Common Shares".

The following report and the discussion and analysis of our financial condition and results of operations for the six months ended June 30, 2021 should be read in conjunction with our unaudited interim financial statements and notes thereto for the six months ended June 30, 2021 and the annual audited financial statements and notes thereto of SRL for the year ended December 31, 2020 filed with the United States Securities and Exchange Commission (the "SEC") and applicable Canadian securities regulators. Our financial statements for such periods have been prepared in accordance with International Financial Reporting Standards ("IFRS"), as issued by the International Accounting Standards Board ("IASB").

Disclaimer for Forward-Looking Information

Certain statements in this document are forward-looking statements or forward-looking information, within the meaning of applicable securities laws, which reflect our expectations regarding our future growth, results of operations, performance and business prospects and opportunities. Forward-looking statements consist of statements that are not purely historical, including statements regarding our business plans, anticipated future gains and recoveries, our strategy to reduce trade receivables and inventories, future business prospects and any statements regarding beliefs, expectations or intentions regarding the future. Generally, these forward-looking statements can be identified by the use of forward-looking terminology such as "plans", "expects", "is expected", "budget", "scheduled", "estimates", "forecasts", "intends", "anticipates", "believes", variations or comparable language of such words and phrases or statements that certain actions, events or results "may", "could", "would", "should", "might" or "will be taken", "occur" or "be achieved" or the negative connotation thereof.

While these forward-looking statements, and any assumptions upon which they are based, are made in good faith and reflect our current judgment regarding the direction of our business, actual results will almost always vary, sometimes materially, from any estimates, predictions, projections, assumptions or other future performance suggested herein. No assurance can be given that any of the events anticipated by the forward-looking statements will occur or, if they do occur, what benefits we will obtain from them. These forward-looking statements reflect our current views and are based on certain assumptions and speak only as of the date hereof. These assumptions, which include our current expectations, estimates and assumptions about our business and the markets we operate in, the global economic environment, interest rates, commodities prices, exchange rates and our ability to expand our business. No forward-looking statement is a guarantee of future results. A number of risks and uncertainties could cause our actual results to differ materially from those expressed or implied by the forward-looking statements. Additional information about these and other assumptions, risks and uncertainties is set out in the "Risk Factors" section of this report and in SRL's annual report on Form 20-F for the year ended December 31, 2020. Such forward-looking statements should therefore be construed in light of such factors. Although we have attempted to identify important factors that could cause actual results to differ materially from those contained in forward-looking statements, there may be other factors that cause results not to be as anticipated, estimated or intended. Investors are cautioned not to place undue reliance on these forward-looking statements. Other than in accordance with our legal or regulatory obligations, we are not under any obligation and we expressly disclaim any intention or obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

DEAR FELLOW SHAREHOLDERS,

Today, we announced that we have filed our semi-annual report on form 6-k with the United States Securities & Exchange Commission and are providing a corporate update on our actions seeking to maximize shareholder value.

UPDATE ON THE SCULLY MINE

Overview

The most valuable asset that the Company owns is its royalty interest in the Scully iron ore mine located in the Province of Newfoundland and Labrador, Canada. The royalty rate under this interest is 7.0% on iron ore shipped from the mine and 4.2% on iron ore shipped from tailings and other disposed materials, with a minimum payment of C$3.25 million per annum.

In 2017, a new operator acquired the Scully mine and has achieved a number of milestones, including completing a US$276 million financing and commencing operations at the mine in 2019. The Scully mine has a capacity of six million tonnes per annum and produces a premium iron ore product, with Fe content in excess of 65%.

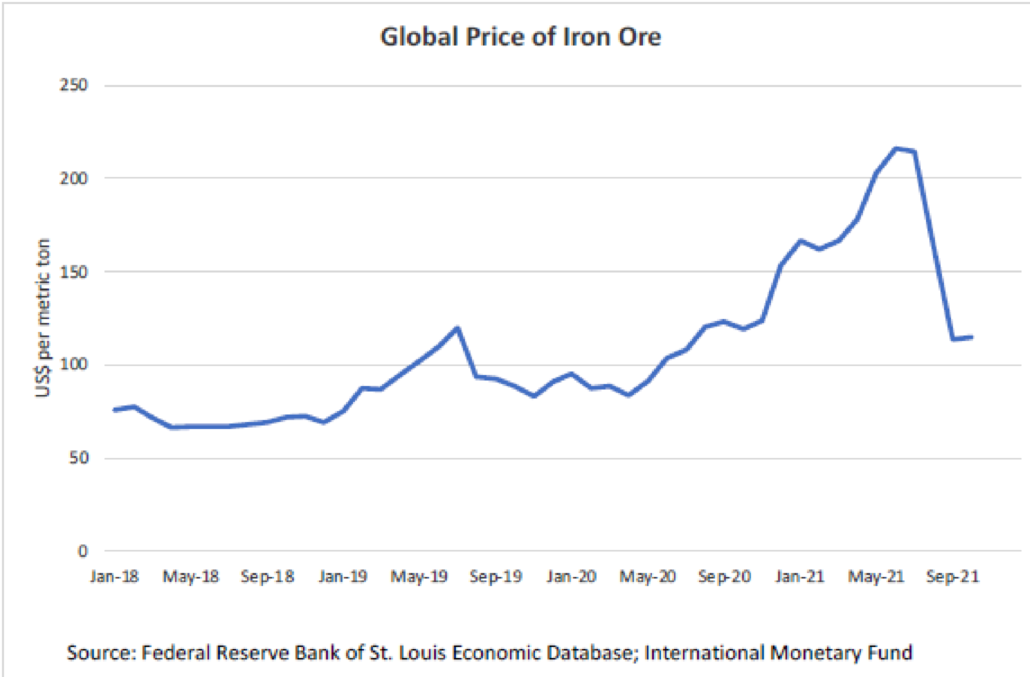
The Scully Iron Ore Mine

Iron ore is primarily used to make steel, which is considered to be a critical commodity for global economic development. As such, the demand and consequently the pricing of iron ore are largely dependent upon the raw material requirements of integrated steel producers. Demand for blast furnace steel is in turn cyclical.

Iron Ore Price & Scully Mine Production

The operator of the mine has disclosed that the Scully iron ore mine produces a high-grade ore in excess of 65% iron content that also has other favorable characteristics, such as relatively low contaminant ratios. Globally, steelmakers value high grade iron ore with low contaminants (such as silica, alumina, and phosphorus) because they improve environmental and financial performance through more efficient raw material utilization, higher plant yields, and lower emissions. Therefore, it is common and generally expected for 65% Fe iron ore, including the Scully iron ore mine's product, to sell at a premium to 62% Fe iron ore. In the first half of 2022, the Platts 65% Fe index price was at an approximately 16% (US$30) premium to the Platts 62% Fe Index price.

However, in recent months the price of iron ore has ceased its upward trend and reverted back towards its historical mean. The following is a three-year price chart of 62% iron ore:



The following table sets forth total iron ore products shipped by the Scully mine operator in 2019, 2020, and the first half of 2021:

	H1	H2	Full Year
		(tonnes)	
2019	-	954,579	954,579
2020	1,459,162	1,539,492	2,998,654
2021	1,649,098	N/A	N/A

The operator of the mine remains committed to ramping up production to at least six million tonnes per annum, and, in support of that commitment, is executing several capital improvement projects which are expected to reduce bottlenecks, while also investing in human resources and operational efficiency. These investments are currently expected to yield results in calendar 2022.

Update on Q3 2021 Royalty

There have been some recent developments which impacted our royalty in the third quarter of 2021. The operator of the Scully mine has an offtake agreement through which it sells 100% of its production to a single counterparty. This offtake agreement is structured such that an advance payment on revenue is made to the operator at the time of shipment from the Port of Sept-Isles in Quebec and then is subsequently adjusted based upon the actual price realized when the shipment reaches the customer.

Ocean freight transit can take ninety days or more (depending on, among other things, the location of the customer), which means that revenue in one quarter may be impacted by adjustments related to a previous quarter's shipments. This adjustment mechanism impacted our third quarter royalty payment. Specifically, the initial advance payments were made based on Q2 2021's higher pricing, whereas the final realized revenue was calculated after iron ore prices had declined in Q3 2021. Therefore, in the third quarter of 2021 there was a negative adjustment to the operator's revenue directly related to realized pricing on shipments which had been made in Q2 2021. As a result of this, despite the operator producing 676,183 tonnes in the third quarter of 2021, our royalty payment was C$844,907.

Utilizing the rights within our agreement, we engaged a third-party forensic accounting firm to perform an audit of the various calculations which comprise the historical royalty payments, including the inputs to the operator's revenue. This audit is currently underway, though initial findings appear to confirm the calculations. Therefore, we expect that in future periods – including in the fourth quarter of 2021 – our royalty will revert back to its historical trend.

CASH DIVIDEND POLICY

In April 2021, the Company announced that it was determined to focus its efforts on enhancing shareholder value and maximizing earnings and dividends to its shareholders based upon its iron ore royalty interest. Aligned with this focus, the Company announced that its board of directors had taken the first step by approving a cash dividend policy. While no dividends have been declared or determined to date, the dividend policy is intended to maximize potential future dividends payable to holders of common shares. after consideration of the Company's financial position, operating results, ongoing working capital requirements and other factors.

Subject to board approval, applicable law and dependent on the Company's results, financial position and other factors, the Company currently expects that the first dividend payment under its cash dividend policy to be made after receipt in the first quarter of 2022 of our royalty payments for the fourth quarter of 2021.

STOCK DIVIDENDS AND LIQUIDITY OF OUR COMMON SHARES

It has been and remains our goal and initiative to structure the group in a way that substantially eliminates the discount between the market price of our common shares and our stated net book value per share. For example, we believe that the value of our royalty interest in the Scully iron ore mine is not properly reflected in the price of our common shares. We believe that one of the reasons for this discrepancy is our complex group structure and diverse portfolio of assets with different economics, capital requirements, and growth prospects. One of the major obstacles for achieving this goal is the very limited liquidity in our common shares. This trading profile restricts many investors from acquiring shareholdings, as the illiquidity of our stock does not qualify us for institutional ownership.

C$ '000s, except share and per share amounts	As at June 30, 2021
Current assets	148,344
Non-current assets	371,228
Current liabilities	21,556
Non-current liabilities	126,493
Shareholders' equity	364,870
Shares outstanding	15,208,217(1)
Book value per share (C$)	24.27(2)
Book value per share (US$)	19.58(2)
Market price per share (US$; 12/24/21 closing price)	9.50
Price / Book	0.48

Notes:
(1) Diluted shares outstanding as at December 28, 2021. Does not include 1,538,600 common shares underlying options that were subject to approval of amendments to the Company's equity incentive plan, which was obtained at the Company's shareholder meeting on December 28, 2021.

(2) Based on diluted shares outstanding as at December 28, 2021. See note 1 above.

To help address this issue of illiquidity with our common shares, our Board of Directors approved two tax-free stock dividends which increased the number of shares outstanding by approximately 18% without diluting any individual shareholder position. The goal of these stock dividends was to improve shareholder value and liquidity and make our common shares more accessible to a broader base of investors, and to date we are pleased with the outcome of this corporate action.

UPDATE ON MERCHANT BANKING & INDUSTRIAL SEGMENTS

In April 2021, we announced that to support the Company's core focus, the other two of our operating segments – Industrial and Merchant Banking would be classified as discontinued operations in our 2021 financial statements, beginning with our 2021 half-year results. However, due to the uncertainty caused by recent new strains of COVID-19 and various economic and other factors, our Board of Directors has determined to postpone the discontinued operations accounting treatment until further decision (or there is a certainty that a rationalization will be completed within one year).

Management is committed to a plan to rationalize these interests, and substantial progress has been made on both projects. These two segments have not produced returns commensurate to that of our royalty interest, and our Board of Directors believes that these actions provide compelling benefits to our shareholders and to all aspects and business segments of the Company. It simplifies the Company's corporate structure by separating its non-strategic assets and allows the independent business lines to focus on pursuing and operating their respective businesses.

June 30, 2021 (C$ '000s, except share and per share amounts)	**Royalty**	**Industrial**	**Merchant Banking**	**All Other**	**Consolidated**
Assets	229,802	150,943	99,589	39,238	519,572
Liabilities and non-controlling interests	53,091	52,956	47,671	984	154,702
Shareholders' equity	176,711	97,987	51,918	38,254	364,870
Shareholders' equity per Share (C$)	11.96	6.63	3.51	2.59	24.69
Shares Outstanding (in '000s)[1]	14,779	14,779	14,779	14,779	14,779
Revenue from external customers	31,863	10,261	4,642	-	46,766
Income (loss) before income taxes	16,371	(3,722)	439	3,184	16,272

Note:
(1) As at December 15, 2021.

Industrial

Our Industrial segment includes multiple projects in resources and services around the globe. It seeks opportunities to benefit from long-term industrial and services assets, with a focus on East Asia. This segment makes proprietary investments as part of its overall activities and we seek to realize gains on such investments over time. These investments can take many forms and can include acquiring entire businesses or portions thereof, investing in equity or investing in existing indebtedness (secured and unsecured) of businesses or in new equity or debt issues. These activities are generally not passive. The structure of each of these opportunities is tailored to each individual transaction. This segment also holds various production and processing assets, including production and processing assets.

The book value of our Industrial segment was C$98.0 million, or C$6.63 per share, as at June 30, 2021.

Merchant Banking

Our Merchant Banking segment comprises regulated merchant banking with a focus on Europe and the Americas. We own Merkanti Bank Limited, a licensed bank in Europe, which does not engage in general retail, commercial banking or any universal banking operations, but provides specialty banking services, focused on merchant banking, to our customers, suppliers and group members. In addition, we hold an interest in certain industrial real estate in Europe.

The book value of our Merchant Banking segment was C$51.9 million, or C$3.51 per share, as at June 30, 2021.

DISPUTE WITH EUROPEAN BANK

As previously disclosed, in the second half of 2019, a European Bank made an application in the Cayman Islands on an ex parte basis (without any prior notice to, or participation by the Company), and was ultimately granted an order which, among other things, restricts the Company from selling or disposing of certain shares in subsidiaries and other assets, without certain conditions or approvals being met. In 2021, we appealed this order and were partially successful, such that there will be no restrictions in dealing with our assets above a capped amount. This order is not a monetary judgement and has no implications on our ongoing daily businesses and our dividend policy.

The underlying dispute between the Company and bank is related to alleged guarantees of the former parent of the Group. In the second half of 2021, we were informed of a proposed amendment which, if allowed, would increase the amount of the bank’s claims to approximately EUR 91 million. The Company disputes the validity of these alleged guarantees, has received legal opinions that certain of the alleged guarantees are invalid, and does not believe that the claim linking the alleged guarantee to the Group has merit. The Company also has filed a counterclaim against the European Bank in excess of their claims, including the proposed amendments. It is difficult to predict how long this matter will take to get to trial, though we believe it is unlikely that this dispute will be resolved in the near future.

We do not currently expect that this dispute will ultimately result in a material impact on our financial results.

MANAGEMENT COMMENTARY

Samuel Morrow, President of the Company, commented, "We are pleased by our financial results in the first half of 2021 and continue to make progress towards our strategic goals, which we believe will best position the Company to maximize value for our shareholders over the long-term."

STAKEHOLDER COMMUNICATIONS

Management welcomes any questions you may have and looks forward to discussing our operations, results and plans with stakeholders. Further:

- stakeholders are encouraged to read our entire half-year report, which includes our unaudited financial statements and management's discussion and analysis, for the six months ended June 30, 2021, for a greater understanding of our business and operations; and

- direct any questions regarding the information in this report to our North American toll-free line at 1 (844) 331 3343 or email info@scullyroyalty.com to book a conference call with our senior management.

Respectfully Submitted,

Samuel Morrow
President & Chief Executive Officer

MANAGEMENT'S DISCUSSION AND ANALYSIS

Nature of Business

We hold a net revenues royalty interest in the Scully iron ore mine located in the Province of Newfoundland and Labrador, Canada. The royalty rate under this interest is 7.0% on iron ore shipped from the mine and 4.2% on iron ore shipped from tailings and other disposed materials. The sub-lease commenced in 1956 and expires in 2055. Pursuant to this sub-lease, we hold a net revenues royalty interest on iron ore shipped from the mine. The new operator of the mine commenced mining operations in 2019. The operator continued its ramp-up through 2020 and into 2021.

The operator of the mine has disclosed that the mine historically extracted approximately 11.8 million tonnes of raw iron per year from which approximately 4.1 million metric tonnes of iron concentrate were produced at an onsite milling facility. It further disclosed that upon-reactivation annual production capacity targeted a capacity of 6.25 million metric tonnes of iron concentrate by 2021, with production ranging from 5.80 million to 7.55 million metric tonnes over the subsequent 22 years. Iron concentrate is transported by rail to the port facilities at Point Noire, Quebec, where it is unloaded, stockpiled and loaded on vessels for sale to the seaborne market.

Under the terms of the sub-lease, we are entitled to minimum royalty payments of $3.25 million per year, payable on a quarterly basis, which quarterly payments may be credited towards earned royalties relating to the same calendar year.

Recent Developments

Continued Scully Iron Ore Mine Ramp Up

In 2021, the operator of the Scully iron ore mine in the Province of Newfoundland and Labrador, Canada, continued its ramp-up of operations at the mine. As a result of such increased operations, our Iron Ore Royalty segment revenues in the first half of 2021 were $31.9 million, compared to $11.7 million in the same period of 2020. See "*Business Segments*".

The Scully iron ore mine produces a high-grade ore in excess of 65% iron content that also has other favorable characteristics, such as relatively low contaminant ratios. Globally, steelmakers value high grade iron ore with low contaminants (such as silica, alumina, and phosphorus) because they improve environmental and financial performance through more efficient raw material utilization, higher plant yields, and lower emissions. Therefore, it is common and generally expected for 65% Fe iron ore, including the Scully iron ore mine's product, to sell at a premium to 62% Fe iron ore. In the first half of 2021, the Platts 65% Fe index sold at approximately a 16% (US$30) premium to the Platts 62% Fe Index.

On August 30, 2019 the operator of the mine announced that it had made its first seaborne vessel shipment of iron ore concentrate produced at the Scully iron ore mine.

The following table sets forth the total iron ore products (which include pellets, chips and concentrates) shipped from the mine based upon the amounts reported to us by the Scully mine for the periods indicated:

	Six Months Ended June 30,	
	2021	2020
	(tonnes)	
Iron Ore Products Shipped	1,649,098	1,459,162

In July 2021, the operator of the Scully iron ore mine filed an environmental assessment registration with the Newfoundland and Labrador government, seeking to expand its current tailings impoundment area by up to 1.411 hectares. The disclosed purpose of such expansion was to enable the extension of mine operations by 22 years to 2047 to fully utilize the mines ore reserves. The provincial government has not rendered a decision on such application to date.

The operator of the mine remains committed to ramping up production to at least six million tonnes per annum, and, in support of that commitment, is currently executing several capital improvement projects which are expected to reduce bottlenecks, while at the same time investing in human resources and operational efficiency. These investments are currently expected to yield results in calendar 2022.

Cash Dividend Policy

On April 30, 2021, we announced that our board of directors approved a cash dividend policy, which is intended to maximize potential future dividends to holders of our Common Shares. While no dividends have been declared or determined to date, based upon a review of our financial position, operating results, ongoing working capital requirements and other factors, our board of directors may from time to time and if deemed advisable by it, declare and pay cash dividends to holders. The timing, payment and amount of any dividends paid on our Common Shares may be determined by our board of directors from time to time, based upon considerations such as our cash flow, results of operations and financial condition, the need for funds to finance ongoing operations and such other business considerations as our board of directors considers relevant.

Subject to board approval, applicable law and dependent on the Company's results, financial position and other factors, the Company currently expects that the first dividend payment under its cash dividend policy to be made after the receipt in the first quarter of 2022 of its royalty payment relating to the fourth quarter of 2021.

Stock Dividend

On April 30, 2021, we announced that our board of directors has approved the following stock dividends to the holders of our Common Shares:

- a 9% stock dividend was distributed on May 31, 2021, to shareholders of record as at May 14, 2021; and

- an 8% stock dividend was distributed on November 30, 2021, to shareholders of record as at November 15, 2021.

No fractional shares were issued by us in connection with such stock dividends.

Business Segments

We currently have three operating segments: (i) Royalty, which includes our interest in an iron ore mine; (ii) Industrial, which includes multiple projects in resources and services; and (iii) Merchant Banking, which comprises regulated merchant banking. In April 2021, we announced that to support the Company's core focus, the other two of our operating segments – Industrial and Merchant Banking would be classified as discontinued operations in our 2021 financial statements, beginning with our 2021 half-year results. However, due to the uncertainty caused by recent new strains of COVID-19 and various economic and other factors, our Board of Directors has determined to postpone the discontinued operations accounting treatment until further decision (or there is a certainty that a sale will be completed within one year).

Management is committed to a plan to rationalize these interests, and substantial progress has been made on both projects. These two segments have not produced returns commensurate to that of our royalty interest, and our Board of Directors believes that these actions provide compelling benefits to our shareholders and to all aspects and business segments of the Company. It simplifies the Company's corporate structure by separating its non-strategic assets and allows the independent business lines to focus on pursuing and operating their respective businesses.

Discussion of Operations

The following discussion and analysis of our financial condition and results of operations for the six months ended June 30, 2021 and 2020 should be read in conjunction with our unaudited condensed consolidated financial statements and related notes.

General

We hold a net revenues royalty interest in the Scully iron ore mine located in the Province of Newfoundland and Labrador, Canada.

Our results of operations have been and may continue to be affected by many factors of a global nature, including economic and market conditions, iron ore prices and demand, operations at the Scully iron ore mine, the availability of capital, the level and volatility of equity prices and interest rates, currency values, asset prices and other market indices, technological changes, the availability of credit, inflation and legislative and regulatory developments.

Business Environment

In the first half of 2021, the demand for iron ore increased, with iron ore prices reaching record levels as global steel production increased and seaborne iron ore supply growth was limited. According to the World Steel Association, global crude steel production in the first half of 2021 increased 14% over the first half of 2020, with strong increases in crude steel production in China, which accounts for approximately 70% of all seaborne iron ore demand. The 65% Fe iron ore price, as reported by Platts, increased by 100% to an average US$212 per tonne for the first half of 2021, compared to an average of US$106 in the same period of 2020. In the third quarter of 2021, iron ore prices have decreased to US$190 per tonne for 65% Fe iron ore, as reported by Platts, as the demand for seaborne iron ore from China weakened due to government efforts to curb steel production growth in China.

Our financial performance is, and our consolidated results in any period can be, materially affected by economic conditions and financial markets generally, including the availability of capital, the availability of credit and the level of market and commodity price volatility. Our results of operations in our merchant banking and industrial segments may also be materially affected by competitive factors. Our competitors include firms traditionally engaged in merchant banking as well as other capital sources such as hedge funds and private equity firms and other companies engaged in similar activities in Europe, Asia and globally.

We operate internationally and therefore our financial performance and position are impacted by changes in the Canadian dollar, our reporting currency, against the other functional currencies of our international subsidiaries and operations, particularly the Euro. As at June 30, 2021, the Canadian dollar was stronger by 6.2% against the Euro from the end of 2020. We recognized a net $6.6 million currency translation adjustment loss under accumulated other comprehensive income within equity in the six months ended June 30, 2021, compared to a net $6.9 million currency translation adjustment gain in the comparative period of 2020. In addition, we recognized a net gain of $1.2 million on exchange differences on foreign currency transactions in our consolidated statement of operations in the six months ended June 30, 2021, compared to net loss of $1.0 million in the comparative period of 2020.

Results of Operations

Six Months Ended June 30, 2021 Compared to Six Months Ended June 30, 2020

The following table sets forth our selected operating results and other financial information for each of the periods indicated:

	Six Months Ended June 30, 2021	Six Months Ended June 30, 2020 (Restated)[1]
	(In thousands, except per share amounts)	
Revenue	$ 46,766	$ 25,699[1]
Costs of sales and services	20,969	10,890[1]
Selling, general and administrative expenses	9,821	10,320
Finance costs	953	1,000
Exchange differences on foreign currency transactions, net (gain) loss	(1,249)	1,048
Net income (loss)[2]	9,758	(1,068)
Net income (loss)[2] per share:		
Basic	0.66[3]	(0.07)[4]
Diluted	0.65[3]	(0.07)[4]

Notes:

(1) Results for the prior period have been adjusted to reflect a revenue item of $4.6 million and related offset costs of sales and services. See Note 6 to our unaudited financial statements for the six months ended June 30, 2021.
(2) Attributable to our shareholders.
(3) Adjusted for stock dividend distributed in November 2021.
(4) Adjusted for stock dividend distributed in May and November, 2021

The following table provides a breakdown of revenue for each of the periods indicated:

	Six Months Ended June 30, 2021	Six Months Ended June 30, 2020 (Restated)
	(In thousands)	
Merchant Banking products and services	$ 41,665	$ 19,306
Interest	314	255
Gain on securities, net	-	1,832
Dividend income	205	-
Other, including medical and real estate sectors	4,582	4,266
Revenue	$ 46,766	$ 25,659

During the six months ended June 30, 2021, royalty revenue (which is included in Merchant Banking products and services) represented 68% of total revenue, compared to 44% in the comparative period of 2020.

The following is a breakdown of our revenue by segment for each of the periods indicated:

	Six Months Ended June 30,	
	2021	2020 (Restated)
	(In thousands)	
Royalty	$ 31,863	$ 11,679
Industrial	10,261	8,508
Merchant Banking	4,642	5,472
Revenue	$ 46,766	$ 25,659

In the first half of 2021, 5.7% of our revenue was from Europe, 91.4% was from the Americas and 2.9% was from Asia, Africa and other regions.

In the first half of 2021, our proportionate revenue by product was 76% from iron ore royalties, 15% from hydrocarbons and 9% from other.

Based upon the average exchange rates for the first half of 2021, the Canadian dollar weakened by approximately 0.01% in value against the Euro compared to the same period of 2020.

Revenue for the first half of 2021 increased to $46.8 million from $25.7 million in the same period of 2020, mainly as a result of an increase in iron ore prices during the period, to a lesser extent, an increase in production at the mine underlying our royalty interest and an increase in natural gas pricing.

Revenue for our Royalty segment for the first half of 2021 increased to $31.9 million from $11.7 million in the same period of 2020, primarily as a result of an increase in iron ore prices during the period and, to a lesser extent, an increase in production at the mine underlying our royalty interest.

Revenue for our Industrial segment for the first half of 2021 increased to $10.3 million from $8.5 million in the same period of 2020, primarily as a result of an increase in natural gas prices.

Revenue for our Merchant Banking segment for the first half of 2021 decreased to $4.6 million from $5.5 million in the same period of 2020.

Costs of sales and services increased to $21.0 million during the first half of 2021 from $10.9 million for the same period in 2020 primarily as a result of a loss on derivatives incurred in the current period incurred in connection with iron ore prices. Costs of sales and services during the first half of 2020 included a credit loss reversal of $3.2 million.

The following is a breakdown of our costs of sales and services for each of the periods indicated:

	Six Months Ended June 30,	
	2021	2020 (Restated)
	(In thousands)	
Merchant banking products and services	$ 12,945	$ 11,564
Reversal of credit losses	(4)	(3,102)
Loss on derivative contracts, net	3,461	-
Gain on disposition of a subsidiary	-	(88)
Fair value loss on a loan payable measured at FVTPL	1,177	227
Other	3,390	2,289
Total costs of sales and services	$ 20,969	$ 10,890

We recognized a net loss on derivative contracts of $3.5 million in the first half of 2021 in connection with iron ore prices.

In the first half of 2021, we recognized a gain of $4,000**,** resulting from reversal of credit losses, and in the same period of 2020 recognized a gain of $3.1 million.

In the first half of 2021, we incurred a fair value loss on a long-term loan payable measured at fair value through profit or loss ("**FVTPL**") of $1.2 million, compared to $0.2 million in the same period of 2020.

In the first half of 2021, we recognized other costs of sales and expenses of $3.4 million relating to medical supplies and real estate, compared to $2.3 million in the same period of 2020. The increase related to additional contract revenue in these businesses generated in the first half of 2021.

Selling, general and administrative expenses decreased to $9.8 million in the first half of 2021 from $10.3 million in the same period of 2020. The decrease was marginal.

In the first half of 2021, we recognized a net foreign currency transaction gain of $1.2 million, compared to a net loss of $1.0 million in the same period of 2020, in our consolidated statement of operations. The foreign currency transaction gain or loss represents exchange differences arising on the settlement of monetary items or on translating monetary items into our functional currencies at rates different from those at which they were translated on initial recognition during the period or in previous financial statements.

We recognized an income tax expense (other than resource revenue taxes) of $0.6 million in the first half of 2021, compared to $1.3 million in the same period of 2020. Our income tax paid in cash, excluding resource property revenue taxes, during the first half of 2021 was $0.1 million, compared to $0.1 million in the same period of 2020. We also recognized resource property revenue tax expense of $6.3 million in the first half of 2021 and $2.1 million in the same period of 2020. The increase was as a result of increased production and shipments at the mine underlying our royalty interest and increased iron ore prices.

Overall, we recognized an income tax expense of $6.9 million (income tax expense of $0.6 million and resource property revenue taxes of $6.3 million) in the first half of 2021, compared to income tax expense of $3.4 million (income tax expense of $1.3 million and resource property revenue taxes of $2.1 million) in the same period of 2020.

In the first half of 2021, our net income attributable to shareholders was $9.8 million, or $0.66 per share on a basic and $0.65 per share on a diluted basis, compared to a net loss of $1.1 million, or $0.07 per share on a basic and diluted basis, in the same period of 2020.

Liquidity and Capital Resources

General

Liquidity is of importance to our business as insufficient liquidity often results in underperformance.

Our objectives when managing capital are:

- to safeguard our ability to continue as a going concern;
- to position ourselves to generate returns for and distribute dividends to our shareholders;
- to maintain a flexible capital structure that optimizes the cost of capital at acceptable risk.

We set the amount of capital in proportion to risk. We manage our capital structure and make adjustments to it in light of changes in economic conditions and the risk characteristics of the underlying assets.

Consistent with others in our industry, we monitor capital on the basis of our net debt-to-equity ratio and long-term debt-to-equity ratio. The net debt-to-equity ratio is calculated as net debt divided by shareholders' equity. Net debt is calculated as total debt less cash. The long-term debt-to-equity ratio is calculated as long-term debt divided by shareholders' equity.

The following table sets forth the calculation of our net debt-to-equity ratio as at the dates indicated:

	June 30, 2021	December 31, 2020
	(In thousands, except ratio amounts)	
Total debt(1)	$ 35,911	$ 38,053
Less: cash	(55,594)	(63,552)
Net debt	Not applicable	Not applicable
Shareholders' equity	364,870	361,544
Net debt-to-equity ratio	Not applicable	Not applicable

Note:

(1) Long-term debt at June 30, 2021 and December 31, 2020 included bonds payable (of $35.9 million and $38.1 million, respectively) and did not include: (a) a non-interest bearing loan payable of $6.3 million as at June 30, 2021 and $5.2 million as at December 31, 2020 which is measured at fair value through profit or loss and does not have a fixed repayment date. See "– *Financial Position*"; and (b) long-term lease liabilities of $0.6 million as at June 30, 2021 and $0.8 million as at December 31, 2020, recognized as a consequence of IFRS 16, *Leases*.

There were no amounts in accumulated other comprehensive income relating to cash flow hedges, nor were there any subordinated debt instruments as at June 30, 2021 and December 31, 2020. Our net debt-to-equity was not applicable as we had a net cash balance as at June 30, 2021 and December 31, 2020.

The following table sets forth the calculation of our long-term debt-to-equity ratio as at the dates indicated:

	June 30, 2021	December 31, 2020
	(In thousands, except ratio amounts)	
Long-term debt, less current portion(1)	35,911	$ 38,053
Shareholders' equity	364,870	361,544
Long-term debt-to-equity ratio	0.10	0.11

Note:

(1) See note in table above.

During the first half of 2021, our strategy, which remained unchanged from the same period of 2020, was to maintain our net debt-to-equity ratio and long-term debt-to-equity ratio at manageable levels. Our long-term debt-to-equity ratio was $0.10 as at June 30, 2021 and 0.11 as at December 31, 2020.

Cash Flows

Our business can be cyclical and our cash flows can vary accordingly. Our principal operating cash expenditures are for general and administrative expenses.

Working capital levels fluctuate throughout the year and are affected by the level of operations of the mine underlying our royalty interest, the markets and prices for commodities, the timing of collection of receivables and the payment of payables and expenses. We currently have a sufficient level of cash on hand and expected cash flows from operations to meet our working capital and other requirements as well as unexpected cash demands.

The following table presents a summary of cash flows for each of the periods indicated:

	Six Months Ended June 30,	
	2021	2020 (Restated)
	(In thousands)	
Cash flows used in operating activities	$ (5,735)	$ (9,053)
Cash flows (used in) provided by investing activities	(3)	2,822
Cash flows used in financing activities	(228)	(244)
Exchange rate effect on cash	(1,992)	2,970
Decrease in cash	$ (7,958)	$ (3,505)

Cash Flows from Operating Activities

Operating activities used cash of $5.7 million in the six months ended June 30, 2021, compared to $9.1 million in the same period of 2020. An increase in receivables used cash of $19.2 million in the six months ended June 30, 2021, compared to $16.2 million in the same period of 2020. The increase in receivables related to an affiliate controlled by our Chairman and increase in royalty receivables. See "*Transactions with Related Parties*" for further information. An increase in restricted cash used cash of $4.7 million in the six months ended June 30, 2021, compared to a decrease in restricted cash providing cash of $63,000 in the same period of 2020. An increase in short-term securities used cash of $3.1 million in the first half of 2021, compared to $1.2 million in the same period of 2020. An increase in account payables and accrued expenses provided cash of $2.8 million in the six months ended June 30, 2021, compared to $6.2 million in the same period of 2020.

Cash Flows from Investing Activities

Investing activities used cash of $3,000 in the six months ended June 30, 2021, compared to providing cash of $2.8 million in the same period of 2020. Proceeds from the sale of investment property provided cash of $11,000 in the first half of 2021, compared to $4.8 million in the same period of 2020. In the first half of 2020, loan advances used cash of $1.2 million.

Cash Flows from Financing Activities

Cash used in financing activities was $0.2 million in the six months ended June 30, 2021 and the same period of 2020.

Financial Position

The following table sets out our selected financial information as at the dates indicated:

	June 30, 2021	December 31, 2020
	(In thousands)	
Cash	$ 55,594	$ 63,552
Short-term securities	20,443	18,497
Trade receivables	3,464	4,755
Tax receivables	369	282
Other receivables	60,019	39,518
Inventories	1,399	1,413
Restricted cash	4,879	175
Deposits, prepaid and other	2,177	1,019
Total current assets	148,344	129,211
Working capital	126,788	113,074
Total assets	519,572	509,125
Account payables and accrued expenses	16,624	15,680
Financial liabilities - derivatives	4,412	-
Income tax liabilities	520	457
Total current liabilities	21,556	16,137
Bonds payable, long-term	35,911	38,053
Loan payable, long-term	6,261	5,223
Decommissioning obligations, long-term	17,361	14,072
Deferred income tax liabilities	66,355	66,115
Total liabilities	148,049	124,264
Shareholders' equity	364,870	361,544

We maintain an adequate level of liquidity, with a portion of our assets held in cash. This provides us with flexibility in managing our continuing business.

As at June 30, 2021, cash decreased to $55.6 million from $63.6 million as at December 31, 2020. The decrease was primarily the result of an increase in receivables.

We had short-term securities of $20.4 million as at June 30, 2021 and $18.5 million as at December 31, 2020, which comprised of government and other securities. The increase in short-term securities resulted from purchases of securities, including government bonds at our bank subsidiary, partially offset by exchange rate fluctuations.

Trade receivables and other receivables were $3.5 million and $60.0 million, respectively, as at June 30, 2021, compared to $4.8 million and $39.5 million, respectively, as at December 31, 2020. Trade receivables primarily consisted of product sales from our Merchant Banking and Industrial segments. Included in other receivables were receivables of $14.8 million related to our iron ore royalty interest. Other receivables included a loan of $6.7 million and aggregate current receivables of $35.3 million as at June 30, 2021 from a related party. See "*Transactions with Related Parties*" for further information. The increase in other receivables resulted from working capital and cash management in the ordinary course of business.

Inventories were $1.4 million as at June 30, 2021 and December 31, 2020.

Deposits, prepaid and other assets were $2.2 million as at June 30, 2021, compared to $1.0 million as at December 31, 2020. The increase primarily resulted from advances to information technology suppliers for a core banking platform upgrade.

Current tax receivables, consisting primarily of value-added taxes and income tax recovery, were $0.4 million as at June 30, 2021 and $0.3 million as at December 31, 2020.

Account payables and accrued expenses were $16.6 million as at June 30, 2021, compared to $15.7 million as at December 31, 2020.

We had financial liabilities relating to derivatives of $4.4 million as at June 30, 2021, compared to $nil as at December 31, 2020. These liabilities relate to iron ore derivative hedging positions, which were subsequently closed in the third quarter of 2021 after the decline in iron ore prices.

We had current income tax liabilities of $0.5 million as at June 30, 2021 and December 31, 2020.

We had bonds payable of $35.9 million as at June 30, 2021, compared to $38.1 million as at December 31, 2020. The decrease resulted from exchange fluctuation.

We had a non-interest bearing loan payable, which is measured at FVTPL, of $6.3 million as at June 30, 2021, compared to $5.2 million as at December 31, 2020. The loan does not have a fixed repayment date and the estimated fair value has been determined using a discount rate for similar instruments.

As at June 30, 2021, we had long-term decommissioning obligations of $17.4 million relating to our existing hydrocarbon properties, which will be funded through cash flows from such interests over their operating lives, compared to $14.1 million as at December 31, 2020. The increase primarily results from change in inflation rates.

Future Liquidity

We expect that there will be acquisitions of businesses or commitments to projects in the future within our merchant banking and industrial segments. To achieve the long-term goals of expanding our assets and earnings, including through acquisitions, capital resources will be required. Depending on the size of a transaction, the capital resources that will be required can be substantial. The necessary resources will be generated from cash flows from operations, cash on hand, borrowings against our assets, sales of proprietary investments or the issuance of securities.

Foreign Currency

Our consolidated financial results are subject to foreign currency exchange rate fluctuations.

Our presentation currency is the Canadian dollar. We translate subsidiaries' assets and liabilities into Canadian dollars at the rate of exchange on the balance sheet date. Revenues and expenses are translated at exchange rates approximating those at the date of the transactions or, for practical reasons, the average exchange rates for the applicable periods, when they approximate the exchange rate as at the dates of the transactions. As a substantial amount of revenue is generated in Euros, the financial position for any given period, when reported in Canadian dollars, can be significantly affected by the exchange rates for these currencies prevailing during that period. In addition, we also have exposure to the Chinese yuan and the United States dollar.

In the six months ended June 30, 2021, we reported a net $6.6 million currency translation adjustment loss under other comprehensive income within equity. This compared to a net gain of $6.9 million in the same period of 2020. This currency translation adjustment does not affect our profit and loss statement until the disposal of a foreign operation.

Contractual Obligations

The following table sets out obligations and commitments, including contractual obligations, bonds payable and loan payable measured at fair value as at December 31, 2020.

	Payments Due by Period[1] (in thousands)				
Contractual Obligations[2]	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years	Total
Lease liabilities	$ 423	$ 565	$ 268	$ -	$ 1,256
Bonds payable	1,561	3,122	3,122	42,142	49,947
Loan payable[3]	-	-	-	5,223	5,223
Total	$ 1,984	$ 3,687	$ 3,390	$ 47,365	$ 56,426

Notes:

(1) Includes principal and interest.

(2) This table does not include non-financial instrument liabilities and guarantees.

(3) Consists of a US dollar loan payable to a former subsidiary, which is interest free, does not have a fixed maturity date and is measured at FVTPL. The undiscounted contractual amount due to former subsidiary out of surplus cash of the applicable subsidiary note holder is $53.6 million (US$42.1 million). The payment amount disclosed here represents its fair value as at December 31, 2020. Inclusive of the undiscounted contractual amount due, total contractual obligations at December 31, 2020 are $53.6 million. The actual repayment may be materially different from the amount disclosed herein. See "– *Financial Position*" for further information.

Risk Management

Risk is an inherent part of our business and operating activities. The extent to which we properly and effectively identify, assess, monitor and manage each of the various types of risk involved in our activities is critical to our financial soundness and profitability. We seek to identify, assess, monitor and manage the following principal risks involved in our business activities: market, credit, liquidity, operational, legal and compliance, new business, reputational and other. Risk management is a multi-faceted process that requires communication, judgment and knowledge of financial products and markets. Our management takes an active role in the risk management process and requires specific administrative and business functions to assist in the identification, assessment and control of various risks. Our risk management policies, procedures and methodologies are fluid in nature and are subject to ongoing review and modification.

Inflation

We do not believe that inflation has had a material impact on our revenue or income over the past two fiscal years. However, increases in inflation could result in increases in our expenses, which may not be readily recoverable in the price of goods or services provided to our clients. To the extent that inflation results in rising interest rates and has other adverse effects on capital markets, it could adversely affect our financial position and profitability.

Application of Critical Accounting Policies

The preparation of financial statements in conformity with IFRS requires our management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting periods.

Our management routinely makes judgments and estimates about the effects of matters that are inherently uncertain. As the number of variables and assumptions affecting the probable future resolution of the uncertainties increase, these judgments become even more subjective and complex. We have identified certain accounting policies that are the most important to the portrayal of our current financial condition and results of operations. Please refer to Note 2B to our audited consolidated financial statements for the year ended December 31, 2020, for a discussion of the significant accounting policies.

In the process of applying our accounting policies, management makes various judgments and estimates that can significantly affect the amounts it recognizes in the consolidated financial statements. The following is a description of the critical judgments and estimates that management has made in the process of applying our accounting policies and that have the most significant effects on the amounts recognized in the consolidated financial statements:

Identification of Cash-generating Units

Our assets are aggregated into cash-generating units, referred to as "CGUs", for the purpose of assessing and calculating impairment, based on their ability to generate largely independent cash flows. The determination of CGUs requires judgment in defining the smallest identifiable group of assets that generate cash inflows that are largely independent of the cash inflows from other assets or groups of assets. CGUs have been determined based on similar geological structure, shared infrastructure, geographical proximity, product type and similar exposure to market risks. In the event facts and circumstances surrounding factors used to determine our CGUs change, we will re-determine the groupings of CGUs.

Impairment and Reversals of Impairment on Non-Financial Assets

The carrying amounts of our non-financial assets, other than assets held for sale and deferred tax assets, are reviewed at the end of each reporting period to determine whether there is an indication of impairment or reversal of previously recorded impairment. If such indication exists, the recoverable amount is estimated.

Determining whether there are any indications of impairment or impairment reversals requires significant judgment of external factors, such as an extended change in prices or margins for hydrocarbon commodities or refined products, a significant change in an asset's market value, a significant revision of estimated volumes, revision of future development costs, a change in the entity's market capitalization or significant changes in the technological, market, economic or legal environment that would have an impact on our CGUs. Given that the calculations for recoverable amounts require the use of estimates and assumptions, including forecasts of commodity prices, market supply and demand, product margins and in the case of our interests in an iron ore mine, power plant and hydrocarbon properties, expected production volumes, it is possible that the assumptions may change, which may impact the estimated life of the CGU and may require a material adjustment to the carrying values of goodwill, if any, and non-financial assets.

Impairment losses recognized in prior years are assessed at the end of each reporting period for indications that the impairment has decreased or no longer exists. An impairment loss is reversed only to the extent that the carrying amount of the asset or CGU does not exceed the carrying amount that would have been determined, net of depletion, depreciation and amortization, if no impairment loss had been recognized.

Assets Held for Sale and Discontinued Operations

We apply judgment to determine whether an asset (or disposal group) is available for immediate sale in its present condition and that its sale is highly probable and therefore should be classified as held for sale at the balance sheet date. In order to assess whether it is highly probable that the sale can be completed within one year, or the extension period in certain circumstances, management reviews the business and economic factors, both macro and micro, which include the industry trends and capital markets, and the progress towards a sale transaction. It is also open to all forms of sales, including exchanges of non-current assets for other non-current assets when the exchange will have commercial substance in accordance with IAS 16, *Property, Plant and Equipment*.

We measure a disposal group classified as held for sale at the lower of its carrying amount and fair value less costs to sell. We recognize an impairment loss for any initial or subsequent write-down of the disposal group to fair value less costs to sell, to the extent that it has not been recognized.

A discontinued operation is a component of an entity (which comprises operations and cash flows that can be clearly distinguished, operationally and, for financial reporting purposes, from the rest of the entity) that either has been disposed of or is classified as held for sale. While a component of the entity has distinguished financial data, judgments must be exercised on the presentation of inter-company transactions between components that are presented as discontinued operations and those that are presented as continuing operations. Furthermore, the allocation of income tax expense (recovery) also involves the exercise of judgments as the tax position of continuing operations may have an impact on the tax position of discontinued operations, or vice versa. Generally, management determines whether a component is a discontinued operation or not based on the contribution of the component to our net income (loss), net assets, or gross assets. Management does not view revenue as a major factor in determining whether a component is a discontinued operation or not because the revenue factor does not contribute any real economic benefits to us.

Credit Losses and Impairment of Receivables

We apply credit risk assessment and valuation methods to our trade and other receivables under IFRS 9, *Financial Instruments*, which establishes a single forward-looking expected loss impairment model.

We measure the loss allowance for a financial instrument at an amount equal to the lifetime expected credit losses if the credit risk on the financial instrument has increased significantly since initial recognition. The objective of the impairment requirements is to recognize lifetime expected credit losses for all financial instruments for which there have been significant increases in credit risk since initial recognition – whether assessed on an individual or collective basis – considering all reasonable and supportable information, including that which is forward-looking.

At each reporting date, our management assesses whether the credit risk on a financial instrument has increased significantly since initial recognition. When making the assessment, management uses the change in the risk of a default occurring over the expected life of the financial instrument instead of the change in the amount of expected credit losses. To make that assessment, management compares the risk of a default occurring on the financial instrument as at the reporting date with the risk of a default occurring on the financial instrument as at the date of initial recognition and consider reasonable and supportable information, that is available without undue cost or effort, that is indicative of significant increases in credit risk since initial recognition.

Allowance for credit losses is maintained at an amount considered adequate to absorb the expected credit losses. Such allowance for credit losses reflects our management's best estimate of changes in the credit risk on our financial instruments and judgments about economic conditions. The assessment of allowance for credit losses is a complex process, particularly on a looking-forward basis; which involves a significant degree of judgment and a high level of estimation uncertainty. The input factors include the assessment of the credit risk of our financial instruments, legal rights and obligations under all the contracts and the expected future cash flows from the financial instruments, which include inventories, mortgages and other credit enhancement instruments. The major source of estimation uncertainty relates to the likelihood of the various scenarios under which different amounts are expected to be recovered through the security in place on the financial assets. The expected future cash flows are projected under different scenarios and weighted by probability, which involves the exercise of significant judgment. Estimates and judgments could change in the near-term and could result in a significant change to a recognized allowance.

Interests in Resource Properties and Reserve Estimates

We had interests in resource properties mainly comprised of an iron ore royalty interest, and to a lesser extent, hydrocarbon properties, with an aggregate carrying amount of $260.4 million as at June 30, 2021.

Generally, estimation of reported recoverable quantities of proved and probable reserves of resource properties include judgmental assumptions regarding production profile, prices of products produced, exchange rates, remediation costs, timing and amount of future development costs and production, transportation and marketing costs for future cash flows. It also requires interpretation of geological and geophysical models and anticipated recoveries. The economical, geological and technical factors used to estimate reserves may change from period to period. Changes in reported reserves can impact the carrying amounts of our interests in resource properties and/or related property, plant and equipment, the recognition of impairment losses and reversal of impairment losses, the calculation of depletion and depreciation, the provision for decommissioning obligations and the recognition of deferred income tax assets or liabilities due to changes in expected future cash flows. The recoverable quantities of reserves and estimated cash flows from our hydrocarbon interests are independently evaluated by reserve engineers at least annually. In 2020 and the first half of 2021, we did not recognize any impairment in respect of our interests in resource properties.

Our iron ore reserves are estimates of the amount of product that can be economically and legally extracted from our mining properties. Reserve and resource estimates are an integral component in the determination of the commercial viability of our interest in the iron ore mine, amortization calculations and impairment analyses. In calculating reserves and resources, estimates and assumptions are required about a range of geological, technical and economic factors, including quantities, grades, production techniques, production decline rates, recovery rates, production costs, commodity demand, commodity prices and exchange rates. In addition, future changes in regulatory environments, including government levies or changes in our rights to exploit the resource imposed over the producing life of the reserves and resources may also significantly impact estimates.

Our hydrocarbon reserves represent the estimated quantities of petroleum, natural gas and natural gas liquids which geological, geophysical and engineering data demonstrate with a specified degree of certainty to be economically recoverable in future years from known reservoirs and which are considered commercially producible. Such reserves may be considered commercially producible if management has the intention of developing and producing them and such intention is based upon: (a) a reasonable assessment of the future economics of such production; (b) a reasonable expectation that there is a market for all or substantially all the expected hydrocarbon production; and (c) evidence that the necessary production, transmission and transportation facilities are available or can be made available. Reserves may only be considered proven and probable if producibility is supported by either production or conclusive formation tests.

Included in interests in resource properties as at June 30, 2021, were exploration and evaluation assets with an aggregate carrying amount of $17 million. Exploration and evaluation assets are assessed for impairment when facts and circumstances suggest that the carrying amount of an exploration and evaluation asset may exceed its recoverable amount and upon reclassification to hydrocarbon development and production assets. If such indicators exist, impairment, if any, is determined by comparing the carrying amounts to the recoverable amounts. The measurement of the recoverable amount involves a number of assumptions, including the timing, likelihood and amount of commercial production, further resource assessment plans and future revenue and costs expected from the asset, if any.

Please see Note 13 to our audited consolidated financial statements for the year ended December 31, 2020 for further information.

Impairment of Other Non-Financial Assets

We had property, plant and equipment aggregating $49.1 million as at June 30, 2021, consisting mainly of a power plant and a natural gas processing facility. Impairment of our non-financial assets is evaluated at the CGU level. In testing for impairment, the recoverable amounts of the Company's CGUs are determined as the higher of their values in use and fair values less costs of disposal. In the absence of quoted market prices, the recoverable amount is based on estimates of future production rates, future product selling prices and costs, discount rates and other relevant assumptions. Increases in future costs and/or decreases in estimates of future production rates and product selling prices may result in a write-down of our property, plant and equipment. Please see Note 12 to our audited consolidated financial statements for the year ended December 31, 2020 for further information.

Taxation

We are subject to tax in a number of jurisdictions and judgment is required in determining the worldwide provision for income taxes. Deferred income taxes are recognized for temporary differences using the liability method, with deferred income tax liabilities generally being provided for in full (except for taxable temporary differences associated with investments in subsidiaries and branches where we are able to control the timing of the reversal of the temporary differences and it is probable that the temporary differences will not reverse in the foreseeable future) and deferred income tax assets being recognized to the extent that it is probable that future taxable profits will be available against which the temporary differences can be utilized.

Our operations and organization structures are complex, and related tax interpretations, regulations and legislation are continually changing. The income tax filings of the companies in our group are subject to audit by taxation authorities in numerous jurisdictions. There are audits in progress and items under review, some of which may increase our income tax liabilities. In addition, the companies have filed appeals and have disputed certain issues. While the results of these items cannot be ascertained at this time, we believe that we have an adequate provision for income taxes based on available information.

We recognized deferred income tax assets of $10.3 million as at June 30, 2021. In assessing the realizability of deferred income tax assets, our management considers whether it is probable that some portion or all of the deferred income tax assets will be realized. The ultimate realization of deferred income tax assets is dependent upon the generation of future taxable income during the periods in which temporary differences become deductible or before tax loss and tax credit carry-forwards expire. Our management considers the future reversals of existing taxable temporary differences, projected future taxable income, taxable income in prior years and tax planning strategies in making this assessment. Unrecognized deferred income tax assets are reassessed at the end of each reporting period.

We provide for future income tax liabilities in respect of uncertain tax positions where additional income tax may become payable in future periods and such provisions are based on our management's assessment of exposure. We did not recognize the full deferred tax liability on taxable temporary differences associated with investments in subsidiaries and branches where we are able to control the timing of the reversal of the temporary differences and it is probable that the temporary differences will not reverse in the foreseeable future. We may change our investment decision in the normal course of our business, thus resulting in additional income tax liabilities.

Contingencies

Pursuant to IAS 37, *Provisions, Contingent Liabilities and Contingent Assets*, we do not recognize a contingent liability. By their nature, contingencies will only be resolved when one or more future events occur or fail to occur. The assessment of contingencies inherently involves the exercise of significant judgment and estimates of the outcome of future events. If it becomes probable that an outflow of future economic benefits will be required for an item previously accounted for as a contingent liability, an accrual or a provision is recognized in the consolidated financial statements in the period in which the change in probability occurs. See Note 24 to our audited consolidated financial statements for the year ended December 31, 2020 for further information.

New Standards and Interpretations Adopted and Not Yet Adopted

In January 2020, the IASB issued the final amendments in *Classification of Liabilities as Current or Non-Current (Amendments to IAS 1)* which affect the presentation of liabilities in the statement of financial position. The amendments clarify that the classification of liabilities as current or non-current should be based on rights that are in existence at the end of the reporting period and align the wording in all affected paragraphs to refer to the "right" to defer settlement by at least twelve months and make explicit that only rights in place "at the end of the reporting period" should affect the classification of a liability; clarify that classification is unaffected by expectations about whether an entity will exercise its right to defer settlement of a liability; and make clear that settlement refers to the transfer to the counterparty of cash, equity instruments, other assets or services. The changes in *Classification of Liabilities as Current or Non-current — Deferral of Effective Date (Amendment to IAS 1)* defer the effective date of *the January 2020 Classification of Liabilities as Current or Non-Current (Amendments to IAS 1)* to annual reporting periods beginning on or after January 1, 2023. Earlier application of the January 2020 amendments is permitted. Management is currently assessing the impacts of the amended standard.

In May 2020, the IASB issued amendments to IAS 37, *Provisions, Contingent Liabilities and Contingent Assets* ("IAS 37"). The amendments clarify that for the purpose of assessing whether a contract is onerous, the cost of fulfilling the contract includes both the incremental costs of fulfilling that contract and an allocation of other costs that relate directly to fulfilling contracts. The amendments are effective for contracts for which an entity has not yet fulfilled all its obligations on or after January 1, 2022. Earlier application is permitted. Management is currently assessing the impacts of the amended standard and does not expect that there will be material effects from these amendments on our consolidated financial statements.

In May 2020, the IASB issued further amendments to IFRS 3 which update references in IFRS 3 to the revised *2018 Conceptual Framework*. To ensure that this update in referencing does not change which assets and liabilities qualify for recognition in a business combination, or create new Day 2 gains or losses, the amendments introduce new exceptions to the recognition and measurement principles in IFRS 3.

An acquirer should apply the definition of a liability in IAS 37, rather than the definition in *the Conceptual Framework,* to determine whether a present obligation exists at the acquisition date as a result of past events. For a levy in the scope of IFRIC 21, *Levies* ("IFRIC 21"), the acquirer should apply the criteria in IFRIC 21 to determine whether the obligating event that gives rise to a liability to pay the levy has occurred by the acquisition date. In addition, the amendments clarify that the acquirer should not recognize a contingent asset at the acquisition date. The amendments to IFRS 3 are effective for business combinations occurring in reporting periods starting on or after January 1, 2022. Earlier application is permitted. Management is currently assessing the impacts of the amended standard and does not expect that there will be material effects from these amendments on our consolidated financial statements.

In May 2020, the IASB issued *Property, Plant and Equipment—Proceeds before Intended Use*, which made amendments to IAS 16. The amendments prohibit a company from deducting from the cost of property, plant and equipment amounts received from selling items produced while the company is preparing the asset for its intended use. Instead, a company will recognize such sales proceeds and related cost in profit or loss. The amendments are effective for annual periods beginning on or after January 1, 2022. Early application is permitted. Management is currently assessing the impacts of the amended standard and does not expect that there will be material effects from these amendments on our consolidated financial statements.

In May 2020, the IASB issued *Annual Improvements to IFRS Standards 2018-2020* which contain an amendment to IFRS 9. The amendment clarifies which fees an entity includes when it applies the "10 per cent" test in paragraph B3.3.6 of IFRS 9 in assessing whether to derecognize a financial liability. An entity includes only fees paid or received between the entity (the borrower) and the lender, including fees paid or received by either the entity or the lender on the other's behalf. The amendment is effective for annual reporting periods beginning on or after January 1, 2022. Management is currently assessing the impacts of the amended standard and does not expect that there will be material effects from these amendments on our consolidated financial statements.

In February 2021, the IASB issued narrow-scope amendments to IAS 1, Presentation of Financial Statements, IFRS Practice Statement 2, *Making Materiality Judgements*, and IAS 8, Accounting Polices, Changes in Accounting Estimates and Errors. The amendments are effective for annual periods beginning on or after January 1, 2023, although earlier application is permitted. The amendments will require the disclosure of material accounting policy information rather than disclosing significant accounting policies and clarifies how to distinguish changes in accounting policies from changes in accounting estimates. Management is currently assessing the impacts of the amended standards and does not expect that there will be material effects from these amendments on our consolidated financial statements.

In May 2021, the IASB issued targeted amendments to IAS 12, *Income Taxes*. The amendments are effective for annual periods beginning on or after January 1, 2023, although earlier application is permitted. With a view to reducing diversity in reporting, the amendments will clarify that companies are required to recognize deferred taxes on transactions where both assets and liabilities are recognized, such as with leases and asset retirement (decommissioning) obligations. Management is currently assessing the impacts of the amended standard and does not expect that there will be material effects from these amendments on our consolidated financial statements.

In August 2020, the IASB issued *Interest Rate Benchmark Reform—Phase 2*, which amends IFRS 9, IAS 39*, Financial Instruments: Recognition and Measurement*, IFRS 7, *Financial Instruments: Disclosures*, IFRS 4, *Insurance Contracts* and IFRS 16. The amendments are effective to the Company for periods beginning on January 1, 2021. Interest rate benchmarks such as interbank offer rates (IBORs) play an important role in global financial markets as they index a wide variety of financial products, including derivative financial instruments. Market developments have impacted the reliability of some existing benchmarks and, in this context, the Financial Stability Board has published a report setting out recommendations to reform such benchmarks. *The Interest Rate Benchmark Reform—Phase 2* amendments focus on the effects of the interest rate benchmark reform on a company's financial statements that arise when an interest rate benchmark used to calculate interest is replaced with an alternative benchmark rate; most significantly, there is no requirement to derecognize or adjust the amount of financial instruments for changes required by the reform, but instead the requirement is to update the effective interest rate to reflect the change to the alternative benchmark rate.

Transactions with Related Parties

In the normal course of operations, we enter into transactions with related parties, which include affiliates in which we have a significant equity interest (10% or more) or have the ability to influence their operating and financing policies through significant shareholding, representation on the board of directors, corporate charter and/or bylaws. The related parties also include, among other things, the Company's directors, Chairman, President, Chief Executive Officer and Chief Financial Officer. This section does not include disclosure, if any, respecting open market transactions, whereby a related party acts as an investor of the Company's publicly traded securities or the bonds of a subsidiary.

	Six Months Ended June 30,	
	2021	2020
	(In thousands)	
Fee income	$ -	$ 9
Dividends income	198	-
Interest income	46	75
Royalty expenses	(369)	(323)
Fee expenses	-	(2)
ECL allowance	-	(8)
Recovery (reimbursements) of expenses, primarily including employee benefits and lease and office expenses	78	(514)

From time to time we have entered into arrangements with a company controlled by our Chairman to assist us to comply with various local regulations and requirements, including the newly introduced economic substance legislation for offshore jurisdictions, as well as fiscal efficiency. These arrangements are utilized to aid in the divestment of financially or otherwise distressed or insolvent assets or businesses that are determined to be unsuitable for our ongoing operations. These arrangements are implemented at cost and no economic benefit is received by, or accrued, by our Chairman or the company controlled by him. Pursuant to this arrangement, as at June 30, 2021, we held: (i) an indemnification asset of $6.7 million relating to a secured indemnity provided by such company to our subsidiary to comply with local regulations and requirements, in an amount equal to the amount advanced to it, for certain short-term intercompany balances involving certain of our subsidiaries and another subsidiary that was put into dissolution by us in 2019; (ii) a loan to such company of $0.8 million, bearing interest at 6.3%, which was made in the year ended December 31, 2019 in order to facilitate the acquisition of securities for our benefit; and (iii) current account receivables of $34.5 million. We also had current account payables of $26,000 due to the aforesaid affiliate as at June 30, 2021.

In addition, pursuant to this arrangement, during the six months ended June 30, 2021 and 2020, respectively, we recovered and reimbursed such company $0.1 million and $0.5 million (as set forth in the table above), respectively, at cost for expenses, primarily consisting of employee benefits and lease and office expenses.

As set forth in the table above, we had royalty expenses of $0.4 million and $0.3 million, respectively, during the six months ended June 30, 2021 and 2020 that were paid to a company in which we hold a minority interest and that is a subsidiary of the operator of the underlying mine.

Financial and Other Instruments

We are exposed to various market risks from changes in interest rates, foreign currency exchange rates and equity prices that may affect our results of operations and financial condition and, consequently, our fair value. Generally, our management believes that our current financial assets and financial liabilities, due to their short-term nature, do not pose significant financial risks. We use various financial instruments to manage our exposure to various financial risks. The policies for controlling the risks associated with financial instruments include, but are not limited to, standardized company procedures and policies on matters such as hedging of risk exposures, avoidance of undue concentration of risk and requirements for collateral (including letters of credit) to mitigate credit risk. We have risk managers to perform audits and checking functions to ensure that company procedures and policies are complied with.

We use derivative instruments to manage certain exposures to commodity price and currency exchange rate risks. The use of derivative instruments depends on our management's perception of future economic events and developments. These types of derivatives are often very volatile, as they are highly leveraged, given that margin requirements are relatively low in proportion to their notional amounts.

Many of our strategies, including the use of derivative instruments and the types of derivative instruments selected by us, are based on historical trading patterns and correlations and our management's expectations of future events. However, these strategies may not be fully effective in all market environments or against all types of risks. Unexpected market developments may affect our risk management strategies during this time, and unanticipated developments could impact our risk management strategies in the future. If any of the variety of instruments and strategies we utilize are not effective, we may incur losses.

Please refer to Note 27 of our audited consolidated financial statements for the year ended December 31, 2020, for a qualitative and quantitative discussion of our exposure to market risks and the sensitivity analysis of interest rate, currency and other price risks at December 31, 2020.

Outstanding Share Data

Our share capital consists of US$450,000 divided into 300,000,000 Common Shares and 150,000,000 preference shares divided into US$0.001 par value each. Our Common Shares are listed on the New York Stock Exchange under the ticker symbol "SRL". As of June 30, 2021, we had 13,684,622 Common Shares and 428,915 stock options issued and outstanding. In addition, 1,538,600 stock options (as adjusted for share dividends declared and paid in 2021) were granted by us in May 2021, which grants are subject to the approval of our shareholders at our annual and extraordinary meeting to be held in December 2021.

Disclosure Controls and Procedures

We maintain a set of disclosure controls and procedures designed to ensure that information required to be disclosed is recorded, processed, summarized and reported within the time periods specified in provincial securities legislation. We evaluated our disclosure controls and procedures as defined under National Instrument 52-109 – *Certification of Disclosure in Issuers*, referred to as "NI 52-109", as at June 30, 2021. This evaluation was performed by our Chief Executive Officer and Chief Financial Officer. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that the design and operation of these disclosure controls and procedures were effective.

Changes in Internal Control over Financial Reporting

We maintain internal controls over financial reporting that have been designed to provide reasonable assurance of the reliability of external financial reporting in accordance with IFRS.

Management, including our then Chief Executive Officer and Chief Financial Officer, conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2020. In conducting this evaluation, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control — Integrated Framework (2013)*.

There were no changes in our internal control over financial reporting that occurred during the six months ended June 30, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Controls

Internal control over financial reporting has inherent limitations and is a process that involves human diligence and compliance and is subject to lapses in judgment and breakdowns resulting from human failures. Internal control over financial reporting also can be circumvented by collusion or improper management override. Because of such limitations, there is a risk that material misstatements will not be prevented or detected on a timely basis by internal control over financial reporting. However, these inherent limitations are known features of the financial reporting process. Therefore, it is possible to design into the process safeguards to reduce, though not eliminate, this risk.

Legal Proceedings

We are subject to routine litigation incidental to our business and are named from time to time as a defendant in various legal actions arising in connection with our activities, certain of which may include large claims for punitive damages.

Further, due to the size, complexity and nature of our operations, various legal and tax matters are outstanding from time to time, including audits and reassessments including relating to our former affiliates, and litigation related thereto.

One of our subsidiaries is disputing certain assessments by the relevant tax authorities related to expatriate staff payroll tax, and has appealed these matters locally. Management believes that it is more likely than not that it will be successful in this appeal, however the timing is unknown. As at December 31, 2020, the total amount of the assessments was $3.5 million of which $1.2 million has been paid in dispute. The amount that has been paid has been written off due to management's expectations of probability of recovery. In late 2020, the relevant government passed legislation which provided for the waiver of interest and penalties on unpaid principal as a Covid-19 relief measure. As a result of this new legislation, the subsidiary began discussions with the relevant tax authorities and in August 2021, the subsidiary entered an agreement whereby the disputes will be settled for $0.5 million, being the entire remaining amount of the principal owing (with all interest and penalties waived). As a result, a liability of $0.5 million was recognized as at June 30, 2021.

The Company and certain subsidiaries have been named as defendants in a legal action relating to an alleged guarantee of the former parent of the group in the amount of approximately $68.3 million (€43.8 million) as at December 31, 2020. We believe that such claim is without merit and intend to vigorously defend such claim. In the second half of 2021, we were informed of a proposed amendment to the claim which, if allowed, would increase the amount to approximately $133.8 million (€91.0 million) as at June 30, 2021. Currently, based upon the information available to management, management does not believe that there will be a material adverse effect on our financial condition or results of operations as a result of this action. However, due to the inherent uncertainty of litigation, we cannot provide certainty as to the outcome.

Currently, based upon information available to us, we do not believe any such matters would have a material adverse effect upon our financial condition or results of operations as at June 30, 2021. However, due to the inherent uncertainty of litigation, we cannot provide certainty as to their outcome. If our current evaluations are materially incorrect or if we are unable to resolve any of these matters favourably, there may be a material adverse impact on our financial performance, cash flows or results of operations. Please see Note 24 to our audited consolidated financial statements for the year ended December 31, 2020 for further information.

Risk Factors

Statements in this report that are not reported financial results or other historical information are "forward-looking statements" within the meaning of applicable securities legislation including the *Private Securities Litigation Reform Act of 1995*, as amended. These statements appear in a number of different places in this report and can be identified by words such as "anticipate", "could", "project", "should", "expect", "seek", "may", "intend", "likely", "will", "plan", "estimate", "believe" and similar expressions suggesting future outcomes or statements regarding an outlook or their negative or other comparable words. Also discussions of strategy that involve risks and uncertainties share this "forward-looking" character.

There are a number of important factors, many of which are beyond our control, that could harm our business, operating or financial condition or that could cause actual conditions, events or results to differ significantly from those described in the forward-looking statements. These factors include, but are not limited to, the following:

- our financial results may fluctuate substantially from period to period;
- a weakening of the global economy, including capital and credit markets, could adversely affect our business and financial results and have a material adverse effect on our liquidity and capital resources;
- we are subject to global economic, market and business risks with respect to the current COVID-19 pandemic;
- our business is highly competitive;
- if we are unable to compete effectively with our competitors, our business and results of operations will be adversely affected;
- our earnings and, therefore, our profitability may be affected by price volatility in our various products;
- the operation of the iron ore mine underlying our royalty interest is generally determined by a third-party operator and we currently have no decision-making power as to how the property is operated. In addition, we have no or very limited access to technical or geological data respecting the mine, including as to mineralization or reserves. The operator's failure to perform or other operating decisions could have a material adverse effect on our revenue, results of operations and financial condition;
- our activities are subject to counterparty risks associated with the performance of obligations by our counterparties;

- we are subject to transaction risks that may have a material adverse effect on our business, results of operations, financial condition and cash flow;
- our risk management strategies may leave us exposed to unidentified or unanticipated risks that could impact our risk management strategies in the future and could negatively affect our results of operations and financial condition;
- if the fair values of our long-lived assets or their recoverable amounts fall below our carrying values, we would be required to record non-cash impairment losses that could have a material impact on our results of operations;
- derivative transactions may expose us to unexpected risk and potential losses;
- the operations of our banking subsidiary are subject to regulation, which could adversely affect our business and operations;
- any failure to remain in compliance with sanctions, anti-money laundering laws or other applicable regulations in the jurisdictions in which we operate could harm our reputation and/or cause us to become subject to fines, sanctions or legal enforcement, which could have an adverse effect on our business, financial condition and results of operations;
- fluctuations in interest rates and foreign currency exchange rates may affect our results of operations and financial condition;
- some of our operations are subject to environmental laws and regulations that may increase the costs of doing business and may restrict such operations;
- limitations on our access to capital could impair our liquidity and our ability to conduct our business;
- we may substantially increase our debt in the future;
- as a result of our global operations, we are exposed to political, economic, legal, operational and other risks that could adversely affect our business, results of operations, financial condition and cash flow;
- we are exposed to litigation risks in our business that are often difficult to assess or quantify and we could incur significant legal expenses every year in defending against litigation;
- we rely significantly on the skills and experience of our executives and the loss of any of these individuals may harm our business;
- we conduct business in countries with a history of corruption and transactions with foreign governments and doing so increases the risks associated with our international activities;
- our hydrocarbon and related operations are subject to inherent risks and hazards;
- future environmental and reclamation obligations respecting our resource properties and interests may be material;
- strategic investments or acquisitions and joint ventures, or our entry into new business areas, may result in additional risks and uncertainties in our business;
- tax audits or disputes, or changes in the tax laws applicable to us, could materially increase our tax payments;
- restrictions on the remittance of Renminbi into and out of China and governmental control of currency conversion may limit our ability to pay dividends and other obligations, and affect the value of your investment;
- failures or security breaches of our information technology systems could disrupt our operations and negatively impact our business;
- investors' interests may be diluted and investors may suffer dilution in their net book value per share if we issue additional shares or raise funds through the sale of equity securities;
- certain factors may inhibit, delay or prevent a takeover of our company, which may adversely affect the price of our common shares; and
- investors may face difficulties in protecting their interests, and their ability to protect their rights through United States courts may be limited, because we are incorporated under Cayman Islands law.

Additional Information

We file annual and other reports, proxy statements and other information with certain Canadian securities regulatory authorities and with the SEC in the United States. The documents filed with the SEC are available to the public from the SEC's website at http://www.sec.gov. The documents filed with the Canadian securities regulatory authorities are available at http://www.sedar.com.

UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

June 30, 2021

UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Scully Royalty Ltd.'s auditors have not reviewed the unaudited financial statements for the period ended June 30, 2021.

NOTICE TO READER OF THE INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

The preparation of the accompanying interim condensed consolidated statements of financial position of Scully Royalty Ltd. as at June 30, 2021 and the related condensed consolidated statements of operations, comprehensive income, changes in equity and cash flows for the six months ended June 30, 2021 is the responsibility of management. These condensed consolidated financial statements have not been reviewed on behalf of the shareholders by the independent external auditors of Scully Royalty Ltd.

The interim condensed consolidated financial statements have been prepared by management and include the selection of appropriate accounting principles, judgments and estimates necessary to prepare these financial statements in accordance with IFRS.

SCULLY ROYALTY LTD.

CONDENSED CONSOLIDATED STATEMENTS OF FINANCIAL POSITION
(Unaudited)
(Canadian Dollars in Thousands)

	June 30, 2021	December 31, 2020
ASSETS		
Current Assets		
Cash	$ 55,594	$ 63,552
Securities	20,443	18,497
Trade receivables	3,464	4,755
Tax receivables	369	282
Other receivables	60,019	39,518
Inventories	1,399	1,413
Restricted cash	4,879	175
Deposits, prepaid and other	2,177	1,019
Total current assets	148,344	129,211
Non-current Assets		
Securities	3,523	3,721
Loan receivable	22	1,237
Real estate held for sale	13,141	13,954
Investment property	34,748	36,908
Property, plant and equipment	49,142	51,883
Interests in resource properties	260,402	261,355
Deferred income tax assets	10,250	10,856
Total non-current assets	371,228	379,914
	$ 519,572	$ 509,125
LIABILITIES AND EQUITY		
Current Liabilities		
Account payables and accrued expenses	$ 16,624	$ 15,680
Financial liabilities – derivatives	4,412	-
Income tax liabilities	520	457
Total current liabilities	21,556	16,137
Long-term Liabilities		
Bonds payable	35,911	38,053
Loan payable	6,261	5,223
Decommissioning obligations	17,361	14,072
Deferred income tax liabilities	66,355	66,115
Other	605	801
Total long-term liabilities	126,493	124,264
Total liabilities	148,049	140,401
Equity Capital stock, fully paid	17	16
Additional paid-in capital	312,470	312,471
Treasury stock	(2,643)	(2,643)
Contributed surplus	16,491	16,627
Retained earnings	11,272	1,378
Accumulated other comprehensive income	27,263	33,695
Shareholders' equity	364,870	361,544
Non-controlling interests	6,653	7,180
Total equity	371,523	368,724
	$ 519,572	$ 509,125

The accompanying notes are an integral part of these condensed consolidated financial statements.

SCULLY ROYALTY LTD.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
For the Six Months Ended June 30, 2021 and 2020
(Unaudited)
(Canadian Dollars in Thousands, Except Per Share Amounts)

	2021	2020 (Restated)
Revenue	$ 46,766	$ 25,659
Costs and expenses:		
Costs of sales and services	20,969	10,890
Selling, general and administrative	9,821	10,320
Finance costs	953	1,000
Exchange differences on foreign currency transactions, net (gain) loss	(1,249)	1,048
	30,494	23,258
Income before income taxes	16,272	2,401
Income tax expense		
Income taxes	(620)	(1,298)
Resource property revenue taxes	(6,259)	(2,127)
	(6,879)	(3,425)
Net income (loss) for the period	9,393	(1,024)
Net loss (income) attributable to non-controlling interests	365	(44)
Net income (loss) attributable to owners of the parent company	$ 9,758	$ (1,068)
Earnings (loss) per share		
Basic	$ 0.66	$ (0.07)
Diluted	$ 0.65	$ (0.07)
Weighted average number of common shares outstanding		
— basic	14,779,302	14,779,302
— diluted	14,918,941	14,779,302

The accompanying notes are an integral part of these condensed consolidated financial statements.

SCULLY ROYALTY LTD.

CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
For the Six Months Ended June 30, 2021 and 2020
(Unaudited)
(Canadian Dollars in Thousands)

	2021	2020
Net income (loss) for the period	$ 9,393	$ (1,024)
Other comprehensive (loss) income, net of income taxes:		
Items that will be reclassified subsequently to profit or loss		
Exchange differences arising from translating financial statements of foreign operations	(6,594)	6,681
Reclassification adjustment for exchange differences to statements of operations for subsidiaries disposed	-	215
Net exchange difference	(6,594)	6,896
Fair value loss on securities at fair value through other comprehensive income	(23)	(4)
Reclassification of reversal of impairment charge to statements of operations	23	(3)
Net fair value loss on securities at fair value through other comprehensive income	-	(7)
	(6,594)	6,889
Total comprehensive income for the period	2,799	5,865
Comprehensive loss (income) attributable to non-controlling interests	527	(357)
Comprehensive income attributable to owners of the parent company	$ 3,326	$ 5,508

The accompanying notes are an integral part of these condensed consolidated financial statements.

SCULLY ROYALTY LTD.

CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY
For the Six Months Ended June 30, 2021 and 2020
(Unaudited)
(Canadian Dollars in Thousands)

	Capital Stock		Treasury Stock		Contributed Surplus		Accumulated Other Comprehensive Income (Loss)				
	Number of Shares	Amount	Number of Shares	Amount	Share-based Compensation	Retained Earnings (Deficit)	Securities at Fair Value Through Other Comprehensive Income	Currency Translation Adjustment	Shareholders' Equity	Non-controlling Interests	Total Equity
Balance at December 31, 2020	12,620,448	$ 312,487	(65,647)	$ (2,643)	$ 16,627	$ 1,378	$ (92)	$ 33,787	$ 361,544	$ 7,180	$368,724
Net income (loss)	-	-	-	-	-	9,758	-	-	9,758	(365)	9,393
Shares issued from stock dividends	1,135,729	-	(5,908)	-	-	-	-	-	-	-	-
Forfeiture of stock options	-	-	-	-	(136)	136	-	-	-	-	-
Net exchange differences	-	-	-	-	-	-	-	(6,432)	(6,432)	(162)	(6,594)
Balance at June 30, 2021	13,756,177	$ 312,487	(71,555)	$ (2,643)	$ 16,491	$ 11,272	$ (92)	$ 27,355	$ 364,870	$ 6,653	$371,523
Balance at December 31, 2019	12,620,448	$ 312,487	(65,647)	$ (2,643)	$ 16,627	$ 1,009	$ (145)	$ 26,277	$ 353,612	$ 8,402	$362,014
Net (loss) income	-	-	-	-	-	(1,068)	-	-	(1,068)	44	(1,024)
Dividends paid	-	-	-	-	-	-	-	-	-	(30)	(30)
Disposition of a subsidiary	-	-	-	-	-	-	-	-	-	(960)	(960)
Net fair value loss	-	-	-	-	-	-	(7)	-	(7)	-	(7)
Net exchange differences	-	-	-	-	-	-	-	6,583	6,583	313	6,896
Balance at June 30, 2020	12,620,448	$ 312,487	(65,647)	$ (2,643)	$ 16,627	$ (59)	$ (152)	$ 32,860	$ 359,120	$ 7,769	$366,889

Total comprehensive (loss) income for the six months ended June 30:	Owners of the Parent Company	Non-controlling Interests	Total
2021	$ 3,326	$ (527)	$ 2,799
2020	$ 5,508	$ 357	$ 5,865

The accompanying notes are an integral part of these condensed consolidated financial statements.

SCULLY ROYALTY LTD.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
For the Six Months Ended June 30, 2021 and 2020
(Unaudited)
(Canadian Dollars in Thousands)

	2021	2020 (Restated)
Cash flows from operating activities:		
Net income (loss) for the period	$ 9,393	$ (1,024)
Adjustments for:		
Amortization, depreciation and depletion	6,128	5,787
Exchange differences on foreign currency transactions	(1,249)	1,048
Loss (gain) on securities, net	346	(1,832)
Loss on derivative contracts, net	3,461	-
Gain on disposition of a subsidiary	-	(88)
Deferred income taxes	598	988
Interest accretion	138	110
Fair value loss on a loan payable measured at FVTPL	1,177	227
Reversal of credit losses	(4)	(3,102)
Write-offs of a payable	(390)	-
Changes in operating assets and liabilities, net of effects of acquisitions and dispositions:		
Short term securities	(3,098)	(1,233)
Receivables	(19,244)	(16,231)
Restricted cash	(4,715)	63
Inventories	9	83
Deposits, prepaid and other	(1,205)	(66)
Account payables and accrued expenses	2,750	6,239
Income tax liabilities	44	311
Other	126	(333)
Cash flows used in operating activities	(5,735)	(9,053)
Cash flows from investing activities:		
Purchases of property, plant and equipment, net	(14)	(88)
Proceeds from sale of investment property	11	4,750
Loan advances	-	(1,187)
Disposition of a subsidiary, net of cash and cash equivalents disposed of	-	(873)
Other	-	220
Cash flows (used in) provided by investing activities:	(3)	2,822
Cash flows from financing activities:		
Reductions in lease liabilities	(228)	(214)
Dividends paid to non-controlling interests	-	(30)
Cash flows used in financing activities	(228)	(244)
Exchange rate effect on cash and cash equivalents	(1,992)	2,970
Decrease in cash	(7,958)	(3,505)
Cash, beginning of period	63,552	78,274
Cash, end of period	$ 55,594	$ 74,769

The accompanying notes are an integral part of these condensed consolidated financial statements.

SCULLY ROYALTY LTD.

SELECTED EXPLANATORY NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
JUNE 30, 2021
(Unaudited)

Note 1. Nature of Business

Scully Royalty Ltd. ("Scully" or the "Company") is incorporated under the laws of the Cayman Islands. Scully and the entities it controls are collectively known as the "Group" in these consolidated financial statements. The Groups's core asset is a 7% net revenue royalty interest in the Scully iron ore mine in Newfoundland & Labrador, Canada. Scully is listed on the New York Stock Exchange under the symbol SRL. The Company's primary business office is Suite 803, 11 Duddell Street, Dina House, Ruttonjee Centre, Central, Hong Kong SAR China.

Note 2. Basis of Presentation and Summary of Significant Accounting Policies

A. Basis of Presentation

These condensed consolidated financial statements include the accounts of Scully and entities it controls. The presentation currency of these condensed consolidated financial statements is the Canadian dollar ($), as rounded to the nearest thousand (except per share amounts).

This interim financial report has been prepared by Scully in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board (the "IASB"). The Group's interim financial statements for the six months ended June 30, 2021 are in compliance with IAS 34, *Interim Financial Reporting* ("IAS 34"). Except those accounting changes in 2021 as indicated in Note 3, the same accounting policies and methods of computation are followed in these interim consolidated financial statements as compared with the most recent annual consolidated financial statements. In accordance with IAS 34, certain information and footnote disclosure normally included in annual consolidated financial statements have been omitted or condensed.

The measurement procedures to be followed in an interim financial report are designed to ensure that the resulting information is reliable and that all material financial information that is relevant to an understanding of the financial position or performance of the Group is appropriately disclosed. While measurements in both annual and interim financial reports are often based on reasonable estimates, the preparation of the interim financial report generally requires a greater use of estimation methods than the annual financial report.

In the opinion of Scully, its unaudited interim condensed consolidated financial statements contain all normal recurring adjustments necessary in order to present a fair statement of the results of the interim periods presented. These interim consolidated financial statements should be read together with the audited consolidated financial statements and the accompanying notes included in Scully 's latest annual report on Form 20-F. The results for the periods presented herein are not indicative of the results for the entire year. The revenues from the Group's iron ore royalty activities involve seasonality and cyclicality.

Certain comparative amounts in prior period have been reclassified to conform with the current period's presentation. These reclassifications were not material to the consolidated financial statement.

SCULLY ROYALTY LTD.

SELECTED EXPLANATORY NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
JUNE 30, 2021
(Unaudited)

Note 3. Accounting Policy Developments

Accounting Changes in 2021

In August 2020, the IASB issued *Interest Rate Benchmark Reform—Phase 2*, which amends IFRS 9, IAS 39*, Financial Instruments: Recognition and Measurement*, IFRS 7, *Financial Instruments: Disclosures*, IFRS 4, *Insurance Contracts* and IFRS 16. The amendments are effective to the Company for periods beginning on January 1, 2021. Interest rate benchmarks such as interbank offer rates (IBORs) play an important role in global financial markets as they index a wide variety of financial products, including derivative financial instruments. Market developments have impacted the reliability of some existing benchmarks and, in this context, the Financial Stability Board has published a report setting out recommendations to reform such benchmarks. *The Interest Rate Benchmark Reform—Phase 2* amendments focus on the effects of the interest rate benchmark reform on a company's financial statements that arise when an interest rate benchmark used to calculate interest is replaced with an alternative benchmark rate; most significantly, there is no requirement to derecognize or adjust the amount of financial instruments for changes required by the reform, but instead the requirement is to update the effective interest rate to reflect the change to the alternative benchmark rate.

Future Accounting Changes

In January 2020, the IASB issued the final amendments in *Classification of Liabilities as Current or Non-Current (Amendments to IAS 1)* which affect the presentation of liabilities in the statement of financial position. The amendments clarify that the classification of liabilities as current or non-current should be based on rights that are in existence at the end of the reporting period and align the wording in all affected paragraphs to refer to the "right" to defer settlement by at least twelve months and make explicit that only rights in place "at the end of the reporting period" should affect the classification of a liability; clarify that classification is unaffected by expectations about whether an entity will exercise its right to defer settlement of a liability; and make clear that settlement refers to the transfer to the counterparty of cash, equity instruments, other assets or services. The changes in *Classification of Liabilities as Current or Non-current — Deferral of Effective Date (Amendment to IAS 1)* defer the effective date of *the January 2020 Classification of Liabilities as Current or Non-Current (Amendments to IAS 1)* to annual reporting periods beginning on or after January 1, 2023. Earlier application of the January 2020 amendments is permitted. Management is currently assessing the impacts of the amended standard.

In May 2020, the IASB issued amendments to IAS 37, *Provisions, Contingent Liabilities and Contingent Assets* ("IAS 37"). The amendments clarify that for the purpose of assessing whether a contract is onerous, the cost of fulfilling the contract includes both the incremental costs of fulfilling that contract and an allocation of other costs that relate directly to fulfilling contracts. The amendments are effective for contracts for which an entity has not yet fulfilled all its obligations on or after January 1, 2022. Earlier application is permitted. Management is currently assessing the impacts of the amended standard and does not expect that there will be material effects from these amendments on the Group's consolidated financial statements

In May 2020, the IASB issued further amendments to IFRS 3, *Business Combinations* ("IFRS 3") which update references in IFRS 3 to the revised *2018 Conceptual Framework*. To ensure that this update in referencing does not change which assets and liabilities qualify for recognition in a business combination, or create new Day 2 gains or losses, the amendments introduce new exceptions to the recognition and measurement principles in IFRS 3.

An acquirer should apply the definition of a liability in IAS 37, rather than the definition in *the Conceptual Framework,* to determine whether a present obligation exists at the acquisition date as a result of past events. For a levy in the scope of IFRIC 21, *Levies* ("IFRIC 21"), the acquirer should apply the criteria in IFRIC 21 to determine whether the obligating event that gives rise to a liability to pay the levy has occurred by the acquisition date. In addition, the amendments clarify that the acquirer should not recognize a contingent asset at the acquisition date. The amendments to IFRS 3 are effective for business combinations occurring in reporting periods starting on or after January 1, 2022. Earlier application is permitted. Management is currently assessing the impacts of the amended standard and does not expect that there will be material effects from these amendments on the Group's consolidated financial statements.

SCULLY ROYALTY LTD.

SELECTED EXPLANATORY NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
JUNE 30, 2021
(Unaudited)

Note 3. Accounting Policy Developments (continued)

In May 2020, the *IASB issued Property, Plant and Equipment—Proceeds before Intended Use*, which made amendments to IAS 16. The amendments prohibit a company from deducting from the cost of property, plant and equipment amounts received from selling items produced while the company is preparing the asset for its intended use. Instead, a company will recognize such sales proceeds and related cost in profit or loss. The amendments are effective for annual periods beginning on or after January 1, 2022. Early application is permitted. Management is currently assessing the impacts of the amended standard and does not expect that there will be material effects from these amendments on the Group's consolidated financial statements.

In May 2020, the IASB issued *Annual Improvements to IFRS Standards 2018-2020* which contain an amendment to IFRS 9. The amendment clarifies which fees an entity includes when it applies the "10 per cent" test in paragraph B3.3.6 of IFRS 9 in assessing whether to derecognize a financial liability. An entity includes only fees paid or received between the entity (the borrower) and the lender, including fees paid or received by either the entity or the lender on the other's behalf. The amendment is effective for annual reporting periods beginning on or after January 1, 2022. Management is currently assessing the impacts of the amended standard and does not expect that there will be material effects from these amendments on the Group's consolidated financial statements.

In February 2021, the International Accounting Standards Board issued narrow-scope amendments to IAS 1, *Presentation of Financial Statements*, IFRS Practice Statement 2, *Making Materiality Judgements*, and IAS 8, *Accounting Polices, Changes in Accounting Estimates and Errors*. The amendments are effective for annual periods beginning on or after January 1, 2023, although earlier application is permitted. The amendments will require the disclosure of material accounting policy information rather than disclosing significant accounting policies and clarifies how to distinguish changes in accounting policies from changes in accounting estimates. Management is currently assessing the impacts of the amended standards and does not expect that there will be material effects from these amendments on the Group's consolidated financial statements.

In May 2021, the International Accounting Standards Board issued targeted amendments to IAS 12, *Income Taxes*. The amendments are effective for annual periods beginning on or after January 1, 2023, although earlier application is permitted. With a view to reducing diversity in reporting, the amendments will clarify that companies are required to recognize deferred taxes on transactions where both assets and liabilities are recognized, such as with leases and asset retirement (decommissioning) obligations. Management is currently assessing the impacts of the amended standard and does not expect that there will be material effects from these amendments on the Group's consolidated financial statements.

SCULLY ROYALTY LTD.

SELECTED EXPLANATORY NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
JUNE 30, 2021
(Unaudited)

Note 4. Business Segment Information

The Group, through its operating segments, is primarily in the merchant banking business, which includes its iron ore royalty, financial services and other resource interests and other proprietary investments. In addition, the Group owns other merchant banking assets and seeks to invest in businesses or assets whose intrinsic value is not properly reflected. The Group's investing activities are generally not passive. The Group actively seeks investments where its financial expertise and management can add or unlock value.

The Group currently has three separate and independently managed operating subgroups underneath its corporate umbrella. In reporting to management, the Group's operating results are currently categorized into the following operating segments: Royalty, Industrial, Merchant Banking and All Other segments which include corporate activities.

Basis of Presentation

In reporting segments, certain of the Group's business lines have been aggregated where they have similar economic characteristics and are similar in each of the following areas: (a) the nature of the products and services; (b) the methods of distribution; and (c) the types or classes of customers/clients for the products and services.

The Group's Royalty segment includes an interest in the Scully iron ore mine in Wabush, Newfoundland & Labrador, Canada. The Group's Industrial segment includes multiple projects in resources and services around the globe. It seeks opportunities to benefit from long-term industrial and services assets, including natural gas, with a focus on East Asia. The Group's Merchant Banking segment has a subsidiary with its bonds listed on the Malta Stock Exchange and comprises regulated merchant banking with a focus on Europe and South America. In addition, the Merchant Banking segment owns two industrial real estate parks.

The All Other segment includes the Group's corporate and operating segments whose quantitative amounts do not exceed 10% of any of the Group's: (a) reported revenue; (b) net income; or (c) total assets.

The accounting policies of the operating segments are the same as those described in the summary of significant accounting policies in Note 2B to the Company's audited consolidated financial statements for the year ended December 31, 2020. The chief operating decision maker evaluates performance on the basis of income or loss from operations before income taxes and does not consider acquisition accounting adjustments in assessing the performance of the Group's reporting segments. The segment information presented below is prepared according to the following methodologies: (a) revenue and expenses directly associated with each segment are included in determining pre-tax earnings; (b) intersegment sales and transfers are accounted for as if the sales or transfers were to third parties at current market prices; (c) certain selling, general and administrative expenses paid by corporate, particularly incentive compensation and share-based compensation, are not allocated to reporting segments; (d) all intercompany investments, receivables and payables are eliminated in the determination of each segment's assets and liabilities; (e) deferred income tax assets and liabilities are not allocated; and (f) gains or losses on dispositions of subsidiaries which includes reclassification of realized cumulative translation adjustments from equity to profit or loss on disposals of subsidiaries, write-offs of intercompany accounts, changes in intercompany account balances and cash used (received) in acquisition (disposition) of a subsidiary are allocated to corporate and included within the Group's All Other segment.

SCULLY ROYALTY LTD.

SELECTED EXPLANATORY NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
JUNE 30, 2021
(Unaudited)

Note 4. Business Segment Information (continued)

Segment Operating Results

	Six Months ended June 30, 2021				
	Royalty	Industrial	Merchant Banking	All Other	Total
Revenue from external customers	$ 31,863	10,261	$ 4,642	$ -	$ 46,766
Intersegment sale	-	3,033	3,272	4,371	10,676
Interest expense	2	70	878	3	953
Income (loss) before income taxes	16,371	(3,722)	439	3,184	16,272

	Six Months ended June 30, 2020 (Restated)				
	Royalty	Industrial	Merchant Banking	All Other	Total
Revenue from external customers	$ 11,679	$ 8,508	$ 5,472	$ -	$ 25,659
Intersegment sale	-	26	859	-	885
Interest expense	-	64	919	17	1,000
Income (loss) before income taxes	7,913	(1,205)	(241)	(4,066)	2,401

Note 5. Shareholders' Equity

Capital Stock

During the six months ended June 30, 2021, the movement of capital stock was as follows:

	Number of Shares	Capital Stock at Par Value	Additional Paid-in Capital	Total Capital Stock
Balance, beginning of the period	12,620,448	$ 16	$ 312,471	$ 312,487
Stock dividends*	1,135,729	1	(1)	-
Balance, end of the period	13,756,177	$ 17	$ 312,470	$ 312,487

* A 9% stock dividend was distributed on May 31, 2021, to shareholders of record as at May 14, 2021.

Treasury Stock

	June 30, 2021	December 31, 2020
Total number of common shares held as treasury stock	71,555*	65,647
Total carrying amount of treasury stock	$ 2,643	$ 2,643

* 5,908 common shares were received as stock dividends during the six months ended June 30, 2021.

All of the Company's treasury stock is held by the Company itself.

Stock Options

The following table is a summary of the changes in stock options granted under the 2017 Equity Incentive Plan (the "2017 Plan") during six months ended June 30, 2021:

	Number of options	Weighted average exercise price per share (US$)
Outstanding as at December 31, 2020	426,000	8.76
Forfeited	(32,500)	8.76
Adjustment for stock dividends	35,415	Not applicable

Outstanding as at June 30, 2021	428,915	8.04
As at June 30, 2021:		
Options exercisable	428,915	8.04

Data in this Note 5 have not reflected the stock dividends paid in November 2021 (see Note 10).

SCULLY ROYALTY LTD.

SELECTED EXPLANATORY NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
JUNE 30, 2021
(Unaudited)

Note 6. Consolidated Statements of Operations

Revenue

The Group's revenue comprised:

Six months ended June 30:	**2021**	**2020 (Restated)**
Merchant banking products and services	$ 41,665	$ 19,306
Interest	314	255
Gain on securities, net	-	1,832
Dividend income	205	-
Other, including medical and real estate sectors	4,582	4,266
Revenue	$ 46,766	$ 25,659

During the six months ended June 30, 2021, royalty revenue (which is included in the merchant banking products and services) from an iron mine operator represented approximately 68% of total revenue (2020: 44%).

Expenses

The Group's costs of sales and services comprised:

Six months ended June 30:	**2021**	**2020 (Restated)**
Merchant banking products and services	$ 12,945	$ 11,564
Reversal of credit losses	(4)	(3,102)
Loss on derivative contracts, net	3,461	-
Gain on disposition of a subsidiary	-	(88)
Fair value loss on a loan payable measured at FVTPL	1,177	227
Other	3,390	2,289
Total costs of sales and services	$ 20,969	$ 10,890

Note 7. Earnings (loss) Per Share

Earnings (loss) per share data for the six months ended June 30, 2021 and 2020 are summarized as follows:

	2021	**2020**
Basic income (loss) attributable to holders of common shares	$ 9,758	$ (1,068)
Effect of dilutive securities:	-	-
Diluted income (loss)	$ 9,758	$ (1,068)

	2021	**2020**
Weighted average number of common shares outstanding — basic	14,779,302*	14,779,302**
Effect of dilutive securities:		
Options	139,639	-
Weighted average number of common shares outstanding — diluted	14,918,941	14,779,302

* The numbers for the six months ended June 30, 2021 were adjusted for the stock dividends issued in November 2021.
**The numbers for the six months ended June 30, 2020 were adjusted for the stock dividends issued in May and November 2021.

Note 8. Related Party Transactions

In the normal course of operations, the Group enters into transactions with related parties, which include affiliates in which the Group has a significant equity interest (10% or more) or has the ability to influence their operating and financing policies through significant shareholding, representation on the board of directors, corporate charter and/or bylaws. The related parties also include, among other things, the Company's directors, Chairman, President, Chief Executive Officer and Chief Financial Officer. This section does not include disclosure, if any, respecting open market transactions, whereby a related party acts as an investor of the Company's securities or the bonds of Merkanti Holding plc.

SCULLY ROYALTY LTD.

SELECTED EXPLANATORY NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
JUNE 30, 2021
(Unaudited)

Note 8. Related Party Transactions (continued)

The Group had the following transactions with its related parties:

Six months ended June 30:	**2021**	**2020**
Fee income	$ -	$ 9
Dividends income	198	-
Interest income	46	75
Royalty expenses	(369)	(323)
Fee expenses	-	(2)
ECL allowance	-	(8)
Recovery (reimbursements) of expenses, primarily including employee benefits and lease and office expenses	78	(514)

From time to time the Group has entered into arrangements with a company controlled by the Group's Chairman to assist the Group to comply with various local regulations and requirements, including the newly introduced economic substance legislation for offshore jurisdictions, as well as fiscal efficiency. These arrangements are utilized to aid in the divestment of financially or otherwise distressed or insolvent assets or businesses that are determined to be unsuitable for the Group's ongoing operations. These arrangements are implemented at cost and no economic benefit is received by, or accrued, by the Group's Chairman or the company controlled by him. Pursuant to this arrangement, as at June 30, 2021, the Group held: (i) an indemnification asset of $6,739 relating to a secured indemnity provided by such company to a subsidiary of the Group to comply with local regulations and requirements, in an amount equal to the amount advanced to it, for certain short-term intercompany balances involving certain of the Group's subsidiaries and another subsidiary that was put into dissolution by the Group in 2019; (ii) a loan to such company of $804, bearing interest at 6.3%, which was made in the year ended December 31, 2019 in order to facilitate the acquisition of securities for the Group's benefit; and (iii) current account receivables of $34,505. The Group also had current account payables of $26 due to the aforesaid affiliate as at June 30, 2021.

In addition, pursuant to this arrangement, during the six months ended June 30, 2021 and 2020, respectively, the Group recovered and reimbursed such company $78 and $514 (as set forth in the table above), respectively, at cost for expenses, primarily consisting of employee benefits and lease and office expenses.

As set forth in the table above, the Group had royalty expenses of $369 and $323, respectively, during the six months ended June 30, 2021 and 2020 that were paid to a company in which it holds a minority interest and that is a subsidiary of the operator of the underlying mine.

SCULLY ROYALTY LTD.

SELECTED EXPLANATORY NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
JUNE 30, 2021
(Unaudited)

Note 9. Changes in Contingent Liabilities or Contingent Assets Since the End of the Last Annual Reporting Period

Litigation

The Group is subject to routine litigation incidental to its business and is named from time to time as a defendant and is a plaintiff from time to time in various legal actions arising in connection with its activities, certain of which may include large claims for punitive damages. Further, due to the size, complexity and nature of the Group's operations, various legal and tax matters are outstanding from time to time, including periodic audit by various tax authorities.

One of the Group's subsidiaries formerly disputed certain assessments by the relevant tax authorities related to expatriate staff payroll tax, and the Group has appealed these matters locally. As at December 31, 2020, the total amount of the assessments is $3,486 of which $1,247 has been paid in dispute. The amount that has been paid has been written off due to management's expectations of probability of recovery. In late 2020, the relevant government passed legislation which provided for the waiver of interest and penalties on unpaid principal as a Covid-19 relief measure. As a result of this new legislation, the subsidiary began discussions with the relevant tax authorities and in August 2021, the subsidiary entered an agreement whereby the disputes will be settled for $538, being the entire remaining amount of the principal owing (with all interest and penalties waived). As a result, a liability of $538 was recognized as at June 30, 2021.

The Company and certain subsidiaries have been named as defendants in a legal action relating to an alleged guarantee of the former parent of the Group in the amount of approximately $68,363 (€43,800) as at December 31, 2020. The Group believes that such claim is without merit and intends to vigorously defend such claim. In the second half of 2021, the Group was informed of a proposed amendment to the claim which, if allowed, would increase the amount to approximately $133,754 (€90,995) as at June 30, 2021. Currently, based upon the information available to management, management does not believe that there will be a material adverse effect on the Group's financial position or results of operations as a result of this action. However, due to the inherent uncertainty of litigation, the Company cannot provide certainty as to the outcome.

Currently, based upon information available, management does not believe any such matters would have a material adverse effect upon the Group's financial position or results of operations as at June 30, 2021. However, due to the inherent uncertainty of litigation, there cannot be certainty as to the eventual outcome of any case. If management's current assessments are incorrect or if management is unable to resolve any of these matters favourably, there may be a material adverse impact on the Group's financial position, cash flows or results of operations.

Note 10. Subsequent Events

The 2017 Plan

In April 2021, the Company's Board of Directors authorized an amendment to the 2017 Plan to: (i) increase the number of common shares of the Company available for Awards (as defined in the 2017 Plan) thereunder by 1,326,591 common shares from 575,403 to 1,901,994 common shares; and (ii) increase the annual limitations on grants of Awards to Covered Employees (as defined in the 2017 Plan) to 400,000 common shares of the Company in any fiscal year (425,000 common shares during the fiscal year when such participant's employment commences). The Company's shareholders will be asked to approve these amendments at the Company's annual meeting in December 2021. The Company's Compensation Committee and Board of Directors also approved grants of stock options entitling the holders thereof to acquire up to 1,307,000 common shares of the Company, which options will have a term of 10 years, be granted effective on the second business day after the date of the Company's 2020 Annual Report on Form 20-F and have an exercise price equal to the closing price of the Company's common shares on such date (which is US$13.15 per common share). Vesting of these Awards is subject to ratification of the amendments to the 2017 Plan at the next annual meeting of the Company's shareholders scheduled for December 29, 2021.

All common share/option numbers and exercise price in this sub-section have not been adjusted for adjustments for stock dividends issued in 2021.

SCULLY ROYALTY LTD.

SELECTED EXPLANATORY NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
JUNE 30, 2021
(Unaudited)

Note 10. Subsequent Events (continued)

Stock Dividend

On April 30, 2021, the Company announced, among other things, an 8% stock dividend which was distributed on November 30, 2021, to shareholders of record as at November 15, 2021. No fractional shares were issued by the Company in connection with such stock dividends.

Note 11. Approval of Consolidated Financial Statements

This interim financial report was approved by the Board of Directors and authorized for issue on December 28, 2021.

NEWS RELEASE

Scully Royalty Ltd.
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SCULLY ROYALTY LTD. PUBLISHES RESULTS FOR THE SIX MONTHS ENDED JUNE 30, 2021

HONG KONG (December 29, 2021) . . . Scully Royalty Ltd. (the "Company") (NYSE: SRL) announces it has published its half-year report, including its results for the six months ended June 30, 2021 and other updates, a copy of which has been furnished on Form 6-K to the United States Securities and Exchange Commission (the "Half-Year Report").

Stakeholders are encouraged to read the Company's entire Half-Year Report for a greater understanding of the Company's business and operations.

A copy of the Half-Year Report is available through the Company's website at www.scullyroyalty.com and is available under the Company's profile on EDGAR at www.sec.gov. Shareholders may request a hard copy of the Half-Year free of charge, by contacting our investor relations firm at info@scullyrolty.com.

All stakeholders who have questions regarding the information in the Half-Year Report may call book a conference call with the Company's senior management by emailing the Company at info@scullyroyalty.com.

SIGNATURES

Pursuant to the requirements of the *Securities Exchange Act of 1934*, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

SCULLY ROYALTY LTD.

By: */s/ Samuel Morrow*
Samuel Morrow
Chief Executive Officer and Chief Financial Officer

Date: December 29, 2021

GLOBAL AGINVESTING

January 26, 2016

Cargill Launches Proterra Investment Partners Under Planned Three-Way Split of Black River

January 26, 2016

Cargill's Black River Asset Management announced it has spun off Proterra Investment Partners – a new private equity firm formed as part of its three-way split announced last September. The firm, which will be led by managing partner, Rich Gammill, will have more than $2.1 billion in assets under management, with a focus on foods, agriculture, and metals and mining in developing countries.

Before being launched, Proterra managed Black River's private equity business and related funds. "The Proterra team is excited to manage our private equity investments as an independent firm on behalf of our investors," said Gammill in a company statement. "Our team has worked together to serve clients for nearly a decade, identifying global private equity investment opportunities in the important sectors of agriculture, food, and metals and mining. We look forward to maintaining the relationship we have developed with Cargill over many years."

On September 28, 2015 Cargill announced it was splitting Black River into three companies under a planned restructure aimed at making Cargill lighter on its feet and more able to quickly respond to a fluctuating commodities market. Of the three planned companies, Proterra is the largest with 49 employees and offices in London, Shanghai, Sydney, Singapore, New Delhi, Sao Paulo, and Buenos Aires, according to Reuters, and investments spanning Asia, Australia, sub-Saharan Africa, and South America according to Ned Dau, chief marketing officer and head of investor relations for Proterra.

In an interview with Reuters, Dau declined to discuss the fund's investment strategy, but did note that investments included farmland development and management, food processing and production, and shipping infrastructure.

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Cargill to wind down $7bn hedge fund arm

Agricultural trading house grapples with tough market conditions

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Gregory Meyer in New York SEPTEMBER 28 2015

Cargill plans to part ways with most of its hedge fund business as it grapples with tough conditions in markets and flagging investor interest.

The world's biggest agricultural trading house said on Monday that it would spin off to employees three fund businesses in its Black River Asset Management division, while two remaining funds that trade agriculture and energy will be folded into Cargill. Black River had $7.4bn under management as of June.

The moves come as Cargill works to improve returns amid volatile commodity markets and weakness in the emerging economies where it is both a supplier and big buyer. This year the US-based company reported its first quarterly loss since 2001, and chief executive David MacLennan has said Cargill's results have not met expectations.

In July, Black River shut down four other hedge funds due to what it called "limited investor demand".

Part of Black River's appeal was that it was housed inside Cargill, whose international network of traders was reputed to enjoy a unique advantage on markets.

A pension fund consultant recommending an investment in Black River's Global Agriculture Absolute Return Fund, or Gaarf, wrote in 2012: "As a result of Cargill's position as a dominant player in the global agriculture market, this fund seeks to take advantage of the fundamental market insights and replicate the firm's proprietary positioning in the futures and listed options markets. Markets traded included wheat, corn, soy and soy products, and oilseeds."

But performance has been "challenging" for Cargill's commodities strategies, a person familiar with the matter said. Only one investor remains in the Gaarf fund.

Both Gaarf and the more recently launched Cargill Energy, Transportation & Metals (ETM) fund will be moved to Cargill Risk Management, an in-house division that deals derivatives to commodity producers and institutional investors.

Black River was formed in 2003 and had employees in 13 countries, according to its website. The firm's payroll of 205 has been shrinking since the July fund closures.

The three businesses to be spun off as individual companies are Black River's flagship $2.2bn fixed income relative value fund led by chief investment officer Jeff Drobny; an emerging markets credit business; and a private equity business managing three funds focusing on food, agricultural land and metals and mining, Black River said.

After months of review, the board and the management team of Black River decided "that an independent, employee-owned firm would best serve investors including Cargill", a company spokeswoman said.

Cargill also owns a separate investment business called CarVal, based in suburban Minneapolis like Black River. It was unaffected by the changes at Black River, the Cargill spokeswoman said.

Proterra Investment Partners launches and will manage Black River Private Equity Funds

Newly independent private equity fund manager focused on natural resources investment strategies

NEWS PROVIDED BY
Proterra Investment Partners →
25 Jan, 2016, 08:30 ET

MINNEAPOLIS, Jan. 25, 2016 /PRNewswire/ -- Proterra Investment Partners announced today its launch as a standalone, natural resources-focused investment advisor and private equity fund manager effective January 1, 2016. Prior to its launch, the Proterra team managed the Black River private equity business and related funds of Black River Asset Management, an independently-managed Cargill, Inc. subsidiary.

The Proterra team, having launched its first funds in 2010 under Black River, currently manages more than US $2.1 billion in committed capital. Proterra retained all related funds' limited partners and fund commitments following their exit from Black River. Cargill will continue to be an investor in the funds. The firm's investment strategies focus on agriculture (US $782 million in three funds), food (US $1.2 billion in three funds) and metals and mining (US $165 million in one fund).

"The Proterra team is excited to manage our private equity investments as an independent firm on behalf of our investors," said Rich Gammill, Proterra's Managing Partner. "Our team has worked together to serve clients for nearly a decade, identifying global private equity investment opportunities in the important sectors of agriculture, food, and metals and mining. We look forward to maintaining the relationship we have developed with Cargill over many years."

On September 28, 2015, Cargill and Black River announced that three Black River businesses, including the private equity business which is now Proterra, were pursuing plans to spin off into three independent firms. The Black River board stated that a transition to employee ownership would position each business to best serve investors. Proterra is now employee-owned, with a team of 49 professionals in Minneapolis, London, Shanghai, Sydney, Singapore, New Delhi, Sao Paulo and Buenos Aires.

About Proterra Investment Partners
Proterra Investment Partners is an alternative investment manager focused on private equity investments in the natural resource sectors of agriculture, food, and metals and mining. Proterra has offices in Minneapolis, London, Shanghai, Sydney, Singapore and New Delhi.
www.proterrapartners.com

About Black River Asset Management
Black River Asset Management is an asset management firm specializing in alternative investment strategies. Formed in 2003, the Firm is an independently managed subsidiary of Cargill.

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BUSINESS

Phaseout of Cargill's Black River Asset Management completed

The new Garda Capital Partners will take over fixed income hedge fund business.

By Mike Hughlett (https://www.startribune.com/mike-hughlett/6370445/) Star Tribune

JANUARY 29, 2016 — 8:01PM

The phaseout of Cargill's Black River Asset Management has been completed with the unveiling Friday of Garda Capital Partners, an independent Minneapolis-based company that will manage about $2 billion.

Garda was formed from a management buyout of Black River's fixed income hedge-fund business, which caters to institutional investors. Cargill announced in September it would wind down Hopkins-based Black River, spinning out three independent companies to be run by their managers.

Some remaining Black River assets will remain under Cargill's financial wing, but otherwise the 12-year-old money manager — which had more than $7 billion in assets — is history.

"Cargill has been a terrific owner, investor and employer over the last two decades," Jeff Drobny, Garda's managing partner, said in a press statement. "But the time came to transition the business to an owner that will be a more natural parent for the future."

Garda will run two hedge funds, including Black River's oldest and largest fund, which focuses on government bonds. Cargill will remain an investor in that larger fund, and Garda said it has retained all of Black River's former investors. Garda also retained more than 40 Black River employees, including its entire relative value fixed-income investment team.

In addition to its headquarters in downtown's Wells Fargo Center, Garda has an office in Geneva, Switzerland.

The other companies to emerge from Black River are Minneapolis-based Proterra Investment Partners and New York-based Argentem Creek Partners.

Proterra, which was Black River's private equity arm, manages $2.1 billion and focuses on food and agriculture-related investments. Argentem manages $500 million and specializes in emerging market debt.

Cargill has retained investments in funds managed by both Proterra and Argentem.

Cargill's decision to unwind Black River came two months after the money manager announced it would close four hedge funds and pay out investors around $1 billion.

They were among several hedge funds that closed last year due to declining investor demand, particularly for commodity-based funds.

The Garda buyout was led by Drobny and two other former Black River senior executives, Tim Magnusson and Rob Goedken.

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Mike Hughlett covers energy and other topics for the Star Tribune, where he has worked since 2010. Before that he was a reporter at newspapers in Chicago, St. Paul, New Orleans and Duluth.

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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.

CROSS-EXAMINATION OF DAVID PERSAMPIERI
On Affidavit Sworn March 18, 2024
Held via Arbitration Place Virtual
on Friday, April 5, 2024, at 1:03 p.m.

APPEARANCES:

Alexander Rose RJ Reid	Counsel for the Applicant, Tacora Resources Inc.
Colm St. Roch Seviour Josh Merrigan	Counsel for 1128349 BC Ltd.
Kiyan Jamal	Counsel for the Monitor

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LIST OF EXHIBITS

Arbitration Place Virtual
--- Upon commencing Friday, April 5, 2024 at
1:03 p.m.
AFFIRMED: DAVID PERSAMPIERI
CROSS-EXAMINATION BY MR. ROSE:
1 Q. Good afternoon, Mr. Persampieri. My name is Alex Rose, and I am a lawyer with Stikeman Elliott. Stikeman Elliott is counsel to Tacora. And I am joined by RJ Reid, whose name you can see on the screen. He is also with Stikeman Elliott.
I am going to be the one conducting the cross-examination, and so I am going to ask you a number of questions today. If you don't hear the question clearly or you don't understand what I am asking, which is entirely possible, please just ask me to clarify and I will do better.
We are conducting this examination by video conference, and so can I ask you to just state for the record where you are physically located right now.
A. Sure. I am physically located in Newton, Massachusetts, just outside of Boston.

2 Q. Okay. Is there anyone in the office with you there in Newton?

A. No, there is not.

3 Q. And do you have any screens or iPhones or personal devices other than the one you are using for this teleconference?

A. I have an iPhone, but it is on mute.

4 Q. Okay. That is fine. I just wanted to clarify, just as a matter of local practice, that during the course of the cross-examination you shouldn't send or receive any e-mails, texts or other messages. Okay?

A. Understood.

5 Q. And as I mentioned this morning, this isn't an endurance contest. If you need a break at any point, please just let me know and we can go off the record and we can take a few minutes. Just raise your hand and say so.

And, because your counsel is not in the room with you -- I can see them there on the screen. If they have an issue with a question that I am asking, they will raise their hand and I will stop and allow them to speak. So if you could just take a moment, keep an eye on them and make sure that they are not objecting before you start talking, that would be great. I would appreciate that.

A. I will do my best. That is somewhat challenging.

6 Q. All right. So I will be referencing your report. And just for the purposes of this proceeding, that report can be found at tab 3 of the responding motion record, on page 1356. The report is dated January 4, 2024 and was sworn in the context of an arbitration, as I understand it, between a numbered company and Tacora Resources. I am sorry, I shouldn't say the report was sworn. The report was prepared in that context.

And then as I understand it, you swore an affidavit on March 18, 2024 to which your report is attached. Is that correct, Mr. Persampieri?

A. I believe so. Yes.

7 Q. Okay. Thanks. So this is a cross-examination on the affidavit and the report attached to it.

A. Mm-hmm.

8 Q. And I understand that you

have that report available to you now, in front of you?

A. I do.

9 Q. That report was prepared before any of the evidence was submitted on this motion. Correct?

A. I am not sure of the timing of when evidence was submitted on the motion.

10 Q. Okay.

A. So I am not sure how to answer that question.

11 Q. All right. Well, are you aware that affidavits were sworn in relation to this motion by Samuel Morrow and Joe Broking?

A. I am aware of Joe Broking's; I wasn't aware of Sam Morrow's.

12 Q. Okay. Mr. Morrow is a director of a numbered company beginning 112, and he is the chief executive officer of Scully Royalty. Do you know who he is?

A. Yes, I do.

13 Q. Okay. But you have not reviewed his affidavit?

A. That is correct. I have

not seen his affidavit, nor have I reviewed it.

14 Q. Mr. Broking, he is the chief executive officer of Tacora Resources. He swore two affidavits on this motion. Have you seen both of those affidavits?

A. No. I believe the only one I have seen is the one dated March 28, 2024.

15 Q. All right. So, for the purposes of our proceeding, you have seen what is the second of two affidavits, March 28, 2024. All right. Okay. Thank you.

So, Mr. Persampieri, one of the documents at issue in this proceeding is the amendment and restatement of consolidation of mining leases, which I will refer to as the Tacora lease. Are you familiar with that document?

A. Yes, I am.

16 Q. For our purposes, it can be found at tab E of the responding motion record at page 81. Now, paragraph 1 of the lease requires the payment of earned royalties every quarter. Is that right?

A. I don't have the document in front of me. Sorry.

17 Q. That is all fair. It is

not a memory test, either. Are you aware that the lease requires the payment of earned royalties every quarter?

A. Yes, I am.

18 Q. Okay. Now I understand, of course -- I heard what you said, that you haven't seen Mr. Morrow's affidavit. Mr. Morrow's affidavit states that an audit was performed by 112 under that lease in 2021. Did you know that?

A. I don't know. I think I may have heard something to that effect at some point in this process.

19 Q. Okay. It was an audit of the earned royalties paid under the lease. Does that help?

A. I mean, I --

20 Q. You don't know?

A. Again, I think in one of the early conversations there was a discussion that there had been an audit performed on the royalty payments. But that is the extent of my knowledge of that.

21 Q. Okay. I understand that that audit assessed whether the earned royalty payments were properly calculated. But you don't

recall that, I assume?

A. I didn't -- I don't think I knew/have any specific knowledge of what the specifics of the audit was.

22 Q. And so you weren't aware that the auditor concluded that there was no issue with the way that the royalty was being calculated by Tacora?

A. No, I am not aware of that.

23 Q. And you may have spoken to this, you said briefly, with someone from, well, the Claimant from 112, about that.

But you never spoke with the auditor?

A. That is correct.

24 Q. And you were never provided with a copy of the audit report?

A. That is correct.

25 Q. And I take it you were not advised of its conclusions?

A. That is also correct.

26 Q. You have previously served as an expert witness, I think, on a number of occasions. Isn't that right?

A. Correct. Yes.

27 Q. And in ordinary course, serving as an expert witness, you would review prior reports that deal with the same issue as you are being asked to deal with?

A. To the extent that I am aware of them and they are perceived to be relevant to what I had been asked to provide testimony on, yes.

28 Q. But that would be a function of whether they are given to you or not, I assume?

A. Whether I was aware of their existence and whether they were provided to me. Yes.

29 Q. Right. I note that your report lists documents that you relied upon. That is the title of appendix B.

A. Yes.

30 Q. Have you reviewed any documents that you did not rely upon?

A. I don't think in this specific matter. Obviously, in my work in the iron ore industry, I review documents relating to the iron ore industry and markets and pricing and seaborne trade, on a regular basis. And those obviously form my overall knowledge base. But they are not specific documents that I relied upon for this particular matter.

31 Q. Okay. That is helpful. As we go through, I will ask you whether you were provided with certain documents from time to time. But I am going to assume, apart from your general knowledge, that the documents you were given in the context of this proceeding are listed on appendix B?

A. Yes.

32 Q. Okay. One other piece of information that I wanted to clarify that you appear to have relied on is the alternate royalty calculations prepared by Tacora. Those are referenced at paragraphs 36 and 39 of your report.

Do you recall referencing those alternate royalty calculations prepared by Tacora?

A. I believe so. Are these the royalty -- what are they called? -- the royalty reports or royalty letters or royalty statements, I guess they were?

33 Q. Well, no. These are --

so for our purposes on this end, the report of Mr. Persampieri, his opinion, can be found at tab 3A of the responding motion record. And in paragraphs 36 and 39, I reference alternate royalty calculations; it is the last sentence of paragraph 36.

A. Uh-huh.

34 Q. And I think, Mr. Persampieri, that what you are doing is you are saying that you take some comfort in the fact that your calculations or assumptions seem to align with estimates used by Tacora in preparing these alternate royalty calculations?

A. Okay. Now I know what you talking about.

35 Q. Yes.

A. Yes.

36 Q. Okay. Okay. So I am right that you were not involved in the preparation of those alternate royalty calculations?

A. I was not.

37 Q. Okay. And you did not give instructions that led to their being prepared?

A. Not at all, no.
38 Q. Okay. You haven't spoken with a woman named Hope Wilson from Tacora, have you?
A. I have not.
39 Q. Okay. And you haven't spoken with anyone from Tacora about the preparation of those alternate royalty calculations, have you?
A. I have not.
40 Q. Those alternate royalty calculations were given to you by 112, the Claimant?
A. Yes, I believe so.
41 Q. It gets a little complicated; I say "Claimant." They are --
A. Well, they either came from 112, to someone at the Claimant or they came from them via counsel.
42 Q. Okay.
A. And I don't remember which one.
43 Q. Okay. But you didn't discuss with anyone from Tacora why those calculations were being prepared, did you?

A. I did not.

44 Q. So everything that you know about those alternate royalty calculations comes from 112 or its counsel. Is that fair?

A. Yes, that is correct.

45 Q. And did you review the correspondence between 112 and Tacora relating to the preparation of those calculations?

A. I think I was -- I had -- was given copies of the e-mails between. I believe it was Sam Morrow and Hope Wilson regarding this spreadsheet.

46 Q. Correct. Those are the ones that I am talking about. So were you aware that those alternate royalty calculations were not intended by Tacora to be definitive? Were you aware of that?

A. I am not sure what you mean by "definitive."

47 Q. Well, they were not intended to be an admission or a final statement of Tacora's position, or even anything more than a back-of-the-envelope calculation for a different purpose. Were you aware of any of that?

A. I believe, if I recall

correctly, that I am aware that they did not consider those to be any sort admission or were using that as a formal calculation of royalties owed.

48 Q. Right. So Ms. Wilson was asked to populate a table prepared by 112, did so, from one evening to the next morning, and was asked to do it as apparently an exercise to determine if it made a difference such that the parties could avoid some of the big swings in mark to market on a quarterly basis from in-transit iron ore.

Did you know that that is what she was asked to do?

A. I don't recall that.

49 Q. And so you would agree that the context in which Tacora prepared the alternate royalty calculations is important?

A. Well, it could be important.

50 Q. If you are relying on them for comfort for your assumptions, it would be helpful to know whether Tacora had given them considered thought or they were back-of-the-envelope calculations, for example.

Is that right?

A. Well, I think -- I don't think I was necessarily relying on them for comfort. I think in my report, and again, but from memory here, I simply said that my calculations were not altogether different from the ones provided by Tacora. But my calculations were done independently and, as a back-check, I looked at, you know, one of the things that is always good practice when doing these calculations is you check for reasonableness.

And one of the checks for reasonableness was somebody else who had been asked to calculate, sort of, the market price came up with a very similar number to mine.

51 Q. So another person who may have served as a useful back-check would have been the auditor who was asked to review those royalty calculations? That would have been another good back-check, I would assume?

A. I didn't have access to the auditors, before.

52 Q. All right. So, at paragraph 3 of your report, you say that you are:

"...fully independent of

the parties to the
arbitration, their
counsel and the members
of the Tribunal."
Do you recall saying that?
A. Yes.
53 Q. Okay. So you have never acted for the numbered company, 112?
A. No. In fact, the only interactions I have had was with a predecessor company when I was actually an expert opposed to them.
54 Q. Okay. Who did you act for in that circumstance?
A. That was back in, I believe it would have been 2008. I was working for -- I had been retained by counsel for Cleveland-Cliffs who, at the time was the operator of the Scully Mine, the Wabush Mine --
55 Q. Right.
A. ...in operation at the time. And it was a royalty dispute with the predecessor to the numbered company over the appropriate price to use to calculate the royalty.
56 Q. So there was a dispute

over the calculation of royalty, of the royalties involving the parent -- the then-parent company of the predecessor to 112?

A. No. It would have -- I was working for Cliffs --

57 Q. That's right.

A. ...who would have been the predecessor to Tacora.

58 Q. Yeah, yeah.

A. And it was -- I don't know the exact entity, but I believe it was a different name at the time, but I think it was one of the predecessor companies to 112.

59 Q. Okay. Okay. So then that was a dispute in 2008. Are you aware of any other disputes involving 112 or its predecessors over the royalty payments?

A. I don't think so.

60 Q. Okay. So you weren't aware that they had a dispute in 2017 or 2018, or the audit in 2021 --

A. Again, I --

61 Q. You weren't involved in any of those?

A. I wasn't involved in any

of those. I may have been aware of the audit, for example, but I was not involved. And I don't think I was aware of any of the other royalty disputes, either.

62 Q. So you were only involved in one, in 2008?

A. Correct.

63 Q. Okay. And so I take it from what you have just told me, that you haven't acted for Scully Royalties, previously?

A. That is correct.

64 Q. All right. And you have never acted for or against Tacora?

A. That is correct.

65 Q. You have never acted for or against Proterra? Are you familiar with Proterra?

A. No, I don't think I am, but I don't think I have ever --

66 Q. Okay. Proterra Investment Partners is a private equity fund manager. But, as far as you can recall, you haven't dealt with them?

A. To the best of my knowledge, I have not been involved in anything with them unless they were, you know -- and it was something where they were behind the scenes that I didn't know about.

67 Q. I understand. Yes. What about Cargill? Have you ever acted for or against Cargill or one of its affiliates?

A. Not to my -- the best of my recollection.

68 Q. And I appreciate that Cargill is a many-headed hydra, a large conglomerate. To the best of your ability or the best of your knowledge, you haven't acted for or against them?

A. Yeah. I don't think so.

69 Q. Okay.

A. I am pretty sure I have not.

70 Q. Okay. So I assume that you have never been involved in a proceeding involving a Cargill contract. Is that fair?

A. I think I --

71 Q. And when I say "involving a Cargill", what I really mean is where the substance of the dispute was the Cargill contract?

A. Right. And again, I --

to the best of my recollection, I don't believe I have.

72 Q. Okay. And you have never assisted Cargill in negotiating one of its agreements?

A. No, I have not.

73 Q. And you have never assisted a party negotiating an agreement where Cargill was on the other side?

A. I don't think so.

74 Q. All right. I am going to refer to the iron ore sale and purchase contract between Tacora and Cargill International Trading. It is the fourth document that is listed in appendix B of your report. For our purposes, that is at tab 2K of the motion record, page 286.

And that is a mouthful, so I am going to refer to it as the Offtake Agreement. Is that a fair characterization?

A. That is fair enough. That is how I would refer to it, as well.

75 Q. Okay. You had not seen that Offtake Agreement before it was provided to you for the purpose of preparing your report. Is that correct?

A. That is correct.

76 Q. Did you review the Offtake Agreement for the purposes of preparing your report?

A. I did.

77 Q. And in preparing the report, did you look at other agreements that Cargill has entered into with other parties?

A. I did not.

78 Q. The Offtake Agreement includes a definition of purchase price at section 11.1 which is in the motion record, tab 2K, page 294. And I am going to speak in generalities, but if you want to see that provision, please let me know and Mr. Reid will pull it up.

Are you familiar with that purchase price provision in the Offtake Agreement?

A. Yes, I am.

79 Q. Okay. And as I understand it, being a layman, the purchase price under that Offtake Agreement is roughly speaking Platts 62 minus the freight cost plus a share of the profit over Platts 62 or, as they put it in their formula, PI minus FC plus PS, purchase index minus freight cost plus profit share.

In very general terms, is that a fair overview of the purchase price under the Offtake Agreement?

A. It is a relatively complicated pricing clause, if you will. I believe there should be an iron content -- I think there is an iron content adjustment in there, as well. But again, that is from memory because I don't have it in front of me.

So if you could put up the --

80 Q. Yes.

A. ...actual clause, I can probably do a better job of answering your question.

81 Q. That would be great.

MR. ROSE: Mr. Reid, if you are there, would you mind putting that up? It is 2K of -- there we go.

THE WITNESS: Yeah.

MR. SEVIOUR: Just to be clear, counsel, and not to interrupt, I want to be fair to the witness. I think in the witness's disclosure in his report, he discloses that he had reviewed and been provided with the November 9, 2018 Cargill Offtake Agreement. I believe that what we are looking at here is the 2017 Offtake Agreement, if I am not mistaken?

MR. ROSE: This is a restatement, as at 2018.

MR. SEVIOUR: This is the restatement --

MR. ROSE: Yeah.

MR. SEVIOUR: ...at November 9, 2018? That is the one that is recited by Mr. Persampieri in his report. I am sorry for the interruption, then.

MR. ROSE: No, no, I appreciate that. Thank you. And, Mr. Reid, if you go back to section 11.1, it is page 294 of the record. There you go.

82 Q. I am speaking in general terms, Mr. Persampieri --

A. Yes.

83 Q. ...only because I want to focus in on the profit sharing concept.

A. Okay, understood.

84 Q. Yes. Please have a look at it. I summarized it as --

A. Yes. Yes.

85 Q. ...in very general terms,

as PI less SC plus PS --

A. Yeah.

86 Q. ...the purchase index less freight cost plus this profit share. But you were indicating there may be an iron content adjustment in there somewhere?

A. Yeah. And it may be an 11.2 or an 11.3. But anyway, that seems approximately correct.

87 Q. Okay. No, thank you, that is probably the best I can do, "approximately correct." Okay, thank you.

So this, this pricing mechanism, a baseline index, in this case the Platts 62, plus a share of the profits that result from sales over that index, that concept, that profit sharing concept, that could exist in other Cargill offtake agreements, as well. Is that correct?

A. I don't see why it couldn't.

88 Q. Okay. And that kind of profit sharing mechanism could be included in offtake agreements entered into by Cargill with arm's-length parties. Correct?

A. Yes. I would think so.

89 Q. And profit sharing mechanisms like this one are not uncommon in long-term agreements between arm's-length parties. Is that fair?

A. I actually think from the one -- from the offtake agreements I have seen in the seaborne iron ore industry, which is the industry we are talking about, I think they are actually fairly unusual.

90 Q. Okay. But again, you haven't looked at other Cargill agreements. They may feature there, and they may be something that Cargill puts in their offtake agreements from time to time. Is that fair?

A. It is possible. And I haven't reviewed other Cargill agreements. I have seen many seaborne iron ore offtake agreements, and I believe this may be the only one I have seen with a profit sharing consideration in it.

91 Q. Let me ask you this: The fact that an offtake agreement includes a profit sharing component doesn't mean that it is not an arm's-length contract, does it?

A. Not necessarily.

92 Q. And, if I may, I will --

MR. ROSE: Mr. Reid, if you could go to the bundle of documents that we provided counsel last night, and bring up the one titled, "Global Arbitration Review"? Can you put that up on the screen?

You will have to excuse me for one second, here. Bear with me. I am sorry.

93 Q. I am looking at page 11 of 14 of that PDF. And this is a publication by the Global Arbitration Review for people in the legal business who follow arbitration disputes. And it is speaking about arbitration under long-term mining offtake contracts and royalty agreements.

And just for reference, I see -- in the second paragraph?

A. Actually, can you -- what is the -- can you go the title and authors of this report or this article? Okay.

94 Q. So page 11 of 14, we are looking at the first paragraph under, "Royalty and Profit Share Disputes."

A. Yeah. I see that.

95 Q. Yeah, nothing turns on

it; I am just trying to frame it in my own mind. You see the -- they are talking about the emergence of disputes, in the first paragraph. And it says:

> "Some offtake contracts may also include profit share elements in the pricing, i.e., whether a part of the price of the product paid to the mine is a share of the buyer's profit."

That is the kind of pricing mechanism we are seeing in the Cargill Offtake Agreement, is it not?

A. It appears to be. Yes.

96 Q. Right. So I think perhaps you were making a distinction between offtake contracts, generally, which are what is being referred to in this article, and maybe seaborne offtake agreements. Is that fair?

A. Well, I was referring more specifically to seaborne iron ore offtake agreements.

97 Q. Okay.

A. And again, I have seen quite a few of those. And I don't recall any other than this one having a profit sharing element to it.

98 Q. Okay. But they may appear in other offtake contracts as described in this article, under "Royalty and Profit Share Disputes"?

A. Yeah -- apparently so.

99 Q. Right. And again, as you said earlier, the existence of a profit sharing component doesn't necessarily indicate that the contract is not arm's length. Is that fair?

A. I think that is correct.

100 Q. If you could pull up the --

MR. ROSE: And we will mark that Global Arbitration Review article as Exhibit A.

EXHIBIT NO. A: Global Arbitration Review article entitled "Royalty and Profit Share Disputes."

MR. ROSE: If you wouldn't

mind, Mr. Reid, could you pull up the article titled, "Black Iron selects Cargill as Ukraine high-grade iron ore offtake purchaser"?

101 Q. Were you given a chance to look at this, Mr. Persampieri, in advance of today's examination?

A. I don't think so.

102 Q. Okay.

A. I mean, I was not -- let's put it this way: If I have seen this, it wasn't specific to this particular matter.

103 Q. Okay. This is an article dated May 10, 2021 talking about apparently a proposal for an offtake arrangement between Black Iron and Cargill?

A. Yeah.

104 Q. And if you take a moment to just look through that, particularly the first couple of paragraphs, you will see the nature of the proposal being described in that article.

A. Okay.

105 Q. Okay.

MR. ROSE: And I would like to mark this article as Exhibit B.

EXHIBIT NO. B:

Article entitled, "Black Iron selects Cargill as Ukraine high-grade iron ore offtake purchaser."

MR. ROSE:

106 Q. Here, of course, the benchmark being employed is different. I believe they are using Platts 65. But they feature a profit sharing component, or there is a discussion of a profit sharing component.

A. Yes.

107 Q. Do you see that in the second paragraph?

A. I do.

108 Q. And so you would agree that Cargill employs profit sharing components in other contexts, or appears to?

A. Well, I think we have to put -- that appears to be a true statement. But I think it is also important that this is in addition to an offtake agreement, they are negotiating an investment. Right? They are providing $75 million of financing in conjunction with the Offtake Agreement and the rest of it.

So, you know, again, this is

not -- in my opinion, we would have to look carefully to determine whether, you know, to what extent the investment that was concurrent with the agreement changed the nature of the relationship between the parties.

109 Q. Right. I understand, I understand. I think I am just trying to make simpler point, which is --

A. Okay.

110 Q. ...Cargill may use profit sharing components in other contexts, not just in the Tacora agreement?

A. Yes, that appears to be the case.

111 Q. Yes. And there is an indication in this article of the belief that the profit sharing component can align the parties' interests. Would you agree that it is possible for a profit sharing component to align the interests of both parties?

A. I think that is often the stated intent --

112 Q. Okay.

A. ...of a profit sharing agreement. Yes.

113 Q. All right. So, as I mentioned earlier, the inclusion of a profit sharing mechanism in an offtake agreement doesn't necessarily mean it is non-arm's length. And you agreed with that?

A. Yes.

114 Q. To determine if it is arm's length or not, you would have to understand all of the facts and circumstances in which that agreement was entered in. Is that fair?

A. Yeah. I think again there is a certain -- you know, I am not a lawyer so I don't have the ability to make any kind of legal opinion on this. But certainly, if asked to understand whether an offtake agreement or a relationship between two parties was likely to be arm's length or non-arm's length, you would want to examine the nature of -- the complete nature of the relationship between the parties.

115 Q. Right. And so you would want to talk to somebody with knowledge of that relationship and knowledge of the circumstances in which that agreement was entered into. Fair?

A. You would need to understand the broader circumstances. Yes.

116 Q. All right.

MR. ROSE: You can take that down, Mr. Reid. Okay.

117 Q. So now, finally, I want to get to the portion of your report that you focused on.

A. Okay.

118 Q. That is this paragraph or subparagraph J(ii) of the Tacora lease. And for purposes of that, the first thing that I think you did was determine the amount per metric tonne. Is that fair? That is the first thing that you did? That is the subject of the formula at paragraph 30 of your report?

A. The amount per metric -- the market price per metric tonne?

119 Q. Oh, I am just going off the words of J(ii); that is amount per metric tonne.

A. Okay. I don't have J(ii) in front of me.

120 Q. Okay. Let's do it properly.

MR. ROSE: Mr. Reid, can you pull up the lease which is at tab E of the responding motion record, beginning at page 81?

121 Q. And again, it is not a memory test. If you scroll down to J(ii), there it is.

A. Mm-hmm.

122 Q. Yeah. It says:

"The amount per metric tonne, by reference to a standard industry publication."

A. Yes.

123 Q. So we can call it shorthand; we call it price. But it is the amount per metric tonne?

A. Yes.

124 Q. And you did that, you took a standard industry publication and you made adjustments for iron content and freight costs. And you did that I assume because you are in the portion of J(ii) which deals with an industry service. Is that right? You see how J(ii) --

A. Yes.

125 Q. ...is split into two halves? You are dealing with the industry service half. Is that fair?

A. Yes. I mean, essentially, right? - an industry service, but basically it is the second part of that. So there is not a -- you can't -- there is not a specific industry service that tells you what the value of this product is, FOB Sept-Îles.

So I basically took the industry -- the quoted prices, and used the industry standard approach to determine the value at a given port by making adjustments for iron and freight from the published price, which is for that product delivered to a port in China.

126 Q. Right. But I think you accepted for your report that a standard industry publication or a service containing prices or quotations was available; that is Platts 65. We are not in the other half, where no such service is available, and so we deal with mining industry practice.

I see that you used the defined term, "industry service" in your report?

A. Yes.

127 Q. Yeah. Okay. So we are in the first half of J(ii). Okay.

And as you just described it,

you took Platts 65 and you make adjustments for the level of iron and freight costs. And you are making those adjustments because you are trying to more accurately estimate the amount per metric tonne at which Tacora's iron would be sold in the market. Is that right?

A. More specifically, I guess, it would be the amount per metric tonne at which Tacora's iron concentrate would be sold, FOB the Port of Sept-Îles.

128 Q. Okay. Fair, that is fair. But what we are trying to -- you make those adjustments, because Platts 65 isn't perfect for this situation, and you are trying to more accurately estimate what something with this iron content, FOB that port, would be sold?

A. Correct.

129 Q. You are trying to more accurately measure or estimate the amount at which it would be sold for, FOB the port in Canada?

A. That is correct. And this is, you know, a common, albeit everyday set of calculations that are done in the iron ore industry because, you know, starting in 2010 as I stated in my report, the global seaborne price is fixed based on the value of a product delivered to China. And so adjustments need to be made for the specific product, its iron content in particular, as well as its location.

130 Q. Right. But big picture, what you are trying to do is accurately estimate the selling price, FOB a Canadian port?

A. Correct.

131 Q. All right. Okay. And so you use this formula at paragraph 30 of your report.

A. Correct.

132 Q. And so once you have calculated the amount per metric tonne, then you multiply by the tonnes shipped in the quarter. Is that correct?

A. Correct.

133 Q. Okay.

A. That is correct.

134 Q. And that gives you net revenue for purposes of the lease. Is that right?

A. Yes.

135 Q. Okay. So you didn't -- you took price times quantity, and you didn't deduct anything. You didn't net anything off to

arrive at net revenues. Is that correct?
A. Correct.
136 Q. And so you didn't deduct the defined term, "Deductible Expenses", or anything else?
A. No, I did not.
137 Q. You didn't deduct any cost of sales or anything like that?
A. No, I did not.
138 Q. Okay. So if we look at exhibit D of your report?
MR. ROSE: Mr. Reid, if you wouldn't mind, that is the responding motion record, tab 3, and then page 1392. Sorry tab 3A, page 1392.
THE WITNESS: Yeah.
MR. ROSE: Okay.
139 Q. I apologize for oversimplifying, but this seems to be the guts of it, in appendix D.
So I understand that you were asked to determine the amount of earned royalties that would have been paid to 112 under section J(ii) of the Tacora lease, and then compare that to the amount stated in Tacora's royalty

statements, and then to present the difference?

A. I think that is pretty accurate.

140 Q. Okay. I am glad to hear that, because I read it aloud here. Okay.

So if we look at exhibit D of your report, the column titled, "CRA calculated earned royalties", that is what you produced. And the total there is about $128.15 million Canadian.

A. Yes.

141 Q. And the far left column, "Earned royalties per royalty statement letters", that is what Tacora produced. That is about $120.86 million Canadian. And you took the CRA number, subtracted the earned royalties number and produced the difference in the right column. Correct?

A. Yes. That is correct.

142 Q. And you were provided with copies of all of the royalty statement letters that are referenced in the far left column there?

A. That is correct.

143 Q. Okay. But you were never asked to review the components of the earned

royalties in the royalty statement letters?

A. Not specifically, no.

144 Q. You weren't asked to verify that they were calculated properly, for example?

A. No, I was not.

145 Q. You were asked to assume that they were correct for an arm's-length contract?

A. I was asked to assume that they reflected what was actually paid.

146 Q. Okay. Okay.

A. Or what was actually admitted to be owed or paid, and I think there was some difference in what was actually paid in the later parts of the time series. But essentially, assuming that that was a reflection of what was either paid or declared to have been owed by Tacora to 113(sic).

147 Q. Right. Okay. And if the Offtake Agreement is held to be an arm's-length contract, then earned royalties will be those shown in the far left column in appendix D. Is that right?

A. Well, again, as we just

established, I didn't verify that those calculations in the royalty statements were done correctly or appropriately. I took that number of what had been -- what was owed, and compared it to what would have been owed under my calculations.

148 Q. Okay. Just to confirm, when you prepared the report back in January, I think it was back in January, you were not asked to consider the impact of any hedging in your analysis, were you?

A. I was aware of some of the hedging documents, but I was -- I did not incorporate them into my calculations at all.

149 Q. Okay.

MR. ROSE: I think you can take that down, Mr. Reid. I want to go back to the lease, Mr. Reid, which is at tab E of the responding motion record. Okay.

150 Q. So, Mr. Persampieri, I want to talk about the Knoll Lake royalty; it is spelled K-N-O-L-L, Knoll Lake royalty. Are you familiar with the Knoll Lake royalty?

A. I am.

151 Q. Okay. And so section 1D of the lease, which is at page -- I think it was

at page 81 now, 1D? Sorry, it is page 86 of the responding motion record. It states that:

"In the event that the lessee is required to pay any royalties to Knoll Lake under the Nalco lease, the lessor agrees that the lessee shall have credit for any such payments so made against any amounts due do the lessor hereunder."

And you are aware that the lessee did have to make those payments. Are you aware of that?

A. Yes, I -- I am.

MR. ROSE: And, Mr. Reid, if you could close out that and pull up the document from the package provided to counsel, which is the royalty payment for Q3 2020? It is MFC statement Q3 2020. I will mark this as Exhibit C.

EXHIBIT NO. C: MFC statement for Q3 2020.

MR. ROSE:

152 Q. This is one of the royalty payment letters that you referenced in exhibit D. Does this look familiar, Mr. Persampieri?

A. Yes, it does.

153 Q. Okay. And this is the royalty payment for Q3 2020. If you go down to the second page, you can see "Earned royalties" in the far right of the column, the far right of the table there, sorry. Okay. And you will see that the total owing, if you could scroll over to the right, Mr. Reid? -- the total owing is $7,099,904.74, earned royalties.

And if you look in appendix D of your report, that is the number listed in the left-hand column for Q3 2020. Is that right?

A. The 7,099,904. Yes, it is.

154 Q. Okay. And that number is arrived at after the application of a credit of $155,457.94. Do you see that there?

A. Yes, I do.

155 Q. Okay. And so Mr. Broking, Joe Broking, who is the CEO of Tacora, he states in his second affidavit that

that credit represents the Knoll Lake royalty. You are aware of that?

A. I am.

156 Q. Okay. And that is the same in every royalty statement; they have a Knoll Lake credit. Do you have any reason to believe that is not the case? Or should I go through all of them?

A. No, no, we don't need to go through all of them. I believe that is the case.

157 Q. Okay. And so a credit had already been applied against the earned royalties, per royalty statement letters in the left-hand column of your appendix D. Correct?

A. Correct.

158 Q. But that credit was not applied to the CRA-calculated earned royalties in appendix D of your report. Correct?

A. That is correct.

159 Q. And so if that amount is not removed from the CRA-calculated earned royalties, you are not comparing apples to apples, are you?

A. Yes. After reviewing

Mr. Broking's affidavit, I looked at that and came to the conclusion that in fact that was an omission on my part, and that amount should have been deducted from -- either added back to what was paid, or deducted from mine, with the same net effect.

160 Q. Right, right. And the difference is Canadian $29,576,150. Correct?

A. Yes, I believe that is correct.

161 Q. So, regardless of whether it is added back to the left column or taken out of the middle column, the net effect is that it comes out of the difference.

A. That is correct.

162 Q. Is that fair?

A. That is fair.

163 Q. And so, after applying that, the difference would really be Canadian $4,719,103.73?

A. I am not going to do that math in my head, but --

164 Q. Okay. All right.

A. ...you would subtract one from the other, and --

165 Q. All right. That is okay.
A. That sounds pretty close.
166 Q. Okay. So we take off, and I accept that the rest of the math is described in your report. We take that off, but the rest still stands?
A. Yes.
167 Q. But we would make that adjustment. Okay.
So, to the extent that you give an opinion in your report as to the amount, it is your opinion that the amount would be the $7 million-odd figure in the right-hand column of appendix D, less the $2,576,150. That is your opinion now?
A. Yes, that is correct.
168 Q. Okay. Okay. Thank you.
MR. ROSE: Mr. Reid, you can take that down. Okay.
169 Q. And so in your calculation of price or amount per metric tonne -- but shorthand, I will call it price -- you make an adjustment for freight costs. Correct?
A. Yes.
170 Q. And you start with a

standard amount, which I understand is the freight cost to ship from Brazil to China, also called the C3 price. Is that fair?

A. Yeah. That is basically a published index freight rate that represents the spot price, spot freight to price that there is from -- day to day in fact -- to ship on a capesize vessel iron ore from Brazil to Qingdao, China. Yes.

171 Q. Okay. And then you add a premium to that to reflect the fact that North America is farther away from China than Brazil is?

A. Correct.

172 Q. And you estimate that the cost to ship is approximately 24 per cent higher to ship from Sept-Îles than it is to ship from Brazil?

A. Correct.

173 Q. And that is based on the difference in nautical miles, 14,000, as opposed to 11,000 nautical miles?

A. Yeah. Well, that is obviously part of it. It is an overarching average adjustment for that, to arrive at the price in Eastern Canada.

174 Q. Okay. And because Platts 65 presumes that goods are FOB in China, it is fair to say that purchasers will pay less when they have to incur the cost of shipment. Is that how that works?

A. Essentially yes, that is correct.

175 Q. Yes, all right. So purchasers pay less when it is FOB Sept-Îles than FOB Qingdao, because of the cost of shipping?

A. Correct. But, you know, in real life, it also depends on where the purchaser is actually located, so where are they actually -- in the end of the day, it is where they ship, where are they going to be consuming the iron.

But, you know, by and large, the global price is fixed, based on a delivery to -- a delivered price in China. The adjustments to other ports are based on the differential freight with some modification depending on -- you know, if, for example, the iron ore was being shipped to a customer in Quebec, the adjustment would be a lot less because they would have a lot less freight.

176 Q. Right. Okay, I understand. I understand. So there is distance, on both ends?

A. Yeah.

177 Q. Okay. But generally speaking, the higher the cost of shipment, the less the purchaser would be prepared to pay for that iron ore. Is that fair?

A. Correct, correct. And a lot of it has do with, you know, the relative shipping cost to that customer from their various supply options. So they are competing with each other and normalizing their freight.

178 Q. Right. Okay, I understand. So Mr. Broking again states in his second affidavit that I think you have read, that:

"Due to the northern climate of Sept-Îles, Quebec, where the port is located, additional freight costs are incurred in winter months."

Do you recall him saying that?

A. Yes.

179 Q. There is also reference to this in the offering memorandum that is in the responding motion record at tab 2J on page 265. And I just read it out. It says:

"There is no index for the route between the Port of Sept-Îles Canada and China. The route from Sept-Îles to the Far East totals approximately 14,000 miles, and is subject to different weather conditions during the winter season. Therefore, the freight cost per tonne associated with this voyage is generally higher than the C3 price."

The first part of that, that is what you were talking about earlier; it is farther to go, from Canada to China.

The second part about different weather conditions, that is what Mr. Broking was talking about.

So, with that in mind, can I ask you, you weren't provided with the actual costs of shipment, I wouldn't --

A. I was not.

180 Q. Okay. And if you had those actual costs of shipment, you could confirm whether there is a winter premium applied. Is that fair?

A. That is fair.

181 Q. But that is not something you were able to do in preparing your report, because you didn't have that data?

A. Correct.

182 Q. But you would agree with the principle that there may be a higher cost of shipment associated with winter shipment in northern ports?

A. Yes, there is. And I think in my estimation of the 24 per cent premium, that was basically an overall average across the year reflecting the higher cost from Eastern Canada relative to Brazil. And that incorporates the -- both the -- yeah, a bunch of different factors that affect that market, including the winter freight, as well as the distance.

183 Q. I see. But you didn't actually have the numbers to indicate whether that accurately captured the winter freight premium?

A. Well, other than looking at other seaborne contracts for shipments from Eastern Canada and the freight adjustments that are used in those pricing formulas, the 24 per cent is pretty reasonable. I have seen many, if -- not many, several other contracts that in fact have an adjustment with a cap. So they say that the additional freight is "x" per cent of C3, not to exceed $3.50 or $4.00, or something like that.

So, looking across that, that is I think a pretty fair estimate of the overall average freight premium across the year.

184 Q. Okay. But, in principle, you would accept that to accurately assess the market value of a producer's product, you would have to take cost of shipment into account. And the higher the costs, the lower the expected market value of the product. Is that fair?

A. That is fair.

185 Q. Okay.

A. Ideally, we would look at

what the end customers were actually paying for the product.

186 Q. Right. But you weren't given that data, were you?

A. I was not.

187 Q. Right. And you weren't given the actual data which would show exactly what the freight, the winter freight premium would be. You weren't given that data, either?

A. That is correct. And that is pretty common, in what I do. So I applied my knowledge and industry standard practices to estimate that.

MR. ROSE: Mr. Reid, can you pull up the Offtake Agreement, again? That is at tab K of the motion record, page 295. And if you go to section 11.1.2(d) -- you would go to the next page. No, (c), sorry. There you go.

188 Q. You can see this winter ice class premium in the Offtake Agreement. And that is the kind of thing that we have been talking about. Is that right, Mr. Persampieri?

A. That is correct.

189 Q. And so we would actually know what that ice class premium was in this case

because all of the periods that you are looking at are now historic periods. Is that right? We would actually know what the freight cost was?

A. Well, I think -- well, we would know what the overall -- we would know both the ice class premium and the overall average freight cost for each -- from A/B, 11A and B, as well as any kind of adjustment for use as a temporary dock, to the extent that that was relevant in B. So we would theoretically be able to look at the overall freight adjustment that had been applied to the shipments.

190 Q. Right. So we wouldn't have to estimate or guess, if you had that data?

A. I think that is true to an extent. I think what we are doing here is using the clause in the lease agreement that calls for estimating a market price. And so the market price is reflective of this industry standard practice that I use.

So certainly you could validate that against the actual price, but the lease actually calls for the use of a market price.

191 Q. Well, I don't want to

debate the legalities with you, but it is to be calculated by reference to an index, i.e., Platts 65. In our case, fortunately we have the actual data. And as I understand it, you were not provided with that data.

A. That is correct.

192 Q. However, the accountant who went in and did the audit may have had that data, but you weren't given that data. That is right?

A. That is correct.

193 Q. Okay.

MR. ROSE: Mr. Reid, you can take that down, now. Okay.

194 Q. So I read through your report obviously, a few times, Mr. Persampieri. And in particular I looked at paragraph 24, which includes a description of what the Platts index is intended to be. I think paragraph 24 may have been referencing the Platts 62, but I am assuming that the same holds true for Platts 65, that this is an assessment of the price using survey assessment methodologies?

A. That is my understanding, yes.

195 Q. Okay.
A. That is what Platts is.
196 Q. So again, in either case, Platts 62 or Platts 65, it is an estimate of the amount that could be realized through the sale of a product that meets those specifications. Is that correct?
A. Correct.
197 Q. Right. But it is not necessarily the price that will actually be realized on the sale of Tacora's products?
A. I think that is correct.
198 Q. The ability to get Platts 65 depends on whether, for example, someone is willing to pay that price?
A. Correct. And it is -- yeah, that is right.
199 Q. Right. And so you have to adjust Platts 65 for various things, including whether or not it meets the specifications that define Platts 65. And that is what you did in part by adjusting for the iron content, I think. Fair?
A. Correct, yes. And iron content adjustments are pretty standard, I would

say, very standard in the seaborne iron ore trade.

200 Q. There may be other factors besides iron content that would affect what a purchaser is willing to pay, for example, its own needs, product specifications, availability of substitutes and so on?

A. Correct.

201 Q. Is that fair? Okay.

A. Yes.

202 Q. And the final sales price, whatever that may be, is determined by negotiation between, in this case, Cargill and the final customer. Is that right?

A. That sounds right.

203 Q. Okay. Now, because the Offtake Agreement has a profit sharing component, am I right that the higher the purchase price that Cargill can obtain the more money it makes?

A. That is generally the way it works.

204 Q. Right. And so Cargill had an incentive to sell for as high a price as possible?

A. I think that is true.

205 Q. Okay. And you have no

reason to believe that Cargill doesn't try to maximize the price it gets for the product through sales to third parties. Correct?

A. I don't have any knowledge that there would be any reason that they would want to do that.

206 Q. So as I mentioned a few minutes ago, your analysis covers periods between Q1 2020 and Q3 2023?

A. Correct.

207 Q. And those are now historic periods. And we now know how much the product was sold for, by Cargill. Correct?

A. Correct.

208 Q. But you were not given the prices at which Cargill was actually able to sell?

A. I was not.

209 Q. Okay. So you are not able to analyze how the ultimate sale price actually compared to Platts 65 at the end of the day?

A. That is correct.

210 Q. And you weren't able to determine how the ultimate sales price compared to

the one generated by your formula. Correct?

A. That is correct.

211 Q. Okay. But we could now do that with the data at hand?

A. I couldn't, but somebody could.

212 Q. Somebody could, okay. And so according to Mr. Broking in his second affidavit, that kind of analysis has been done. He states that Cargill has almost invariably sold as a discount to Platts 65. Are you aware that he takes that view?

A. I think he -- if I am not mistaken in his report, he put a range of a discount to a slight premium.

213 Q. That is right. But he said on -- it most often sells at a discount of [redacted], and it is [redacted] 2. And a safe assumption, I think he said, would be minus [redacted]. But that is not something you were able to look at in preparing your opinion. Correct?

A. That is correct.

214 Q. So I am not asking you to agree with Mr. Broking or not, but would you agree

that if a product is invariably sold at a discount and you wanted to accurately estimate the price at which it would be sold in the market, you would adjust for that discount?

A. I think you would have to understand a little bit more about the nature of the sales and what were the reasons for the discounts, and premiums for that matter, that were being achieved in the marketplace.

I don't think looking at it from, you know, an industry indexed market value you would necessarily need -- just take the straight adjustment from the actual realized prices.

215 Q. But you had none of that information and none of that context. Correct?

A. I did not. That is correct.

216 Q. And, if I may, at paragraph 26 you talked about Platts 65. And you say that:

"Parties had gradually adopted the 65 per cent indices as the base for their pricing."

Do you remember that, from your report?

A. Yes.

217 Q. And they do that because Platts 65 is an approximation of what could be realized in a market sale. Is that right?

A. Yeah. Platts 65 reflects Platts' assessment of what is primarily made up of Vale's Carajas high-grade fines ore product sold to China.

218 Q. Right. Okay.

A. So there is a specification for that, and that spec more reflective of Fes so they -- because of the nonlinearity in price between the 62 per cent iron and the 65 per cent iron, it made sense to have a separate index for 65.

219 Q. Okay. But they are trying to approximate based on the survey data for these specifications --

A. Yes.

220 Q. ...what you could achieve selling into the market?

A. Right.

221 Q. But Tacora obviously is

not selling into the market. It's selling to an intermediary. Correct?

A. Correct. That is my understanding.

222 Q. And it wouldn't be unusual in an offtake agreement to have the offtaker pay the supplier a lower amount than it expects to realize when it sells into the market, that compensates the offtaker for the selling?

A. Well, in the case of an offtaker that is a trader, for lack of a better term, trader or distributor, the distributor is looking to make a markup.

223 Q. Right.

A. So, yes.

224 Q. So, like, Cargill wants to make money on the spread, basically?

A. Correct.

225 Q. Right? Okay. And then that is not unusual, that they would be selling and the producer would be selling at a lower amount than if it were able to sell into the market itself, because there is a middleman now.

A. Well, I think it is more -- they may get a lower price from another trader than they would if they were selling directly to end users.

226 Q. In this case, Cargill acts as a trader. Right?

A. Yes, that is how I characterize their business.

227 Q. Right.

A. They may not agree with that, but that is how I characterize their business.

228 Q. Right. They are not here, so I will go with that.

So if you wanted to accurately assess the realizable value of Tacora's product when sold to an intermediary, you would have to discount the market price to reflect the fact that the intermediary is going to take a piece. Is that fair?

A. I guess so, but that is not what I was asked to do. But --

229 Q. No, no, I am not -- that is okay, I am not asking what you were doing --

A. But I guess, hypothetically/theoretically, yes, there is, you know, the subject of distributors and what kind of discounts they get is a topic that I have been involved with in other disputes. So, yes.

230 Q. If the exercise is to accurately predict what you are going to realize on the sale of Tacora's products, we have to take into account the fact that they are selling to an intermediary and not to the market?

A. I think that sounds about right.

231 Q. Okay. I want to switch gears for a second to the definition of deductible expenses in the lease. Do you recall that? And I am happy to bring that up, if that would assist.

A. Yeah. I generally remember what it was, not specifically, but...

MR. ROSE: Mr. Reid, do you want to pull that one up? This is the lease, again. Thank you. Thanks.

232 Q. If you look at this definition of deductible expenses, they include a variety of industry terms that I had to look up, including loading and dock handling, tug charges, dock access fees, stevedoring charges and so on. You can see them all --

A. Yes.

233 Q. ...listed in the last few lines.
A. Yes.
234 Q. These are costs I understand that are incurred at the port. Is that right?
A. That is my understanding. Yes.
235 Q. They are payments that are being made to third parties, the security people, the stevedores. Those are not payments to Cargill; those are payments to whoever works down at the docks. Is that right?
A. Yeah. Those are the costs incurred, you know, at the port to move stuff around and get it loaded onto a ship.
236 Q. Right. And there are costs that are incurred by Tacora associated with the shipping and selling of the iron ore product. Is that right?
A. That appears to be correct. Yes.
237 Q. Okay. And they are costs of sales, in other words?
A. Yeah. They are costs

associated with -- that are incurred by Tacora in getting their product to market.

238 Q. Right. And so, regardless of how one calculates the amount per tonne, in other words, whether you are under J(i) or J(ii), these deductible expenses, these costs are being incurred either way. In reality, these amounts get paid if you want that stuff on a boat?

A. Their costs are being incurred, either way. Yes.

239 Q. Okay. And Mr. Broking in his affidavit material says that these costs have always been incurred. I assume you have no factual basis to disagree with that?

A. I mean, it's, as a practical matter, that is pretty -- there is no reason to dispute it.

240 Q. Right. But you did not remove or subtract these deductible expenses from your calculations in appendix D. Correct?

A. That is correct, because the J(ii) non-arm's-length definition of net revenue did not call for deducting these deductible expenses.

241 Q. I just want to be careful

that you are not purporting to give a legal opinion about how to interpret J(ii)?

A. No.

242 Q. You are only saying that --

A. No. I am simply applying an industry perspective on reading the language in J(ii). And J(ii) makes no mention of deductible expenses.

243 Q. Right. I don't have to debate it with you; it depends on how you read J(ii) and J(i). But, under your version in J(ii), the cost of these deductible expenses, it is no longer shared between the parties. It becomes Cargill's problem. Is that right?

You don't subtract this from net revenue and then calculate the royalties as a percentage of that. These costs are now just borne by Cargill(sic) on its -- sorry, not Cargill, Tacora, a hundred per cent.

A. Okay. That is why I was confused --

244 Q. Sorry.

A. ...when you said Cargill.

245 Q. Sorry.

A. I think --
246 Q. So, under J(ii), one of the differences you say between J(ii) and J(i) is that when you switch to J(ii), you now make these deductible expenses completely Cargill's(sic) problem whereas, in J(i), they would have been shared in some way?
A. Well, Tacora's problems, not a Cargill problem.
247 Q. I know that the transcript is not going to help me. I will start again.
A. Yeah.
248 Q. Okay. So under your interpretation, in J(ii) these deductible expenses are going to become Tacora's problem whereas, under J(i), they would be shared between Tacora and 112. Is that right?
A. I believe that is correct. Yes.
249 Q. Okay. And -- okay.
A. But, you know, I think if you look at the way royalty agreements -- the ones I have seen and which are quite a few -- are structured, there is a bunch of different ways

that the value is determined, particularly when a royalty is based on the value of the product removed, as it is in this case.

And there are two basic flavours, and we see them a lot in North America in royalty agreements: One is it is based on actual realized revenues, which would be the case of J(i). And in those cases, there can be but there are not always adjustments made for certain types of costs that get credited to the mining company as opposed to the royalty holder.

And the other way that they are done, which is particularly the case where there is an expectation of significant non-arm's length sales in the case of say equity ownership of the mine by the steel mill, for example. Then --

250 Q. Sorry, can you give me that again? Non-arm's...

A. So, not when there is a -- when there is an expectation or the possibility or likelihood of significant non-arm's-length sales, for example, when a steel mill has an equity ownership stake in the mine itself, so there is just a transfer not a sale, then the royalty is often based on some indication of the market value of the product.

And in those cases, there typically isn't any kind of adjustment for cost; they are simply using the market value as published or as determined appropriately.

So, given that background, it wasn't surprising to me to not have deductible -- to not see the deductible expenses referenced in the J(ii) non-arm's-length section.

251 Q. Okay. That may be. I am not going to debate the contractual interpretation with you.

A. And I am not providing a legal opinion, either. I am simply reflecting on my experience and what I have seen in other agreements, which is why when I looked at J(ii) and didn't see deductible expenses, it wasn't surprising or unusual to me.

252 Q. Right. No, you were calculating net revenue as price times quantity and not netting anything off. Correct?

A. Correct.

253 Q. Okay. Just latching on to something you said, you said a non-arm's-length

contract such as where a steel mill has ownership of the mine. That would be an example of a non-arm's-length contract. Correct?

A. Yes.

254 Q. And that is not what we have here. Correct?

A. Well, I think there is -- you know, again, I am not -- I wasn't asked to opine on whether the sale to Cargill was arm's length or not.

255 Q. And you don't have any of the facts or the evidence?

A. And I am not a lawyer and I am not equipped to do that. But, you know, I think there is, you know, equity ownership of the offtaker in the supplier could be an indication of a non-arm's-length situation. But again, it is going to depend on the specific circumstances associated with that.

256 Q. Now just to clarify, you were talking about steel mill ownership of the mine, and I asked you whether that is a situation we have here, steel mill ownership of the mine. We don't have that here, do we?

A. Well, we don't have that

here. Although, in the past, at the Scully Mine, we did have it.

257 Q. Right, right. But not now?

A. Not now.

258 Q. And you don't know any of the circumstances in 2017, when the Offtake Agreement was entered into, do you?

A. I don't have specific knowledge of the relationship --

259 Q. Right.

A. ...between Cargill and Tacora at the time the agreement was made.

260 Q. Okay. So I want to talk about offtake agreements in general. You would agree with me that there are valid business reasons why a producer would enter into an offtake agreement on an arm's-length basis?

A. On an arm's-length basis?

261 Q. Yeah. There are reasons why you would do that?

A. Well, sure. There are lots of them. I mean, that is kind of a relatively standard feature of the market. So yes, there are lots of really good business reasons --

262 Q. Right.

A. ...to do offtake agreements.

263 Q. So an offtake agreement may give a producer a security of demand, for example?

A. Yes.

264 Q. Right. And some producers may lack marketing knowhow and logistics necessary to sell the products. Is that right?

A. Are you talking about offtake agreements with a trader versus offtake agreements with an end customer? Or were you thinking of extension --

265 Q. With a trader, sorry. Yeah, with a trader. I apologize. Yeah.

A. There is any number of reasons why that -- they would decide to do that. They are trying to serve a part of the market that they not used to serving. Traders took on an outsized role, as China grew, as the Western companies didn't have the relationships with the Chinese steel mill customers. In many cases, they are also a relatively fragmented purchasing group, so there, sometimes a trader can be useful.

But, by and large, the bigger, more sophisticated mining companies tend to do their own direct selling to their customers, but not exclusively. Even those guys sometimes will sell through traders, on an opportunistic basis.

266 Q. Right. The terms of those offtake agreements would ultimately depend on negotiations between the parties. Correct?

A. Yes.

267 Q. Okay. So it is possible for a producer to enter into an offtake agreement for valid reasons, and have it ultimately turn out to be a bad deal. That can happen. Right?

A. Yes.

268 Q. Right. And it may initially appear to be a good deal, but becomes less attractive over time. That can happen as well. Right?

A. Yes. And, unfortunately, I am aware of a lot of those --

269 Q. Right.

A. ...because they end up in disputes.

270 Q. Right. And a producer

can enter into a bad deal on an arm's-length basis. You would agree with that?

A. Well, they try not to, obviously, but sure, it is possible.

271 Q. It happens. Right?

A. Yeah.

MR. ROSE: I am going to just stop there and take a five-minute break. Is that all right with you, Mr. Persampieri?

THE WITNESS: Yes. Yes, that is fine.

MR. ROSE: So if we could come back here at 2:30?

THE WITNESS: So should I stay logged in and just come back.

MR. ROSE: Yeah. Just put it on mute.

THE WITNESS: Yeah.

MR. ROSE: Put it on mute, shut off your camera, and we will go off the record. I am sorry. We will be back at 2:30.

--- Recess taken at 2:26 p.m.

--- Upon resuming at 2:31 p.m.

MR. ROSE: Thank you for going off the record for a few minutes, there. Those are my questions. I have nothing further.

Subject to what your counsel may say, I am prepared to conclude the cross-examination and thank you for your time, Mr. Persampieri. I appreciate it.

MR. SEVIOUR: I have no redirect questions for Mr. Persampieri this afternoon. So thank you, Dave. I think we are concluded.

MR. ROSE: We can go off the record now.

--- Whereupon the proceeding concluded at 2:32 p.m.

Global Arbitration Review

The Guide to Mining Arbitrations - Second Edition

Arbitration under Long-Term Mining Offtake Contracts and Royalty Arrangements

The Guide to Mining Arbitrations - Second Edition

Mining is booming – and with it mining disputes. The Guide to Mining Arbitrations fills a gap in the literature on those disputes. It offers practical know-how in three parts: the risks and issues mining companies confront; the substantive principles at work; and the regional variations that must be taken into account – written by some of the leading names in mining arbitration.

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GAR Global Arbitration Review

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Simon Greenberg and **Karolina Rozycka**

Clifford Chance

Summary

INTRODUCTION

Long-term gas sales agreements have attracted considerable attention in arbitration literature, particularly in the context of price reopener arbitrations. In comparison, mining offtake, royalty and streaming agreements have attracted less attention, even though the resulting arbitrations can be of a similar order of magnitude and complexity. Over the past decade, bespoke strategies and expertise adapted to these kinds of disputes have developed in international arbitration practice, with a number of practitioners gaining substantial experience in the sector.

This chapter addresses arbitrations arising from contracts between mines and purchasers of minerals or other commodities under longer-term 'offtake' arrangements. It also explores the disputes that can arise from bespoke mining financing agreements linked to a mine's supply of product.

Disputes commonly arising from offtake and bespoke mining financing contracts include:

- pricing disputes;
- supply and volume disputes;
- force majeure and hardship disputes;
- royalty and profit share disputes;
- quality disputes; and
- shipping and transport disputes.

The frequency and complexity of the first four of these categories has increased materially in the past 15 years as a result of price volatility for certain minerals and commodities. That volatility arose from general global economic uncertainty and, for some products, the fluctuating demand from East Asian buyers. In addition, East Asian buyers can sometimes approach long-term contracting commitments in a way that is alien to foreign miners selling the minerals or commodities. For several minerals, the determination of price, quality and quantity commitments, and excuses for non-delivery (hardship or force majeure) had been relatively stable for many years. For many bulk mineral commodities, supply into the internationally traded market was previously dominated by a small number of large players, which contributed to this 'contractual stability'.

The shift from relative stability to, for some commodities in particular, a sharply volatile pricing environment puts pressure on both buyers and sellers under long-term offtake pricing arrangements. If market prices plunge for any reason, buyers may find themselves bound by a long-term offtake contract that prices a mineral very substantially above short-term spot prices – occasionally to the point that a buyer can no longer afford to stay afloat if it continues to pay based on the pricing mechanism specified under its contract. Conversely, in a rising spot market, sellers may find themselves bound by a long-term agreement that substantially underprices a product. A seller may therefore try to force a realignment of the pricing mechanism so that it is closer to market prices, or find excuses to reduce or defer the volumes that it is required to sell at prices below market.

Significant pricing pressures will infect and therefore test other terms of the contract, such as hardship or force majeure, volume commitments and the calculations of distributable profits or revenue shares under royalty and profit sharing arrangements (as the mines or investors seek to exploit ambiguities in accounting metrics or calculation methodologies to compensate for losses caused by the price volatility). Not surprisingly, the coronavirus pandemic that marked most of 2020 resulted in even more volatility in the pricing of mineral resources. The precise consequences of the pandemic on supply and prices in the long term are yet to be seen. What is certain, however, is that it has constituted a fertile ground for a whole variety of new mining disputes, with the usual challenges for buyers and sellers being aggravated by the supply chain disruptions that resulted from the economic uncertainty and the restrictions put in place by governments to fight the spread of the pandemic. Finally, shipping disputes in the mining sector – while certainly not unique to this industry – have also increased in recent years, not only as a by-product of the general strain on buyers and sellers, but also because of direct volatility in shipping market prices.

The increased frequency of disputes under various forms of long-term offtake contracts, and the very substantial amounts of money often at stake, have seen a commensurate increase in their sophistication and technical complexity. Unsurprisingly, therefore, significant care needs to be taken in (1) the selection of arbitrators with the desired experience and approach for any particular case, and (2) the design of the arbitral procedure, to ensure that it is both efficient and effective in terms of ensuring that the tribunal has access to the right information and expertise to perform its functions properly. Where pricing and hardship or force majeure are concerned, arbitrators will need to make special efforts properly to understand the case early on so that they are able properly to direct and design evidentiary processes such as those relating to experts and the production of documents. If all these factors are given due consideration, international arbitration is an exceptionally effective means of resolving complex offtake and mine financing-related disputes.

THE IMPACT OF THE CORONAVIRUS PANDEMIC

The coronavirus pandemic led to extreme volatility in the pricing of certain minerals in 2020.-[2] In particular, the Chinese lockdown had a huge impact on prices, leading to a substantial decrease in demand.[3] Hence, in the first half of 2020 prices plummeted, before jumping back to pre-pandemic levels in the third quarter of the year, and then stabilising at that level.[4] As usual in dire times, gold regained its status as a safe haven as prices rose from around US$1,550/ounce in early January 2020 to close to US$2,050/ounce in August 2020. Gold prices then fell back again to below US$1,700/ounce in early March 2021.[5] This strong variation in gold prices illustrates well the current instability of the stock market.

It has been suggested that price volatility is today the new normal with which the mining industry will have to deal.[6] This phenomenon underlines, to a certain extent, the potential for concluding long-term contracts, as mining companies can stabilise their income through these, even in uncertain times. At the same time, price volatility may also lead to a surge in pricing or volume arbitrations, or both, between parties to long-term mining offtake contracts, as some try to even out the economic impact on their finances.

However, and notwithstanding what had been feared at the beginning of the pandemic,[7] one commentator claims that very few cases of force majeure have been reported among miners, and those reported were almost exclusively in South Africa.[8]

Importantly, the pandemic revealed how much the world economy continues to depend on China, in particular in its role as the country that manufactures a substantial proportion of critical resources for European and North American economies.[9] This was the ideal opportunity for several governments – such as the US administration under President Trump – to encourage the reassessment of global supply chains and the relocation of production facilities of critical industries inside their national territory.[10] However, this should not only be seen as an expression of defiance against China in its commercial conflict with the United States, but also as a realisation for most businesses that diversification was critical in achieving a measure of resilience in economically uncertain times.[11] Indeed, as the pandemic struck most countries at different times, the most resilient businesses were those with the most diversified supply chains and client bases.[12] The US and Canadian governments had announced a joint plan to attain independence from overseas imports in the mineral industry two years ago.[13] The new Biden administration has shown a willingness to maintain these policies, and even ordered a review on the reliance of the US on overseas supply chains for semiconductors and rare earths.[14] This is an opportunity for the mining industry to secure funding for new projects in North America, which might very well happen through typical long-term offtake, royalty or streaming agreements. In the same direction, major users of base metals, such as Tesla, have already announced that they would take stakes in mines to secure their supply in the future.[15]

However, on a broader scale, the same challenges as those identified below, as well as in the previous edition of this chapter, remain for the mining industry. Decarbonising the mining industry, reducing the environmental impact of mines and improving the status of local communities in mining projects are still among the main long-term and structural challenges the mining industry will have to face.[16] Furthermore, despite the challenges of 2020, investors appear to have renewed their trust in mining companies, and 2020 may turn out to be the start of a new upward long-term cycle for the mining industry. The fluctuation of the biggest mining companies' valuations illustrates this. In 2020, the market valuation of the world's 50 largest mining companies fell to a low of US$700 billion on 31 March, only to rocket back to US$1.28 trillion at the end of the year.[17] Compared to the pre-pandemic level of US$989 billion, the valuation of these mining companies grew on average by 29.4 per cent.[18]

TYPES OF MINING OFFTAKE AGREEMENTS

Mines need to sell what they produce. Sales contracts include: (1) long-term offtake agreements, with a duration of between two and 30 or even more years; (2) short-term contracts; and (3) spot contracts for a specified number of shipments. A mine will typically seek a balance between spot or short-term, and long-term offtake arrangements. Longer-term contracts provide the mine with a steady and reliable stream of revenue and can be important for obtaining financing in the early stages of a mine's life. Short-term and spot contracts allow mines to attract new customers, experiment with new products or product mixes, and take advantage of attractive short-term price increases.

In general, the longer a contract's term, the more valuable it is for both the mine (which secures a steady source of income) and the buyers (who secure a steady source of supply). However, in general terms, the longer a contract is, the higher the chances are of something going wrong during its performance. As noted above, pricing and other market conditions can fluctuate. Buyers and sellers alike can see material changes in their operating conditions and costs, not to mention evolutions and unforeseen changes in legal and environmental restrictions. Far fewer disputes arise from spot or very short-term offtake contracts and, when such disputes arise, they are typically of a much lower value and less complex, and rarely require the same level of expertise and tailored procedural tools. This chapter accordingly focuses on long-term offtake agreements and bespoke mine-financing arrangements.

TYPES OF BESPOKE MINE FINANCING CONTRACTS

New mining projects typically need financing to fund their developing and ramping-up periods. Buyers can obtain better contracting conditions when they are willing to commit to significant upfront purchases or risk-sharing arrangements with start-up mines.

Mines may enter into long-term offtake agreements with buyers even before the mine is a hole in the ground. Such long-term commitments can help to reassure potential investors and financiers funding the mine's start-up period. Sometimes the buyer may agree to substantial upfront payments to the mine.

Royalty agreements and streaming agreements are other forms of bespoke mine-financing arrangements.

Royalty agreements provide a state or a private party (the royalty holder) with the right to receive a portion of a project's production in cash or in kind in exchange for upfront capital.-[19] They typically cover the entire life of a mining project. Mining companies heavily rely on royalty agreements for certain metals as a form of financing to enable them to facilitate the development of new projects. Distinguishing terms of royalty agreements include the form of the royalty and the applicable royalty rate, which can vary significantly depending on the arrangements that particular parties make.[20]

Streaming agreements are similar to royalty agreements where the 'royalty' is in kind. Under a streaming agreement, the buyer purchases all or a portion of the mined mineral throughout the life of a mining project at an agreed price in exchange for upfront capital. The streaming company will usually make ongoing payments at an agreed rate for each unit of the mineral delivered during the life of the agreement, allowing the mine to fund its production.[21]

Both royalty and streaming agreements are inherently of a long-term nature and the comments above relating to the risks and potential for disputes therefore apply to them.

PRICING DISPUTES

As noted above, arbitrations over the pricing of minerals under long-term contracts have become increasingly frequent because of shifts in market conditions, intense price fluctuations and the approach of certain Chinese buyers, which is unfamiliar to traditional sellers. Since the late 2000s, these conditions have led to a shift in the way certain minerals are priced. It has also led to a general trend away from truly long-term contracts towards shorter terms (e.g., one to three years instead of five to 30). Where new contracts of a longer term are made, buyers and sellers may look for more precise and sophisticated pricing mechanisms given the difficulty, or indeed impossibility, to foresee how markets and pricing trends may evolve.

HOW ARE MINERALS PRICED UNDER TERM CONTRACTS?

The base market price of commonly traded minerals on any given day, week or month can usually be found by referring to prices published on established exchanges or by index providers. Examples of exchanges include the London Metal Exchange or COMEX in New York. Examples of index providers and price reporting agencies include Platts and Metal Bulletin for ferrous and non-ferrous metals, the London Bullion Market Association for precious metals and the NEWC Index published by globalCOAL for coal.

For a one-off spot sale of minerals (say, one or a few shipments), buyers and sellers can negotiate a fixed price per tonne, with or without referring to an index price, with quality adjustments agreed depending on the particular product being sold, and then adjustments to the price based on the mineral actually delivered. Alternatively, buyers and sellers can agree that the price will be determined by reference to a price generated by one of the indices or exchanges on a given day, such as the day on which the delivery vessel completes loading.

There are numerous variations of these arrangements, such as utilising averages of the quoted index or exchange values over a certain quotation period. Discounts, premiums and other special adjustments to these published prices can then be agreed depending on the product itself (for example, a concentrate will be discounted against the price of a pure metal or ore) as well as the parties' respective bargaining positions and other market conditions at play. Some of the published index prices may also themselves need to be adjusted to take account of factors that do not apply to the product being sold.

For term contracts, the general approach in the previous paragraph may serve as a starting point. For example, a term contract may provide that the price is fixed by reference to the previous three months' average of an agreed published index price. That market base price is then adjusted for product specificities, actual delivered quality and all other relevant factors that the parties may negotiate. Purely commercial terms, such as volume discounts or exclusivity premiums, are also more common compared with spot sale contracts. Junior or start-up mines in need of long-term offtake commitments to secure financing may offer even further discounts on bulk or long-term orders to attract the sort of commitments they need. By agreeing to grant a discount to a large offtaker, the mine developer not only secures a buyer for a long period of time; it can also more easily access funding to develop the mine.

WHAT KIND OF PRICING DISPUTES ARISE UNDER TERM CONTRACTS?

No matter how much effort goes into negotiating bespoke pricing terms in a long-term contract, and despite the fact that the price terms always track market prices somehow, market conditions and other circumstances can change. Where significant volumes are involved, or where those volumes represent a significant proportion of a seller's output or a buyer's needs, one side may see an advantage in seeking to renegotiate the agreed pricing terms.

In certain industries (iron ore being a good example), disagreements over pricing are often resolved by good faith negotiations between the parties. But where that is not possible, and where the contract provides a basis for a price review, disputes are inevitable. Pricing arbitrations arising from long-term gas sales agreements are well known.[22]

In the mining industry, pricing disputes may arise when a given benchmark, index or other pricing reference ceases to exist, becomes unavailable or otherwise changes so that it is no longer appropriate to use it for the contract in question. A party may also assert that bespoke price adjustments against the basic benchmark, index or reference are no longer correct and need to be changed, where the contract provides a mechanism for doing so.

When the index or benchmark disappears, the parties are of course forced to find a new solution – yet they may be diametrically opposed as to what that solution should be. One side may seek to apply a new index that has been published by index providers as a replacement for the previous one. The other side may consider that the new published index is calculated differently, is based on different spot sale inputs or will not work by reason of the parties' bespoke pricing adjustments. In any of those situations the replacement reference may not be suitable for use in the parties' agreement without certain new adjustments being included in the price formula.

The situation may be more delicate where the agreed index or reference that is designed to track market prices continues to be published but, for various reasons, is no longer an appropriate or correct reference to use for the product being sold or the parties' particular circumstances. This may happen when, for example, an index provider changes the specifications underlying a relevant index or publishes a new index better suited to the product being sold. One side may then want to push for a change in the base index used in the contract, while the other may see an advantage in maintaining the originally agreed one.

The magnitude of such 'price reopener' disputes can reach several hundred million, or sometimes several billion, dollars, especially where they concern the sale of substantial quantities of a given mineral or other commodity over extended periods of time.

Similarly to long-term gas sale agreements, many long-term mining agreements will include price adaptation mechanisms, also called price review or price reopener clauses, requiring the parties to renegotiate elements or variables of the price formula, including the base benchmark or index used to determine the price. However, contrary to gas sales agreements, which have attracted much attention in recent years in relation to such clauses,[23] price review mechanisms in long-term mining offtake, royalty and streaming agreements have not been so widely commented on.

Price adjustment clauses in mining contracts may contain features similar or equivalent to those seen in long-term gas offtake agreements. The clause may require the parties to review (and, if necessary, amend) the price if certain conditions are satisfied. Any review and amendment of the price formula is ordinarily restricted to when a precise 'trigger event' specified in the contract occurs. There may be temporal limitations (e.g., a review can be requested only once per year) and market condition limitations (e.g., a substantial, unforeseen change that is beyond the parties' control and likely to have long lasting effects not reflected or predicted in the original price formula).[24]

Offtake contract price review clauses can range from nondescript, vague provisions to highly prescriptive clauses obliging the parties to discuss and periodically review the pricing elements, with any adjustments having to fulfil predefined criteria.[25] The advantage of including prescribed criteria is more certainty for the parties as to precisely which elements in the price formula can be reviewed and under what circumstances. Clauses containing vague or unspecific references to price reviews can lead to great uncertainty and unexpected outcomes in arbitration proceedings.

Other key elements of price review clauses and price review arbitrations include the price adjustment guidelines. Price adjustment guidelines, described earlier, seek to adjust a published market price reference to the peculiarities of a product or the peculiarities of the parties' respective positions and needs under a contract.[26] These terms do not concern commercial discounts or premiums, as such, but specifically devised adjustments that realign a market reference that may price a different but related product to the specificities of the product actually being sold. Subject to whatever else the price adjustment provisions of a contract may specify, those bespoke aspects of pricing terms are rarely allowed to be changed without an agreement of the parties. These terms often result from give and take between experts from the parties in contract negotiations and it is difficult to conceive of how an arbitrator's decision could ever substitute for such agreements. Having said that, one cannot rule out situations where a change in market conditions, or a change in the way that a base index or reference is prepared, means that the initially agreed pricing equilibrium cannot be maintained without amending bespoke price adjustments.

Price review clauses typically permit or require a court or arbitral tribunal to fix the new pricing by applying the prescribed criteria. As with other disputes arising out of mining agreements, price reopener disputes are in most cases resolved through international arbitration. Such arbitrations commonly revolve around issues such as whether the price review process or trigger event was properly invoked, which parts of the pricing terms can be changed, and whether the parties negotiated in good faith and properly adhered to the requirements of their price adjustment process.

An occasionally controversial issue concerns the legitimacy of arbitral tribunals to rewrite the parties' bargain in the first place (i.e., establishing the limits of the arbitral tribunal's role). As put by one commentator in relation to gas price disputes:

> [w]hile price review arbitrations share many characteristics of commercial arbitrations, they are in many respects quite different. They require the tribunal to invade a space that is normally the preserve of the parties – the negotiated price. This requires a commercial perception that is beyond the experience, if not the reach, of many tribunals.[27]

Arbitral tribunals deciding pricing disputes may indeed arrive at decisions that are divorced from the reality or have nothing to do with what the players in the mining industry could possibly have envisaged or wished for.

To avoid unpredictable results, it is of course best to include strict criteria and guidance in price review clauses to pre-define the extent to which an overzealous arbitral tribunal can rewrite the parties' bargain. Short of such drafting, the appointment of arbitrators and counsel with real experience in the sector can assist in reducing the risks. Needless to say, under most substantive laws it will not be possible for an arbitral tribunal to revise a contractually agreed pricing mechanism unless the contract specifically empowers the arbitral tribunal to do so.

SUPPLY AND VOLUME DISPUTES

Another area of intense disputes between miners and offtakers revolves around the quantities of product to be delivered.

Offtake agreements typically require the seller to sell and the buyer to buy a given volume of product on a yearly (or other) basis. Alternatively, the volume to be sold or purchased may correspond to a percentage of a mine's total yearly production or a percentage of its production of a product (where the mine is producing several products) or quality of output. As another alternative, the contract may specify a minimum quantity to be purchased each year, with an option for the buyer to purchase additional quantities if the yearly production increases.

Not surprisingly, mines may need firm volume purchase commitments to secure financing or other investments. Similarly, buyers sometimes require fixed security of supply so that they can make commitments to their own customers.

Where the prices of minerals are fluctuating, sellers or buyers may have an interest in attempting to skew the interpretation of fixed volume commitments and presenting them as non-binding, or vice versa. These situations may lead to tense volume disputes. At the time contracts are negotiated, the parties may not focus on what the real effect of contractual volume provisions is and, in the light of limitation of liability clauses, what the real impact is of a failure to purchase or a failure to sell those volumes.

While still relatively rare in mineral contracts, price fluctuations and changing economic and regulatory environments in the past 10 years or so have led contracting parties to insert 'take-or-pay' or 'deliver-or-pay' type contractual obligations, whereby penalties are applied if the buyer fails to take, or the seller fails to deliver, a minimum quantity of product in a given time frame (these may be subject to force majeure, hardship or other limitations specified in the contract). Take-or-pay and deliver-or-pay provisions have historically been more commonly used in coal, gas or petroleum sales contracts.[28] Their more recent adoption in the mining industry may generate disputes in the next decade.

Disputes under take-or-pay and deliver-or-pay clauses may be less complex than traditional volume disputes, where determining the damages due to the seller or buyer for a failure to respect volume obligations can be a complicated process, requiring industry as well as valuation experts.

ROYALTY AND PROFIT SHARE DISPUTES

Both royalty and streaming agreements require the parties to calculate profit shares and cost elements (although some state royalties are just a fixed or sliding proportion of the export price). Some offtake contracts may also include profit share elements in the pricing (i.e., where a part of the price of the product paid to the mine is a share of the buyer's profit).

Royalty and profit share arrangements in any kind of mining contract can give rise to special types of disputes that are peculiar to these arrangements. These disputes revolve around the accounting and valuation metrics that go into the formulae for calculating the profit shares or royalties. Calculating the real cost of producing a tonne of a particular product, or of mining and running a beneficiation facility for a given period of time or a given volume, are evidently open to much interpretation. Yet the stakes – and accordingly the differences between each side's valuation of a royalty or profit share – can be materially different.

Royalty disputes often focus on the financial aspects of the parties' royalty relationship, such as the calculation and payment of the royalty, including the determination of the production or proceeds as well as the offtake conditions if the royalty is to be paid in kind.-[29] Disputes can also arise where the royalty agreement provides for extensive operating covenants and information rights, or where the assignment rights to mineral royalties are drafted ambiguously.[30]

When it comes to streaming agreements, the actual cost of production of a metal may turn out to be lower than the purchase price in the streaming agreement – and vice versa, the production cost of a metal may become higher than the purchase price specified in the streaming agreement. This, again, may lead to disputes. Further, and as noted above, a common reason for launching arbitration (although not always fully spelled out by either party) is the price determination formula that may result in the contract price being significantly below or above the actual market price of the product at the time of delivery. Other disputes may result from an unfair (at least from the point of view of one party) allocation of risks associated with a given project, including operational, financial or political risks.[31]

Naturally, resolving disputes relating to royalty or profit shares can involve accounting rules and methodologies. This means that choosing arbitrators for these disputes may be an entirely different exercise to choosing arbitrators for mine-specific disputes, such as those relating to quality, pricing and volumes.

QUALITY DISPUTES

The quality of a delivered mineral is usually critical to the buyer. Mineral offtake contracts therefore contain agreed physical and chemical product specifications. Depending on the product, desired physical properties may include size, shape, mass, and fineness or particle surface area.

Chemical composition of the material will naturally depend on what the purchased mineral is. Parties will first want to specify the level of the principal metal (e.g., iron or copper), so offtake contracts invariably include specific mechanisms to adjust the final price depending on the exact proportion of metal in the delivered metal or ore. The metal in an ore may be present in an oxide (e.g., for iron) or a sulphide (e.g., for copper) form. In addition, there may be price penalties where the metal levels fall below a certain threshold. But the proportion of metal (or its oxide or sulphide form) in the delivered product is certainly not the only relevant chemical factor. The cost of processing it into metal will depend (among other factors) on what else is contained in the product delivered to the buyer. Contaminants that will typically be limited in terms of maximum percentages in iron ore contracts, for example, include silica, alumina, phosphorus and magnesium. If the agreed thresholds are exceeded, then the offtake agreement will typically include an agreed price adjustment or 'penalty' to compensate the buyer.

Mineral offtake contracts may include two sets of physical and chemical specifications, one being indicative (usually called the 'expected' specifications) and one being the 'guaranteed' specifications, outside of which the buyer will be allowed to claim price adjustments (also called penalties). The penalty amounts are often, but not always, negotiated and specified in the contract. In some agreements, or for some chemicals, the buyer and seller are left to negotiate or arbitrate about the compensation due to the buyer where the delivered product is outside any guaranteed specification.

For a mine operator, purifying and processing the raw mined mineral (called beneficiation) can be a very costly process. The more a product is purified, the higher the cost is likely to be. Increasing purity can also increase the proportion of product that is wasted. Therefore, mines aim in general to deliver product at the guaranteed specifications so that they avoid incurring price penalties but also avoid the additional costs of over-purification.

Price adjustments and penalty provisions are specifically negotiated based on numerous factors including geological studies, assessments of a mine's beneficiation capabilities and, in particular, the buyer's requirements. In principle, they are therefore not subject to revision as part of a price reopener arbitration process unless the parties have specifically agreed otherwise. Nonetheless, buyers and sellers alike have attempted to argue in arbitrations that quality penalty provisions can be the subject of a price reopener arbitration and that an arbitral tribunal can order changes to the penalty thresholds or penalty amounts.

On the one hand, where the market has changed so that products of a particular quality require a discount or premium that did not exist at the time of the contract, revising the quality penalties may be seen as an alternative to revising the price mechanism or adjusting applicable pricing indices. On the other hand, however, adjusting the penalties may be seen as an impermissible back-door method of adjusting the price terms in a way that is not provided for under the contract. As noted above, ultimately such an argument will depend on the terms of the parties' agreement and, where applicable, relevant industry practice. While forced adjustments to the penalties are rare, it is not impossible that they will become more frequent as mineral markets continue to become more volatile and competitive, and index providers publish a broader range of indices aimed at specific contaminants. Parties are therefore well advised to consider this issue at the time of drafting long-term mineral offtake agreements.

Also related to the quality of product is the question of whether a buyer can refuse to take delivery of a product that is outside the contractual specifications. Specific rejection levels are sometimes provided for in offtake agreements. Where they are not, however, this can be a cause for disputes. Where there is no specific contractual rejection threshold and no agreed penalties for the delivery of 'off-spec' product, the buyer may argue that the absence of penalty provisions entitles it to reject cargoes that do not meet the contractual specifications. Such a position will be more difficult where the contract provides for price adjustments on quality that are, at least arguably, the consequence of the seller delivering an 'off-spec' product.

FORCE MAJEURE AND HARDSHIP DISPUTES

As explained above, commercial, economic, political and geological conditions can change over the course of a long-term agreement. The longer the term, the more likely that a material change in circumstances makes it hard or impossible for one of the parties to perform its end of the bargain.

Mines and associated beneficiation facilities are complicated operations. They can be subject to licensing controls, failings in equipment, floods, water or power shortages, industrial action, failings by suppliers, and all the usual other factors that can impact manufacturing operations. In addition, buyers and sellers of minerals can suffer situations of hardship. For example, a mine will have numerous fixed costs that cannot simply be scaled down when the market price falls below the mine's per unit operating cost.

It is therefore not unusual for mines to claim force majeure and, where the contract or law provides for it, hardship. While less frequent, buyers may claim force majeure or hardship based on the buyer's circumstances and economic conditions where hardship applies.

Force majeure and hardship claims are fact-, contract- and applicable law-specific. The dispute between the parties may revolve around whether the criteria or conditions for triggering the force majeure or hardship (under the contract or the law) have been met.

SHIPPING AND TRANSPORT DISPUTES

Many or most of the buyers of a mine's products tend to be located far away from the mine, most commonly in other continents, or at least in other countries. This means that the minerals need to be transported. Shipping and other transport disputes have always arisen in the mining industry and will probably continue to do so. However, they are not specific to that industry and can be seen in virtually every industry or sector involving the purchase of

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Black Iron News

Black Iron Selects Cargill As Ukraine High-grade Iron Ore Offtake Purchaser With A Us$75m Finance Facility

Written by Matt Simpson - May 10, 2021

Black Iron selects Cargill for Offtake & Investment.mp4

Matt Simpson

01:04

For Immediate Release

TORONTO, CANADA, May 10, 2021 – Black Iron Inc. ("**Black Iron**" or the "**Company**") (TSX: BKI; OTC: BKIRF; FWB: BIN) is pleased to announce that it has selected Cargill, Incorporated ("**Cargill**") for offtake rights on the initial four million tonnes per year of production from its Shymanivske iron ore project (the "**Project**") and a US$75 million finance facility to be used for Project construction.

Subject to completion of due diligence and successful conclusion of negotiations, Cargill will offtake the production and extend financing of US$75 million for the construction of the Project through a finance facility. Drawdown on this funding will be subject to certain conditions being met, as is customary for this type of transaction, mainly related to the Project being fully permitted and financed for construction. Black Iron and Cargill will now start work on definitive binding offtake and financing agreements which reflect the Proposal. Based on the proposal agreed between Black Iron and Cargill (the "**Proposal**"), the offtake agreement will be for an initial term of ten years and will include a profit-sharing component which will align the interests of both parties and thereby generate a strong interdependent relationship of benefit to both parties. On the profit share, Black Iron will receive 100% of the 65% iron content fines benchmark price, currently ~$230 per tonne, and share with Cargill a portion of the incremental sale price of its 3% higher (68%) iron content and low impurity magnetite product.

Cargill's metals business ("**Cargill Metals**") focuses on iron ore and steel trading. Connecting iron ore miners around the world with steel mills and steel end users in key markets, Cargill Metals trades over ~50 million tonnes of iron ore per year and is also a strategic investor of a number of mining operations in North America and Northern Europe.

Black Iron and Cargill Metals agree that, as the world is becoming more environmentally conscious it will naturally turn to ores with a higher iron content and in forms such as pellets/pellet feed that reduce emissions in the production of steel.

Black Iron's planned 68% iron content magnetite pellet feed is in the top 4% of global production by iron content and is anticipated to reduce emissions generated in the production of steel by an estimated 30% as compared to the more commonly consumed 62% iron content hematite fines. It is envisaged that the high-quality product from the Shymanivske iron ore project will attract a premium price in a variety of markets.

Black Iron's CEO Matt Simpson stated: "Black Iron received several offtake and investment proposals and chose Cargill based on its proposal striking the optimal balance of investment quantum, structure and shared vision on the increasing demand for high-grade ore as the global ferrous industry is shifting to become greener. Cargill brings tremendous value not only in strengthening the project funding with a US$75 million financing facility but, more importantly, its global network and local footprints, unique industry insight and successful experience in the technical marketing of high-grade ore to customers around the world."

"We are very pleased to help finance Black Iron's Shymanivske Project," Lee Kirk, Managing Director, Cargill Metals said. "A relationship with Black Iron would be an excellent fit with Cargill Metals' growth strategy to develop a high-grade and CO2 reducing iron ore portfolio, to help customers navigate the environmental and carbon challenges and opportunities ahead, and to support the sustainability efforts and low carbon ambitions of the ferrous industry."

Cargill has operated in Ukraine since 1991 with offices in several cities to support its more than 500 in-country employees. Cargill's main Ukraine businesses are in the agricultural sector and include a deep-sea vessel terminal at Port Yuzhny close to the terminal Black Iron plans to use to ship its iron ore.

The selection of Cargill as Black Iron's preferred offtake purchaser has triggered the following activities to bring the Project to a fully financed state for construction:
Update of the Project's feasibility study will commence upon receipt and review of proposals already requested.
Selection and negotiation of binding terms with the preferred engineering, procurement and construction contractor who proposes to invest ~US$65 million in the Project.
Commencement of third-party due diligence with a consortium of major international financial institutions on binding agreements for senior debt, US$100 million royalty investment and political risk insurance.

The above activities will be supported by the outputs from the environmental impact assessment and Ukraine land transfer work currently ongoing which were previously announced.

About Black Iron

Black Iron is an iron ore exploration and development company, advancing its 100% owned Shymanivske project located in Kryviy Rih, Ukraine. The Shymanivske project contains a NI 43-101 compliant mineral resource estimated to be 646 Mt Measured and Indicated mineral resources, consisting of 355 Mt Measured mineral resources grading 32.0% total iron and 19.5% magnetic iron, and Indicated mineral resources of 290 Mt grading 31.1% total iron and 17.9% magnetic iron, using a cut-off grade of 10% magnetic iron. Additionally, the Project contains 188 Mt of Inferred mineral resources grading 30.1% total iron and 18.4% magnetic iron. Full mineral resource details can be found in the NI 43-101 compliant technical report entitled "(Amended) Preliminary Economic Assessment of the Re-scoped Shymanivske Iron Ore Deposit" effective November 21, 2017 (the "PEA") under the Company's profile on SEDAR at www.sedar.com. The Shymanivske project is surrounded by five other operating mines, including ArcelorMittal's iron ore complex. The PEA is preliminary in nature, and it includes inferred mineral resources that are considered too speculative geologically to have the economic considerations applied to them that would enable them to be categorized as mineral reserves. There is no certainty that the PEA will be realized. Mineral resources that are not mineral reserves do not have demonstrated economic viability. Please visit the Company's website at www.blackiron.com for more information.

About Cargill

Cargill's 155,000 employees across 70 countries work relentlessly to achieve our purpose of nourishing the world in a safe, responsible, and sustainable way. Every day, we connect farmers with markets, customers with ingredients, and people and animals with the food they need to thrive. We combine 155 years of experience with new technologies and insights to serve as a trusted partner for food, agriculture, financial and industrial customers in more than 125 countries. Side-by-side, we are building a stronger, sustainable future for agriculture.

About Cargill Metals

Headquartered in Singapore, Cargill's metals business provides value-add services and solutions along the global ferrous supply chain. Combining over 150 years track record of risk management in global commodities markets with more than 40 years unique insights in the ferrous industry, we provide our customers the support they need to thrive. We connect iron ore miners around the world with steel mills in key markets and provide a broad range of services from technical marketing to customized risk management solutions along the supply chain including to end users of steel.

With around 130 dedicated experts, an established global network and hubs in China, Singapore, U.K. and Vietnam to serve our customers, Cargill operates across over 25 ports and more than 50 warehouses globally, providing physical and financial solutions to over 2,500 customers in 40 countries. Each year we move around 50 million tons of physical iron ore and 6 million tons of physical steel globally. For more information, visit Cargill Metals Supply Chain or Cargill.com.

For more information, please contact:

Matt Simpson
Chief Executive Officer
Black Iron Inc.
info@blackiron.com

Forward-Looking Information

This press release contains forward-looking information. Forward-looking information is based on what management believes to be reasonable assumptions, opinions and estimates of the date such statements are made based on information available to them at that time.

Forward-looking information may include, but is not limited to, statements with respect to the financial viability of the Shymanivske project (the "Project"), the Proposal and the offtake agreement to be negotiated between Cargill and the Company, the price of iron ore, the demand for iron ore, the Company's ability to obtain adequate financing, including offtake financing, the process to be followed to obtain offtake financing, updating of the Project's feasibility study, engagement of engineering, procurement and construction contractors, third-party due diligence with senior debt providers, the Company's ability to acquire the requisite land for Project construction, the Company's ability to develop the Project, the ceasefire of conflict in Ukraine and the Company's future plans.

Generally, forward looking information can be identified by the use of forward-looking terminology such as "plans", "expects" or "does not expect", "is expected", "budget", "scheduled", "estimates", "forecasts", "intends", "anticipates" or "does not anticipate", or "believes", or variations of such words and phrases or state that certain actions, events or results "may", "could", "would", "might" or "will be taken", "occur" or "be achieved". Forward-looking information is subject to known and unknown risks, uncertainties and other factors that may cause the actual results, level of activity, performance or achievements of the Company to be materially different from those expressed or implied by such forward-looking information, including but not limited to: general business, economic, competitive, geopolitical and social uncertainties; the actual results of current exploration activities; other risks of the mining industry and the risks described in the annual information form of the Company.

Although the Company has attempted to identify important factors that could cause actual results to differ materially from those contained in forward-looking information, there may be other factors that cause results not to be as anticipated, estimated or intended. There can be no assurance that such information will prove to be accurate, as actual results and future events could differ materially from those anticipated in such statements. Accordingly, readers should not place undue reliance on forward looking information. The Company does not undertake to update any forward-looking information, except in accordance with applicable securities laws. The Company notes that mineral resources that are not mineral reserves do not have demonstrated economic viability.

All information contained in this news release with respect to Cargill was supplied by Cargill for inclusion herein and the Company has relied on the accuracy of such information without independent verification.

Black Iron Receives Multiple Off-take & Investment Offers
Prev Post

Black Iron Strengthens Board & Operations Team
Next Post

PRESS

Recent News & Updates

September 18, 2023. 11:21 AM

Black Iron General Shareholder Update

TORONTO, CANADA, September 18, 2023 – Black Iron Inc. ("Black Iron" or the "Company") (TSX: BKI) recently received feedback that Ukraine's Ministry of Economy is currently reviewing the Company's investment support agreement ("Investment Agreement") and is generally supportive. The next steps are to receive written comments on

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Black Iron is an emerging iron producer with upside potential. Black Iron is currently developing the lowest-cost undeveloped Iron Ore project globally.

Tacora Resources Inc.
102 NE 3rd Street
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Grand Rapids, MN 55744
Ph: 218-999-7018
Fax: 218-999-5827

STRICTLY PRIVATE AND CONFIDENTIAL

October 20, 2020

1128349 BC Ltd.
400 Burrard Street, Suite 1860
Vancouver, BC V6C 3A6
Canada

Attention: Mr. Michael J. Smith, President & Chief Executive Officer
Mr. Ken Yuen

Re: Tacora Mine, Third Quarter Ended September 30, 2020 – Minimum Royalty Payment

Dear Michael:

A wire transfer was effectuated today on behalf of Tacora Resources Inc. ("Tacora") and the Tacora Mine located at 1 Wabush Mines Road, PO Box 3000, Wabush, NL A0R 1B0 for the following payment:

1. Tacora is required to remit on or before October 25, 2020 a royalty payment in the amount of Cdn$7,099,904.74.

We have withheld Cdn$1,419,980.95 which has been paid to the Minister of Finance, Government of Newfoundland and Labrador for Minerals Rights withholding tax per their instructions.

Provided as an attachment to this letter are the reported values in accordance with section A.3. of the Amendment and Restatement of Consolidation of Mining Leases – 2017 between 1128349 B.C. LTD. (formerly called MFC BANCORP LTD.), and Tacora Resources Inc.

Sincerely,

Joe Broking
Chief Financial Officer

CC by email: Steve Bennett (Stikeman Elliott LLP)

TACORA RESOURCES

Tacora Resources Inc.
102 NE 3rd Street
Suite 120
Grand Rapids, MN 55744
Ph: 218-999-7018
Fax: 218-999-5827

Table 1- Earned Royalties from Mined Ore

Royalties from Mined Ore from Pit				
Ore Mined and Products Produced				
Starting Date	Ending Date	Total Tonnage Mined (tonnes)	Iron Ore Products Produced (tonnes)	Ave. %Fe of Iron Ore Products
7/1/2020	9/30/2020	2,430,318	712,119	65.43%

		Calculation of Earned Royalties							
Starting Date	Ending Date	Gross Value Received ($)	Gross Tonnes Shipped	Deducible Expenses Cap ($)	Deductible Expenses ($)	Net Revenue from Iron Ore Products ($)	Withheld Taxes ($)	Credits or Payments ($)	Earned Royalties ($)
7/1/2020	9/30/2020	$105,570,063.78	706,627	$ 2.72	1,922,025.44	$103,648,038.34	$0.00	($155,457.94)	$7,099,904.74

Table 2- Earned Royalties from Tailings, Waste Rock, Spoil and Mine Waste

		Royalties from Tailings, Waste Rock, Spoil and Mine Waste															
		Tailings, Waste Rock, Spoil and Mine Waste Mined				Iron Ore Products from Tailings, Waste Rock, Spoil and Mine Waste					Calculation of Earned Royalties						
Starting Date	Ending Date	Tailings (tonnes)	Waste Rock (tonnes)	Spoil and Mine Waste (tonnes)	Total Tonnage Mined (tonnes)	Tailings (tonnes)	Waste Rock (tonnes)	Spoil and Mine Waste (tonnes)	Total Iron Ore Products Produced (tonnes)	Ave %Fe of Iron Ore Products	Deductible Expenses ($)	Gross Value Received ($)	Withheld Taxes ($)	Credits or Payments ($)	Net Revenue from Iron Ore Products ($)	Earned Royalties ($)
7/1/2020	9/30/2020	-	-	-	-	-	-	-	-	-	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00