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.

PUBLIC
MOTION RECORD OF CARGILL, INCORPORATED AND CARGILL INTERNATIONAL TRADING PTE LTD.
(Motion to Set Aside Disclaimer)

(Motion Returnable June 26, 2024)

June 11, 2024

Goodmans LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Robert J. Chadwick (LSO No. 35165K)
rchadwick@goodmans.ca

Caroline Descours (LSO No. 58251A)
cdescours@goodmans.ca

Peter Kolla (LSO No. 54608K)
pkolla@goodmans.ca

Sarah Stothart (LSO No. 73068O)
sstothart@goodmans.ca

Lawyers for Cargill, Incorporated and Cargill International Trading Pte Ltd.

INDEX

I N D E X

1

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.

NOTICE OF MOTION
(Motion to Set Aside Disclaimer)

Cargill, Incorporated ("**Cargill Inc.**") and Cargill International Trading Pte Ltd. ("**CITPL**" and together, "**Cargill**") will make a motion before Justice Kimmel of the Ontario Superior Court of Justice (Commercial List) on June 26, 2024 at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard,

☐ In writing under subrule 37.12.1(1);

☐ In writing as an opposed motion under subrule 37.12.1(4);

☒ In person;

☐ By telephone conference;

☐ By video conference.

THE MOTION IS FOR an order:

(a) in accordance with subsection 32(2) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), that the Offtake Agreement and Stockpile

Agreement (each as defined and described below) are not disclaimed, despite the Notice of Disclaimer of Tacora Resources Inc. dated May 16, 2024 (the "**Notice of Disclaimer**");

(b) declaring that the Offtake Agreement and Stockpile Agreement continue to bind Tacora and are otherwise enforceable against it;

(c) permanently sealing the materials to be filed on this motion in connection with the Notice of Disclaimer that contain confidential information in respect of the Offtake Agreement and Stockpile Agreement; and

(d) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Tacora's CCAA Proceedings and Restructuring Efforts to Date

2. Tacora Resources Inc. ("**Tacora**" or the "**Company**") is a private company focused on the production and sale of iron ore concentrate. It owns the Scully Mine, located in Labrador, which it acquired in 2017.

3. On October 10, 2023, Tacora was granted protection under the CCAA pursuant to an initial order (as amended, the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). Most recently, the stay of proceedings was extended to June 24, 2024.

4. From October 30, 2023 to January 19, 2024, Tacora solicited offers or proposals for a sale, restructuring or recapitalization transaction in respect of Tacora's assets and business operations, through a two-phase sale, investment and services solicitation process approved by the Court (the "**SISP**").

5. As part of the SISP, Tacora received three Phase 2 bids (including a bid from Cargill), and selected a bid from a consortium formed by an ad hoc ground of noteholders and new equity participants as the successful bid (the "**AHG Consortium Bid**").

6. As described further below, the AHG Consortium Bid is no longer available to Tacora. Tacora is now seeking approval of a new Sale Procedure Order, which would see a further sale solicitation process occur from early June to July 2024 (the "**Second Sale Process**").

7. Cargill Inc. is the DIP lender and CITPL is a secured creditor of Tacora in respect of an advanced payments facility with Tacora. CITPL is also the counterparty to the Offtake Agreement and Stockpile Agreement which are the subject of Tacora's Notice of Disclaimer, and which, if disclaimed, would make CITPL the largest unsecured creditor of Tacora.

The Offtake Agreement and Stockpile Agreement

8. Tacora and CITPL are parties to an Iron Ore Sale and Purchase Contract, dated April 5, 2017 and restated on or about November 11, 2018, and as further amended from time to time, whereby Cargill buys 100% of the iron ore concentrate production at the Scully Mine (the "**Offtake Agreement**"). The Offtake Agreement was amended in 2020 to last for the life of the Scully Mine.

9. Pursuant to the Offtake Agreement, Cargill purchases and takes possession of the iron ore once it is loaded onto a vessel at port for shipment. Payment from CITPL to Tacora pursuant to the Offtake Agreement is made upon vessel load and then finalized at a later date, accounting for variations in the market price of iron ore and hedging arrangements that may be entered into in the interim. Substantial price swings in the intervening shipment period are to be settled in cash, subject to a margin facility made available as part of the Offtake Agreement.

10. Tacora and CITPL are also parties to an Iron Ore Stockpile Purchase Agreement dated December 17, 2019 (the "**Stockpile Agreement**", and together with the Offtake Agreement, the "**Agreements**"), which amends the Offtake Agreement by advancing the time at which Cargill purchases and takes possession of the iron order to when it is unloaded to a stockpile at the port (i.e. before it is on the vessel).

11. The payment mechanisms in the Offtake Agreement and Stockpile Agreement function together, and offer working capital to Tacora at an earlier stage than Tacora would otherwise have access to it. The Agreements also provide a margin facility that insulates Tacora from the effects of iron ore price swings which would otherwise necessitate settlement in cash. The Agreements further provide opportunities for the parties to enter into further hedging arrangements, which they did: Cargill regularly agreed to hedging agreements with Tacora to manage Tacora's risk from price fluctuations, which were implemented through amendments to the pricing formula in the Offtake Agreement.

12. There are significant operational interdependencies and features to the Offtake Agreement and Stockpile Agreement that render their termination complicated and problematic both for Tacora and Cargill. Tacora's iron ore must be transported by train to the port, and then stored at the stockpile. Onward shipment vessels and third party contracts must be arranged, and the iron ore is then loaded onto vessels and shipped to third party purchasers around the world.

13. The Offtake Agreement and Stockpile Agreement are the Company's only sources of cash flow, apart from the DIP facility funded by Cargill.

The Prior RVO Motion

14. Upon selecting the AHG Consortium Bid as the successful bid in the SISP, Tacora brought a motion on February 2, 2024 seeking a reverse vesting order from this Court to approve the transaction contemplated by the AHG Consortium Bid (the "**RVO Motion**"). Tacora sought this relief in order to rid itself of its obligations under the Offtake Agreement and Stockpile Agreement (without, at that time, purporting to follow the disclaimer procedures of section 32 of the CCAA). The effect of the RVO Motion and the AHG Consortium Bid for which Tacora sought approval would have been to create a damages claim in excess of US$500 million in favour of Cargill against Tacora that would not be satisfied.

15. Cargill disputed this relief on numerous bases, including that an RVO is an extraordinary remedy that was not available or appropriate, as it was not the only available transaction or the best available alternative for Tacora and its stakeholders in the circumstances.

16. Tacora subsequently withdrew the RVO Motion as the AHG Consortium Bid had been withdrawn.

17. Tacora agreed to obtain a Claims Procedure Order in connection with a potential restructuring, though it has to date resisted seeking a Meeting Order and filing a plan of compromise or arrangement. Cargill has continued to seek to engage in dialogue and negotiation with Tacora about the best path forward for all stakeholders.

Notice of Disclaimer of the Offtake Agreement

18. On May 16, 2024, Tacora delivered a Notice of Disclaimer to Cargill seeking to disclaim the Offtake Agreement and the Stockpile Agreement (the "**Disclaimer**"). Tacora identified two alleged reasons for the Disclaimer in its Notice of Disclaimer:

(a) it will increase Tacora's chances of successfully identifying a going-concern transaction for its business and exiting the CCAA; and

(b) the Offtake Agreement is "off-market" in its life-of-mine term and its profit share, among other characteristics.

19. Cargill brings this motion for an order that the Offtake Agreement and Stockpile Agreement not be disclaimed.

20. The Offtake Agreement and Stockpile Agreement cannot be disclaimed pursuant to the CCAA for the following reasons:

(a) the nature of the Agreements as "eligible financial contracts" is such that they are prohibited from being disclaimed by Section 32(9)(a);

(b) the nature of the Agreements as "financing agreements" where Tacora is the borrower is such that they are prohibited from being disclaimed by Section 32(9)(c); and

(c) the proposed Disclaimer would not enhance the prospects of a viable compromise or arrangement being made in respect of the Company.

The Offtake Agreement and Stockpile Agreement Cannot be Disclaimed

21. The Offtake Agreement, alone and in conjunction with the Stockpile Agreement, is an eligible financial contract, including because it falls within the definition of "derivatives agreement" within the meaning of s. 2 of the Eligible Financial Contract Regulations. It allows Tacora to mitigate risk associated with iron ore pricing.

22. In addition, the Offtake Agreement and the Stockpile Agreement are financing agreements in which Tacora is the borrower. Since Tacora does not have any working capital loan arrangements, it uses the cash flow provided by Cargill through the Agreements to fund its operations on a day-to-day basis. Cargill can also provide financing to Tacora as borrower through the margining facility under the Offtake Agreement for price fluctuations up to $7.5 million in Cargill's favour.

Disclaiming the Offtake Agreement would Not Enhance Prospects of Viable Plan

23. The Disclaimer of the Offtake Agreement and the Stockpile Agreement will not enhance the prospects of a viable compromise or arrangement being made in respect of Tacora.

24. It is inappropriate, and not in the interests of enhancing a viable compromise, for the Disclaimer to be allowed at this critical time in the CCAA proceedings. Tacora needs operational stability in order to maximize value and achieve a successful restructuring solution in the next few months. The timing of the delivery of the Notice of Disclaimer increases risk in a number of areas for Tacora and its stakeholders.

25. If the Disclaimer is effected, an unsecured claim in excess of USD $500 million will be created in respect of Cargill.

26. The reason for Tacora's attempted Disclaimer is not to enhance the prospects of a viable compromise or arrangement, but to make an attempt to clear its path from obstacles to seeking a future RVO transaction with a hypothetical bidder in the Second Sale Process. Tacora can proceed with an asset sale and these issues would not need to be determined, or it can attempt to address the Offtake Agreement pursuant to an opposed RVO transaction.

27. An RVO is not a compromise or arrangement. The Disclaimer does not enhance the prospects of a consensual plan of compromise and arrangement to be voted on and approved by creditors. Rather, it creates the largest unsecured claim that would position Cargill to control the vote on any potential proposed CCAA plan.

28. Further, Tacora relies on the Offtake Agreement for 100% of its cash flows. If the Disclaimer were made effective on June 26, 2024, it would create significant instability for the Company, put the business at tremendous liquidity risk, and result in bidders evaluating a potential restructuring or sale transaction with a target that has no reliable cash flow.

29. Maintaining the status quo, rather than a Disclaimer, will better enhance the prospect of a viable compromise or arrangement, as Tacora will have stability and all options available to it, including a plan but also including an asset sale or an opposed RVO transaction.

30. It is not fair, appropriate or reasonable in the circumstances for Tacora to disclaim the Offtake Agreement and Stockpile Agreement.

Sealing

31. Certain confidential information relating to the Agreements is contained in the materials to be filed on this motion (the "**Confidential Material**").

32. The Confidential Material contains commercially sensitive information pertaining to the terms of the Agreements.

33. If the Confidential Material is publicly disclosed, competitors of Cargill could use it to harm Cargill's interests, both generally and in the context of Tacora's CCAA proceeding.

34. The Offtake Agreement contains a confidentiality clause to protect its commercially sensitive information (subject to limited exceptions).

35. Alternative measures will not protect against the risks of disclosure of the Confidential Material and sealing of the Confidential Material is reasonable in light of the circumstances.

36. The salutary effects of sealing the Confidential Material from the public record greatly outweigh the deleterious effects of doing so under the circumstances. No party will be prejudiced if the Confidential Material is sealed on the basis requested. No public interest will be served if the Confidential Material is disclosed.

General

37. The CCAA, including sections 11 and 32 and the Regulations thereof.

38. Rules 2.03, 3.02, 10.01, 12.07 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

39. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

40. Affidavit of Jeremy Cusimano sworn March 1, 2024, and cross-examination transcripts in relation thereto, portions of which are confidential;

41. Affidavit of William Gula sworn March 1, 2024, and cross-examination transcripts in relation thereto, portions of which are confidential;

42. Affidavit of Matthew Lehtinen sworn March 1, 2024, and cross-examination transcripts in relation thereto, portions of which are confidential;

43. Affidavit of Joe Broking sworn February 2, 2024, and cross-examination transcripts in relation thereto, portions of which are confidential;

44. Affidavit of Matthew Lehtinen, to be sworn;

45. Evidence and argument filed in respect of the dispute between Tacora and 0778539 B.C. Ltd. and 1128349 B.C. Ltd. referred to as the "MFC Royalty Dispute"; and

46. Such further and other materials as counsel may advise and this Honourable Court may permit.

May 31, 2024

GOODMANS LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Robert Chadwick LSO#: 35165K
rchadwick@goodmans.ca

Caroline Descours LSO#: 58251A
cdescours@goodmans.ca

Peter Kolla LSO#: 54608K
pkolla@goodmans.ca

Sarah Stothart LSO#73068O
sstothart@goodmans.ca

Tel: 416.979.2211

Lawyers for Cargill, Incorporated and Cargill International Trading Pte Ltd.

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.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding Commenced At Toronto

NOTICE OF MOTION
(Motion to Set Aside Disclaimer)

Goodmans LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Robert Chadwick LSO#: 35165K
rchadwick@goodmans.ca

Caroline Descours LSO#: 58251A
cdescours@goodmans.ca

Peter Kolla LSO#: 54608K
pkolla@goodmans.ca

Sarah Stothart LSO#73068O
sstothart@goodmans.ca

Tel: 416.979.2211

Lawyers for Cargill, Incorporated and Cargill International Trading Pte Ltd.

2

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.

AFFIDAVIT OF MATTHEW LEHTINEN

Sworn June 11, 2024

I, Matthew Lehtinen, of the City of Carmel, in the State of Indiana, make oath and say:

1. I am employed by Cargill, Incorporated ("**Cargill Inc.**") as the Customer Manager Americas in respect of its metals business. I was hired by Cargill in August 2023 as a full-time senior employee, and began to work on matters relating to Tacora Resources Inc. ("**Tacora**") upon my hiring in my role at Cargill's metals business. As such, I have personal knowledge of the matters deposed to herein. To the extent that information has been provided to me by others, I have specified the source of that information and in each case, I believe the information I refer to is true. Cargill Inc. together with Cargill International Trade PTE Ltd. ("**CITPL**") are collectively referred to herein as "**Cargill**".

2. I have previously sworn affidavits in relation to various issues in the CCAA proceedings. The contents of those affidavits continue to be true.

3. I swear this affidavit in support of the motion Cargill has brought to contest Tacora's attempt to disclaim the Offtake Agreements and the Stockpile Agreement (as defined below).

I. BACKGROUND

4. Tacora is a private company focused on the production and sale of iron ore concentrate. It owns the Scully Mine, located in Labrador, which it acquired in 2017.

5. As I have described in previous affidavits, Cargill has been a key partner and important source of financial support for Tacora since its inception. Tacora sells 100% of its iron ore to Cargill pursuant to an Offtake Agreement dated April 5, 2017 and restated on November 11, 2018, and as further amended from time to time (the "**Offtake Agreement**"). The Offtake Agreement was amended in 2020 to last for the life of the Scully Mine.

6. As Tacora's proceedings under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (the "**CCAA**") have continued, Tacora has increasingly – but incorrectly – sought to paint the Offtake Agreement as a hindrance to its restructuring efforts. This is a recent narrative. Indeed, the Offtake Agreement has provided stability to Tacora during these CCAA proceeding as its only source of revenue. The Offtake Agreement provides considerable benefits to Tacora. The benefits include:

(a) Cargill being committed to purchase 100% of the iron ore concentrate that Tacora produces regardless of market conditions;

(b) no credit risk with third party purchasers who purchase the iron ore concentrate;

(c) logistical and administrative arrangements put in place by Cargill regarding the transportation and sale of the iron ore concentrate, which reduce Tacora's business and financial risk and provide operational and employee costs savings to Tacora;

(d) a profit share mechanism whereby Tacora shares in the results of Cargill's efforts to market all of the iron ore concentrate;

(e) a hedging program available to Tacora at below market fees that can protect Tacora from fluctuations in iron ore prices if Tacora chooses to employ hedges; and

(f) a margining facility that provides credit for mark-to-market exposure at no cost to Tacora that can provide valuable working capital to Tacora (i.e. financing) between the time when Cargill makes an initial payment for the iron ore concentrate when it is loaded onto a vessel at the port in Sept-Iles, Quebec, and when customers make final payment often months later.

7. I believe that the amounts payable by Tacora to Cargill under the Offtake Agreement reflect fair value for the services provided to Tacora by Cargill on a global basis, taking into account Tacora's working capital provided by Cargill, the risk-management services provided by Cargill to Tacora, and the benefits to Tacora of all the general and technical marketing, brand development, shipping, advisory, and other services provided by Cargill.

8. Tacora and Cargill are further party to an Onshore Purchase Agreement dated December 17, 2019 (the "**Stockpile Agreement**", and together with the Offtake Agreement, the "**Agreements**"), which amends the Offtake Agreement. A copy of the Stockpile Agreement is attached at **Exhibit "A"**. As noted above, under the Offtake Agreement, Cargill makes an initial payment to Tacora for, and takes possession of, the iron ore concentrate once it is loaded onto a vessel at the port in Sept-Iles, Quebec. The Stockpile Agreement moves the point in time at which Cargill purchases the iron ore ahead, such that the initial payment occurs once the iron ore is

deposited at a storage stockpile at the port. In this way, the Stockpile Agreement can function to increase the amount of working capital (i.e. financing) that Cargill provides to Tacora. The Stockpile Agreement does this by moving ahead when Tacora receives initial payment for the iron ore concentrate by several weeks, and lengthening the time between that initial payment from Cargill to Tacora and when customers make final payment to Cargill, often months later around the time when the vessels are offloaded at their final destination, at which time Cargill makes a final adjustment payment to Tacora (as discussed in further detail below). Further, the Stockpile Agreement and Offtake Agreement provide for price settlement over time such that Tacora is not settling for prices at a discount for the benefit of receiving such early payment; rather, Tacora can fully realize the actual market settlements when such iron ore is delivered to, and payment for it is made by, the end customers.

9. Cargill has a long history of working with Tacora in a positive and constructive way to find balanced and reasonable solutions to liquidity issues it has faced. In addition to the agreements above, Cargill is or has also been party to other key related agreements and arrangements with Tacora, including multiple working capital facilities to optimize Tacora's operations, working capital, cash flow and liquidity, and a hedging program made available in a cost efficient and beneficial manner for Tacora.

10. Prior to the CCAA proceedings, Tacora and its financial advisors had consistently described the relationship with Cargill and the features of the Offtake Agreement as being a valuable asset of Tacora. For example, in various capital raise documents and presentations produced by Tacora or its financial advisors in the years prior to the CCAA proceedings, the Offtake Agreement was described as a favourable asset of Tacora and having been structured at

competitive market terms with a strong incentive for Cargill to maximize the price received so as to allow Tacora to participate in the upside.

11. In an executed transaction term sheet entered into by Tacora in mid-2023, Tacora, the potential buyer, certain of Tacora's noteholders and Cargill, agreed that the Offtake Agreement would be an unaffected obligation and be assumed on its terms as part of a proposed transaction.

12. In October 2023, Tacora sought and was granted protection under the CCAA. Cargill has provided debtor-in-possession financing to Tacora throughout the duration of the CCAA, pursuant to the Cargill DIP Agreement, as amended (the "**Cargill DIP Facility**").

13. From October 30, 2023 to January 19, 2024, Tacora solicited offers or proposals for a sale, restructuring or recapitalization transaction in respect of Tacora's assets and business operations, through a two-phase sale, investment and services solicitation process approved by the Court (the "**SISP**").

14. Cargill participated as a bidder in the SISP. It presented a transaction and structure which Cargill believed maximized value for all stakeholders in the form of an investment in, and restructuring and recapitalization of, Tacora and its business.

15. Ultimately, Tacora selected a bid from a consortium formed by an ad hoc group of noteholders (the "**AHG**") and new equity participants as the successful bid (the "**AHG Reverse Vesting Transaction**"). The AHG Reverse Vesting Transaction required a reverse vesting order that proposed to assign the Offtake Agreement and Stockpile Agreement to a shell corporation that could not perform those contracts, and provide no payment to Cargill for the unsecured claim that would be created. Tacora proposed to assign the Agreements without having first sought to

disclaim them. Said differently, Tacora sought to keep the Offtake Agreement and Stockpile Agreement in place until it completed a transaction that would have seen it emerge from these CCAA proceedings and then leave behind such Agreements for no consideration to Cargill.

16. The Offtake Agreement is a valuable agreement to Cargill. Through it, Cargill buys and then markets and sells to third parties the iron ore concentrate produced during the life of the Scully Mine. Depriving it of its contractual entitlement would cause it damages of in excess of USD $500 million.

17. In that context and in response to Tacora's choice to pursue the AHG Reverse Vesting Transaction, Cargill had no choice but to seek to defend its contractual rights that Tacora was seeking to jettison in return for no payment to Cargill. Cargill believed that Tacora was legally prohibited from seeking a reverse vesting order affecting the Agreements because it had not first sought to disclaim the Agreements under the CCAA. Moreover, Cargill believed (and still believes) that Tacora could not satisfy the legal test for approval of a reverse vesting order on the facts of this case.

18. Throughout these CCAA proceedings, Cargill has continuously sought to seek ways to assist Tacora's restructuring and find solutions to problems. It has sought a consensual out-of-Court restructuring with the AHG. It advanced a value maximizing transaction in the SISP, and even after Tacora chose the AHG Reverse Vesting Transaction, Cargill encouraged Tacora to allow it to continue to advance a value-maximizing transaction (which Tacora refused). Cargill put forward a claims process, which Tacora initially rejected. Cargill sought mediation, but Tacora, the Monitor and the AHG have refused to participate. Cargill encouraged Tacora to advance contingency planning including to obtain consents and approvals required to implement

any asset sale transaction, but to no avail. Cargill has also advanced the Cargill DIP Facility to Tacora during the CCAA proceedings and has increased the availability and improved the terms of the Cargill DIP Facility to assist Tacora and its business for the benefit of all stakeholders.

19. On April 9, 2024, the evening before the scheduled court hearing to consider Tacora's motion for approval of the AHG Reverse Vesting Transaction, Tacora advised Cargill that the AHG consortium had walked away from the transaction due to an unfulfilled debt condition.

20. In the aftermath of the failure to seek approval of the AHG Reverse Vesting Transaction, Tacora agreed – as had been urged by Cargill – to obtain a Claims Procedure Order in connection with a potential restructuring. Cargill has continued to seek to engage in dialogue and negotiation with Tacora about the best path forward for all stakeholders.

21. Tacora has obtained Court approval of a new sale process (the "**Second Sale Process**"). Cargill currently intends to participate in that process.

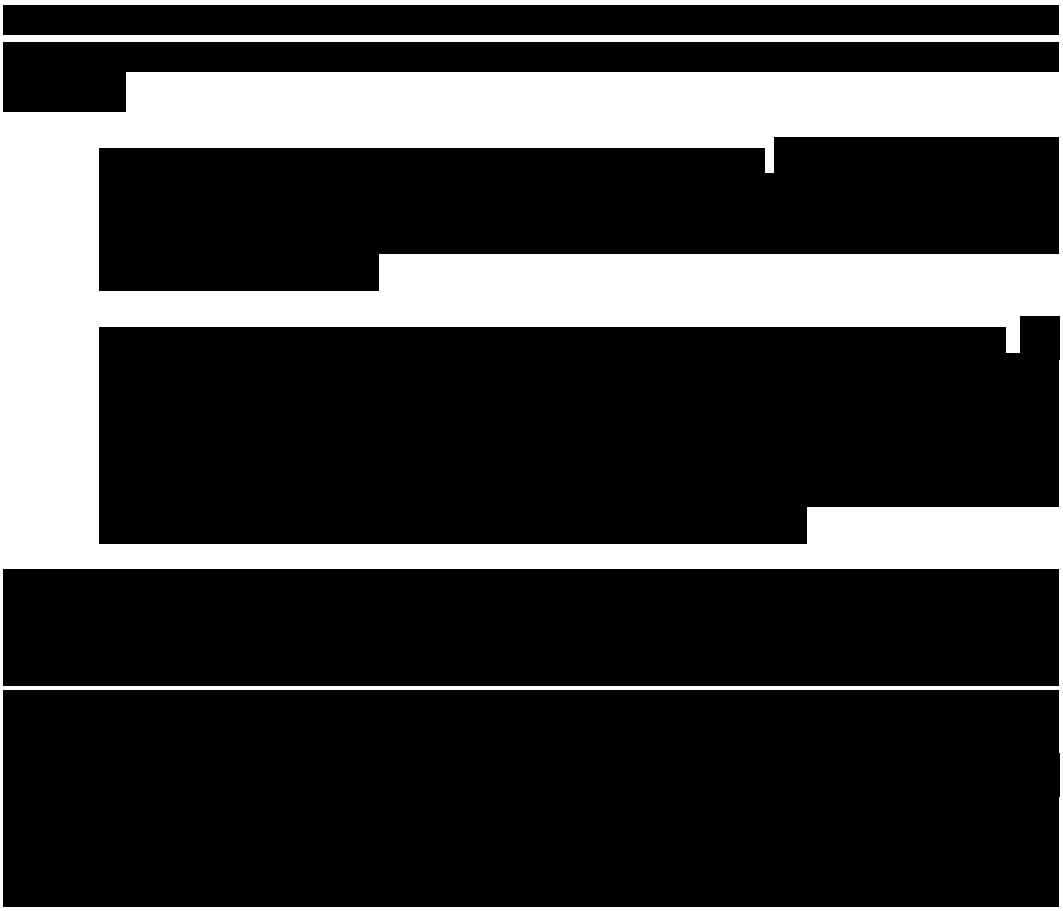
22. On May 16, 2024, Tacora delivered a Notice of Disclaimer to Cargill pursuant to the CCAA seeking to disclaim the Agreements (the "**Notice of Disclaimer**"). The Notice of Disclaimer and accompaying letter are attached to my affidavit as **Exhibit "B"**. In the accompanying letter, Tacora claimed that disclaiming the Agreements is necessary to better Tacora's chances of attracting a transaction in the Second Sale Process and exiting the CCAA. I disagree.

II. MARGINING UNDER THE AGREEMENTS

23. I have previously described the mechanics of the Offtake Agreement and the Stockpile Agreement in my affidavit sworn March 1, 2024, and reference them at a high level in this section.

24. Pursuant to the Offtake Agreement, Cargill purchases and takes possession of iron ore concentrate from Tacora once it is loaded onto a vessel at the Sept-Iles port in Quebec for shipment. Payment from CITPL to Tacora pursuant to the Offtake Agreement is made upon vessel load and then finalized when the final sale to a customer is completed. The final payment accounts for variations in the market price of iron ore and hedging arrangements that may be entered into in the intervening period (which can span several months). Additionally, during the shipping period, price swings are to be settled in cash, subject to a margin facility made available in section 15.3 of the Offtake Agreement by which Tacora is extended financing up to $7.5 million if the iron ore price decreases (and Cargill is extended financing up to $5 million if the price increases).

25. Sections 15.2 and 15.3 of the Offtake Agreement provide (emphasis in original):



[redacted]

26. The Stockpile Agreement adds an earlier date for possession and payment, upon arrival at the stockpile at the port, and extends the margining under the Offtake Agreement to cover that earlier period as well.

27. The payment mechanisms in the Offtake Agreement and Stockpile Agreement function together, and offer working capital to Tacora at an earlier stage than Tacora would otherwise have access to payments resulting from Cargill's ultimate sales of iron ore concentrate to customers for which payments is received typically when the vessels are offloaded at their final destination (or earlier through letters of credit arranged by Cargill, at a cost, that can accelerate payment timing for the benefit of Cargill and Tacora). The margin facility in the Agreements also insulates Tacora from the effects of iron ore price swings which would otherwise necessitate settlement in cash. The Agreements further provide opportunities for the parties to enter into further hedging arrangements, which they did regularly until Tacora stopped hedging in January 2024, to manage Tacora's risk from price fluctuations through amendments to the pricing formula in the Offtake Agreement.

28. While the Offtake Agreement provided for margin financing to Tacora up to $7.5 million, Cargill subsequently agreed to increase the limit to $25 million in connection with the amendment and restatement of the Advanced Payments Facility dated May 29, 2023 (which otherwise involved Cargill making advanced payments to Tacora against future deliveries under the Offtake Agreement to satisfy Tacora's additional working capital needs). The increased margining facility was premised on and amended the existing facility under the Offtake Agreement, and upon termination of the APF, it was agreed that the parties' obligations would revert to those under the

Offtake Agreement. A copy of Amendment No. 1 to Amended and Restated Advance Payments Facility Agreement made June 23, 2023 is attached as **Exhibit "C"**.

29. The same increased margining facility was incorporated into the Cargill DIP Facility agreement.

III. A DISCLAIMER PREJUDICES THE STATUS QUO TO TACORA'S DETRIMENT

30. If the Agreements were disclaimed, as noted above, Cargill would suffer damages in an amount exceeding USD $500 million. It would immediately become Tacora's largest unsecured creditor and any unsecured creditor CCAA plan would require Cargill's support.

31. In the absence of the Agreements, Tacora would also be left without any source of revenue whatsoever. Tacora relies on the Offtake Agreement and Stockpile Agreement for 100% of its cash inflows. Cargill and potentially other third parties may be advancing transactions for the acquisition of Tacora's assets and projects as part of the Second Sale Process and it is not the time for Tacora to enter into a new offtake agreement which could affect such proceeds. Disclaiming the Agreements has the potential to disrupt the flow of Tacora's iron ore concentrate to the market. Tacora requires stability at this time.

32. I note that this is even more the case given that the Stockpile Agreement was entered into to provide additional working capital to Tacora on a zero-cost basis. Tacora has acknowledged that without the Stockpile Agreement it would need new and additional working capital financing in the range of USD $30 million to $40 million, which would cause Tacora to incur significant interest expense and prime all existing creditors by a significant amount.

33. As previously stated by Cargill on numerous occasions, including in open-Court, Cargill is willing to work with parties – Tacora, the AHG and/or other potential bidders in the Second Sale Process – to amend the terms of the Offtake Agreement as part of a consensual restructuring solution or a bid in the Second Sale Process. Cargill is in discussions with a wide variety of parties that want Cargill to continue as the offtake provider as part of a go-forward solution for Tacora. Even the potential for disclaimer of the Agreements – let alone their actual disclaimer – is very disruptive to these discussions and negotiations that Cargill is having and wants to take part in as part of a consensual resolution, given the uncertainty created by Tacora's Notice of Disclaimer.

34. Tacora should not be limiting restructuring solutions, but taking all steps to advance and explore all restructuring and transaction alternatives in advance of July 12, 2024 (the date for phase 1 proposals as provided in the Second Sale Process).

35. In addition, if the Offtake Agreement is not in place, Tacora would be offside the DIP cashflows and not have sufficient availability under the Cargill DIP Facility and there is significant risk that Tacora would not have the funding to continue its operations without the consent of Cargill or a replacement DIP facility on terms approved by the CCAA Court. Having no guaranteed stability or operational certainty in this regard if the Agreements were disclaimed puts Tacora in a far more precarious position (both with any potential replacement offtake provider and with potential bidders in the Second Sale Process) than the status quo.

IV. OPERATIONAL INTERDEPENDENCIES BETWEEN CARGILL AND TACORA

36. In addition to the above constraints, there are significant operational interdependencies and features to the Offtake Agreement and Stockpile Agreement that render their termination complicated and problematic both for Tacora and Cargill.

37. The time period during which iron ore is in shipment can extend for several months. During this period, Cargill pays Tacora on three separate occasions – at the stockpile, upon vessel load, and around the time of final delivery – and marks-to-market regularly. If the Agreements were disclaimed now, various shipments would be in the midst of their transit and payment journeys and there would be a lag time and operational complexity associated with completing them and settling all payments before Cargill and Tacora could be un-intertwined.

38. Currently, Cargill markets the iron ore and arranges for all onward sale contracts. Both it and Tacora have resources dedicated to this arrangement that would be required to be transferred fully to Tacora (or another hypothetical offtake provider).

39. Further, iron ore must be stored at the stockpile, then loaded onto vessels for shipment to third party purchasers around the world. Cargill has agreements in place for the stockpile storage, which includes Canadian tax frontage and filings given the onshore purchase of the ore, and has arrangements with the port and vessels and an ocean transportation team to coordinate all freight needs. All of these would need to be managed and replaced by Tacora if the Agreements were disclaimed.

40. Cargill also has in place a readily available hedging program to offer insulation from price fluctuations. Tacora does not currently have any alternative ability to hedge or manage its risk exposure to price fluctuations associated with its sales.

V. CONFIDENTIAL CARGILL INFORMATION

41. Documents containing Cargill's confidential information in respect of the Offtake Agreement will be included in the materials filed on this motion, including documents that

reference the profit share and other specific commercial terms that are confidential to Cargill (the "**Confidential Information**"). I believe that disclosure of the Confidential Information would make available sensitive information that could be used to benefit Cargill's market competitors and would disadvantage Cargill in the market and in these ongoing CCAA proceedings, including by prejudicing Cargill's future contractual negotiations.

VI. CONCLUSION

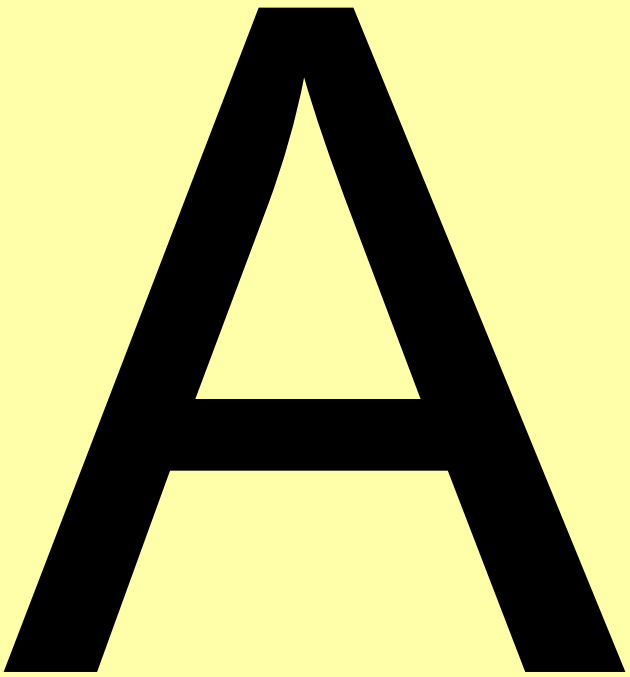
42. For the reasons set out above, I do not believe a disclaimer of the Agreements is appropriate, nor is it likely to enhance the prospect of a compromise or arrangement. The Second Sale Process is fundamentally important to Tacora and its stakeholders and a disclaimer of the Agreements at this time may result in less options or alternatives in the Second Sale Process, a potential for no Cargill DIP Facility, operational risk, and potentially increasing the amount of interest and priority secured debt by a material amount. The Agreements should remain in place and matters can be properly considered upon the results of the Second Sale Process (which may in fact include an ongoing Cargill Offtake Agreement).

SWORN remotely by Matthew Lehtinen stated as being located in the City of Carmel in the State of Indiana, before me at the City of Toronto, in the Province of Ontario, on June 11, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

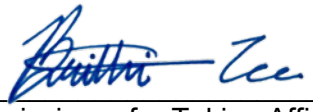
Commissioner for Taking Affidavits

Brittni Tee
LSO #85001P

Matthew Lehtinen


A

THIS IS EXHIBIT "A" REFERRED TO IN THE AFFIDAVIT OF MATTHEW LEHTINEN SWORN BEFORE ME THIS 11th DAY OF JUNE, 2024



Commissioner for Taking Affidavits
Brittni Tee
LSO # 85001P

17 December 2019

dated: 17 December 2019

Tacora Resources Inc

and

Cargill International Trading Pte Ltd

IRON ORE STOCKPILE PURCHASE AGREEMENT

Cargill International Trading Pte Ltd
138 Market Street, # 17-01 CapitaGreen, Singapore 048946

Contents

Clauses

This iron ore stockpile purchase agreement (***"Agreement"***) is made the 17th day of December 2019 between:

1. **Tacora Resources Inc,** a company incorporated in British Columbia, Canada with registered number BC1103579 and its registered office at: Suite 1700, Park Place, 666 Burrad Street, Vancouver BC V6C 2X8,Canada (***"Seller")***; and

2. **Cargill International Trading Pte Ltd** a company incorporated in Singapore with registered number 196700442D and its registered office at 138 Market Street, # 17-01 CapitaGreen, Singapore 048946 (***"Buyer").***

BACKGROUND

A. On 5th April 2017, Seller and Buyer entered into an offtake agreement in respect of all iron ore to be mined from the Wabush Scully mine and processing plant, Newfoundland and Labrador, Canada during the term of the agreement (the "***Offtake Agreement***").

B. The Offtake Agreement was amended and restated on 11th November 2018, so that it now has a term expiring on 31st December 2024, with options for Buyer to extend the term until 31st December 2033.

C. The parties agree that instead of Buyer purchasing iron ore FOB onboard vessel pursuant to the Offtake Agreement, some iron ore for a certain period will purchased by Buyer on the stockpile in the port in accordance with the terms of this Agreement, which effects certain consequential changes to the Offtake Agreement.

1. DEFINITIONS

1.1 In this Contract, the following terms shall, unless otherwise defined, have the following meanings:

"***Buyer Stockpile***" means the stockpile or stockpiles referred to in clause 3.1;

"***Condition Precedent***" means a condition precedent listed in clause 2.4;

"***Deadbed Ore***" means the first 35,000MT of Relevant Ore on the Buyer Stockpile;

"***Effective Time***" shall have the meaning set out in clause 2.1;

"***End-Stop Date***" shall have the meaning set out in clause 2.1;

"***Invoice Day***" means, in respect of a Pricing Day, the first Working Day after that Pricing Day;

"***Offtake Agreement***" shall have the meaning set out in background paragraph A above;

"***PA1***" (Port Authority 1) means Societe Ferroviaire et Portuaire de Pointe-Noire s.e.c. (known as SFPPN);

"***PA1 Dock***" means dock 30 at the Pointe-Noire Terminal, Sept-Iles, Quebec, Canada;

"***PA2***" (Port Authority 2) means the Sept-Iles Port Authority;

"***PA2 Dock***" means dock 35 at the Pointe-Noire Terminal, Sept-Iles, Quebec, Canada;

"***Parcel Stockpile Price***" means, in respect of a Parcel and in USD per DMT, the average Stockpile Provisional Price paid in respect of those DMTs of Relevant Ore comprised within the Parcel, on the basis that the Parcel comprises the oldest DMTs of Relevant Ore on the Buyer Stockpile at the time the Parcel is removed from the Buyer Stockpile in order to be loaded on a vessel;

"***Pricing Day***" shall have the meaning set out in the table in clause 5.2;

"***Relevant Ore***" means Ore which is purchased by Buyer pursuant to clause 3;

"***Stockpile Provisional Price***" shall have the meaning set out in clause 5.2;

"***Storage Area***" shall have the meaning set out in clause 1.30 of the Agreement in Principle dated 1 June 2018 made between PA1 and Seller;

"***Seller Services***" means, in respect of each DMT of Relevant Ore, the Seller Services set out in clause 7;

"***Term***" means the term of this Agreement which commences at the Effective Time and, subject to earlier termination pursuant to clause 11, ends on 31st December 2021;

1.2 Terms not defined in this Agreement but defined in the Offtake Agreement, shall have the same meaning as in the Offtake Agreement. Such terms include, without limitation: DMT, Insolvency Event, Ore, Platts 62% Index, Platts 65% Index, Parcel, party, Working Day, WMT.

1.3 Headings applied to clauses are applied for reading convenience only and shall not be taken into account to construe the meaning of the relevant clauses.

2. CONDITIONALITY

2.1 This Agreement will become effective at 9am (local time at the Mine) on the 2nd Working Day after Buyer confirms in writing to Seller, by no later than 31st December 2019 (the "***End-Stop Date***"), that each of the Conditions Precedent has been satisfied (the "***Effective Time***").

2.2 Buyer shall serve the confirmation referred to in clause 2.1 on Seller within 24 hours of it first becoming aware that all the Conditions Precedent have been satisfied. If that confirmation is not served by the End-Stop Date, then this Agreement shall terminate and neither party shall have any further liability hereunder other than any arising pursuant to this clause 2.

2.3 Buyer shall have the right unilaterally, by notice to Seller, to:

2.3.1 extend the End-Stop Date and/or;

2.3.2 waive each or any of the Conditions Precedent.

2.4 The Conditions Precedent are:

2.4.1 **SFPPN:** agreements between Buyer and PA1, in a form acceptable to Buyer, acting reasonably, becoming legally binding and unconditional, which enable Buyer to store Relevant Ore at the Buyer Stockpile, to transport Relevant Ore from the Buyer Stockpile to the PA1 Dock, to load Relevant Ore at the PA1 Dock onto vessels and to export Relevant Ore, all on terms which are not materially less beneficial than those available to Seller at the date of this Agreement;

2.4.2 **Sept-Iles Port Authority:** agreements between Buyer and PA2, in a form acceptable to Buyer, acting reasonably, becoming legally binding and unconditional, which enable Buyer to store Relevant Ore at the Buyer Stockpile, to transport Relevant Ore from the Buyer Stockpile to the PA2 Dock, to load Relevant Ore at the PA2 Dock onto vessels and to export Relevant Ore, all on terms which are not materially less beneficial than those available to Seller at the date of this Agreement;

2.4.3 **Export Licences:** Buyer having all necessary governmental permits, permissions and consents, including export licences, necessary to enable it to export Relevant Ore from the PA1 Dock and the PA2 Dock;

2.4.4 **Lender Consents and Security Release:** Buyer being satisfied, acting reasonably, that Seller has all necessary lender consents, in a form acceptable to Buyer, acting reasonably, which are necessary to facilitate the execution and operation of this Agreement, including the release of all Relevant Ore from existing lender security arrangements;

2.4.5 **Insurance:** Seller, at its own cost, procuring insurance in the name of Buyer in respect of the Buyer Stockpile and each of the activities listed in clause 7.3, on terms which are acceptable to Buyer, acting reasonably.

2.5 Seller agrees to use all reasonable endeavours, including the incurring of reasonable cost, to ensure that the Conditions Precedent are satisfied as soon as possible. Buyer agrees to cooperate fully with Seller to facilitate this.

3. SALE AND PURCHASE

3.1 Subject to clause 3.3 below, Buyer shall purchase, in accordance with the terms of this Agreement:

3.1.1 all Ore comprised within the stockpile or stockpiles in the Storage Area at the Effective Time, including the Deadbed Ore; and

3.1.2 all Ore delivered during the Term by Seller to the Buyer Stockpile.

3.2 All Relevant Ore purchased by Buyer pursuant to clause 3.1.1 shall become the property of Buyer, with both title and risk passing from Seller to Buyer, at the Effective Time and all Relevant Ore purchased by Buyer pursuant to clause 3.1.2 shall become the property of Buyer, with both title and risk passing from Seller to Buyer, at the moment of delivery by Seller to the Buyer Stockpile.

3.3 Notwithstanding clause 3.2, Buyer shall not pay:

3.3.1 if at any time the Buyer Stockpile (including the Deadbed Ore) comprises more than 400,000DMT, for a DMT of Ore which represents the surplus until the Buyer Stockpile is reduced to 400,000DMT or less as a result of Ore being shipped, in which case that DMT of Ore will be deemed to have been delivered to the Buyer Stockpile on the date on which the Buyer Stockpile is so reduced; and

3.3.2 for the Deadbed Ore unless the Deadbed Ore is loaded on a vessel and the Buyer Stockpile is reduced to zero DMT, in which case the Deadbed Ore will be deemed to have been delivered to the Buyer Stockpile on the date on which it is removed from the Buyer Stockpile for shipping.

4. WEIGHT OF ORE

4.1 **Existing Stockpile:** the weight of Ore purchased by Buyer pursuant to clause 3.1.1 will be the weight (in

DMT) which Seller is able to prove, by the production to Buyer of train weight data and drone data, exists at the location stipulated in clause 3.1.1 beyond reasonable doubt. That DMT weight shall take into account a deemed level of natural moisture in the Ore of 1.6% and all moisture deliberately added to the Ore for any purpose, including to prevent wind loss.

4.2 **Empty Train Weight:** Each train which transports Ore to the Buyer Stockpile shall be weighed empty by Seller using the weighing platforms at PA1 and the relevant data shall be sent to Buyer by Seller as required by clause 4.7.1.

4.3 **Loaded Train Weight:** Seller shall procure that each train which transports Ore to the Buyer Stockpile shall be weighed fully loaded by PA1 (or PA2 as the case may be) using the weighing platforms at PA1. The relevant data shall be sent to Buyer by Seller as required by clause 4.6.1. This weight data shall:

4.3.1 include the natural moisture within the Ore which shall be deemed to be 1.6% and shall consequently be denominated in WMT;

4.3.2 be converted to DMT for the purposes of clause 5 (Purchase Price) by deduction of its deemed 1.6% moisture; and

4.3.3 be measured prior to any deliberate adding of moisture to Ore for any purpose, including to prevent wind loss.

4.4 Seller shall be responsible for administering all weighing operations pursuant to clauses 4.1 to 4.3 and ensuring weighing equipment is regularly maintained and calibrated. Seller shall notify Buyer promptly if it becomes aware of inaccuracies in weighing results and shall take into account any reasonable representations of Buyer in ensuring that relevant equipment is recalibrated as necessary.

4.5 The weight of Relevant Ore purchased by Buyer during the Term pursuant to clause 3.1.2 shall be determined in DMT initially by deducting train weights derived pursuant to clause 4.2 from train weights derived pursuant to clause 4.3, provided however that Seller shall, at the request of Buyer, undertake drone surveys (subject to the survey methodology for deriving weight from images being acceptable to Buyer, acting reasonably) of the Buyer Stockpile and take such other steps as may reasonably be requested by Buyer (including taking into account any drone surveys effected by Buyer, or any other data produced by Buyer), to verify the weight in DMT of Ore delivered from any train to the Buyer Stockpile.

4.6 Payment adjustments necessary as a result of weighing inaccuracies shall be made immediately. Each such adjustment shall require Buyer to pay for DMTs not paid for, or for Seller to reimburse Buyer for DMTs underdelivered, as the case may be. Buyer shall pay for each such DMT at the Stockpile Provisional Price current on the first Invoice Day after the inaccuracy is discovered. Seller shall reimburse Buyer for underdelivered DMTs at the Stockpile Purchase Price most recently paid by Buyer for that number of DMTs.

4.7 On each day during the Term Seller shall send to Buyer:

4.7.1 all weight data derived pursuant to clauses 4.2 and 4.3 since the prior day notification;

4.7.2 a 7 day rolling schedule showing weight data of deliveries of Ore made and to be made by Seller to the Buyer Stockpile on each day. Such weight data shall be actual for the previous day and the current day and prospective for the 5 forward days; and

4.7.3 Seller's best estimate in DMT of the current weight of Relevant Ore, inclusive of the Deadbed Ore, comprising the Buyer Stockpile.

5. PURCHASE PRICE

5.1 In consideration for:

5.1.1 all purchases of Ore pursuant to clause 3.1; and

5.1.2 the Seller Services relating to each DMT of Relevant Ore;

5.1.3 the amendments to the Offtake Agreement set out in clause 9;

Buyer shall pay to Seller the Stockpile Provisional Price in respect of each DMT of Relevant Ore, but subject to the provisions of clause 3.3.

5.2 The "***Stockpile Provisional Price***" (in USD per DMT) means, in respect of an Invoice Day an amount per DMT equal to PPI *less* PFC where:

"PPI"	means the provisional purchase index, which is an amount equal to A+B+C
"A"	means 100% of the arithmetic mean of the last 5 published values of the Platts 62% Index for the period ending 5 days prior to the relevant Pricing Day.
"B"	means 60% of the arithmetic mean of the last 5 Spread Values for the period ending 5 days prior to the relevant Pricing Day.
"C"	means – USD4.00, being a discount to reflect weighing uncertainties at the Buyer Stockpile.
"Pricing Day"	means each Monday during the Term, providing that if any such Monday is not a Working Day, the Pricing Day shall be the next following Working Day;
"Spread Value"	means the excess value in US dollars per DMT of the published value of the Platts 65% Index at a certain time on a certain date over the published value of the Platts 62% Index at the same time on the same date, which shall never be less than zero.
"PFC"	means the provisional freight cost, being the arithmetic mean of the last 5 published values of the BECI-C3 during the 7 day period ending 5 days prior to the Pricing Day, such arithmetic mean then being adjusted by the Buyer, acting reasonably, in accordance with the following provisions of the Offtake Agreement: Clause 11.1.2(b): the Canada – Brazil freight cost adjustment; Clause 11.1.2(c): the winter ice class premium adjustment; and Clause 11.1.2(d): the Temporary Dock adjustment.

6. PAYMENT

6.1 Buyer shall prepare calculations of the Stockpile Provisional Price for each Invoice Day and shall send the same to Seller on the Pricing Day related to that Invoice Day.

6.2 On the first Invoice Day, Seller shall send to Buyer an invoice for the Stockpile Provisional Price for that Invoice Day in respect of:

6.2.1 the Ore referred to in clause 3.1.1 other than the Deadbed Ore; and

6.2.2 all Relevant Ore delivered to the Buyer Stockpile after the Effective Time.

6.3 On each subsequent Invoice Day, Seller shall send to Buyer an invoice for the Stockpile Provisional Price for that Invoice Day in respect of all Relevant Ore delivered to the Buyer Stockpile and not previously invoiced, other than the Deadbed Ore.

6.4 Every invoice shall include:

6.4.1 Canadian sales taxes to the extent the same are mandatorily chargeable by Seller under local law; and

6.4.2 relevant documentation evidencing the weight of Relevant Ore invoiced.

6.5 Payment of each such invoice shall be made by Buyer to Seller within 3 Working Days of receipt of the invoice.

6.6 Payments to be made pursuant to this Agreement shall be:

6.6.1 reduced by the amount of any port costs required to be paid by Buyer pursuant to arrangements entered into by Buyer with PA1 and PA2 pursuant to clauses 2.4.1 and 2.4.2 above; and

6.6.2 subject to netting pursuant to clause 15 of the Offtake Agreement (Netting and Margining) as if amounts payable under this Agreement were payable under the Offtake Agreement.

7. SELLER SERVICES

7.1 Seller shall provide the following services to Buyer during the Term, as set out in this clause.

7.2 Seller shall manage the Buyer Stockpile in accordance with:

7.2.1 the requirements of insurers in order to ensure that insurance taken out pursuant to clause 2.4.5 remains valid at all times and, subject thereto;

7.2.2 any reasonable requirements of Buyer from time to time.

In particular Seller shall procure that the Buyer Stockpile is kept secure at all times, clearly signed and marked as the property of Buyer and shall ensure that no third party property is added to the Buyer Stockpile.

7.3 Seller shall procure that Buyer has the right at any time to:

7.3.1 access to the Buyer Stockpile;

7.3.2 store Relevant Ore at the Buyer Stockpile;

7.3.3 transport Relevant Ore from the Buyer Stockpile to the PA1 Dock and the PA2 Dock;

7.3.4 load Relevant Ore at the PA1 Dock and the PA2 Dock onto vessels; and

7.3.5 export Relevant Ore.

7.4 Seller shall provide export services to Buyer which shall include:

7.4.1 procuring all necessary export permits in the name of Buyer;

7.4.2 the payment on behalf of Buyer of all export duties and any port disbursement allowances otherwise payable by Buyer; and

7.4.3 undertaking each of the activities listed in clause 7.3 on behalf of Buyer and as required pursuant to clause 8.1.2 below.

7.5 Seller shall do all other things, and provide services to Buyer in respect thereof, which Seller would have done in respect of Relevant Ore had this Agreement not been entered into and Seller had been selling Relevant Ore to Buyer pursuant to the terms of the Offtake Agreement.

8. INTERFACE WITH THE OFFTAKE AGREEMENT

8.1 During the Term, the Offtake Agreement shall operate in accordance with its terms subject to the following:

8.1.1 quantities of Ore to be sold by Seller to Buyer pursuant to the Offtake Agreement shall be satisfied by quantities of Relevant Ore sold pursuant to this Agreement;

8.1.2 Relevant Ore shall be shipped pursuant the Offtake Agreement exactly as Ore would have been, had this Agreement not been entered into, provided that:

8.1.2.1 Seller shall perform its role as a service provider to Buyer pursuant to clause 7, and not as owner and seller of Ore pursuant to the Offtake Agreement;

8.1.2.2 notwithstanding clause 8.1.2.1 above, pricing formulae under the Offtake Contract will continue to be applied on the basis that Seller, and not Buyer, is the exporter of Relevant Ore responsible for loading Relevant Ore on vessels;

8.1.3 in respect of a Parcel, the Provisional Purchase Price calculated pursuant to clause 13.1.3 of the Offtake Agreement shall not be paid pursuant to clause 13.1.1 of the Offtake Agreement and the procedure set out in clause 8.1.4 below shall instead apply;

8.1.4 in respect of a Parcel, the Provisional Purchase Price ("***PPP***") shall be compared to the Parcel Stockpile Price ("***PSP***"). If PPP exceeds PSP, Buyer shall pay the excess, multiplied by the number of DMTs in the Parcel, to Seller. If PSP exceeds PPP, Seller shall pay the excess, multiplied by the number of DMTs in the Parcel, to Buyer. All payments shall be made by telegraphic transfer and otherwise in accordance with clause 13.1.1 of the Offtake Agreement;

8.1.5 subject to clause 8.1.6 below, references in the Offtake Agreement (in whatever form) to the Provisional Purchase Price having been paid, shall be construed as references to clause 8.1.4 above having been applied and all resulting payments made; and

8.1.6 in clause 15.2.1 of the Offtake Agreement (Netting and Margining), in the case of the first Calculation Date in respect of a Relevant Shipment, LPP shall be the Provisional Purchase Price in respect of which clause 8.1.4 above has been applied only if all payments resulting from that application of clause 8.1.4 have been made. If all such resulting payments have not been made, LPP in that case shall be the aggregate of the Parcel Stockpile Price paid in respect of each Parcel comprised within that Relevant Shipment.

9. AMENDMENTS TO THE OFFTAKE AGREEMENT

9.1 New clause 35.6 shall be added to the Offtake Agreement as follows:

"35.6: If Buyer exercises the option in clause 35.5, Buyer shall have an additional option to extend this Contract for a further 2 years by serving notice in writing on Seller no later than 31st December 2033. On service of such notice, each of 2034 and 2035 shall become Contract Years for the purposes of this Contract."

9.2 In the definition of Provisional Purchase Price in clause 1 of the Offtake Contract, the reference to clause 13.3 shall be changed to a reference to clause 13.1.3.

9.3 Clause 31 (Entire Agreement) of the Offtake Contract shall be amended to refer both to this Agreement and the Offtake Agreement constituting the entire agreement between the parties.

10. REPRESENTATIONS AND WARRANTIES

10.1 Each party represents and warrants to the other that:

10.1.1 It has all requisite power and authority, and has taken all necessary corporate action, to enable it to enter into and perform this Agreement;

10.1.2 its obligations under this Agreement shall, when executed, constitute legal, valid, and binding obligations enforceable in accordance with the terms of this Agreement;

10.1.3 it does not require the consent, approval or authority of any other person to enter into or perform its obligations under this Agreement;

10.1.4 its entry into and performance of its obligations under this Agreement will not constitute any breach of or default under any contractual, governmental or public obligation binding on it; and

10.1.5 it is not engaged in any litigation or arbitration proceedings which might affect its capacity or ability to perform its obligations under this Agreement and to the best of its knowledge no such legal or arbitration proceedings have been threatened or are pending against it.

11. TERM AND TERMINATION

11.1 Either party may terminate this Agreement and sue for breach of contract if:

11.1.1 the other party commits a material breach of this Agreement or the Offtake Agreement and fails to remedy the same within 10 Working Days of receipt of notice in writing of the breach from the terminating party; or

11.1.2 an Insolvency Event occurs with respect to the other party.

11.2 Buyer may terminate this Agreement and sue for breach of contract if Seller commits any breach of any loan facility or debt agreement under which it is the borrower, which is not waived by the lending party or parties within 30 Working Days of the breach.

11.3 If the Offtake Agreement terminates, this Agreement shall automatically terminate.

12. TACORA REPURCHASE

12.1 If Buyer has reasonable grounds for believing that PA1 or PA2 may refuse to load Relevant Ore as a consequence of it being owned by Buyer rather than Seller, Buyer has the option (exercisable on any number of occasions without limit) to require Seller to buy back the Relevant Ore.

12.2 Buyer shall exercise the above option by notice in writing to Seller specifying that the option is exercised in respect of all Relevant Ore removed from the Buyer Stockpile for the purpose of loading on a vessel between the specified start date and the specified end date ("***Repurchase Ore***").

12.3 At the moment the Repurchase Ore is removed from the Stockpile for loading onto a vessel:

12.3.1 title in that Repurchase Ore shall revert to Seller; and

12.3.2 a debt shall arise owed by Seller to Buyer in respect of the Parcel Stockpile Price paid for each DMT comprised within the Repurchase Ore.

12.4 Financial settlement between Seller and Buyer shall occur in accordance with clause 8 above, the whole of which shall apply to Repurchase Ore, save that clauses 8.1.1 and 8.1.2 shall not apply to Repurchase Ore.

13. OFFTAKE AGREEMENT CLAUSES TO APPLY

13.1 The following clauses of the Offtake Agreement shall apply in this Agreement as if set out in full in this Agreement subject only to:

13.1.1 the changes set out in column 3 of the table; and

13.1.2 other consequential changes necessary for the relevant provision to make sense in this Agreement.

1	2	3
Offtake Agreement Clause Number	**Offtake Agreement Clause Name**	**Changes to the clause in this Agreement**
16	Bank Details	None
24	Taxes and Duties	None
26	Force Majeure	None
27	Sanctions	None
28	Anti-boycott	None
29	Anti-bribery, FCPA	None
30	Confidentiality	None
31	Entire Agreement	The clause in this Agreement shall refer both to this Agreement and the Offtake Agreement as constituting the entire agreement between the parties.

32	Notices	None
33	Index Discontinuation	None
34	Expert	None
36	Governing Law and Arbitration	None
38	Assignment	None

Signed by the parties on the date set out above.

TACORA RESOURCES INC.

By: Joe Bedard

Its: EVP and CFO

CARGILL INTERNATIONAL TRADING PTE LTD

By: PHIL MULVIHILL

Its: SIGNATORY

B

THIS IS EXHIBIT "B" REFERRED TO IN THE AFFIDAVIT OF MATTHEW LEHTINEN SWORN BEFORE ME THIS 11th DAY OF JUNE, 2024

Commissioner for Taking Affidavits
Brittni Tee
LSO # 85001P

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

Ashley Taylor
Direct: +1 416 869 5236
ataylor@stikeman.com

May 16, 2024 **By Email**

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

Attention: Robert Chadwick and Caroline Descours

Dear Rob and Caroline:

Re: **In the Matter of a Plan of Compromise or Arrangement of Tacora Resources Inc. ("Tacora" or the "Company"), Court File No. CV-23-00707394-00CL (the "CCAA Proceedings**")

And Re: **Disclaimer of offtake agreement between Tacora, as seller, and Cargill International Trading Pte Ltd. ("Cargill"), as buyer, dated April 5, 2017, and restated on November 9, 2018 (as amended from time to time, the "Offtake Agreement") and iron ore stockpile purchase agreement between Tacora, as seller, and Cargill, as buyer, dated April 17, 2019 (as amended and restated from time to time, the "Stockpile Agreement")**

Pursuant to Section 32 of the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"), Tacora is empowered to disclaim or resiliate any agreement to which it was a party when the CCAA Proceedings commenced. The enclosed 'Notice by Debtor Company to Disclaim or Resiliate an Agreement' (the "**Disclaimer**"), constitutes notice of Tacora's intention to disclaim the Offtake Agreement and the Stockpile Agreement pursuant to Section 32 of the CCAA. The Monitor has approved the disclaimer of the Offtake Agreement and the Stockpile Agreement.

From previous discussions with you, we understand that Cargill intends to oppose the Disclaimer. As a courtesy, this letter sets forth the "reasons" for the Disclaimer, as contemplated by Subsection 32(8) of the CCAA.

1. **Disclaiming the Offtake Agreement will increase Tacora's chances of successfully identifying a going-concern transaction for its business and exiting the CCAA Proceedings.**

Since the restart of the Scully Mine and throughout the duration of the Offtake Agreement, Tacora has incurred cumulative losses of over $415 million.

The Company requires significant capital investment in the Scully Mine for the Company to ramp up production and become profitable. Without this investment and corresponding capital improvements Tacora will continue to generate losses.

As you know, the Company and Cargill have (both together and independently) attempted to solicit investments in Tacora from third party equity investors, since early 2022, without success. The Offtake Agreement has been a significant impediment to Tacora's ability to raise the new capital it needs to ramp up production at the Scully Mine. The market feedback to date is unequivocal – third party investors have advised that they will not provide new money to Tacora as long as the Offtake Agreement in its current form with the uneconomic and off-market terms described below remains in place.

In the Pre-Filing Strategic Process[1] conducted by Tacora in 2023, with the assistance of Greenhill & Co. Canada Ltd., the Company received several LOIs and term sheets in respect of potential transactions. Nearly all of the LOIs received contemplated significant concessions from Cargill on the Offtake Agreement. In May 2023, the Company entered into a non-binding LOI for the sale of the Company to a strategic party. However, in July 2023, the strategic party advised that it was no longer interested in the transaction contemplated by the LOI. One of the main reasons the transaction did not move forward, was the limit the Offtake Agreement imposed on the party's ability to use Tacora's iron ore in its own operations and prevent future realization of potential synergies.

In the Solicitation Process conducted by Tacora during these CCAA Proceedings, Greenhill contacted over 130 potential bidders and Cargill/Jefferies contacted over 43 financing parties directly, in an attempt to develop a consortium bid. Tacora received seven non-binding LOIs on the Phase 1 Bid Deadline of the Solicitation Process. Only one LOI, received from Cargill, contemplated the assumption of the Offtake Agreement. Cargill was also unable to attract any financing in connection with a potential consortium bid by the definitive bid deadline of January 19, 2024 in the Solicitation Process. As such, the bid submitted by Cargill had no committed new money financing and despite continuing efforts to raise capital, to date, Cargill has not presented an actionable transaction to the Company.

The Monitor has also reached the same conclusion as the Company.[2] In the Supplemental Report to the Fourth Report, the Monitor stated that it understood that Tacora viewed the Cargill Offtake Agreement as "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" and that "[t]he Monitor agrees with this conclusion."[3] In the Supplement to the Eighth Report, the Monitor states "[t]he Monitor agrees that the Offtake Agreement as currently structured is an impediment to a successful restructuring."[4]

Internal Cargill documents also recognize that the Offtake Agreement is an impediment to Tacora's ability to raise new equity financing. [redacted]

[1] Details of the Pre-Filing Strategic Process are set forth in the Affidavit of Michael Nessim sworn February 2, 2024 (the "**Nessim Affidavit**").
[2] Fourth Report of the Monitor dated March 14, 2024 (the "**Fourth Report**") at paras. 34, 52 and 65; Supplemental Report to the Fourth Report of the Monitor dated March 26, 2024 (the "**Supplemental Report to the Fourth Report**") at para. 29.
[3] Supplemental Report to the Fourth Report at para. 29
[4] Supplement to the Eighth Report of the Monitor dated April 24, 2024 (the "**Supplement to the Eighth Report**") at para. 10.

[redacted][6]

[redacted] Cargill has not amended the Offtake Agreement to reflect feedback provided by the Company regarding the market terms it believes are needed to attract the necessary capital. [redacted]

Accordingly, the Company is of the view that a disclaimer of the Offtake Agreement will significantly improve its chances of successfully soliciting new capital and allow it to exit the CCAA Proceedings as a going concern with a stronger, well-capitalized business.

2. The Offtake Agreement is significantly "off-market".

The Company believes the Offtake Agreement is uneconomic, "off-market" and is significantly prohibitive, compared to potential available replacement agreements. [redacted][8]

The Company has identified the following terms of the Offtake Agreement which it views as being "off-market" and an impediment to the Company's ability to successfully restructure in the CCAA Proceedings:

(a) ***Term***. The market feedback during the Pre-Filing Strategic Process and the Solicitation Process was that the Offtake Agreement cannot have a "life of mine" term. The "life of mine" term limits the Company's flexibility to engage in future transactions and limits optionality with respect to its operations. In the Pre-Filing Strategic Process, certain parties indicated that an inability to replace or renegotiate the Offtake Agreement with Cargill and to sell the iron ore concentrate for their own account was problematic in any acquisition of or investment into Tacora.

[5] Draft update to Cargill's Finance, Risk Management, and Audit Committee circulated between Scott Naatjes, Ross Hamou-Jennings, Alanna Weifenbach, and Lee Kirk on October 10, 2023.
[6] Confidential Exhibit No. 14 to Transcript of the Cross-Examination of Jeremy Matican held on March 22, 2024 ("**Matican Cross Examination**")
[7] Confidential Exhibit No. 13 to Matican Cross Examination; Matican Cross Examination at Qs 254-258.
[8] Confidential Exhibit No. 13 to Matican Cross Examination.

(b) ***Profit Share***. The profit share attributable to Cargill under the Offtake Agreement is "above market" as Cargill acknowledges. The above-market profit share increases Tacora's cost structure and limits its ability to generate sufficient profits to attract investors.

(c) ***Profit Share Structure***. The profit share structure within the Offtake Agreement is overly complicated and allows Cargill to capture a disproportionate amount of the expected rising premium of high-grade iron ore (i.e. >65% Fe) versus standard-grade iron ore (i.e. <62% Fe). The profit share and/or fee structure related to the Offtake Agreement needs to align with the quality of the iron ore produced at the Scully Mine.

(d) ***Quotation Period***. The quotational period of M+3 for the P62 index, being the third calendar month after the month of the date of the bill or bills of lading, included within the Offtake Agreement is excessively long. The long quotation period negatively impacts Tacora by exposing Tacora's revenue to significant iron ore price risk and volatility and in the past, has caused Tacora's cash and liquidity position to rapidly deteriorate with limited notice. This problem will continue to exacerbate as Tacora ramps up production exposing Tacora and its stakeholders to continual price and liquidity risk.

(e) ***Transparency***. The Offtake Agreement does not provide Tacora with sufficient visibility on the transactions with end-customers.

Without a disclaimer of the Offtake Agreement and the Stockpile Agreement (which works in conjunction with the Offtake Agreement), Cargill continues to earn significant amounts of profit to the detriment of Tacora and its other stakeholders. The Company believes a disclaimer of the Offtake Agreement and the Stockpile Agreement is necessary in order for Tacora to be able to raise the new capital required and to successfully restructure and exit the CCAA Proceedings as a going concern business.

Yours truly,

AT/PY

cc: Joe Broking and Heng Vuong *(Tacora Resources Inc.)*
Lee Nicholson, Philip Yang and Natasha Ramadan (*Stikeman Elliott LLP, counsel to Tacora Resources Inc.*)
Paul Bishop and Jodi Porepa *(FTI Consulting Canada Inc., in its capacity as the Court-appointed Monitor of Tacora Resources Inc.)*
Ryan Jacobs and Jane Dietrich *(Cassels Brock & Blackwell LLP, counsel to the Court-appointed Monitor of Tacora Resources Inc.)*

FORM 4

NOTICE BY DEBTOR COMPANY TO DISCLAIM OR RESILIATE AN AGREEMENT

TO: Cargill International Trading Pte Ltd. ("**Cargill**")

AND TO: FTI Consulting Canada Inc., in its capacity as the court-appointed monitor (in such capacity, the "**Monitor**") of Tacora Resources Inc. ("**Tacora**")

Take notice that:

1. On October 10, 2023, Tacora sought and obtained protection from its creditors under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") pursuant to an initial order (as amended or amended and restated from time to time) granted by the Ontario Superior Court of Justice (Commercial List) (the "**Court**").

2. In accordance with subsection 32(1) of the CCAA, Tacora gives you notice of its intention to disclaim or resiliate the following agreements:

   - Iron Ore Sale and Purchase Contract between Tacora, as seller, and Cargill, as buyer, dated April 5, 2017, as restated on November 9, 2018 (and as amended or amended and restated from time to time); and

   - Iron Ore Stockpile Purchase Agreement between Tacora, as seller, and Cargill, as buyer, dated December 17, 2019 (and as amended or amended and restated from time to time).

3. In accordance with subsection 32(2) of the CCAA, a party to each of the agreements may, on notice to the other party to the agreement and the Monitor, apply to the Court for an order that the agreement is not to be disclaimed or resiliated.

4. In accordance with paragraph 32(5)(a) of the CCAA, if no application for an order is made under subsection 32(2) of the CCAA, the agreements will be disclaimed or resiliated on June 15, 2024, being 30 days after the day on which this notice has been given.

Dated at Toronto, Ontario, on May 16, 2024.

[*Signature Page Follows*]

TACORA RESOURCES INC.

By: DocuSigned by: Joe Broking 9EBB6BB7AB484D8...

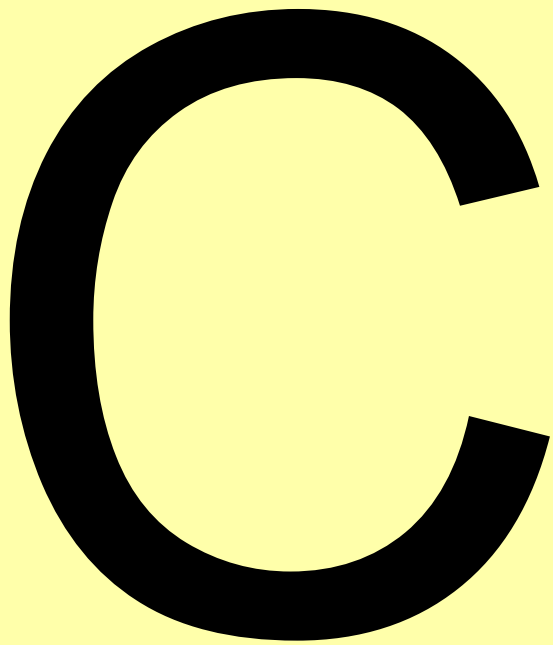
Name: Joe Broking
Title: Chief Executive Officer

The Monitor approves the proposed disclaimer or resiliation. Dated at Toronto, Ontario, on May 16, 2024

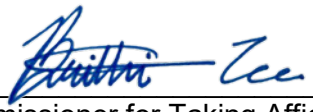
FTI CONSULTING CANADA INC., solely in its capacity as Monitor of Tacora Resources Inc. and not in its personal or corporate capacity

By: DocuSigned by: Paul Bishop 415F84284A85430...

Name: Paul Bishop
Title: Senior Managing Director



THIS IS EXHIBIT "C" REFERRED TO IN THE AFFIDAVIT OF MATTHEW LEHTINEN SWORN BEFORE ME THIS 11th DAY OF JUNE, 2024



Commissioner for Taking Affidavits
Brittni Tee
LSO # 85001P

AMENDMENT NO. 1 TO AMENDED AND RESTATED ADVANCE PAYMENTS FACILITY AGREEMENT

THIS AMENDING AGREEMENT made as of the 23 day of June, 2023.

AMONG:

TACORA RESOURCES INC., together with its successors and assigns (the "**Seller**")

- and -

CARGILL INTERNATIONAL TRADING PTE LTD., solely in its capacity as lender, together with its successors and assigns (the "**Buyer**")

1. DEFINITIONS

Capitalized terms used in this Amending Agreement (this "**Amending Agreement**") but not otherwise defined in this Amending Agreement are defined in the Amended and Restated Advance Payments Facility Agreement dated as of May 29, 2023 among the Seller and the Buyer (the "**A&R APF Agreement**").

2. AMENDMENTS TO THE A&R APF AGREEMENT

In consideration of the covenants, conditions, agreements and promises contained in this Amending Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Seller and the Buyer, the Seller and the Buyer hereby agree to amend the A&R APF Agreement as set forth in Schedule A hereto by deleting the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and by adding the underlined text (indicated textually in the same manner as the following example: underlined text).

3. CONDITIONS PRECEDENT TO AMENDING AGREEMENT

3.1 The effectiveness of this Amending Agreement shall be subject to the following conditions precedent, all of which shall be for the benefit of the Buyer and shall be satisfied on or prior to the date hereof, in each case in form and substance satisfactory to the Buyer:

(a) the Buyer shall have received evidence of amendments to the Indenture permitting, among other things, the amendments to the A&R APF Agreement contemplated hereunder and further extending the interest payment cure period thereunder, together with such supporting opinions addressed to the Buyer, in form and substance satisfactory to it;

(b) receipt by the Buyer of an updated Cash Flow Forecast (through to September 12, 2023) in form and substance satisfactory to the Buyer; and

(c) (i) all representations and warranties contained in the A&R APF Agreement and the Financing Documents shall be true and correct as of the date hereof as if made on such date, (ii) no Default or Event of Default shall have occurred and is continuing and (iii) there shall have been no Material Adverse Effect, and the Buyer shall have received a certification from an officer of the Seller, without personal liability, to that effect.

4. MISCELLANEOUS

4.1 Further Assurances

The Seller shall at its expense, from time to time do, execute and deliver, all such further acts, documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) and things as the Buyer may reasonably request for the purpose of giving effect to this Amending Agreement.

4.2 Continuing Effect

Each of the Seller and the Buyer acknowledges and agrees that the A&R APF Agreement, as amended by this Amending Agreement, continues in full force and effect and is hereby ratified and confirmed. Provisions of the A&R APF Agreement that have not been amended by this Amending Agreement remain in full force and effect, unamended. This Amending Agreement shall not, except as expressly provided herein, operate as an amendment or waiver of any right or remedy of any party under the A&R APF Agreement nor constitute a waiver of any provision thereof.

4.3 Disclosure

No press release or other public disclosure concerning the transactions contemplated herein shall be made by the Seller without the prior consent of the Buyer (such consent not to be unreasonably withheld); *provided*, however, that the Seller shall, after providing the Buyer and its Advisors with copies of all related documents and an opportunity to consult with the Buyer and its Advisors as to the contents, make prompt disclosure of the material terms of this Amending Agreement and make such disclosure as may be required by applicable law, by any Governmental Entity having jurisdiction over the Seller. Notwithstanding the foregoing, no information with respect to the identity of the Buyer shall be disclosed by the Seller except as may be required by applicable law, or by any Governmental Entity having jurisdiction over the Seller.

4.4 Conflict

To the extent that there is any inconsistency between this Amending Agreement and the A&R APF Agreement or any of other Financing Documents, this Amending Agreement shall govern.

4.5 **Amendments and Waivers**

This Amending Agreement shall only be amended or waived with the consent of the Buyer and the Seller in writing.

4.6 **Governing Law**

This Amending Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

4.7 **Confidentiality**

This Amending Agreement is being executed on a highly confidential basis on the understanding that this Amending Agreement, any related documents, the existence and contents thereof and the existence and contents of any discussions related thereto ("**Confidential Information**") shall not be disclosed by the Seller or the Buyer to any third party or made public without the prior written consent of the other party, except for disclosure to such party's legal and financial advisors, directors, officers and employees who are bound by the terms of confidentiality arrangements to keep all such Confidential Information confidential (with the applicable party bearing all risk of such disclosure).

4.8 **Counterparts; Electronic Signatures**

This Amending Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures provided by electronic transmission shall be valid and binding.

4.9 **Indemnity**

The Seller shall indemnify and hold harmless the Buyer and its Affiliates, and each such Person's respective officers, directors, shareholders, employees, legal counsel, agents and representatives (each, an "**Indemnified Person**"), from and against any and all suits, actions, proceedings, orders, claims, damages, losses, liabilities and expenses (including reasonable and documented legal fees and disbursements and other costs of investigation or defense, including those incurred upon any appeal) that may be instituted or asserted against or incurred by any such Indemnified Person as a result of or in connection with (i) the breach by the Seller of its obligations in connection with or arising out of the transactions contemplated under this Amending Agreement and the other documents related thereto and any actions or failures to act in connection therewith including the taking of any enforcement actions by the Buyer and (ii) all legal costs and expenses arising out of or incurred in connection with disputes between or among the Buyer, the Seller and/or any other party or parties to any of the documents related thereto (collectively, "**Indemnified Liabilities**"); provided that the Seller shall not be liable for any indemnification to an Indemnified Person to the extent that any such suit, action, proceeding, claim, damage, loss, liability or expense results from that Indemnified Person's gross negligence or wilful misconduct. No Indemnified Person shall be responsible or liable to any other party to any document related thereto, any successor, assignee or third party beneficiary of such Person or any other Person asserting claims derivatively through such party, for indirect, punitive,

exemplary or consequential damages which may be alleged as a result of any transaction contemplated hereunder or under any of the documents related thereto.

4.10 **No Waiver**

The Buyer's failure, at any time or times, to require strict performance by the Seller of any provision of this Amending Agreement or any other document related thereto shall not waive, affect or diminish any right of the Buyer thereafter to demand strict compliance and performance herewith or therewith. Any suspension or waiver of an Event of Default shall not suspend, waive or affect any other Event of Default whether the same is prior or subsequent thereto and whether the same or of a different type. Except as otherwise provided for herein, none of the undertakings, agreements, warranties, covenants and representations of the Seller contained in this Amending Agreement or any of the other documents related thereto and no Default or Event of Default shall be deemed to have been suspended or waived by the Buyer, as applicable, unless such waiver or suspension is by an instrument in writing from the Buyer and directed to the Seller specifying such suspension or waiver.

4.11 **Remedies**

The Buyer's rights and remedies under this Amending Agreement shall be cumulative and nonexclusive of any other rights and remedies that the Buyer may have under any other agreement, including the other documents related thereto, by operation of law or otherwise. Recourse to the Collateral shall not be required.

4.12 **Severability**

Wherever possible, each provision of this Amending Agreement and the other documents related thereto shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Amending Agreement or any other document related thereto shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Amending Agreement or such other document related thereto.

4.13 **Section Titles**

The Section titles contained in this Amending Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

4.14 **Reinstatement**

This Amending Agreement shall remain in full force and effect and continue to be effective should any petition or other proceeding be filed by or against the Seller for liquidation or reorganization, should the Seller become insolvent or make an assignment for the benefit of any creditor or creditors or should an interim receiver, receiver, receiver and manager or trustee be appointed for all or any significant part of the Seller's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the obligations under the Advances, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Advances, whether as a

fraudulent preference, reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the obligations under the Advances shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

4.15 **No Strict Construction**

The parties hereto have participated jointly in the negotiation and drafting of this Amending Agreement. In the event an ambiguity or question of intent or interpretation arises, this Amending Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favouring or disfavouring any party by virtue of the authorship of any provisions of this Amending Agreement.

[Remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Amending Agreement to be executed by their duly authorized representatives as of the date first written above.

TACORA RESOURCES INC., as Seller

Per: DocuSigned by: Joe Broking 9EBB6BB7AB484D8...
Name:
Title:

CARGILL INTERNATIONAL TRADING PTE LTD., as Buyer

Per: _____
Name:
Title:

Per: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Amending Agreement to be executed by their duly authorized representatives as of the date first written above.

TACORA RESOURCES INC., as Seller

Per: _____
Name:
Title:

CARGILL INTERNATIONAL TRADING PTE LTD., as Buyer

Per: Philip Mulvihill
Name:
Title:

Per: _____
Name:
Title:

SCHEDULE A

Amendments to A&R APF Agreement

See attached.

~~Execution Copy~~

As Amended by Amendment No. 1.

AMENDED AND RESTATED
ADVANCE PAYMENTS FACILITY AGREEMENT

by and among:

TACORA RESOURCES INC.
as Seller

and

CARGILL INTERNATIONAL TRADING PTE LTD.
as Buyer

Dated May 29, 2023

~~Execution Copy~~

As Amended by Amendment No. 1.

TABLE OF CONTENTS

AMENDED AND RESTATED ADVANCE PAYMENTS FACILITY AGREEMENT

THIS AGREEMENT made as of the 29th day of May, 2023.

AMONG:

TACORA RESOURCES INC., together with its successors and assigns (the "**Seller**")

- and -

CARGILL INTERNATIONAL TRADING PTE LTD., solely in its capacity as lender, together with its successors and assigns (the "**Buyer**")

RECITALS:

WHEREAS the Seller and the Buyer are parties to that certain Advance Payments Facility Agreement made as of January 3, 2023 (the "**Original Facility Agreement**"), as amended by an amending agreement made as of April 29, 2023 (the "**First Amendment**"), and as supplemented by a consent dated as of May 11, 2023 (collectively, the "**Existing Facility Agreement**").

AND WHEREAS, the Seller and the Buyer wish to amend and restate, in its entirety and without novation, the Existing Facility Agreement pursuant to this Agreement.

NOW THEREFORE in consideration of the covenants, conditions, agreements and promises contained herein and for other consideration, the receipt and sufficiency of which are acknowledged, the Seller and the Buyer hereby agree as follows:

1. DEFINITIONS

Capitalized terms used in this Agreement are defined on Schedule C.

2. ADVANCE PAYMENT TERMS

2.1 Advance Payment

The Seller requested and the Buyer made, by way of the Original Advances, an advance payment under the Offtake Agreement, against future deliveries of Product thereunder in accordance with the terms of this Agreement and the Offtake Agreement, in order to provide liquidity and financing to the Seller.

The Original Advances constitute an advance payment against delivery of Product in accordance with the Offtake Agreement, it being agreed as follows:

(a) Until the Termination Date, the Buyer shall pay the Purchase Price for deliveries of Product in accordance with the terms of the Offtake Agreement and such

deliveries shall not be credited against the outstanding balance of the funded Original Advances.

(b) The Seller shall use its reasonable best efforts to deliver a minimum of 55,000 DMT of the Product over each four-week period, or such other amount as may be agreed between the Seller and the Buyer from time to time in their sole discretion.

(c) Upon the occurrence of the Termination Date, the outstanding Original Advances (including the Floor Price Premium), together with all other Advances, shall be repaid in accordance with Section 4.

2.2 **Margin Advances and Additional Prepay Advances**

In addition to the Original Advances, the Seller has requested and the Buyer has agreed to make additional advances of credit in connection with the Offtake Agreement, on the following terms:

(a) Margin Advances. The Seller has requested and the Buyer has agreed to make the following advances in order to fund any Margin Amount owing as of the Effective Date and any additional amount required to be paid by the Seller and held by the Buyer under the Offtake Agreement from time to time, on the following terms:

(i) (a)The Seller and the Buyer agree that the Offtake Agreement shall be amended, pursuant to this clause 2.2(a)(i) for the period from the Effective Date until the later of (iA) the date on which the Buyer, at its option, elects to no longer make the Margin Advances available to the Seller pursuant to this Agreement and (iiB) the date on which all Senior Priority Obligations are indefeasibly repaid in full in cash (such later date being the "**Offtake Amendment Termination Date**"), in order to remove the threshold set out therein in respect of any Margin Amount owed by the Seller (but for certainty, not any threshold set out therein in respect of any Margin Amount owed by the Buyer). In particular, the Seller and the Buyer agree that Section 15.3 of the Offtake Agreement shall be amended, pursuant to this clause 2.2(a) for the duration of the term of this Agreement, to (iA) delete the words "and greater than $7.5 million" and (iiB) delete the words "less $5 million" from the second sentence of Section 15.3. For greater certainty, the Seller and the Buyer agree that (1) for purposes of determining the Margin Amount owing under the Offtake Agreement on any Calculation Date, the calculation shall not include any amounts owing in respect of the Margin Advance Fee; and (2) clause 2.2(a)(i) does not limit the Buyer's obligation to make available Margin Advances until the Termination Date in accordance with and subject to this Agreement.

(ii) (b)Subject to, and after giving effect to, the amendment to the Offtake Agreement set out in clause 2.2(a)(i), above:

(A) (i)The net amount owing to the Buyer by the Seller as of the Effective Date in respect of, without duplication: (A1) any Margin

Amount and (~~B~~2) any FPM Payable Amount under clause 13.2 of the Offtake May Side Letter, if any, shall be deemed to be an advance made by the Buyer to the Seller on the Effective Date (the "**Initial Margin Advance**");

(B) ~~(ii)~~from and after the Effective Date, if, on any Calculation Date, the net amount owing to the Buyer by the Seller in respect of, without duplication: (~~A~~1) any Margin Amount, (~~B~~2) any FPM Payable Amount under clause 13.2 of the Offtake May Side Letter and (~~C~~3) other amounts in respect of margin pursuant to additional hedging arrangements entered into by the Buyer and the Seller from time to time (collectively the "**Seller Offtake Margin Amounts**"), if any, such that the Buyer is entitled to hold margin on such Calculation Date in an amount equal to such Seller Offtake Margin Amounts, such margin requirement shall be satisfied by way of a deemed advance from the Buyer to the Seller under this Agreement (together with the Initial Margin Advance, each, a "**Margin Advance**"), which Margin Advance shall then be held by the Buyer as margin under Section 15.3 of the Offtake Agreement;

(C) ~~(iii)~~the amount outstanding under the Margin Advances shall be recalculated on each Calculation Date and increased or decreased to reflect the Seller Offtake Margin Amounts, if any, required to be paid by the Seller to the Buyer thereunder and held by the Buyer as margin in accordance with Section 15.3 of the Offtake Agreement, it being understood that if at any time the Seller Offtake Margin Amounts (inclusive of the Margin Advance Fee) are zero or are owed by the Buyer to the Seller, then the amount outstanding under the Margin Advances shall be zero.

(iii) ~~(c)~~The Margin Advances may, at the option of the Seller be repaid at any time in whole or in part without premium or penalty. Any amount of the Margin Advances so repaid shall remain available to be re-advanced in accordance with this Section 2.2, until the Termination Date.

(b) Additional Prepay Advances. The Buyer may, in its sole discretion, upon request of the Seller in accordance with Section 2.3(c), make one or more additional advance payments under the Offtake Agreement against future deliveries of Product thereunder (each such additional advance being, an "**Additional Prepay Advance**"), which Additional Prepay Advances shall be in accordance with the terms of this Agreement, and which shall be used to provide additional liquidity and financing to the Seller, on the following terms:

(i) Each Additional Prepay Advance shall constitute an advance payment against delivery of Product in accordance with the Offtake Agreement.

(ii) The Additional Prepay Advances shall be repayable on demand, in accordance with Section 4.

(iii) Until the earlier of (1) the date which is five (5) Business Days following the date on which the Buyer demands repayment of the Additional Prepay Advances and (2) the Termination Date, the Buyer shall pay the Purchase Price for deliveries of Product in accordance with the terms of the Offtake Agreement and such deliveries shall not be credited against the outstanding balance of the funded Additional Prepay Advances, provided that, if the Termination Date occurs solely as a result of an Event of Default arising from the Seller's failure to repay the Additional Prepay Advances on demand (absent any other Event of Default), the Buyer shall continue pay the Purchase Price for deliveries of Product in accordance with the terms of the Offtake Agreement until the date which is five (5) Business Days after the Buyer demands repayment of the Additional Prepay Advances.

(iv) Upon the earlier of (1) the date on which the Buyer demands repayment of the Additional Prepay Advances and (2) the occurrence of the Termination Date, the outstanding Additional Prepay Advances shall be repaid in accordance with Section 4.

(v) The Additional Prepay Advances may, at the option of the Seller, be repaid at any time in whole or in part without premium or penalty.

(c) ~~(d)~~Maximum Senior Priority Advance Amount. The Seller shall not be permitted to incur ~~Margin Advances hereunder in excess of the Maximum Margin~~ any Margin Advance or Additional Prepay Advance, as applicable, hereunder in an amount that would, together with the amount of all Margin Advances (including the Margin Advance Fee) and Additional Prepay Advances then outstanding, exceed, in the aggregate, the Maximum Senior Priority Advance Amount, and if at any time the aggregate amount of all Margin Advances ~~exceeds~~ (including the Margin Advance Fee) together with all Additional Prepay Advances exceeds, in the aggregate, the Maximum ~~Margin~~ Senior Priority Advance Amount, the Seller shall immediately pay to the Buyer such amount, in cash, as is required to reduce the aggregate amount of all Margin Advances and Additional Prepay Advances to an amount equal to or less than the Maximum ~~Margin~~ Senior Priority Advance Amount (the "**Excess ~~Margin~~ Senior Priority Advance Amount**". Failure to pay the Excess ~~Margin~~ Senior Priority Advance Amount at any time shall constitute an Event of Default hereunder.

(d) ~~(e)~~Upon the occurrence of the Termination Date, (i) the outstanding Margin Advances (including the Margin Advance Fee) and Additional Prepay Advances, together with all other Advances, shall be repaid in accordance with Section 4 and (ii) provided that the Offtake Amendment Termination Date has occurred, the amendments to the Offtake Agreement set forth in Section 2.2(a)(i) shall be of no further force and effect and the Offtake Agreement shall revert to its terms as in effect prior to the amendments contemplated by Section 2.2(a)(i).

(e) ~~(f)~~The Margin Advances (including the Margin Advance Fee) and the Additional Prepay Advances shall constitute the "Senior Secured Hedging Facility" under the

Indenture and shall constitute Senior Priority Obligations hereunder and "Senior Priority Obligations" under the Indenture and the Senior Priority Intercreditor Agreement.

2.3 **Funding of Advances**

(a) Original Advances. The funding of the Original Advances pursuant to this Agreement occurred on (i) January 9, 2023, in respect of the Initial Advance (the "**Initial Advance Date**") (on which date the deemed advance of the Floor Price Premium also occurred and (ii) February 24, 2023, in respect of a Subsequent Advance (as defined in the Existing Facility Agreement) of $5,000,000 and form part of the Obligations hereunder. The Original Advances constitute Pari Passu Indebtedness under the Indenture and the Pari Passu Intercreditor Agreement.

(b) Margin Advances. The funding of the Initial Margin Advance, together with the Margin Advance Fee shall be deemed to be funded by the Buyer on the Effective Date, and any subsequent Margin Advance shall be deemed to be funded by the Buyer on each Calculation Date. The Margin Advances (including the Margin Advance Fee) and the Additional Prepay Advances shall constitute the "Senior Secured Hedging Facility" under the Indenture, shall form part of the Obligations hereunder, and shall constitute Senior Priority Obligations hereunder and "Senior Priority Obligations" under the Indenture and the Senior Priority Intercreditor Agreement.

(c) Additional Prepay Advances. The Additional Prepay Advances may be funded by the Buyer, in its sole discretion upon written request (which may be my e-mail) by the Seller (the "**Additional Prepay Draw Request**"). Unless otherwise agreed to by the Buyer, in its sole discretion, each Additional Prepay Draw Request shall (i) set out the requested amount of the Additional Prepay Advance, (ii) set out the requested date of such Additional Prepay Advance (which may be no earlier than the third Business Day of the following week) and (iii) be delivered by no later than 4:00 p.m. (Toronto time) on the last Business Day of the week prior to the week in which the Additional Prepay Advance is requested, provided, that, an updated weekly cash flow projection in respect of the week in which the Additional Prepay Advance is requested to be funded has also been delivered by no later than 9:00 p.m. (Toronto time) on the second last Business Day of such prior week. The Seller and the Buyer shall use commercially reasonably efforts to schedule a conference call prior to the delivery of any Additional Prepay Draw Request to discuss the weekly cash flow projection delivered by the Seller and any anticipated Additional Prepay Draw Request. The Buyer shall, by no later than 12:00 p.m. (Toronto time) on the second Business Day of the week following delivery of the applicable Additional Prepay Draw Request, notify the Seller in writing (which may be by e-mail) whether it shall make the Additional Prepay Advance requested in such Additional Prepay Draw Request on the date requested therein. The Additional Prepay Advances shall form part of the Obligations hereunder, and shall constitute Senior Priority Obligations hereunder and "Senior Priority Obligations" under the Indenture and the Senior Priority Intercreditor Agreement.

2.4 **Fees**

(a) Floor Price Premium. As consideration for entering into the Offtake January Amendment and guaranteeing the Floor Price thereunder, the Seller agreed to pay the Buyer a premium of $15,000,000 (the "**Floor Price Premium**") which was funded from the Initial Advance and an amount equal to the Floor Price Premium is deemed to have been advanced to the Seller on the Initial Advance Date, and forms part of the Obligations. The Floor Price Premium was fully earned and paid upon the entry into of the Offtake January Amendment and the concurrent funding of the Initial Advance, whether or not any deliveries are made against or in respect of the Initial Advance.

(b) Margin Advance Fee. As consideration for the amendments to the Offtake Agreement set out in clause 2.2(a)(i) above, and for making available the Margin Advances from time to time pursuant to Section 2.2, the Seller shall pay the Buyer a fee of $700,000 (the "**Margin Advance Fee**") which shall be fully earned and payable on the Effective Date and shall constitute a Margin Advance. The Margin Advance Fee shall be paid-in-kind by adding the Margin Advance Fee to the outstanding amount of the Obligations on the Effective Date and the Margin Advance Fee shall be deemed to have been advanced to the Seller concurrently with the Initial Margin Advance on the Effective Date.

2.5 **Currency**

All advances and payments shall be made in United States dollars. All references to "$", "Dollars" or "dollars" shall be references to United States dollars unless otherwise expressly indicated.

2.6 **Purpose**

(a) The proceeds of the Original Advances (other than the amount used to pay the Floor Price Premium) shall be used solely to fund (i) the ongoing operations at the Mine and general corporate expenses relating to management of the Seller, strictly in accordance with the Liquidity Management Plan and Cash Flow Forecast and (ii) the development and implementation of the Restructuring Plan for the Seller, which Restructuring Plan, as amended in accordance with this Agreement, shall at all times remain acceptable to the Buyer.

(b) A portion of the Initial Advance in an amount equal to the Floor Price Premium was deemed to be advanced on the Initial Advance Date and the Seller authorized and directed the Buyer to retain such amount on account of the Floor Price Premium.

(c) The Margin Advances and the Additional Prepay Advances are intended to provide additional liquidity to the Seller and permit the Seller to fund (i) the ongoing operations at the Mine and general corporate expenses relating to management of the Seller, strictly in accordance with the Liquidity Management Plan and Cash Flow Forecast and (ii) the development and implementation of the

Restructuring Plan for the Seller, which Restructuring Plan, as amended in accordance with this Agreement, shall at all times remain acceptable to the Buyer.

3.SECURITY AND INTERCREDITOR MATTERS

3.1 As security for payment and performance of the Obligations (including the Senior Priority Obligations), the Seller shall grant a Lien in all of the property, assets and undertaking of the Seller (the "**Security**"), subject only to Permitted Liens.

3.2 The Seller shall take all steps necessary at all times to ensure that:

(a) the Security, to the extent it secures the Obligations (other than the Senior Priority Obligations) shall constitute "Pari Passu Liens" as defined under the Indenture and that the Obligations (other than the Senior Priority Obligations) shall constitute "Pari Passu Indebtedness" as defined under the Indenture and "Initial Additional Pari Passu Lien Obligations" as defined under the Pari Passu Intercreditor Agreement; and

(b) the Security, to the extent it secures the Senior Priority Obligations shall constitute "Senior Priority Liens" as defined under the Indenture and that the Senior Priority Obligations shall constitute "Senior Priority Obligations" as defined under the Indenture and the Senior Priority Intercreditor Agreement.

3.3 If at any time following the Initial Advance Date, the Seller or any of its subsidiaries provides any guarantee, security, lien or other credit support to the Notes Collateral Agent or otherwise in connection with the Indenture, it shall provide a guarantee of the Obligations to the Buyer in form and substance satisfactory to the Buyer and shall grant equivalent security, liens or other credit support to the Buyer.

3.4 If at any time following the Initial Advance Date, the Seller acquires any rights (whether owned or lease) in real property or immovable property in the Province of Quebec it shall, concurrently with the acquisition of such rights deliver a deed of hypothec charging all real property immovable property in the Province of Quebec in form and substance satisfactory to the Buyer and its counsel.

4.REPAYMENT OF ADVANCES

4.1 ~~On~~ Subject to Section 4.2 below, on the earlier of (i) the date on which demand is made following the occurrence of an Event of Default which has not been waived by the Buyer and (ii) ~~July 14~~September 12, 2023 (such earlier date being the "**Termination Date**"), all outstanding Advances made hereunder shall be due and payable in full and, (A) with respect to the Original Advances, at the Buyer's option, the repayment of such Original Advances shall be made either (1) via weekly deliveries of Product in accordance with the Offtake Agreement, the Purchase Price for which shall not be paid by the Buyer but shall instead be credited against the outstanding Original Advances; or (2) in cash, ~~and~~ (B) with respect to the Margin Advances, the repayment thereof shall be made in cash and (C) with respect to the Additional Prepay Advances, the repayment thereof shall be made in any of the following manners (or any combination thereof), at the Buyer's

option: (1) from time to time, upon not less than five (5) Business Days' prior notice to the Seller, via deliveries of Product in accordance with the Offtake Agreement without payment of the Purchase Price in respect thereof by the Buyer, and with such deliveries instead being credited against the outstanding Additional Prepay Advances; (2) immediate transfer of title from Seller to the Buyer of Ore, which Ore may be in the form of wet concentrate (measured in WMT) and with a value calculated in a manner consistent with the methodology set out in Schedule I or in the form of dry concentrate (measured in DMT) and with a value calculated in a manner consistent with the Offtake Agreement or (3) in cash.

4.2 Notwithstanding the foregoing, it is agreed and acknowledged by the Seller that, in addition to being repayable on the Termination Date, the Additional Prepay Advances shall repayable immediately on demand by the Buyer at any time prior to the Termination Date, and that such repayment shall be made in the manner selected by the Buyer, at the Buyer's option, in accordance with clause (C) of Section 4.1 above (which repayment if elected by the Buyer to be made pursuant to sub-clause (1) thereof, shall not be required to be made on less than five (5) Business Days' prior notice to the Seller of such election).

4.3 ~~4.2~~The Advances may be prepaid at any time without premium or penalty, it being agreed that the Floor Price Premium was fully earned and paid upon the entry into of the Offtake January Amendment and the concurrent funding of the Initial Advance, notwithstanding any voluntary prepayment of the Advances prior to the Termination Date, and whether or not any deliveries are made.

5.PAYMENTS CONSTITUTING INTEREST

5.1 The parties shall comply with the following provisions to ensure that no receipt by the Buyer of any payments to the Buyer hereunder would result in a breach of section 347 of the *Criminal Code* (Canada):

(a) If any provision of this Agreement or any of the other documents related to this Agreement would obligate the Seller to make any payment to the Buyer of an amount that constitutes "interest", as such term is defined in the *Criminal Code* (Canada) and referred to in this section as "**Criminal Code interest**", during any one-year period after the Initial Advance Date in an amount or calculated at a rate which would result in the receipt by the Buyer of Criminal Code interest at a criminal rate (as defined in the *Criminal Code* (Canada) and referred to in this section as a "**criminal rate**"), then, notwithstanding such provision, that amount or rate during such one-year period shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not result in the receipt by the Buyer during such one-year period of Criminal Code interest at a criminal rate, and the adjustment shall be effected, to the extent necessary, as follows:

(i) first, by reducing the amount or rate of such amounts which constitute Criminal Code interest required to be paid to the Buyer during such one-year period; and

(ii) thereafter, by reducing the fees and other amounts required to be paid to the Buyer during such one-year period which would constitute Criminal Code interest.

The dollar amount of all such reductions made during any one-year period is referred to in this section as the "**Excess Amount**".

(b) Any Excess Amount shall be payable and paid by the Seller to the Buyer in the then next succeeding one-year period or then next succeeding one-year periods until paid to the Buyer in full, subject to the same limitations and qualifications set out in paragraph (a), so that the amount of Criminal Code interest payable or paid during any subsequent one-year period shall not exceed an amount that would result in the receipt by the Buyer of Criminal Code interest at a criminal rate.

(c) Any amount or rate of Criminal Code interest referred to in this section shall be calculated and determined in accordance with generally accepted actuarial practices and principles as an effective annual rate of interest over the term that the Advances remain outstanding on the assumption that any charges, fees or expenses that constitute Criminal Code interest shall be pro-rated over the period commencing on the Initial Advance Date and ending on the relevant Termination Date (as may be extended by the Buyer from time to time hereunder) and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Buyer shall be conclusive for the purposes of such calculation and determination.

5.2 If the Advances are not repaid when due, all outstanding amounts then owing under or in respect of the Advances will bear interest at 10% per annum, compounded monthly on the last day of each month, and payable on demand.

6.ADEQUATE PROTECTION

6.1 The Seller agrees and acknowledges that:

(a) there are a number of key financial and operational covenants which have been critical to the Buyer in committing to enter into this Agreement and provide the Advances to the Seller hereunder, without which the Buyer would not have agreed to enter into this Agreement or provide the funding contemplated hereunder, including:

(i) pursuant to Section 9(m)~~.1(m~~ of this Agreement, the Seller is restricted from creating, incurring, or guaranteeing any Indebtedness for borrowed money other than (i) Indebtedness and Guarantees existing on the Original Agreement Date and (ii) Indebtedness under the Initial 2023 Notes; and

(ii) pursuant to Section 9(n)~~.1(n~~ of this Agreement, the Seller is restricted from creating or incurring any Liens, except Permitted Liens.

(b) the ability of the Seller to satisfy its obligations to the Buyer hereunder could be significantly affected or materially impaired if the financial position of the Seller changes, including if any additional Indebtedness or Liens are incurred in violation of the foregoing covenants;

(c) any debtor-in-possession financing, other interim financing or any other charges granted by any court under the CCAA, the BIA or other similar legislation in Canada or in any other jurisdiction, or pursuant to or in connection with any proceedings under such statutes (each, a "**DIP Financing**") would result in a breach of any of the foregoing covenants and could materially prejudice the Buyer; and

(d) the Seller shall first provide the Buyer with an opportunity to reach agreement on DIP Financing should it become necessary before agreeing to such DIP Financing from another party.

7.CONDITIONS PRECEDENT

7.1 Conditions Precedent to Effectiveness

This Agreement shall become effective upon the satisfaction or waiver of the following conditions precedent, all of which are for the benefit of the Buyer, in each case in form and substance satisfactory to the Buyer:

(a) execution and delivery by the Seller of this Agreement;

(b) execution and delivery of a confirmation of Security in form and substance substantially similar to the confirmation delivered to the Notes Collateral Agent in connection with the issuance of the Initial 2023 Notes;

(c) execution and delivery of all documents required for the Senior Priority Obligations hereunder to constitute "Senior Priority Obligations" under the Senior Priority Intercreditor Agreement;

(d) delivery of legal opinions from counsel to the Seller, in each applicable jurisdiction, including customary assumptions and qualifications, opinions confirming, among other things (i) corporate existence, authority and due execution and delivery, (ii) no breach of applicable law or constating documents including the Amended Shareholders' Agreement, (iii) the registration and perfection of the Security and confirmation that such Security continues to secure the Obligations (including the Senior Priority Obligations) and that all of the Obligations (including the Senior Priority Obligations) are permitted to be incurred and so secured by the Security pursuant to the Required Consents, (iv) the enforceability of this Agreement, (v) confirmation that the Obligations (other than the Senior Priority Obligations) constitute Initial Additional Pari Passu Lien Obligations under the Pari Passu Intercreditor Agreement and that the Senior Priority Obligations constitute Senior Priority Obligations under the Senior Priority Intercreditor Agreement; and (vi) no breach under the Indenture;

(e) satisfaction that, upon the effectiveness of this Agreement, the Seller shall have sufficient liquidity to fund its operations in accordance with the Liquidity Management Plan and the Cash Flow Forecast; and

(f) (i) no Default or Event of Default has occurred and is continuing and (ii) there shall have been no Material Adverse Effect, and the Buyer shall have received a certification from an officer of the Seller, without personal liability, to that effect.

7.2 **Conditions Precedent to the Initial Advance**

The funding of the Initial Advance (including the deemed advance of an amount equal to and to be applied to the Floor Price Premium) was subject to the following conditions precedent, all of which are for the benefit of the Buyer and were satisfied or waived in connection with the Initial Advance, in each case in form and substance satisfactory to the Buyer:

(a) execution and delivery by the Seller of this Agreement and the Security Documents;

(b) execution and delivery of all documents required for the Buyer and the Obligations to accede to the Pari Passu Intercreditor Agreement and form part of and have the benefit of the provisions thereof as Initial Additional Pari Passu Lien Obligations;

(c) execution and delivery of the Amended Shareholders' Agreement, the Offtake January Amendment and the Preferred Share Amendments;

(d) continuance of the Seller as an Ontario corporation under the *Business Corporations Act* (Ontario);

(e) amendment of governing documents of Proterra M&M MGCA B.V. and Proterra M&M Co-Invest LLC, in form and substance satisfactory to the Buyer, it being understood that Buyer shall use its commercially reasonable efforts to assist the Seller in satisfying this condition;

(f) issuance of the Cargill Warrants (as defined in the Original Advance Agreement) in form and substance satisfactory to the Buyer and Cargill;

(g) satisfaction of the Floor Price Premium from the proceeds of the Initial Advance;

(h) receipt of a certified copy of the Amended Shareholder Agreement and all other constating documents and by-laws of the Seller, and of all corporate and other proceedings taken and required to be taken by the Seller to authorize, *inter alia*, (i) the execution and delivery of this Agreement and the other Financing Documents to which it is a party and the performance of the transactions contemplated thereby; (ii) a certificate of status of the Seller; and (iii) a certificate of incumbency of the Seller;

(i) (i) completion of all necessary lien and other searches, together with all registrations, filings and recordings wherever the Buyer deems appropriate in

connection with the Security, and (ii) satisfaction that there are no Liens ranking pari passu with or in priority to the Security except Permitted Liens;

(j) satisfaction that the Seller maintains adequate insurance coverage of such type and in such amounts and against such risks as is prudent for a business of an established reputation with financially sound and reputable insurers in coverage and scope acceptable to the Buyer, with appropriate endorsements in favour of the Buyer;

(k) constitution of the board of directors of the Seller in accordance with the Amended Shareholders' Agreement provided that board positions to be filled by any independent directors contemplated by the Amended Shareholders' Agreement may be vacant at the time of the Initial Advance for purposes of this condition precedent and such independent directors may be appointed following the Initial Advance in accordance with the Amended Shareholders' Agreement;

(l) delivery of legal opinions from counsel to the Seller, in each applicable jurisdiction, including customary assumptions and qualifications, opinions confirming, among other things (i) corporate existence, authority and due execution and delivery, (ii) no breach of applicable law or constating documents, including, as applicable, the amended and restated shareholders' agreement as in effect on the Original Agreement Date, and/or the Amended Shareholders' Agreement, (iii) the registration and perfection of the Security, (iv) the enforceability of this Agreement and the other applicable Security Documents set out in Schedule A, the Offtake January Amendment and the Cargill Warrants (as defined in the Original Advance Agreement), (v) confirmation that the Obligations constitute Initial Additional Pari Passu Lien Obligations under the Pari Passu Intercreditor Agreement and (vi) no breach under the Indenture;

(m) completion by the Seller of an operational assessment review in form and substance satisfactory to the Buyer by no later than January 1, 2023;

(n) receipt of the Cash Flow Forecast, Liquidity Management Plan, Operational Turnaround Plan and Retention Plan (as defined in the Existing Facility Agreement) all in form and substance satisfactory to the Buyer;

(o) satisfaction with the identity, scope and extent of the authority of the chief transaction officer retained by the Seller to advance the Liquidity Management Plan, Operational Turnaround Plan, Retention Plan (as defined in the Existing Facility Agreement) and Restructuring Plan;

(p) satisfaction that, if the Initial Advance (excluding an amount equal to the Floor Price Premium), the Subsequent Advance (as defined in the Existing Facility Agreement) and the Final Advance (as defined in the Existing Facility Agreement) have been funded, assuming satisfaction of the applicable conditions precedent set out in Section 7 hereof, the Seller shall have sufficient liquidity to fund its operations in accordance with the Liquidity Management Plan and the Cash Flow Forecast; and

(q) (i) all representations and warranties contained in this Agreement and the Financing Documents remain true and correct as of the Initial Advance Date, (ii) no Default or Event of Default has occurred and is continuing and (iii) there shall have been no Material Adverse Effect, and the Buyer shall have received a certification from an officer of the Seller, without personal liability, to that effect.

7.2 **Conditions Precedent to each Margin Advance and each Additional Prepay Advance**

The availability and deemed funding of each Margin Advance and/or each Additional Prepay Advance shall be subject to the following conditions precedent, all of which shall be for the benefit of the Buyer and shall be satisfied prior to each deemed Margin Advance and each Additional Prepay Advance, in each case in form and substance satisfactory to the Buyer:

(a) the amount of such Margin Advance or Additional Prepay Advances, as applicable, together with the aggregate amount of all Margin Advances and Additional Prepay Advances then outstanding ~~,~~ shall not exceed the Maximum ~~Margin~~ Senior Priority Advance Amount;

(b) all representations and warranties contained in this Agreement and the Financing Documents remain true and correct as of the applicable Calculation Date on which the Margin Advance ~~is~~ or the Additional Prepay Advance, as applicable is made or deemed to be made;

(c) no Default or Event of Default shall have occurred and be continuing; and

(d) there shall have been no Material Adverse Effect,

and, if requested, the Buyer shall have received a certification from an officer of the Seller, without personal liability, to that effect.

8.REPRESENTATIONS AND WARRANTIES

The Seller makes each of the following representations and warranties:

(a) The Seller is a corporation duly formed and validly existing under the laws of the jurisdiction of its formation, and is duly qualified, licensed or registered to carry on business under the applicable law in all jurisdictions in which the nature of its assets or business makes such qualification necessary.

(b) The execution, delivery and performance by the Seller of this Agreement and the other Financing Documents:

(i) are within its corporate power;

(ii) have been duly authorized by all necessary corporate, action, including all necessary consents of the holders of its Equity Securities, where required;

(iii) do not (A) contravene the Amended Shareholders' Agreement, articles, by-laws or other constating documents, as applicable, (B) violate any judgment, order, notice, decree, statute, law, ordinance, rule or regulation applicable to it or any of its properties or assets, (C) conflict with or result in the breach of, or constitute a default under, or require a consent under, any Material Contract (other than such consents as have been obtained including, the Required Consents) or (D) result in the creation or imposition of any Lien upon any of its property except pursuant to the Security Documents; and

(iv) do not require the consent of, authorization by, approval of or notification to any Governmental Entity.

(c) This Agreement and the other Financing Documents constitute valid and binding obligations of the Seller enforceable in accordance with their terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally or by general principles of equity, whether asserted in a proceeding in equity or law.

(d) The Seller (i) owns its assets with good and marketable title thereto, free and clear of all Liens, except for Permitted Liens, (ii) does not own or lease any real property other than as described on Schedule E and (iii) maintains no business in any jurisdiction other than as set out on Schedule E. The Seller does not own or lease any real property or immovable property in the Province of Quebec other than as set out on Schedule E.

(e) There is no Default or Event of Default that has occurred and is continuing as of the date hereof.

(f) The Seller does not have any Material Liabilities except (i) Liabilities which are reflected and properly reserved against in the Financial Statements, (ii) Liabilities incurred in the ordinary course of business, having regard to the current financial condition of the Seller and as reflected in the Cash Flow Forecast, (iii) current Liabilities arising in the ordinary course under the Contracts to which the Seller is a party and (iv) Liabilities under the Initial 2023 Notes.

(g) Other than the fees of GLC Advisors & Co., LLC, and the fees and expenses of Greenhill & Co. Canada Ltd., each of which have been separately disclosed to the Buyer, provisions for all payments, fees and retainers for professionals and advisors engaged by the Seller or its subsidiaries and all transaction, success, performance or change of control payments payable thereunder or in connection therewith (the "**Professional Fees**"), and have been accounted for in the Liquidity Management Plan and included in the Cash Flow Forecast.

(h) Except for the claims set out in the letters disclosed on Schedule 8(h), true, correct and complete copies of which have been delivered to the Buyer, there is not now pending or, to the knowledge of the Seller, threatened against the Seller or any of its subsidiaries, nor has the Seller received notice in respect of, any Material

claim, potential claim, litigation, action, suit, arbitration or other proceeding by or before any Governmental Entity.

(i) A complete and accurate list of all Material Contracts and amendments thereto is set forth on Schedule E hereto and all such agreements are in full force and effect.

(j) Except as would not have a Material Adverse Effect:

(i) The Seller is in possession of all, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals, registrations and orders of any Governmental Entity in Canada and other jurisdictions necessary for the Seller to carry on its business as it is now being conducted (the "**Company Permits**"), the Company Permits are valid and in good standing and no suspension or cancellation of any of the Company Permits is pending or, to the knowledge of the Seller, threatened; and

(ii) to the knowledge of the Seller, neither the Seller nor any of its subsidiaries has received any written notice that any Governmental Entity (including, without limitation, Governmental Entities outside of Canada) has commenced, or threatened to initiate, any action to withdraw its approval for, revoke, request the recall of, or otherwise impair restrict or vary any Company Permits, or to restrain, impede or prohibit the execution, delivery and performance by the Seller of this Agreement or require or purport to require a variation of this Agreement.

(k) The Seller maintains adequate insurance coverage of such type and in such amounts and against such risks as is prudent for a business of an established reputation with financially sound and reputable insurers in coverage and scope as is prudent for such a business, with appropriate endorsements in favour of the Buyer.

(l) The Security Documents create a valid and continuing perfected Lien on the personal property described therein (collectively, the "**Collateral**") in favour of the Buyer having the priority set forth herein, subject only to Permitted Liens. There are no other Liens on the Collateral other than Permitted Liens.

(m) As of the date of this Agreement, Schedule F sets out the corporate structure of the Seller and its subsidiaries, including particulars of authorized, issued and outstanding capital of each such entity and the percentage ownership interest.

(n) All consents required to permit the Security to attach to all Material assets and property of the Seller (including all Material Contracts and all real property rights disclosed on Schedule E) are listed on Schedule G (the "**Required Consents**"), which have been obtained. Other than the assets and property subject to the Required Consents (which have been obtained), no other Material asset or property of the Seller constitutes a Restricted Asset (as defined in any applicable Security Document). The Seller has not obtained any consent in favour of the

Notes Collateral Agent or any other holder of Indebtedness (or any agent or trustee on its behalf) other than consents substantially similar to the Required Consents.

(o) All documents constituting the Notes Collateral Documents (as defined in the Pari Passu Intercreditor Agreement and the Senior Priority Intercreditor Agreement), and all consents obtained in connection therewith, are set out on Schedule H.

(p) Neither the Financial Statements delivered to the Buyer or its Advisors from time to time nor any other written statement or information (other than projections, which are subject to following sentence) furnished by or on behalf of or at the direction of the Seller to the Buyer or its Advisors in connection with the negotiation, consummation or administration of this Agreement contain, as of the time such statements were so furnished, any untrue statement of a material fact or an omission of a material fact as of such time, which material fact is necessary to make the statements contained therein not misleading. All such statements, taken as a whole, together with this Agreement, all of the other Financing Documents and all other relevant documents do not contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained herein or therein not misleading. All financial projections, including the Cash Flow Forecast, furnished or made available by the Seller to the Buyer and its Advisors have been prepared in good faith, on the basis of all known facts and using reasonable assumptions and the Seller believes such projections to be fair and reasonable.

(q) All written information furnished by or on behalf of the Seller to the Buyer or its Advisors for the purposes of, or in connection with, this Agreement, the other Financing Documents or any other relevant document or any other transaction contemplated thereby, is true and accurate in all Material respects on the date as of which such information is dated or certified, and not incomplete by omitting to state any material fact necessary to make such information not misleading at such time in light of then-current circumstances.

(r) Except for the Tacora Orion Letter, there are no agreements between the Seller or any of its subsidiaries and any holder of debt or Equity Securities of the Seller or such subsidiaries with respect to any restructuring, refinancing or recapitalization matters.

9.COVENANTS

The Seller on behalf of itself and its subsidiaries covenants and agrees to comply with the following covenants unless otherwise expressly consented to by the Buyer in writing in advance:

(a) The Seller shall duly and punctually make the deliveries of Product and/or pay the amounts on and in respect of the Advances in each case when due and payable under this Agreement and the Offtake Agreement, as applicable.

(b) The Seller shall use the proceeds of the Advances only in accordance with Section 2.6.

(c) The Seller shall comply with the terms of the Offtake Agreement.

(d) The Seller shall maintain at all times adequate insurance coverage of such kind and in such amounts and against such risks as is prudent for a business of an established reputation with financially sound and reputable insurers in coverage and scope acceptable to the Buyer, with appropriate endorsements in favour of the Buyer.

(e) The Seller shall deliver to each of the Buyer and/or such representatives as may be reasonably designated by the Buyer:

(i) on the third Business Day of every week, a report as to the Seller's actual cash flows for the immediately preceding week, accompanied by a variance analysis explaining how and why actual results for such immediately preceding week varied from the applicable week in the Cash Flow Forecast;

(ii) on the first Business Day of each week, updates regarding the progress made under the Liquidity Management Plan and the Restructuring Plan and make such amendments thereto as may be reasonably requested by the Buyer;

(iii) notice forthwith upon the Seller determining that there will be a Material change from the Cash Flow Forecast, or of any other Material developments with respect to the business and affairs of the Seller or the operations at the Mine;

(iv) notice forthwith upon the Seller receiving notice from any creditor, Governmental Entity, landlord or other third party of a default, demand, acceleration or enforcement in respect of any material obligation of the Seller;

(v) notice forthwith and copies to the Buyer of, any discussion papers, term sheets, letters of intent, commitment letters, offers or agreements entered into by the Seller after Original Agreement Date, relating to (i) a Sale Transaction, (ii) a Restructuring or Recapitalization Transaction or (iii) a Change of Control;

(vi) notice forthwith of any intention to seek any financing, refinancing or any "debtor-in-possession" financing under the CCAA or the BIA;

(vii) notice forthwith of any Default or Event of Default;

(viii) from time to time as requested by the Buyer, updates on the Retention Plan and make some amendments thereto as may be reasonably requested by the Buyer;

(ix) promptly following delivery thereof, copies of any weekly reporting delivered to the holders of the Initial 2023 Notes (or any of them, whether in their capacity as holders of the Initial 2023 Notes or otherwise); and

(x) such other information as may be requested by the Buyer or its Advisors from time to time acting reasonably.

(f) The Seller shall review the Operational Turnaround Plan and the progress made thereunder with the Buyer on the first Business Day of each calendar month following the Initial Advance Date and such Operational Turnaround Plan shall in each case remain acceptable to, or amended as may be reasonably required by, the Buyer.

(g) The Seller shall work cooperatively with the Buyer to implement the Restructuring Plan;

(h) The Buyer shall have the right to engage at any time a financial advisor to assist it in relation to the Advances and any Liquidity Event, and all reasonable and documented fees of such advisor, excluding any success or transaction fee (unless expressly consented to by the Seller), shall be reimbursed by the Seller and shall form part of the Obligations in accordance with Section 12.

(i) The Seller shall not be entitled to make any Distribution or Affiliate Payment, other than a Distribution or Affiliate Payment that is contemplated by the Cash Flow Forecast (and in the case of any Affiliate Payment made to any Shareholder and/or its Affiliates, that is contemplated by the Cash Flow Forecast and approved in writing by the Buyer) or any Distribution to the Buyer on account of existing preferred shares held by Buyer.

(j) The Seller shall not make any Material expenditures except to the extent such expenditures are consistent with the Liquidity Management Plan and reflected in the Cash Flow Forecast.

(k) The Seller shall not amalgamate, consolidate with or merge into or sell all or substantially all of its assets to another entity, or change the nature of its business or their corporate or capital structure or enter into any agreement committing to such actions, provided that the Buyer shall not withhold consent in respect of any of the foregoing events if prior to concurrently with completion of any of such event, the Obligations are repaid in full.

(l) The Seller shall not issue any Equity Securities nor create any new class of Equity Securities or amend any terms of its existing Equity Securities other than (i) the Permitted Issuances; and (ii) the issuance of the Seller's common shares that would not result in a Change of Control.

(m) The Seller shall not create, incur or Guarantee any Indebtedness other than, without duplication, (i) Indebtedness and Guarantees existing on the Original

Agreement Date, (ii) the Obligations and (iii) Indebtedness under the Existing Notes and the Initial 2023 Notes.

(n) The Seller shall not create or incur any Liens other than Permitted Liens.

(o) The Seller shall not make any Investments or acquisitions of any kind, direct or indirect, and, following the Original Agreement Date, the Seller shall not make further Investments in, payments to, or provide any Guarantees or financial assistance in favour of, its subsidiaries, without the Buyer's prior written consent.

(p) The Seller shall not increase compensation or severance entitlements or other benefits payable to directors, senior officers or senior management (including by way of a "KERP"), or pay any bonuses whatsoever, other than (i) as required by law or (ii) pursuant to the terms of the Retention Plan and ~~as~~ set out in the Cash Flow Forecast.

(q) The Seller shall not be entitled to pay any Professional Fees except for, without duplication: (i) such Professional Fees provided for and specifically listed in the Cash Flow Forecast and (ii) all fees and expenses payable to GLC Advisors & Co., LLC, Greenhill & Co. Canada Ltd., Bennett Jones LLP and Hatch Ltd., pursuant to their engagement letters dated as of April 25, 2023, January 23, 2023, March 1, 2023 and March 1, 2023, respectively, and the fee letter between the Seller and Bennett Jones dated March 1, 2023, each as in effect on the date of this Agreement, unamended.

(r) The Seller shall operate its businesses in accordance with the Liquidity Management Plan, the Operational Turnaround Plan, the Restructuring Plan and the Cash Flow Forecast.

(s) The Seller shall maintain a minimum liquidity of $5,000,000 tested on a weekly basis along with the variance analysis under the Cash Flow Forecast.

(t) Following a reasonable advance request by the Buyer or its Advisors, the Seller, shall, to the extent permitted by law and the terms of any contractual confidentiality obligations:

(i) provide the Buyer and/or its Advisors with reasonable access to its books and records for use in connection with the transactions contemplated by this Agreement; and

(ii) make its officers and legal and financial advisors available on a reasonable basis for any discussions with the Buyer and/or its Advisors.

(u) The Seller shall not make or permit to be made any changes to composition (including addition, removal or replacement of directors) of the board of directors of the Seller (other than a resignation by a director), except in accordance with the Amended Shareholders Agreement and the First Noteholder Side Letter.

(v) The Seller shall not, to the extent it is required to do so, consent to, or take any steps in furtherance of the exercise of any conversion right under any Equity Securities issued by it.

(w) The Seller shall not transfer, lease, license or otherwise dispose of all or any part of its property, assets or undertaking, except pursuant to a Liquidity Event which has been approved by the Buyer.

(x) The Seller shall not enter into, extend, renew, waive or otherwise modify any of its Material Contracts.

(y) The Seller shall not enter into, extend, renew, waive or otherwise modify in any respect the terms of any transaction with an Affiliate (other than the Buyer or Cargill), other than extension or renewal of existing operational arrangements which are in compliance with the Liquidity Management Plan, the Operational Turnaround Plan and the Cash Flow Forecast.

(z) The Seller shall not (i) deliver any guarantee, security, lien or other credit support to the Notes Collateral Agent or otherwise in connection with the Indenture, unless, concurrently therewith it shall comply with the requirements of Section 3.3 and it shall provide the equivalent guarantees, security, liens or other credit support to the Buyer or (ii) acquire any rights in any real property or immovable property in the Province of Quebec unless, concurrently therewith it shall comply with the requirements of Section 3.4.

(aa) The Seller shall not form any subsidiary after the Original Agreement Date without the prior written consent of the Buyer and, to the extent so consented, delivery of all guarantees, Security Documents and other credit support as may be required by the Buyer in connection therewith.

(bb) In the event that the Seller agrees pursuant to ~~any~~ a Noteholder Side Letter or other binding agreement between the Seller and any holders of Initial 2023 Notes or other notes issued under the Indenture (each such binding agreement being, a "**Noteholder Restructuring Agreement**") to meet any milestone related to advancing a Liquidity Event pursuant thereto (each, a "**Milestone**"), then the Seller covenants to the Buyer that it shall meet each such Milestone pursuant to this Agreement by the same deadline as set out in such Noteholder Restructuring Agreement (or such later deadline as may be agreed by the Buyer in its sole discretion).

(cc) The Seller shall, by no later than the date that is ten (10) Business Days following the Effective Date (or such later date as may be expressly agreed by the Buyer in writing), obtain supplements or confirmations to the Required Consents listed under the heading "Counterparty Consents re Material Contracts" in Schedule G.

10.EVENTS OF DEFAULT

10.1 Each of the following shall constitute an event of default hereunder and under the Security Documents (each, an "**Event of Default**"):

(a) the failure to pay any amount (including fees and expenses or any Excess ~~Margin~~ Senior Priority Advance Amount) or make any delivery in respect of the Advances when the same shall become due and payable hereunder or are required to be made or delivered pursuant to the Offtake Agreement;

(b) the failure by the Seller to perform or comply with any term, condition, covenant or obligation contained herein (other than the items expressly set out in paragraph (a) above) or in any other Financing Document or any other document delivered pursuant to the terms hereof or thereof or in connection herewith or therewith on their part to be performed or complied with and, to the extent capable of being remedied, such failure remains unremedied for three (3) Business Days;

(c) if any representation, warranty or other statement of the Seller made or deemed to be made in this Agreement, any other Financing Document or in any other document delivered pursuant to the terms thereof or in connection therewith shall prove untrue in any material respect as of the date made;

(d) the occurrence of a default or an event of default under any Indebtedness of the Seller, including, for certainty, under the Indenture (or any supplemental indenture thereunder) or under any Noteholder Restructuring Agreement, provided that, (i) solely with respect to the existing ~~default~~ defaults under the Indenture set out on Schedule 10.1, such ~~default~~ defaults shall not constitute and Event of Default hereunder unless the obligations under the Indenture are accelerated or otherwise declared due and payable as a result thereof, or the Notes Collateral Agent or any holders thereunder initiate any enforcement steps in respect thereof; (ii) failure by the Seller to pay the May 15, 2023 interest payment under the Indenture shall only constitute an Event of Default hereunder if not paid in full in cash prior to the expiry of the applicable cure period in respect thereof; and (iii) failure by the Seller to pay the quarterly royalty payment pursuant to the amended and restatement of the consolidation of mining leases dated October 30, 2017 shall only constitute an Event of Default hereunder if not paid in full in cash prior to May 25, 2023;

(e) a revocation, termination or cancellation of, any Material Contract or a default thereunder that would permit the revocation, termination or cancellation thereof by any third party;

(f) failure by the Seller, in the opinion of the Buyer, acting reasonably, to comply with the terms of, take any proposed steps under, or meet any milestones or metrics set out in the Liquidity Management Plan, the Operational Turnaround Plan, the Retention Plan or the Restructuring Plan, in each case on the timelines set out therein;

(g) the existence of an adverse variance of cumulative actual net cash flow from the Cash Flow Forecast by an amount exceeding 10% in respect of any four week period;

(h) any change to the composition (including addition, removal or replacement of directors) of the board of directors of the Seller that is not in accordance with the Amended Shareholders Agreement and the First Noteholder Side Letter, except as arising from resignation by a director;

(i) the cessation (or threat of cessation) by the Seller to carry on business in the ordinary course, having regard to the current financial condition of the Seller;

(j) the denial or repudiation by the Seller of the legality, validity, binding nature or enforceability of this Agreement, the other Financing Documents or any other document or certificate delivered pursuant to the terms hereof or thereof or the Offtake Agreement;

(k) the cessation of any of the Security Documents to constitute, in whole or in part, a Lien on the Collateral in the priority contemplated by this Agreement;

(l) the entry of one or more final judgements, writs of execution, garnishment or attachment representing a claim in excess of $250,000 against the Seller or the Collateral that is not released, bonded, satisfied, discharged, vacated, stayed or accepted for payment by an insurer within 30 days after their entry, commencement or levy;

(m) the commencement by the Seller or any of its subsidiaries organized under the laws of the United States of America or Canada (or any state, province, territory other subdivision thereof) of any action, application, petition, suit or other proceeding under any bankruptcy, arrangement, reorganization, dissolution, liquidation, insolvency, winding-up or similar law of any jurisdiction now or hereafter in effect, for the relief from or otherwise affecting creditors of such entity, including without limitation, under the BIA (including the filing of a notice of intention to make a proposal), CCAA, *Winding-up and Restructuring Act* (Canada), the CBCA or any similar law of another jurisdiction, including provisions of corporate statutes providing for a stay of proceedings or the compromise of claims;

(n) the appointment of any receiver, receiver-manager, interim receiver, monitor, liquidator, assignee, custodian, trustee, sequestrator or other similar entity in respect of the Seller or any of its subsidiaries organized under the laws of the United States of America or Canada (or any state, province, territory other subdivision thereof), or all or any part of their respective property, assets or undertaking;

(o) the act of the Seller or any of its subsidiaries organized under the laws of the United States of America or Canada (or any state, province, territory other subdivision thereof): (i) making a general assignment for the benefit of its

creditors, including without limitation, any assignment made pursuant to the BIA, (ii) acknowledging its insolvency or is declared or becomes bankrupt or insolvent, (iii) failing to meet its liabilities generally as they become due, or (iv) committing an act of bankruptcy under the BIA or any similar law of any jurisdiction;

(p) the occurrence of any Liquidity Event;

(q) the failure by the Seller to pay the May 15, 2023 interest payment under the Indenture in full in cash prior to the expiry of the applicable cure period in respect thereof;~~or~~

(r) the failure by the Seller to meet any Milestone in accordance with Section 9(bb)~~.1(bb).~~; or

(s) a default under any Noteholder Side Letter.

11.REMEDIES

Following the occurrence of an Event of Default, without limiting the remedies available under the Security Documents or hereunder, the Buyer may:

(a) on demand, accelerate all payments due by the Seller hereunder, and set off amounts owing by the Buyer to the Seller against amounts owing by the Seller to the Buyer, provided that if the Event of Default relied upon by the Buyer to demand or accelerate such payments has arisen solely as a result of the Seller's failure to repay the Additional Prepay Advances on demand (absent any other Event of Default), the Buyer shall not set-off the Purchase Price for deliveries of Product in accordance with the terms of the Offtake Agreement against the Advances until the date which is five (5) Business Days after the Buyer demands repayment of the Additional Prepay Advances;

(b) apply to a court (i) for the appointment of an interim receiver or a receiver and manager of the undertaking, property and assets of the Seller, (ii) for the appointment of a trustee in bankruptcy of the Seller, or (iii) to seek other relief; or

(c) without limiting the foregoing, the Buyer shall have the power and rights of a secured party under section 17, 17.1 and Part V of the *Personal Property Security Act* (Ontario).

12.EXPENSES

The Seller shall be obligated to, on the Termination Date, reimburse the Buyer for all reasonable out-of-pocket expenses and costs, including, without limitation, all reasonable and documented legal and advisory fees, incurred by each of the Buyer and its Advisors in connection with any matter arising hereunder or any documents issued in connection with this Agreement or any of the Financing Documents. All such reimbursement and/or payment obligations shall form part of the Obligations and shall be secured by the Security.

13.TAXES

13.1 All payments in cash or in kind made by the Seller to the Buyer, including without limitation any payments required to be made from and after the exercise of any remedies available to the Buyer upon an Event of Default, shall, except as required by applicable law, be made free and clear of, and without reduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any kind or nature whatsoever or any interest or penalties payable with respect thereto now or in the future imposed, levied, collected, withheld or assessed by any country or any political subdivision of any country (collectively "**Taxes**"); provided, however, that if any Taxes (other than Excluded Taxes) are required by applicable law to be deducted or withheld ("**Withholding Taxes**") from any amount payable in cash or in kind to the Buyer hereunder or under any other document delivered pursuant to the terms hereof, the amount so payable to the Buyer shall be increased to the extent necessary to yield to the Buyer on a net basis after withholding and remitting all Withholding Taxes, the amount the Buyer would have received had no Withholding Taxes been payable, and the Seller shall provide evidence satisfactory to the Buyer that the Taxes have been so withheld and remitted to the applicable Governmental Entity on a timely basis.

13.2 In addition, the Seller shall reimburse and indemnify the Buyer for any Withholding Taxes paid by the Buyer within 10 days upon receiving evidence from the Buyer that it has paid the Withholding Taxes, whether or not such Withholding Taxes were correctly or legally asserted. If the Buyer determines, in its sole discretion exercised in good faith, that it has received a refund of Withholding Taxes remitted to a Governmental Entity pursuant to Section 13.1 or to which it has been indemnified and reimbursed by the Seller pursuant to this Section 13.2, it shall pay to the Seller an amount equal to such refund, net of all out-of-pocket expenses (including any taxes) and without interest. The Seller shall, upon request, repay to the Buyer the amount paid over to the Seller hereunder in the event that the Buyer is required to repay such refund to a Governmental Entity.

13.3 The Buyer will take all commercially reasonable steps to obtain a refund of any Withholding Taxes payable by it pursuant to Section 13.2, provided that nothing in this Section 13.3 shall be construed to require the Buyer to:

(a) make available its Tax returns or any other information which it deems confidential to the Seller or any other Person; or

(b) pay any amount pursuant to this Section 13.3, the payment of which would place the Buyer (or any of its Affiliates) in a less favourable net after-Tax position than the Buyer (or any of its Affiliates) would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld, or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid.

13.4 The Buyer represents that it is a resident of Singapore for purposes of the tax convention between the governments of Canada and Singapore entitled to the benefits of such convention, it does not have a permanent establishment in Canada as defined in such Convention and it is receiving any amounts paid by the Seller pursuant to this Agreement

in the ordinary course of its business; provided, for greater certainty, that Seller's obligations described in Sections 13.1 and 13.2 (i) are not conditional on this section 13.4, and (ii) remain enforceable against Seller notwithstanding any assessment, reassessment or other assertion by a Tax authority, or a finding of a court of competent jurisdiction, that is inconsistent with the representations contained in this section 13.4.

14.MISCELLANEOUS

14.1 Further Assurances

The Seller shall at its expense, from time to time do, execute and deliver, all such further acts, documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) and things as the Buyer may reasonably request for the purpose of giving effect to this Agreement, perfecting, protecting and maintaining the Liens created by the Security establishing compliance with the representations, warranties and conditions of this Agreement or any other document delivered in connection herewith.

14.2 Disclosure

No press release or other public disclosure concerning the transactions contemplated herein shall be made by the Seller without the prior consent of the Buyer (such consent not to be unreasonably withheld); *provided*, however, that the Seller shall, after providing the Buyer and its Advisors with copies of all related documents and an opportunity to consult with the Buyer and its Advisors as to the contents, make prompt disclosure of this Agreement and make such disclosure as may be required by the Indenture, by applicable law or by any Governmental Entity having jurisdiction over the Seller. Notwithstanding the foregoing, no information with respect to the identity of the Buyer shall be disclosed by the Seller except as may be required by applicable law, or by any Governmental Entity having jurisdiction over the Seller.

14.3 Conflict

To the extent that there is any inconsistency between this Agreement and any of other Financing Documents, this Agreement shall govern.

14.4 Amendments and Waivers

This Agreement shall only be amended or waived with the consent of the Buyer and the Seller in writing.

14.5 Assignments and Participations

The Buyer may assign all or any portion of its Advances and related rights under this Agreement and the other Financing Documents, without the consent of any other party, provided that the Margin Advances and related rights shall only be assigned if the Offtake Agreement is also assigned. The Seller may not assign its rights hereunder without the consent of the Buyer.

The Buyer may also grant a participation (whether by way of equitable assignment, limited recourse deposit or otherwise) (each a "Participation") to any other person (a "**Participant**") in the whole or any part of any of its Advances (whether before or after the funding of such

Advances) under which the Participant shall be entitled to the benefit of the same rights under this Agreement with respect to such Participation as if it were a party hereto in the place and stead of the Buyer; provided that in respect of such participated share and as between the Participant and the Seller, (i) the Buyer (and not the Participant) shall remain solely entitled to enforce such rights, and shall remain solely responsible for the performance of all obligations, of the Buyer under this Agreement with respect to such participated share, (ii) such Participant shall have no direct enforceable rights against the Seller in respect of such participated share, other than against the Buyer; (iii) no party hereto, other than the Buyer, shall have any obligations to such Participant with respect to such participated share; and (iv) the consent of the Participant is not required under the terms of such participation to any change to this Agreement, except for changes that (1) increase the aggregate amount of the Advances in excess of the participated share agreed to by the Participant or (2) postpone or defer the time for the payment or repayment of any Advance or any other amount payable hereunder to which such Participant has a right.

14.6 **Governing Law**

(a) This Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

(b) The Seller hereby consents and agrees that the courts of the Province of Ontario shall have non-exclusive jurisdiction to hear and determine any claims or disputes between the Seller and the Buyer pertaining to this Agreement or any of the other documents related thereto or to any matter arising out of or relating to this Agreement or any of the other documents related thereto. Nothing in this Agreement shall be deemed or operate to preclude the Buyer from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the obligations, or to enforce a judgment or other court order. The Seller expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and the Seller hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue or *forum non conveniens* and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. The Seller hereby waives personal service of the summons, complaint and other process issued in any such action or suit and agrees that service of such summons, complaints and other process may be made by registered mail (return receipt requested) addressed to it at the address set forth in Section 14.13 of this Agreement and that service so made shall be deemed completed upon the earlier of its actual receipt thereof or three (3) Business Days after deposit with Canada Post, proper postage paid.

14.7 **Confidentiality**

This Agreement is being executed on a highly confidential basis on the understanding that this Agreement, any related documents, the existence and contents thereof and the existence and contents of any discussions related thereto ("**Confidential Information**") shall not be disclosed by the Seller or the Buyer to any third party or made public without the prior written consent of the other party, except for disclosure to such party's legal and financial advisors, directors, officers and employees who are bound by the terms of confidentiality arrangements to keep all

such Confidential Information confidential (with the applicable party bearing all risk of such disclosure).

14.8 **Counterparts; Electronic Signatures**

This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures provided by electronic transmission shall be valid and binding.

14.9 **Indemnity**

The Seller shall indemnify and hold harmless the Buyer and its Affiliates, and each such Person's respective officers, directors, shareholders, employees, legal counsel, agents and representatives (each, an "**Indemnified Person**"), from and against any and all suits, actions, proceedings, orders, claims, damages, losses, liabilities and expenses (including reasonable and documented legal fees and disbursements and other costs of investigation or defense, including those incurred upon any appeal) that may be instituted or asserted against or incurred by any such Indemnified Person as a result of or in connection with (i) the breach by the Seller of its obligations in connection with or arising out of the transactions contemplated under this Agreement and the other documents related thereto and any actions or failures to act in connection therewith including the taking of any enforcement actions by the Buyer and (ii) all legal costs and expenses arising out of or incurred in connection with disputes between or among the Buyer, the Seller and/or any other party or parties to any of the documents related thereto (collectively, "**Indemnified Liabilities**"); provided that the Seller shall not be liable for any indemnification to an Indemnified Person to the extent that any such suit, action, proceeding, claim, damage, loss, liability or expense results from that Indemnified Person's gross negligence or wilful misconduct. No Indemnified Person shall be responsible or liable to any other party to any document related thereto, any successor, assignee or third party beneficiary of such Person or any other Person asserting claims derivatively through such party, for indirect, punitive, exemplary or consequential damages which may be alleged as a result of any transaction contemplated hereunder or under any of the documents related thereto.

14.10 **No Waiver**

The Buyer's failure, at any time or times, to require strict performance by the Seller of any provision of this Agreement or any other document related thereto shall not waive, affect or diminish any right of the Buyer thereafter to demand strict compliance and performance herewith or therewith. Any suspension or waiver of an Event of Default shall not suspend, waive or affect any other Event of Default whether the same is prior or subsequent thereto and whether the same or of a different type. Except as otherwise provided for herein, none of the undertakings, agreements, warranties, covenants and representations of the Seller contained in this Agreement or any of the other documents related thereto and no Default or Event of Default shall be deemed to have been suspended or waived by the Buyer, as applicable, unless such waiver or suspension is by an instrument in writing from the Buyer and directed to the Seller specifying such suspension or waiver.

14.11 **Remedies**

The Buyer's rights and remedies under this Agreement shall be cumulative and nonexclusive of any other rights and remedies that the Buyer may have under any other agreement, including the other documents related thereto, by operation of law or otherwise. Recourse to the Collateral shall not be required.

14.12 **Severability**

Wherever possible, each provision of this Agreement and the other documents related thereto shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement or any other document related thereto shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or such other document related thereto.

14.13 **Notices**

Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by any other parties, or whenever any of the parties desires to give or serve upon any other parties any communication with respect to this Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be deemed to have been validly served, given or delivered

(a) upon the earlier of actual receipt and three (3) Business Days after deposit with Canada Post, registered mail, return receipt requested, with proper postage prepaid,

(b) upon receipt, when sent by electronic mail,

(c) one (1) Business Day after deposit with a reputable courier for overnight delivery with all charges prepaid, or

(d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address indicated on Schedule B hereto or to such other address as may be substituted by notice given as herein provided.

The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to any Person (other than the Seller) designated Schedule B to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

14.14 **Section Titles**

The Section titles and Table of Contents contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

14.15 **Reinstatement**

This Agreement shall remain in full force and effect and continue to be effective should any petition or other proceeding be filed by or against the Seller for liquidation or reorganization, should the Seller become insolvent or make an assignment for the benefit of any creditor or creditors or should an interim receiver, receiver, receiver and manager or trustee be appointed for all or any significant part of the Seller's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the obligations under the Advances, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Advances, whether as a fraudulent preference, reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the obligations under the Advances shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

14.16 **No Strict Construction**

The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favouring or disfavouring any party by virtue of the authorship of any provisions of this Agreement.

14.17 **Permitted Liens**

Except as otherwise expressly provided in this Agreement, the designation of any Lien as a "Permitted Lien" is not, and shall not be deemed to be, an acknowledgment by the Buyer that the Lien shall have priority over the security interests granted to the Buyer in the Collateral pursuant to the Security Documents.

14.18 **Principles of Construction**

(a) Unless otherwise specified, references in this Agreement or any of the Exhibits, Annexes, Schedules or Appendices to a Section, subsection or clause refer to such Section, subsection or clause as contained in this Agreement. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole, including all Annexes, Exhibits and Schedules, as the same may from time to time be amended, restated, modified or supplemented, and not to any particular section, subsection or clause contained in this Agreement or any such Annex, Exhibit or Schedule.

(b) Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and neuter genders. The words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; the word "or" is not exclusive; references to Persons include their respective successors and assigns (to the extent and only to the extent permitted by the agreement) or, in the case of

Governmental Entities, Persons succeeding to the relevant functions of such Persons; and all references to statutes and related regulations shall include any amendments of the same and any successor statutes and regulations. Whenever any provision in any agreement refers to the knowledge (or an analogous phrase) of the Seller, such words are intended to signify that the Seller has actual knowledge or awareness of a particular fact or circumstance or that the Seller or, if it had exercised reasonable diligence, would have known or been aware of such fact or circumstance.

(c) All Annexes, Schedules, Exhibits and other attachments (collectively, "**Appendices**") hereto, or expressly identified to this Agreement, are incorporated herein by reference, and taken together with this Agreement, shall constitute one single agreement.

14.19 **Iron Ore Stockpile Agreement**

For the duration of the term of this Agreement, the Buyer: (a) agrees that the Iron Ore Stockpile Purchase Agreement dated December 17, 2019 between the Seller and the Buyer shall continue for the term of this Agreement; and (b) shall continue to provide onsite technical support to the Seller, at no cost to the Seller, in such manner as determined by the Buyer in its sole discretion.

14.20 **Amendment and Restatement**

From and after the Effective Date, this Agreement shall for all purposes be deemed to be an amendment and restatement of the Existing Facility Agreement in its entirety and shall, from and after the Effective Date, supersede the Existing Facility Agreement. The amendment and restatement of the Existing Facility Agreement pursuant to this Agreement shall not in any manner be construed to constitute payment of, or impair, limit, cancel or extinguish, or constitute a novation in respect of, the Obligations and liabilities of the Seller evidenced by or arising under the Existing Facility Agreement, and the Security and Liens securing such Obligations and liabilities shall not in any manner be impaired, limited, terminated, waived or released. All of the Security and the other Financing Documents (other than the Existing Facility Agreement) delivered in connection with the Existing Facility Agreement are hereby expressly reaffirmed by the Seller, and shall remain in full force and effect.

[Remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

TACORA RESOURCES INC., as Seller

Per: _____
Name:
Title:

CARGILL INTERNATIONAL TRADING PTE LTD., as Buyer

Per: _____
Name:
Title:

Per: _____
Name:
Title:

SCHEDULE A
SECURITY DOCUMENTS

1. Debenture granted by the Seller in favour of the Buyer, charging all of the Seller's present and future real property.

2. General Security Agreement granted by the Seller in favour of the Buyer, charging all of the Seller's present and after-acquired personal property.

3. Assignment of Material Contracts granted by the Seller in favour of the Buyer, charging the Seller's interests in all of the material contracts and the material permits specified therein.

4. Assignment of Insurance granted by the Seller in favour of the Buyer.

5. Hypothec granted by the Seller in favour of the Buyer, charging all of the Seller's present and after-acquired movable property.

6. Share Pledge Agreement granted by the Seller in favour of the Buyer.

7. Blocked Account Agreement between Bank of Montreal, the Seller, the Notes Collateral Agent, and the Buyer.

8. Pari Passu Intercreditor Agreement between (among others) the Seller, the Notes Collateral Agent, and the Buyer.

SCHEDULE B
NOTICES

If to the Seller:

Tacora Resources Inc.
102 NE 3rd Street, Suite 120
Grand Rapids, MN 55744

Attn: Heng Vuong, Chief Financial Officer
E-mail: heng.vuong@tacoraresources.com

If to the Buyer:

Cargill International Trading Pte Ltd.
138 Market Street, # 17-01
CapitaGreen, Singapore 048946

Attention: Head of Iron Ore Operations

Email:

ironoreops@cargill.com;

Ironore@cargill.com;

Phil_Mulvihill@cargill.com;

Paul_Carrelo@cargill.com

SCHEDULE C
DEFINITIONS

Defined Term	Section Number
Appendices	~~14.1(c)~~ 14.18(c)
Additional Prepay Advances	2.2(b)
Additional Prepay Draw Notice	2.3(c)
Buyer	Parties
Collateral	~~8.1(l~~8(l)
Company Permits	~~8.1(j)(i)~~8(j)(i)
Confidential Information	14.7
Criminal Code interest	5.1(a)
criminal rate	5.1(a)
Event of Default	10.1
Excess Amount	5.1(a)
Excess ~~Margin~~ Senior Priority Advance Amount	2.2(c)
Existing Facility Agreement	Recitals
First Amendment	Recitals
Floor Price Premium	2.4
Indemnified Liabilities	14.9
Indemnified Person	14.9
Initial Advance Date	~~2.2~~2.3(a)
Initial Margin Advance	~~2.2(b)(i)~~2.2(a)(ii)(A)
Margin Advance	2.2(a)(ii)(B)
Milestone	~~9.1(bb~~9(bb)
Noteholder Restructuring Agreement	~~9.1(bb~~9(bb)
Offtake Amendment Termination Date	2.2(a)(i)
Original Facility Agreement	Recitals
Required Consents	~~8.1(n~~8(n)
RSA	~~9.1(bb~~9(bb)
Security	3.1
Seller	Parties
Seller Offtake Margin Amounts	~~2.2(b)(ii)~~2.2(a)(ii)(B)
Taxes	13.1
Termination Date	4.1
Withholding Taxes	13.1

In addition, the following terms used in this Agreement shall have the following meanings:

"**2023 Notes Warrants**" means the 346,624,268 penny warrants issued to certain holders of the Initial 2023 Notes, as consideration for backstopping the purchase of the Initial 2023 Notes and entry into certain amendments to the Indenture, which shall be immediately exercisable for a two-year period and expiring on May 11, 2025.

"**Advances**" means, collectively, the Original Advances (including the Floor Price Premium) ~~and~~ , the Margin Advances and the Additional Prepay Advances, and each individually, an "**Advance**".

"**Advisors**" means the legal and financial advisors to the Buyer.

"**Affiliate**" means (a) any Person which, directly or indirectly, Controls, is Controlled by or is under common Control with any other Person; (b) any Person which beneficially owns or holds, directly or indirectly, 10% or more of any class of voting stock or equity interest (including partnership interests) of any other Person; (c) any Person, 10% or more of any class of the voting stock (or if such Person is not a corporation, 10% or more of the equity interest, including partnership interests) of which is beneficially owned or held, directly or indirectly, by any other Person; or (d) any Person related within the meaning of the *Income Tax Act* (Canada) to any such Person and includes any "Affiliate" within the meaning specified in the CBCA on the Original Agreement Date.

"**Affiliate Payments**" means all payments to shareholders, directors, senior executives and their related parties or Affiliates, whether under contract or otherwise, including bonus payments, transaction payments, change of control payments, management fees, consulting or advisory fees or amounts payable in respect of reimbursements.

"**Amended Shareholders Agreement**" means the second amended and restated shareholders' agreement by and among the Seller and the Shareholders, in form and substance satisfactory to the Buyer.

"**BIA**" means the *Bankruptcy and Insolvency Act* (Canada), as amended.

"**Business Day**" means each day other than a Saturday or Sunday or a statutory or civic holiday that banks are open for business in Canada, the United States of America and Singapore.

"**Calculation Date**" has the meaning given to such term in the Offtake Agreement.

"**Cargill**" means Cargill, Incorporated.

"**Cargill Initial Warrants**" means penny warrants issued to Cargill as additional consideration for the Initial Advance and entry into the Original Facility Agreement, which shall be exercisable into common shares, representing a 10% equity ownership in the Seller on a fully-diluted basis and be immediately exercisable for a two-year period and expiring on January 9, 2025.

"**Cargill Extension Warrants**" means the penny warrants issued to Cargill as additional consideration for entry into the First Amendment, including the extension of the Termination Date thereunder, which shall be exercisable into common shares, representing a 25% equity ownership in the Seller on a fully-diluted basis and be immediately exercisable for a two-year period and expiring on April 29, 2025, all of which shall be issued pursuant to a warrant certificate in form and substance satisfactory to the Buyer and Cargill.

"**Cash Flow Forecast**" means the weekly cash flow forecast for the Seller for the period from January 1, 2023 until ~~July 14~~**[September 12]**, 2023, as delivered to the Buyer in connection with the First Amendment, which cash flow forecast shall contain, among all other items, all

anticipated Professional Fees, presented on a weekly basis, as may be amended from time to time with the prior written consent of the Buyer.

"**CBCA**" means the *Canada Business Corporations Act*, as amended.

"**CCAA**" means the *Companies' Creditors Arrangement Act* (Canada), as amended.

"**Change of Control**" means the occurrence of any one of the following event:

(a) any person or group (other than Cargill, the Buyer or their Affiliates) acting in concert directly or indirectly (i) shall have acquired beneficial ownership or control of 50% or more on a fully diluted basis of the aggregate voting power of the Seller's Equity Securities or (ii) shall have otherwise acquired Control of the Seller; or

(b) the occupation of a majority of the seats (other than vacant seats) on the board of directors of the Seller by persons who were neither (a) nominated by the board of directors of the Seller as composed on the Initial Advance Date nor (b) appointed by directors so nominated.

"**Contracts**" means all agreements, contracts, leases (whether for real or personal property), purchase orders, undertakings, covenants not to compete, employment agreements, confidentiality agreements, licenses, instruments, obligations and commitments to which a Person is a party or by which a Person or any of its assets are bound or affected, whether written or oral.

"**Control**" (including the terms "controlled by" and "under common control with"), means the possession, directly or indirectly, whether by voting rights or otherwise, of the power to direct or cause the direction of the management and policies of the Person in question.

"**Default**" means any event or occurrence that, with notice or the passage of time or both, would be an Event of Default.

"**Distribution**" means (i) the retirement, redemption, retraction, purchase, repayment or other acquisition of any Equity Securities of any Person; (ii) the declaration or payment of any dividend, return of capital or other distribution of, on or in respect of Equity Securities of any Person; and (iii) any other payment or distribution (in cash, securities or other property or otherwise) of, on or in respect of any Equity Securities of any Person.

"**DMT**" has the meaning given to such term in the Offtake Agreement.

"**Effective Date**" means the date on which this Agreement becomes effective in accordance with Section 7.1.

"**Equity Securities**" means, with respect to any Person, any and all shares, interests, participations, rights in, or other equivalents (however designated and whether voting and non-voting) of, such Person's capital, whether outstanding on the Original Agreement Date or issued after the Original Agreement Date, including any interest in a partnership, limited partnership or

other similar Person and any beneficial interest in a trust, and any and all rights, warrants, debt securities, options or other rights exchangeable for or convertible into any of the foregoing.

"**Excluded Taxes**" means Taxes that satisfy both of the following criteria:

(a) the Tax is calculated or based upon or measured by the Buyer's overall net income, capital, net receipts or net profits or franchise taxes imposed in lieu thereof; and

(b) the Tax is imposed by a Governmental Entity in a jurisdiction in which the Buyer is organized, or its principal office is located or is carrying on business otherwise than as a result of entering into this Agreement,

provided that, for greater certainty and notwithstanding the foregoing, any Tax calculated or based upon or measured by the gross amount of income earned or payment received by the Buyer or that is imposed under Part XIII of the Income Tax Act (Canada) is not an Excluded Tax.

"**Existing Notes**" means the 8.250% Senior Secured Notes due 2026 in an aggregate principal amount of $225,000,000 issued on May 11, 2021, pursuant to the Indenture.

"**Financial Statements**" means (a) the most recent audited consolidated balance sheet of the Seller and the related audited consolidated statement of operations and comprehensive loss, consolidated statement of cash flows for each of the fiscal years then ended, together with the report thereon of independent certified public accountants, each prepared in accordance with GAAP consistently applied throughout the periods covered, and (b) the most recent unaudited consolidated balance sheet of the Seller, and the related unaudited consolidated statement of operations and comprehensive loss and consolidated statement of cash flows for such period, each prepared in accordance with GAAP consistently applied throughout the periods covered.

"**Financing Documents**" means this Agreement, the Security Documents, the Pari Passu Intercreditor Agreement, the Senior Priority Intercreditor Agreement and all other documents or instruments delivered pursuant to the terms thereof or in connection therewith, including all agreements of the Buyer with, and consents provided to the Buyer from, third parties.

"**Financing Transaction**" means any transaction involving the incurrence of Indebtedness in excess of $100,000 or otherwise amending, restating, extending, refinancing or replacing any existing Indebtedness of the Seller, other than Lease Obligations in the ordinary course of business.

"**First Noteholder Side Letter**" means the side letter agreement dated May 29, 2023 between the Seller, the Buyer, Cargill and certain holders of Initial 2023 Notes or other notes issued under the Indenture,

"**Floor Price**" has the meaning given to such term in the Offtake January Amendment.

"**FPM Payable Amount**" has the meaning given to such term in the Offtake May Side Letter.

"**GAAP**" means International Financial Reporting Standards as in effect from time to time.

"**Governmental Entity**" means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

"**Guarantee**" of or by any Person (in this definition, the "**guarantor**") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (in this definition, the "primary credit party") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof (whether in the form of a loan, advance, stock purchase, capital contribution or otherwise), (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital solvency, or any other balance sheet, income statement or other financial statement condition or liquidity of the primary credit party so as to enable the primary credit party to pay such Indebtedness or other obligation, (d) as an account party in respect of any letter of credit or letter of guarantee issued to support such Indebtedness or other obligation, or (e) to purchase, sell or lease (as lessor or lessee) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss.

"**Indebtedness**" of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guarantee, (j) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (k) all negative marked-to-market exposure of such Person under Swap Agreements, (l) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value (other than for other Equity Securities) any Equity Securities in the capital of such Person, valued, in the case of redeemable Equity Securities, at the greater of voluntary or involuntary liquidation preference, plus accrued and unpaid dividends and (m) all obligations of such Person under any streaming agreements, royalties or other similar transactions, including any obligations under prepaid purchase and sale agreements.

"**Indenture**" means, collectively, the Amended and Restated Base Indenture dated as of May 11, 2023, by and among the Seller, as issuer, the guarantors from time to time party thereto and the Notes Collateral Agent, as trustee and collateral agent, as supplemented by a first supplemental indenture dated as of May 11, 2023, ~~and~~ a second supplemental indenture dated as of May 11, 2023, and a third supplemental indenture dated as of June 23, 2023, as the same may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"**Initial 2023 Notes**" means the 9.00% Cash / 4.00% PIK Senior Secured First Lien Notes due 2023 in an aggregate principal amount of $27,000,000 issued on May 11, 2023, pursuant to the Indenture.

"**Initial Advance**" has the meaning given to such term in the Existing Facility Agreement.

"**Investment**" means, as applied to any Person (the "investor"), any direct or indirect purchase or other acquisition by the investor of, or a beneficial interest in, Equity Securities of any other Person, including any exchange of Equity Securities for Indebtedness, or any direct or indirect loan, advance (other than advances to employees for moving and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contribution by the investor to any other Person, including all Indebtedness and accounts owing to the investor from such other Person that did not arise from sales or services rendered to such other Person in the ordinary course of the investor's business, or any direct or indirect purchase or other acquisition of bonds, notes, debentures or other debt securities of, any other Person.

"**Lease**" means, at the time any determination is made, a lease of real or personal property that would at that time be required to be classified as a "lease" in accordance with GAAP.

"**Lease Obligations**" of any Person means, at the time any determination is to be made, the amount of the liability in respect of a Lease that would at that time be required to be accounted for as a lease liability on a balance sheet in accordance with GAAP.

"**Liability**" or "**Liabilities**" means any direct or indirect liability, indebtedness, obligation, commitment, expense, claim, deficiency, guaranty or endorsement of or by any Person of any type, whether accrued, absolute, contingent, matured, unmatured liquidated, unliquidated, known or unknown.

"**Lien**" means, with respect to any asset, any mortgage, lien, pledge, charge, hypothec, debenture, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the PPSA (or equivalent statutes) of any jurisdiction.

"**Liquidity Event**" means a Financing Transaction, a Sale Transaction, a Restructuring or Recapitalization Transaction or a Change of Control.

"**Liquidity Management Plan**" means the liquidity management plan in form and substance satisfactory to the Buyer.

"**Margin Amount**" has the meaning given to such term in the Offtake Agreement.

"**Material**" means material, or reasonably expected to be material, to the business, affairs, results of operations or financial condition of the Seller or the operation of the Mine.

"**Material Adverse Effect**" individually or in the aggregate, any event, change or effect that could reasonably be expected to have a materially adverse effect on (i) the business, operations, assets, liabilities (including contingent liabilities), condition (financial or otherwise) of the Seller (ii) the operation of the Mine, (iii) any material impairment of the Seller's ability to consummate the transactions contemplated by this Agreement and the other Financing Documents or to perform their respective obligations thereunder or (iv) the rights and remedies of the Buyer under this Agreement and the other Financing Documents.

"**Material Contract**" means (a) the contracts, licences and agreements listed and described on Schedule E hereto, and (b) any other contract, licence or agreement (i) to which the Seller is a party or by which it is bound, (ii) which is Material to, or necessary in, the operation of the Mine or otherwise in the operation of the business of the Seller, and (iii) which the Seller cannot promptly replace by an alternative and comparable contract with comparable commercial terms.

"**Maximum ~~Margin~~ Senior Priority Advance Amount**" means $25,000,000 (including any amount on account of the Margin Advance Fee).

"**Mine**" means the Wabush Scully mine and processing plant in Newfoundland and Labrador, Canada and related facilities and infrastructure necessary to ship any ore extracted thereof.

~~"**Noteholder Side Letter**" means the side letter agreement dated on or about the date hereof between the Seller, the Buyer, Cargill and certain holders of Initial 2023 Notes or other notes issued under the Indenture,~~

"**Noteholder Side Letters**" means the First Noteholder Side Letter and the Second Noteholder Side Letter.

"**Notes Collateral Agent**" means Computershare Trust Company, N.A. (as successor to Wells Fargo Bank, National Association), as trustee and collateral agent under the Indenture, the Pari Passu Intercreditor Agreement and the Senior Priority Intercreditor Agreement.

"**Obligations**" means all obligations of the Seller under or in connection with this Agreement and the other Financing Documents, including all fees and expenses payable or reimbursable pursuant to Section 12, the amounts deemed to be advanced on account of the Floor Price Premium, the Additional Prepay Advances, the Margin Advances, the Margin Advance Fee and, if applicable, any Excess Amount. Notwithstanding anything herein to the contrary, solely for purposes of the Pari Passu Intercreditor Agreement, the Senior Priority Obligations shall not constitute "Obligations".

"**Offtake Agreement**" means the Restatement of the Iron Ore Sale and Purchase Agreement dated November 11, 2018, as amended by the amendment dated March 2, 2020, emails dated June 10 through June 16, 2021 between representatives of the Buyer and the Seller, Offtake

January Amendment, the Offtake May Side Letter, Section 2.2(a)(i) of this Agreement, and as further amended from time to time.

"**Offtake January Amendment**" means the amendment to the Offtake Agreement dated on or about the Initial Advance Date in form and substance satisfactory to the Buyer.

"**Offtake May Side Letter**" means the Fixed Price Side Letter 5 dated on or about the Effective Date in form and substance satisfactory to the Buyer.

"**Operational Turnaround Plan**" means the operational turnaround plan in form and substance satisfactory to the Buyer.

"**Ore**" has the meaning given to such term in the Offtake Agreement.

"**Original Advances**" means advances made under the Existing Facility Agreement in the aggregate amount of $30,000,000, including the deemed advance of the Floor Price Premium.

"**Original Agreement Date**" means January 3, 2023.

"**Orion**" means OMF Fund II (Be) Ltd. and its Affiliates.

"**Pari Passu Indebtedness**" has the meaning given to such term in the Indenture.

"**Pari Passu Intercreditor Agreement**" means the pari passu intercreditor agreement dated as of January 9, 2023 by and among, the Buyer, the Seller and the Notes Collateral Agent.

"Permitted Issuances" means the issuance by the Seller of (a) the Cargill Initial Warrants; (b) the Cargill Extension Warrants; (c) the 2023 Notes Warrants; (d) any stock options, performance share units, warrants or other instrument or consideration (including, without limitation, stock appreciation, phantom stock, or other similar rights) to the directors, officers, employees or consultants of the Seller; and (e) penny warrants issued to certain suppliers of the Seller in connection with amendments to Material Contracts to improve the liquidity of the Seller, as approved by the Buyer or the Advisors, acting reasonably, provided that the instruments issued pursuant to the foregoing clauses (e) and (e) shall be exercisable into common shares of the Seller and shall in the aggregate be exercisable for no more than 10% equity ownership in the Seller on a fully-diluted basis, and shall be issued pursuant to warrant certificates or other instruments in form and substance satisfactory to Buyer, acting reasonably.

"**Permitted Liens**" means (a) Liens in favour of the Notes Collateral Agent as in existence on the date of this Agreement and which are subject to the Pari Passu Intercreditor Agreement and the Senior Priority Intercreditor Agreement, (b) Liens arising by operation of law in the ordinary course of business without any contractual grant of security and (b) as have been previously disclosed in lien searches conducted by Buyer's counsel prior to the Initial Advance Date, and which are set out on Schedule D hereto, together with any other lien set out on Schedule D hereto.

"**Person**" means any natural person, corporation, company, limited liability company, unlimited liability company, trust, joint venture, association, incorporated organization, partnership, Governmental Entity or other entity.

"**Preferred Share Amendments**" means the amendments to the terms of the existing preferred shares held by Buyer to, among other things, provided that the conversion price protection thereunder shall be extended to December 31, 2024, all in form and substance satisfactory to the Buyer.

"**Product**" means the Ore to be delivered as stipulated in clause 9 of the Offtake Agreement.

"**Purchase Price**" has the meaning given to such term in the Offtake Agreement.

"**Restructuring or Recapitalization Transaction**" means the consummation of any restructuring, reorganization or recapitalization of the Existing Notes, the Initial 2023 Notes and other Indebtedness of the Seller pursuant to a plan of arrangement, plan of compromise or similar restructuring plan pursuant to the CBCA, the Business Corporations Act (Ontario), the CCAA, the BIA or any similar law of another jurisdiction, including provisions of corporate statutes providing for a stay of proceedings or the compromise of claims.

"**Restructuring Plan**" means a plan prepared by the Seller, in consultation with the Buyer in respect of opportunities related to a Financing Transaction, a Sale Transaction, a Restructuring or Recapitalization Transaction and/or other transaction in respect of the capital structure of the Seller.

"**Retention Plan**" means the retention plan prepared by the Seller ~~in respect of key management, directors and/or employees, on terms and conditions, including as to identification of individuals and compensation arrangements, satisfactory to the Buyer.~~and approved in accordance with the First Noteholder Side Letter.

"**Sale Transaction**" means the direct or indirect sale, lease, transfer, conveyance or other disposition in one or a series of related transactions, of all or substantially all of the properties or assets of the Seller and its subsidiaries taken as a whole.

"**Second Noteholder Side Letter**" means the side letter agreement dated June **[●]**, the Buyer, Cargill and certain holders of Initial 2023 Notes or other notes issued under the Indenture,

"**Security Documents**" means each of the documents set out on Schedule A hereto and all other security agreements, pledge agreements, debentures, mortgages, control agreements, intellectual property security agreements, collateral assignments, or other grants or transfers for security executed and delivered by the Seller or any guarantor creating (or purporting to create) a Lien upon Collateral in favour of the Buyer, in each case, as amended, modified, restated or replaced, in whole or in part, from time to time, in accordance with the Pari Passu Intercreditor Agreement

"**Senior Priority Intercreditor Agreement**" means the collateral agency and priority agreement dated as of May 11, 2023 by and among, the Buyer, the Seller and the Notes Collateral Agent.

"**Senior Priority Obligations**" means all Obligations under or in respect of the Margin Advances (including the Margin Advance Fee) and the Additional Prepay Advances.

"**Shareholders**" means each of the shareholders of the Seller as of the Initial Advance Date.

"**Swap Agreement**" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions.

"**Tacora Orion Letter**" means the letter between OMF Fund II (Be) Ltd., OMF FUND II H Ltd, the Seller, Tacora Norway AS and Sydvaranger Mining AS, dated on or about the date of this Amendment Agreement and this Agreement.

"**WMT**" has the meaning given to such term in the Offtake Agreement.

SCHEDULE D
PERMITTED LIENS

1. Liens in favour of Komatsu International (Canada) Inc. with respect to Liens in certain specified items of equipment, together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements, together with all proceeds, perfected by financing statements (as amended) registered under the following registration numbers:

i. BC registrations 498496L, 498519L, 522228L, 522241L, 535984L, 536041L, 590488L, 600117L, 635734L, 682122L, 733510L, 749295L, 914893L, 871138M, 881180M, 881198M, 881200M, 004580N, 004631N;

ii. NL registrations 16606402, 16905978, 16916546, 16916579, 16950925, 16954240, 16970238, 16970246, 17006453, 17047176, 17060872, 17109539, 17173667, 17266909, 17246471, 17173667, 17266909, 17486747, 18721027, 18734582, 18734640, 18928341, 18928457, 20004685, 20004693, 20004727 and 17097320.

2. Liens in favour of Caterpillar Financial Services Limited with respect to Liens in certain specified items of equipment, together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements, together with all proceeds, perfected by financing statements (as amended) registered under the following registration numbers:

i. BC registrations 426654L, 436219L, 472849L, 625738L, 926512L, 516447M and 863365N;

ii. NL registrations 16828758, 17096017, 17502287, 18300988 and 20037578.

3.Liens in favour of Sandvik Canada Inc. and Sandvik Financial Services Canada with respect to Liens in certain specified items of equipment, together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements, together with all proceeds, perfected by financing statements (as amended) registered under the following registration numbers:

i. BC registrations 932814N, 933016N and 933161N;

4.Liens in favour of Integrated Distribution Systems LP o/a Wajax Equipment with respect to Liens in certain specified items of equipment, together with all attachments, accessories, accessions, replacements, substitutions, additions and improvements, together with all proceeds, perfected by financing statements (as amended) registered under the following registration numbers:

i. NL registration 19956705;

5.Liens in favour of Xerox Canada Ltd. with respect to Liens in all present and future office equipment and software supplied or financed from time to time by such secured party, and all proceeds thereof, perfected by financing statements (as amended) registered under the following registration numbers:

i. NL registrations 17026121 and 18939819;

6. Liens in favor of Toromont Cat (Quebec) with respect to Liens in certain specified items of equipment, together with all proceeds, perfected by financing statements registered under the following registration number:

i.Quebec registration 19-0149628-0001

6. Liens in favor of Bank of Montreal, solely to the extent such Liens are limited to cash collateral in an amount not to exceed USD$113,000 and held in account no. 0002-1810-678 at Bank of Montreal, perfected by financing statements registered under the following registration numbers:

i.BC registration 466521P

ii. Ontario registration no. 20230411 0825 1590 8190 under file ref. no. 792187182

SCHEDULE E
REAL PROPERTY INTERESTS, JURISDICTIONS, QUEBEC LEASED PROPERTY, AND MATERIAL CONTRACTS

Real Property Interests

- Interests granted by 1128349 B.C. Ltd. and held by the Seller:
    - the "Lease" as defined in the Consent and Acknowledgement Agreement re: Pari Passu Security re: Lot 1 Sub-Sublease
    - the "Sub-Sublease" as defined in the Consent and Acknowledgement Agreement re: Pari Passu Security re: Knoll Lake Lots 2, 3 and 4 and Wabush Mountain Area Mining Sub-Sublease
- Interests granted by the NL Crown and held by the Seller:
    - the "License" as defined in the Acknowledgement Agreement re: Pari Passu Security re: Flora Lake License
    - the "Lease" as defined in the Consent and Acknowledgement Agreement re: Pari Passu Security re: Pumping Facilities Crown Lease

Jurisdictions

- Newfoundland and Labrador
- Quebec

Quebec Owned and Leased Real Property

Nil

Material Contracts

- Iron Ore Sale and Purchase Contract dated April 5, 2017 between the Seller (under its former name Magglobal CA Inc.), as seller, and Cargill International Trading Pte. Ltd., as buyer, as amended by the Amendment and Clarification dated March 2, 2020
- Confidential Transportation Contract dated November 3, 2017 between Quebec North Shore and Labrador Railway Company Inc. and the Seller, as amended by the Agreement to Amend the Confidential Transportation Contract dated February 13, 2019
- Locomotive Rental Agreement dated November 8, 2018 between Quebec North Shore and Labrador Railway Company Inc. and the Seller
- Contract (for users of the Port's multi-user berth) between Sept-Îles Port Authority and New Millennium Iron Corp. (since assigned to the Seller by the Assignment of

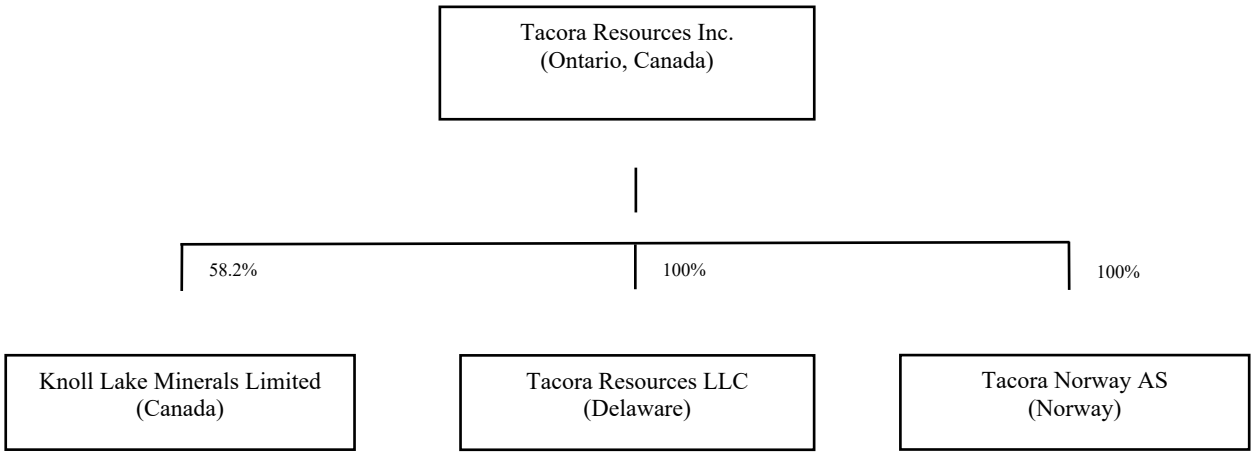
Contractual Rights dated April 19, 2018 between New Millennium Iron Corp. and the Seller)

- Agreement in Principle dated June 1, 2018 between Société ferroviaire et portuaire de Pointe-Noire s.e.c. and the Seller, as amended by the Amending Agreement dated August 15, 2018

- Service Agreement dated May 16, 2018 between Newfoundland and Labrador Hydro and the Seller

SCHEDULE F
CORPORATE STRUCTURE

Organizational Chart



SCHEDULE G
REQUIRED CONSENTS

Consent/Acknowledgements re Real Property Interests

1. Consent and Acknowledgement Agreement (re: Pari Passu Security re: Lot 1 Sub-Sublease) from 1128349 B.C. Ltd. as lessor;

2. Consent and Acknowledgement Agreement (re: Pari Passu Security re: Knoll Lake Lots 2, 3 & 4 and Wabush Mountain Area Mining Sub-Sublease) from 1128349 B.C. Ltd. as lessor.

3. Acknowledgement Agreement (re: Pari Passu Security re: Flora Lake License) from the NL Crown as Licensor and Knoll Lake Minerals Ltd. as Licensee

4. Consent and Acknowledgement Agreement (re: Pari Passu Security re: Pumping Facilities Crown Lease) from the NL Crown as Lessor and Knoll Lake Minerals Ltd. as Lessee

5. Acknowledgement Agreement (re: Pari Passu Security re: Lot 1 Sublease) from Knoll Lake Minerals Ltd. as lessor and 1128349 B.C. Ltd. as lessee

6. Acknowledgement Agreement (re: Pari Passu Security re: Knoll Lake Lots 2, 3 & 4 and Wabush Mountain Area Mining Sublease) from Knoll Lake Minerals Ltd. as lessor and 1128349 B.C. Ltd. as lessee

7. Acknowledgement Agreement (re: Pari Passu Security re: Lot 1 Head Lease) from the NL Crown as lessor and Knoll Lake Minerals Ltd. as lessee

8. Acknowledgement Agreement (re: Pari Passu Security re: Knoll Lake Lots 2, 3 & 4 and Wabush Mountain Area Mining Head Leases) from the NL Crown as lessor and Knoll Lake Minerals Ltd. as lessee

Counterparty Consents re Material Contracts

1. Consent Letter from Sept-Iles Port Authority re Port Contract;

2. Consent Letter from Societe Ferroviarire Et Portuaire de Pointe-Noire S.E.C. (i.e., SFPPN) re Agreement in Principle

3. Consent Letter from Newfoundland and Labrador Hydro re Service Agreement (re electricity);

4. Consent Letter from Quebec North Shore and Labrador Railway Company Inc. re Confidential Transportation Contract; and

5. Consent Letter from Quebec North Shore and Labrador Railway Company Inc. re Locomotive Rental Agreement.

6. Consent Letter from Cargill International Trading Pte Ltd re Iron Ore Purchase and Sale Contract

SCHEDULE H
NOTES COLLATERAL DOCUMENTS

Notes Collateral Documents:

1. Debenture granted by the Seller in favour of the Notes Collateral Agent, charging all of the Seller's present and future real property (as amended and restated in connection with the issuance of the Initial 2023 Notes).

2. General Security Agreement granted by the Seller in favour of the Notes Collateral Agent, charging all of the Seller's present and after-acquired personal property.

3. Assignment of Material Contracts granted by the Seller in favour of the Notes Collateral Agent, charging the Seller's interests in all of the material contracts and the material permits specified therein.

4. Assignment of Insurance granted by the Seller in favour of the Notes Collateral Agent.

5. Deed of Hypothec granted by the Seller in favour of the Notes Collateral Agent, charging all of the Seller's present and after-acquired movable and immovable property.

6. Share Pledge Agreement granted by the Seller in favour of the Notes Collateral Agent.

7. Blocked Account Agreement between Bank of Montreal, the Seller, the Notes Collateral Agent, and the Buyer.

8. Pari Passu Intercreditor Agreement between (among others) the Seller, the Notes Collateral Agent, and the Buyer.

Consents in connection with Notes Collateral Documents:

<u>Consent/Acknowledgements re Real Property Interests</u>

1. Consent and Acknowledgement Agreement (re: Notes Security re: Lot 1 Sub-Sublease) from 1128349 B.C. Ltd. as lessor;

2. Consent and Acknowledgement Agreement (re: Notes Security re: Knoll Lake Lots 2, 3 & 4 and Wabush Mountain Area Mining Sub-Sublease) from 1128349 B.C. Ltd. as lessor.

3. Acknowledgement Agreement (re: Notes Security re: Flora Lake License) from the NL Crown as Licensor and Knoll Lake Minerals Ltd. as Licensee

4. Consent and Acknowledgement Agreement (re: Notes Security re: Pumping Facilities Crown Lease) from the NL Crown as Lessor and Knoll Lake Minerals Ltd. as Lessee

5. Acknowledgement Agreement (re: Notes Security re: Lot 1 Sublease) from Knoll Lake Minerals Ltd. as lessor and 1128349 B.C. Ltd. as lessee

6. Acknowledgement Agreement (re: Notes Security re: Knoll Lake Lots 2, 3 & 4 and Wabush Mountain Area Mining Sublease) from Knoll Lake Minerals Ltd. as lessor and 1128349 B.C. Ltd. as lessee

7. Acknowledgement Agreement (re: Notes Security re: Lot 1 Head Lease) from the NL Crown as lessor and Knoll Lake Minerals Ltd. as lessee

8. Acknowledgement Agreement (re: Notes Security re: Knoll Lake Lots 2, 3 & 4 and Wabush Mountain Area Mining Head Leases) from the NL Crown as lessor and Knoll Lake Minerals Ltd. as lessee

Counterparty Consents re Material Contracts

1.Consent Letter from Sept-Iles Port Authority re Port Contract;

2.Consent Letter from Societe Ferroviarire Et Portuaire de Pointe-Noire S.E.C. (i.e., SFPPN) re Agreement in Principle

3.Consent Letter from Cargill International Trading Pte Ltd. re Iron Ore Purchase and Sale Contract;

4.Consent Letter from Newfoundland and Labrador Hydro re Service Agreement (re electricity);

5.Consent Letter from Quebec North Shore and Labrador Railway Company Inc. re Confidential Transportation Contract; and

6.Consent Letter from Quebec North Shore and Labrador Railway Company Inc. re Locomotive Rental Agreement.

SCHEDULE I
WET CONCENTRATE CALCULATIONS

Amounts Presented in USD			
Converted at USD:CAD		1.34	
Wet concentrate inventory	tonne	222,222	
Percentage sold		90%	
Wet concentrate sold	tonne	200,000	
Proposed Invoicing Methodology		US$ / tonne	US$mm
P62 five day average		104.73	$20.9
Sea Freight			
C3 five day average		(18.46)	($3.7)
North atlantic premium		(4.00)	($0.8)
Port and port handling			
SFPPN		(8.44)	($1.7)
Port of Sept-Iles		(1.57)	($0.3)
Rail			
QNS&L rail cost		(14.02)	($2.8)
Western Labrador Rail		(0.35)	($0.1)
Rail car rentals		(2.00)	($0.4)
Other costs			
Product discount		(10.00)	($2.0)
Extra handling cost		(6.00)	($1.2)
Moisture deduction		(2.00)	($0.4)
Total		37.88	$7.6

Support calculation		
QNS&L	C$ / tonne	US$ / tonne
Base rate	C$15.82	$11.81
Price participation	C$2.97	$2.22
QNS&L Total		$14.02
Western Labrador Rail		
Rate for first 333,000 of tons	C$0.47	
Rate for tons above 333,000	C$0.15	
Average rate	C$0.47	$0.35
SFFPN		
Monthly fix rate	C$4,298,257	
Average monthly tonne	380,000	
Average cost per tonne	C$11.31	$8.44
Port of Sept-Ile		
Fixed loading costs	C$115,000	
Cape size vessel	170,000	
Fixed cost per tonne	C$0.68	$0.50
Variable loading costs	C$1.43	$1.07
Total loading costs		$1.57

We propose performing a weekly drone survey to determine the total tonnes in WIP. The valuation would be [90%] of the Wet Concentrate multiplied by the invoicing methodology shown above. In the first week, the valuation would be invoiced by Tacora to Cargill, in succesive weeks there would be an additional step of netting off the prior weeks valuation with the current weeks valuation and this would be the amount invoiced. This will revalue the current tonnes at the time of the survey to current market prices.

SCHEDULE 8(H)
MATERIAL CLAIMS

1. Claims made pursuant to a letter dated March 27, 2023 from Quebec Iron Ore Inc.
2. Claims made pursuant to a letter dated April 27, 2023 from 1128349 B.C. Ltd..

SCHEDULE 10.1
EXISTING DEFAULTS

Default under the Indenture arising from the failure by the Seller to provide its financial statements in respect of its fiscal quarter ended September 30, 2022 as required under the Indenture.

Default under the Indenture arising from the failure by the Seller to provide its financial statements in respect of its fiscal quarter ended March 31, 2023 as required under the Indenture or deliver notice to the Notes Collateral Agent in respect thereof.

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.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding Commenced At Toronto

AFFIDAVIT OF MATTHEW LEHTINEN
SWORN JUNE 11, 2024

Goodmans LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Robert Chadwick LSO#: 35165K
rchadwick@goodmans.ca

Caroline Descours LSO#: 58251A
cdescours@goodmans.ca

Peter Kolla LSO#: 54608K
pkolla@goodmans.ca

Sarah Stothart LSO#: 73068O
sstothart@goodmans.ca

Tel: 416.979.2211

Lawyers for Cargill, Incorporated and Cargill International Trading Pte Ltd.

3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

AFFIDAVIT OF MATTHEW LEHTINEN

Sworn March 1, 2024

I, Matthew Lehtinen, of the City of Carmel, in the State of Indiana, make oath and say:

1. I am employed by Cargill, Incorporated ("**Cargill Inc.**") as the Customer Manager Americas in respect of its metals business. As such, I have personal knowledge of the matters deposed to herein. To the extent that information has been provided to me by others, I have specified the source of that information. In each case, I believe the information I refer to is true. Nothing in this affidavit is intended to limit or waive privilege.

2. Cargill Inc. is a privately-held Delaware company. It has been in operation for 150 years and currently operates in 70 countries with over 155,000 employees. It provides food, agriculture, financial and industrial products and services throughout the world.

3. Cargill International Trade PTE Ltd. ("**CITPL**", and together with Cargill Inc., "**Cargill**") is a Singapore company. Singapore is the headquarters of Cargill's metals business, which has more than 40 years of experience in the ferrous industry. It provides a broad range of marketing,

risk management and financial solutions. Each year Cargill moves around 50 million tons of physical iron ore and 6 million tons of physical steel globally.

4. Prior to joining Cargill, I was a co-founder, was initially the President and Chief Operating Officer, and was subsequently the Chief Commercial Officer, of Tacora Resources Inc. ("**Tacora**"). I was heavily involved in the process by which Tacora purchased the Scully Mine in 2017 in an asset purchase transaction out of a previous insolvency process under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (the "**CCAA**"), and by which Tacora restarted mining operations at the Scully Mine in July of 2019.

5. I left Tacora in January 2020 and became a consultant and exclusive agent to Cargill in November 2020 to assist with business opportunities in North America other than Tacora.

6. I was hired by Cargill in August 2023 as a full-time senior employee, and began to work on Tacora matters upon my hiring in my role at Cargill's metals business.

I. OVERVIEW

7. Cargill has been a key partner and important source of financial support for Tacora since its inception. Cargill is Tacora's offtake and technical marketing provider under the Offtake Agreement (as defined below) that was negotiated in April of 2017. Cargill is or has also been party to other key related agreements and arrangements with Tacora including: (i) 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 (all as defined below)), (ii) as provider of a hedging program in a cost efficient and beneficial manner for Tacora, and (iii) as provider of operational expertise and assistance at the Scully Mine. As part of Tacora's

CCAA proceedings, Cargill has also provided debtor-in-possession financing to Tacora. Cargill also (directly and/or indirectly) holds common shares and preferred shares of Tacora, and, until recently, Cargill employees served as technical and business advisors to Tacora in addition to serving as the acting general manager of operations of Tacora.

8. Cargill has, for an extended period of time, worked to assist Tacora and to provide stability and funding to Tacora for its operations particularly when alternative sources of liquidity were not available, including investing in preferred shares in November 2022 to facilitate Tacora's payment of interest under its senior secured notes, entering into the APF in January 2023, entering into the Wetcon Agreement in the fall of 2023, and prepaying certain amounts prior to them being due to Tacora in the fall of 2023, in each case for the benefit of Tacora and its stakeholders. Cargill has a long history of working with Tacora in a positive and constructive way to find balanced and reasonable solutions.

9. Pursuant to Tacora's SISP (as defined below) in these CCAA proceedings, Cargill advanced the Cargill Recapitalization Transaction (as defined below) in the same spirit of working with Tacora to find a fair and balanced solution, and proposed a transaction and structure which Cargill believes maximizes value for all stakeholders.

10. Unfortunately, Tacora failed to use the SISP to achieve a consensual or value maximizing transaction that respects the interests of all stakeholders, including Cargill. In particular, in the SISP, Tacora and its advisors (a) failed to properly consider Cargill as a key and material stakeholder of Tacora and the impacts on Cargill of the proposed reverse vesting transaction that Tacora now advances, (b) failed to properly engage with Cargill and its advisors on the Cargill Recapitalization Transaction and seek solutions for the benefit of Tacora and all of its stakeholders,

(c) failed to seek to explore all available alternatives and to work on advancing potential solutions that would provide better results and value for the benefit of Tacora and all of its stakeholders, (d) elected to not use its discretion within the SISP to extend timelines required to commit new third party capital providers in the short SISP time period (which overlapped with holidays including Christmas and New Year), and (e) failed to engage to seek a potential consensual resolution among its stakeholders.

11. Rather, Tacora selected a transaction that assumes and requires the availability of a reverse vesting order to rid Tacora of the Offtake Agreement and at the same time deprive Cargill of a claim for damages in respect of the Offtake Agreement. Tacora accepted the reverse vesting order-based offer, not as a last resort after exploring alternative transactions to avoid the need for a reverse vesting order, but as its first choice.

12. Cargill made multiple efforts to advance alternative transaction terms and structures with Tacora in order to maximize value for all stakeholders, but these invitations were not pursued by Tacora despite having the opportunity to do so, including in November 2023 at the beginning of the SISP, after phase 1 bids were submitted on December 1, 2023, or during phase 2 of the SISP. Cargill believes that its proposed alternatives, including the Cargill Recapitalization Transaction pursuant to Cargill's ultimate phase 2 bid, had merit and should have been explored by Tacora with Cargill. Cargill received little to no engagement from Tacora to solve problems or to create a consensual solution for its stakeholders during the CCAA proceedings.

13. Cargill securing an equity investment in Tacora from a new third party, with little or no previous connection with Tacora, is achievable but takes time. Such time was needed in this CCAA of Tacora given factors like Tacora's revenues being dependent on volatile iron ore pricing,

Tacora's requirement for significant capital expenditures, and Tacora's business plan that (compared to historical performance) requires material improvements in production and cost. While it was unfortunate that Cargill was unable to secure committed third party funding for its bid by January 19, 2024, that outcome should not have been surprising and should not have prevented Tacora and its advisors from continuing to work with Cargill after January 19 to pursue a value maximizing transaction, considering the progress that Cargill was continuing to make with potential investors and Cargill's historical and deep commitments to Tacora.

14. In proceeding down this path, Tacora has put itself and its stakeholders (including Cargill) at significant risk of material prejudice. Tacora has further exacerbated this situation by not selecting any back-up bid transaction pursuant to its SISP or, to my knowledge, advancing any contingency plans in the circumstance where Cargill and its advisors have communicated to Tacora many times throughout the course of these CCAA proceedings that Cargill strongly believes that a reverse vesting structure that seeks to leave behind the Offtake Agreement cannot be approved by the Court without the consent or agreement of Cargill.

15. Cargill has serious, material concerns over the conduct of the SISP by Tacora and its advisors, as discussed in further detail below. Among other things, the process as conducted by Tacora and its advisors created numerous challenges, delays and obstacles for bidders to successfully obtain third party financing within the limited timeframe available. The lack of dialogue and engagement with Cargill and its advisors after the submission of Cargill's phase 2 bid is also concerning to Cargill. I believe that Tacora did not fully and properly consider the Cargill Recapitalization Transaction or take suitable steps to obtain the benefits associated with it.

16. It is my strong belief that Tacora has manufactured a situation where it can try to claim that its proposed reverse vesting transaction is the only available transaction, including by Tacora not selecting a back-up bid and not advancing contingency steps towards an asset sale or CCAA plan transaction. It is not the case that there are no other superior alternatives available to Tacora in the circumstances. Tacora and its advisors have simply failed to properly consider and advance such alternatives that could have maximized value for Tacora and resulted in a better, consensual transaction for its stakeholders.

17. Tacora's actions will create significant prejudice to Cargill. Tacora has selected a reverse vesting transaction that, if implemented on its proposed terms, would "transfer" the Offtake Agreement to a shell company, which would have the effect of creating a claim under the Offtake Agreement that would exceed $500 million and leave Cargill as the only creditor not being satisfied pursuant to the proposed transaction.[1] Tacora failed to take into account the impact of such a proposed transaction on Cargill and weigh that against potential alternatives, as based on the proposed transaction, Cargill became the fulcrum-affected party.

18. Accordingly, and as discussed further herein, it is Cargill's view that Tacora's proposed reverse vesting transaction should not be approved based on all of the facts and circumstances. Cargill is therefore requesting the Court to, among other things, advance Cargill's proposed CCAA Plan (as defined and described further below). Cargill believes the CCAA Plan provides a significantly superior alternative to the proposed reverse vesting transaction, does not seek to

[1] Unless otherwise noted, all references to dollar amounts in this affidavit are to U.S. dollars.

isolate and prejudice a single key creditor, and rather seeks to satisfy all secured claims in full and provides significant if not full recovery to all of Tacora's unsecured creditors.

II. THE PREVIOUS SALE OF THE SCULLY MINE

19. The Scully Mine was previously sold pursuant to an asset sale transaction in the course of the CCAA proceedings of, among others, Bloom Lake General Partner Limited, Cliffs Quebec Iron Mining ULC, and Wabush Resources Inc. The asset sale transaction was approved by the Superior Court of Quebec.

20. In June 2017, as part of those CCAA proceedings, Tacora, as purchaser, and certain of the CCAA parties, as vendors, entered into an asset purchase agreement for the sale of the Scully Mine. The asset purchase agreement provided for a number of closing conditions, including, among other things:

(a) a requirement that Tacora obtain replacement financial assurance in respect of its closure plan, which was to be satisfactory to the Government of Newfoundland and Labrador;

(b) the granting of any consents or approvals necessary for the assignment or transfer of certain permits and licenses to Tacora; and

(c) approval pursuant to the *Mining Act* (Newfoundland and Labrador).

21. That transaction closed in July 2017, six weeks after the execution of the asset purchase agreement.

22. In that same CCAA proceedings, the CCAA debtor completed another asset sale transaction for a similar iron ore mine named Bloom Lake, which was sold to Champion. That asset sale transaction closed in April 2016.

III. CARGILL'S AGREEMENTS WITH TACORA

23. Cargill is a party to numerous material agreements with Tacora. I have been advised of, and verily believe, some of the information regarding the agreements with Tacora by Alanna Weifenbach, Finance Director, Metals and Trade & Capital Markets at Cargill and by Philip Mulvihill, Investments and Structuring Lead at Cargill.

24. There is an offtake agreement between Tacora, as seller, and CITPL, as buyer, of 100% of the iron ore concentrate production at the Scully Mine, dated April 5, 2017 and restated on November 11, 2018, and as further amended from time to time (the "**Offtake Agreement**"). The Offtake Agreement was amended in 2020 to last for the life of the Scully Mine.

25. In order to restart mining operations at the Scully Mine, in 2018 and 2019 Tacora raised approximately $140 million of equity and $120 million of debt. The original Offtake Agreement was in place before this equity was raised. The November 11, 2018 amendment to the Offtake Agreement was negotiated in conjunction with the equity raise and in consideration for Cargill investing approximately $20 million of equity capital in Tacora.

26. As explained further below, there are various payments made among Tacora and Cargill which stretch out over many months in respect of each specific iron ore shipment, since there is a gap of many months between when Cargill makes a first payment for the iron ore, and when there is a final reconciliation after the iron ore has been sold to a third party. Given the volatility of the

underlying price index, the Offtake Agreement requires not-yet finalized invoices be marked to market twice per week. Changes in the mark to market are settled in cash by either party. The margining facility under the Offtake Agreement provides that if Tacora owes amounts to Cargill under this mechanism, Tacora does not need to make immediate payment to Cargill, so long as the amount owed by Tacora does not exceed the margining threshold. The threshold was originally set at $5 million for each of Tacora and Cargill. The threshold for Tacora has subsequently been increased (first to $7.5 million, and then further increased pursuant to related agreements). In this way, Cargill provides financing to Tacora through the Offtake Agreement.

27. I have been advised by Mr. Mulvihill, and verily believe, that Cargill has also been able to realize prices in excess of market norms for Tacora's iron ore through Cargill's iron ore marketing and other technical services. The brand established by Cargill known as Tacora Premium Concentrate ("**TPC**") is well established among customers and it has enhanced the value of Tacora's iron ore. Tacora has realized these benefits through Cargill's substantial investment in branding and technical marketing including but not limited to: R&D programs for European and Chinese markets, customer segmentation to identify high value in use customers, and substantial technical roadshows and a significant number of customer meetings globally since 2019. Tacora and Cargill enjoy economic alignment via the profit sharing mechanism set out in the Offtake Agreement.

28. Tacora has taken no steps to seek to assign or disclaim the Offtake Agreement (other than Tacora's attempt to "transfer" the Offtake Agreement in these CCAA proceedings as part of Tacora's proposed reverse vesting transaction).

29. There is a stockpile agreement dated December 17, 2019, as amended from time to time, between CITPL and Tacora, which works in conjunction with the Offtake Agreement (as further amended from time to time, the "**Stockpile Agreement**"). I have been advised by Mr. Mulvihill, and verily believe, that Cargill entered into the Stockpile Agreement with Tacora because around the time it was entered, Tacora was at risk of default on its senior debt covenants that were in place at that time and could not raise financing from any third parties. Accordingly, Cargill provided the Stockpile Agreement as a financing solution for Tacora. The Stockpile Agreement provides for payment of a provisional purchase price by Cargill to Tacora when TPC is unloaded to a stockpile at the port, at which point title is transferred to Cargill, as opposed to later payment after a vessel is loaded in port as it would be under the Offtake Agreement. This provides material working capital financing to Tacora by moving forward payment for TPC by one or two months on average.

30. In December 2023, based on a request from Tacora, Cargill agreed to an amendment of the Stockpile Agreement to increase the stockpile limit for the benefit of Tacora.

31. Tacora has taken no steps to seek to assign or disclaim the Stockpile Agreement.

32. Cargill and Tacora are also parties to an advanced payments facility agreement, initially dated January 3, 2023, as amended and restated on May 29, 2023 and further amended on June 23, 2023 (as further amended from time to time, the "**APF**"), pursuant to which Cargill initially made advanced payments to Tacora against future deliveries under the Offtake Agreement of $30 million. As part of the amendment and restatement of the APF on May 29, 2023, Cargill agreed to provide a $25 million margining facility (to increase the amount of the margining facility under the Offtake Agreement), to fund Tacora's margin amounts under the Offtake Agreement by way

of deemed advances instead of cash payments, thus providing additional liquidity to Tacora. Cargill agreed to extend the term of the APF (as well as the Stockpile Agreement) to October 10, 2023 (i.e., the date on which Tacora filed for protection under the CCAA).

33. Under the APF, as at October 10, 2023 when Tacora commenced these CCAA proceedings, Cargill was owed the following amounts (exclusive of any applicable fees and interest) by Tacora, which were secured:

(a) $4,717,648 regarding the margining facility, with the same rank as the senior priority notes held by the ad hoc group of noteholders (the "**AHG**") and other noteholders; and

(b) $30,000,000 of advances pursuant to the APF, with the same rank as the senior secured notes held by the AHG and other noteholders.

34. Amounts owing under the APF are secured against the assets of Tacora and remain outstanding.

35. Cargill and Tacora were also parties to a wetcon purchase and sale agreement dated July 10, 2023 (the "**Wetcon Agreement**") whereby Cargill agreed to purchase wet concentrate from Tacora for an initial upfront payment of $5 million for 117,000 tonnes of wet concentrate, and additional payments when additional wet concentrate (up to a limit of 225,000 tonnes) was added to the stockpile, along with deferred further payments if and when Cargill took delivery of the wet concentrate based on the actual price of such wet concentrate. On September 12, 2023 (a potential date on which Tacora contemplated filing for protection under the CCAA), Cargill agreed to amend the Wetcon Agreement and to provide to Tacora $3,954,171.43 in full satisfaction of all

amounts (including deferred amounts) owing under the Wetcon Agreement, which Cargill agreed to in order to provide Tacora with much needed liquidity that it was unable to otherwise secure.

36. All obligations under the Wetcon Agreement have been satisfied.

37. Other than the revenue and financing provided to Tacora through these agreements, I am not aware of any other source of day-to-day revenue or financing available to Tacora in respect of working capital.

IV. CARGILL PAYMENTS UNDER THE OFFTAKE AGREEMENT AND HEDGES

38. The TPC produced from the Scully Mine is taken by train to the port of Sept-Iles, Quebec. Cargill pays Tacora for the TPC at the port under the Stockpile Agreement, as set out in stockpile provisional invoices that are delivered by Tacora to Cargill. Examples of such stockpile provisional invoices dated May 2, 2023, May 8, 2023, May 9, 2023, May 16, 2023, and May 22, 2023 are attached as **Exhibit "A"**.

39. Once the TPC is loaded onto a ship at the port, Tacora then issues a vessel adjustment invoice to Cargill for the TPC actually on the vessel. This can result in either an amount owing to Tacora or a credit to Cargill, depending on if the amount Cargill already paid for that TPC pursuant to the stockpile provisional invoices, and any subsequent margin payments, was more or less than the amount on the vessel adjustment invoice. A copy of the vessel adjustment invoice dated June 19, 2023 in respect of the stockpile provisional invoices referred to in the preceding paragraph is attached as **Exhibit "B"**.

40. I am advised by Chung Hung Diong, Commodities Structuring Manager, Trading, at Cargill, and verily believe, that either before or contemporaneous to when a ship is loaded with

TPC at the port, Cargill will typically approach a Tacora representative, usually Heng Vuong, Tacora's Chief Financial Officer, or Joe Broking, Tacora's Chief Executive Officer, about whether Tacora wishes to hedge the price for TPC that is subject to the Offtake Agreement and the Stockpile Agreement. This hedging can make sense if, for example, there is a high price of iron ore prevailing at the time, or if Tacora wants price certainty. The hedges are used to manage the risk of iron ore price fluctuations. If Tacora agrees to such a hedge, then Cargill and Tacora execute a written amendment to the Offtake Agreement to document the hedge and amend the pricing formula in the Offtake Agreement. An example of such an amending agreement, dated June 26, 2023, corresponding to the iron ore referred to in the preceding two paragraphs, is attached as **Exhibit "C"**.

41. After the TPC reaches its final destination, the Platts 62 Iron Ore index price is known for the third month after vessel loading, and the chemical composition of the TPC is finally determined, a final invoice is issued by Tacora to Cargill. An example of such a final invoice corresponding to the TPC referred to in the preceding three paragraphs, dated February 16, 2024, is attached as **Exhibit "D"**. This final invoice will take into account the amount payable to Tacora pursuant to the Offtake Agreement as amended by any hedging arrangements incorporated as part of the Offtake Agreement, as described below, provisional payments already paid to/received from Tacora under the Stockpile Agreement and upon vessel load, and margining advances paid to/received from Tacora pursuant to the Offtake Agreement and APF. This can result in either an amount owing to Tacora or a credit to Cargill under the final invoice.

42. As noted above, there is a time gap between when there is a first payment by Cargill to Tacora further to a stockpile provisional invoice and any payment owing under the final invoice.

The pricing under the Offtake Agreement and the related agreements described above is dependent on the price of iron ore, which fluctuates through time. These price fluctuations can lead to large swings in the amounts that may be owed by Cargill to Tacora (or vice versa) for any particular shipment of TPC between each of the invoicing and payment dates noted above (for example, between the time TPC arrives at the port and is loaded on the vessel, or between the time it is loaded on the vessel and arrives at its destination).

43. As noted above, to address this volatility, twice weekly Cargill calculates the net amounts outstanding for all Tacora TPC shipments under the relevant agreements including the Offtake Agreement. If the amount owing to or from Tacora exceeds the thresholds in the margining facilities described above, including under the Offtake Agreement, then a payment needs to be made. If Tacora owes an amount to Cargill that is below the threshold in the margining facilities, then Tacora does not need to make any payment at that time.

44. The arrangements and services that the Cargill metals business provides to Tacora are explicitly meant to provide Tacora with working capital, cash flow and liquidity. These services that Cargill's metals business provides to Tacora to provide working capital, cash flow and liquidity, are not typically provided to Cargill's other customers, nor are they provided by iron ore traders generally. Most traditional transactions involve purchase of cargos on FOB terms.

45. I am advised by Mr. Diong, and verily believe, that in addition to the hedges that Cargill arranges directly with Tacora, described above, Cargill also has a trading desk that handles derivatives and other risk management and financial strategies for Cargill in respect of the TPC sales made pursuant to the Offtake Agreement. By convention, iron ore pricing is typically based on a monthly sales price index such as the monthly average of the Platts 62 or Platts 65 price.

Pricing risk arises from the fact that the pricing terms under the Offtake Agreement for TPC are often set in a different month than the pricing terms under the contracts for sales of the TPC to third parties. Cargill's trading desk uses hedges to manage that risk.

46. By virtue of the Offtake Agreement, not all of the price risk for iron ore price movements is passed onto Tacora (for example, given the time difference between the month when a vessel is loaded with TPC from the Scully Mine, and the month of the final sale by Cargill to a third party). Once Cargill has visibility into the timing of TPC delivery from Tacora and the follow-on sale of that TPC to a third party, Cargill's trading desk then manages that price risk to Cargill through hedges and other derivative instruments involving Cargill's entire portfolio of iron ore. These hedging arrangements may extend over a period of six months or more. Cargill actively trades physical iron ore and iron ore derivatives, including trading iron ore futures contracts on both the Singapore Exchange and the Dalian Commodities Exchange. The risk from some of these transactions may offset each other without the need to directly execute hedging trades.

V. CARGILL'S INVESTMENT IN TACORA

47. Cargill holds shares and warrants in Tacora.

48. In particular, CITPL holds preferred shares in Tacora issued in November 2022, which provided Tacora with additional funding at the time they were issued so as to permit Tacora to pay the November 15 semi-annual interest payment due on amounts owing under Tacora's senior secured notes.

49. Various professionals from Cargill have worked on-site at Tacora prior to the commencement of these CCAA proceedings to support and enhance its operations, without any

payment by Tacora. In particular, Cargill provided Andrew Kirby, Strategic Customer Manager, who acted as the Plant General Manager for Tacora at no cost for approximately one year (Mr. Kirby had significant experience in industrial operations in the iron making industry). Timothy Sylow, Technical and Product Marketing Lead at Cargill (Mr. Sylow formerly led research and development for a leading steelmaker and iron ore miner), along with Mr. Kirby, worked with a consultant and led the development of a turnaround and capital investment plan for Tacora. This consultant subsequently advised Tacora on the implementation of the turnaround plan. Cargill employees have also served on Tacora's board of directors.

50. As discussed below in Section VI, Cargill has also expended a significant amount of time and effort, prior to these CCAA proceedings, to identify outside parties that could provide Tacora with additional financing or liquidity.

51. Cargill's approach in seeking to support and assist Tacora did not change once Tacora entered CCAA proceedings. Pursuant to the DIP Facility Term Sheet (the "**DIP Agreement**") dated October 9, 2023, which was approved by the CCAA Court in this proceeding on October 30, 2023, Cargill Inc. has provided debtor-in-possession financing to Tacora. As of February 28, 2024, the principal amount that has been advanced to Tacora under the DIP Agreement totals $75 million (exclusive of accrued interest and fees). Cargill is willing to work with Tacora to ensure that it has sufficient funding in these CCAA proceedings. At the request of Tacora, on February 28, 2024, Cargill provided Tacora with a proposal for an extension and amendment to the DIP Agreement to increase additional availability for liquidity to assist Tacora with its overall operations.

52. As demonstrated by the discussion above about Cargill's dealings with Tacora, Cargill has consistently sought to stabilize Tacora's operations, provide Tacora with additional funding and overall liquidity, and assist Tacora to improve its operations. These steps included, without limitation, investing in Tacora preferred shares so that Tacora could pay interest to the noteholders in 2022, entering into the APF in January 2023, entering into the Wetcon Agreement in the fall of 2023, prepaying certain amounts due to Tacora in 2023, entering into the DIP Agreement in October 2023, and amending the Stockpile Agreement in December 2023. All of these steps benefitted Tacora and its stakeholders, including by providing Tacora with liquidity, including in circumstances when Tacora was unable to otherwise access such funding. Cargill has a long history of working with Tacora in a positive and constructive way to find balanced and reasonable solutions.

53. As described in further detail below, Cargill advanced its bid for Tacora in these CCAA proceedings in the same spirit. Cargill advanced a structure which it believed was value maximizing for all stakeholders. Tacora, however, elected not to engage or work with Cargill as part of that process.

VI. CARGILL INTRODUCED RCF TO TACORA

54. Paulo Carrelo is Senior Solutions and Structuring Manager in Cargill's metals business, who is involved in Tacora matters. I am advised by Mr. Carrelo, and verily believe, that in November 2022, he approached a contact of his, Martin Valdes, who works at Resource Capital Fund (together with Resource Capital Fund VII L.P., "**RCF**"), about a potential investment in Tacora.

55. Tacora and RCF were unable to come to terms on a confidentiality agreement. So CITPL and RCF signed a Confidentiality Agreement dated May 3, 2023, for the stated purpose of facilitating discussions regarding a possible business relationship concerning restructuring or refinancing Tacora.

56. The negotiations between Cargill, the AHG and RCF about a consensual transaction involving Tacora culminated in a term sheet that had been negotiated between Cargill, the AHG and RCF. This term sheet included proposed amendments to the Offtake Agreement for the economic benefit of the AHG. Cargill understood that the term sheet was essentially settled amongst the parties. It was circulated in advance of meetings scheduled for October 3-4 in New York amongst Cargill, the AHG and RCF. Cargill understood that the purpose of the meetings was to finalize a consensual deal amongst Cargill, the AHG and RCF to recapitalize Tacora in order to avoid insolvency proceedings. A copy of my text exchange with Paulo Carrelo, Joe Broking and Heng Vuong for the period October 1 through October 6, 2023, is attached as **Exhibit "E"**. Those texts show that on October 2 we were discussing the term sheet that had been sent to the AHG to seek to advance a consensual deal, but by October 5 the discussion had turned to Cargill providing terms for debtor-in-possession financing.

57. This abrupt change happened because, at the meetings on October 3-4, it became clear that the AHG (or at minimum a subset of them) came into the meetings with no intention to pursue a consensual resolution, but rather were committed to Tacora entering into a CCAA proceeding.

VII. CARGILL HAS BEEN WILLING TO MODIFY THE OFFTAKE AGREEMENT

58. I can confirm that Cargill is currently open, and has previously been open, to the possibility of negotiating amendments to the Offtake Agreement, including its life-of-mine duration, as part

of attempts to find a consensual path to recapitalize or restructure Tacora. Cargill was open to that possibility before Tacora entered these CCAA proceedings, and continues to be open to that possibility today as part of these CCAA proceedings. This fact is known to Tacora and the other parties to these CCAA proceedings.

59. For example, as part of Cargill's discussions with RCF, RCF raised the possibility of modifications to the Offtake Agreement. I had a phone conversation with Mr. Carrelo and Mr. Valdes of RCF on the evening of October 4, 2023 to debrief the meetings in New York, and we discussed a potential path forward to a consensual deal. Mr. Valdes asked specifically if Cargill would be willing to amend the Offtake Agreement and I responded that although I could not officially commit such a position, my understanding was that there was clear openness within Cargill to make material changes to the Offtake Agreement in the interest of a consensual deal. Later, in a text exchange on WhatsApp starting on October 8, 2023 between Mr. Carrelo and Martin Valdes of RCF, the topic of Cargill's willingness to modify the Offtake Agreement as part of a potential transaction involving RCF, Cargill and the AHG was again raised. Mr. Valdes wrote that "there has to be room from offtake as well." Mr. Carrelo responded expressing Cargill's openness to modifications to the Offtake Agreement in the context of potential options for a transaction, writing "Yes we can modify offtake." Mr. Valdes was clear that he believed Cargill needed to also be open to potential modifications to the life-of-mine duration of the Offtake Agreement, writing "you need to be realistic about changing duration of offtake." Mr. Carrelo immediately responded: "Yep we are willing to move on that".

60. Even after Tacora had entered the CCAA process on October 10, 2023, Cargill remained open to potentially modifying the Offtake Agreement, including that it was a life-of-mine contract.

As part of Mr. Carrelo's WhatsApp exchange with Mr. Valdes, Mr. Valdes sent a message on October 12, 2023 seeking feedback on possible proposals. Mr. Carrelo responded on October 13, 2023, expressing willingness to explore them – Mr. Carrelo specifically wrote regarding the Offtake Agreement, "Offtake – your ideas are not a non starter." As I verily believe to be true, Mr. Carrelo was expressing in this message that Cargill was open to changes in the Offtake Agreement.

61. A copy of Mr. Carrelo's WhatsApp exchange with Mr. Valdes, including the WhatsApp messages referred to above, is attached as **Exhibit "F"**.

VIII. THE SISP

62. On October 30, 2023, the Court granted a Solicitation Order in this CCAA process authorizing and directing Tacora to run a sale, investment and services solicitation process (the "**SISP**"). Cargill engaged in the SISP in order to protect its economic interests.

63. Cargill hired a financial advisor, Jefferies Financial Group ("**Jefferies**") to assist Cargill as part of the SISP to identify and secure a partner or partners on any Cargill bid as part of the SISP. That engagement is continuing and ongoing. Cargill's approach to the SISP was to seek co-investors for any bid that Cargill would make, while also evaluating the possibility of making a bid on its own.

64. The SISP contained various milestones, including that on December 1, 2023, parties would submit phase 1 bids, and on January 19, 2024, parties would submit phase 2 bids. Cargill submitted bids in compliance with both of these dates. Below is a summary of the work that Cargill and its advisors undertook to prepare for and make its bids under the SISP. In particular, Cargill and

Jefferies undertook a significant amount of work during the SISP seeking potential debt and equity investors who would partner with Cargill as part of a bid.

65. Tacora required that potential investors sign non-disclosure agreements with it, before such parties could have access to the virtual data room that Tacora had set up for potential bidders. Cargill also entered into non-disclosure agreements with the potential investors it was dealing with (with the prior consent of Tacora pursuant to the SISP). In order to preserve the confidentiality of the identity of the parties to these non-disclosure agreements, this affidavit will not refer to any of them by name. This affidavit does not capture all of the substantial and intense work that Cargill (and its counsel) and Jefferies undertook as part of the SISP. Rather, it is meant to illustrate the magnitude of Cargill's work and to demonstrate that Cargill approached the SISP in good faith and with a serious and professional desire to comply with the SISP requirements and present the best bid possible. Cargill's approach to the SISP was specifically influenced by the terms in Schedule "A" of the Court's SISP Solicitation Order, including (i) the provisions at paragraphs 26 and 36 that permitted Tacora to waive compliance with requirements for phase 1 and phase 2 bids, and (ii) the provision in paragraph 40(b) that permitted Tacora to continue negotiations with phase 2 bidders with a view to finalizing acceptable terms with one or more bidders, all in order to maximize value to all stakeholders.

66. As part of the SISP, Cargill was required to negotiate a non-disclosure agreement with Tacora, which was dated November 27, 2023.

67. I am advised by Robert Chadwick, of Goodmans LLP, and verily believe, that in November and December 2023 during these CCAA proceedings, he communicated to Tacora (through counsel) that Cargill was willing to work with Tacora to advance a Cargill CCAA plan on a dual

track basis with Tacora's ongoing SISP to advance matters and the potential implementation of a transaction with Cargill in an efficient and timely manner.

68. Under the SISP, Cargill was required to get the permission of Tacora's financial advisor, Greenhill & Co. Canada Ltd. ("**Greenhill**"), and the Monitor, before it could seek to speak to a potential party who may provide debt or equity financing.

69. On November 8, 2023, Jefferies sent to Greenhill a list of 29 potential equity investors and 19 potential debt investors that it sought to speak with. Jefferies and Greenhill held a call on November 9 to discuss that list, on which Greenhill requested a revised investor list with fewer institutions. Accordingly on November 10, Jefferies followed up with a revised investor list, with 13 potential equity investors and 13 potential debt investors that it sought to speak with.

70. Jefferies followed up on November 13 seeking a call with Greenhill to discuss potential investors that could be contacted, and the call was scheduled for November 15.

71. On that call on November 15, Greenhill provided permission to speak with eight of the 13 potential equity investors, all of whom Jefferies or Cargill immediately reached out to. Greenhill also provided permission to speak with any of the potential debt investors, but expressed a preference if only a handful were actually contacted. Jefferies ultimately reached out to five potential debt investors in phase 1. Jefferies or Cargill reached out to 18 potential incremental equity investors and 14 potential incremental debt investors in phase 2 after obtaining proper consent from Greenhill.

72. Once Cargill reached out to those potential investors further to the permission granted by Tacora, if the potential investor was interested in pursuing matters with Cargill, the potential

investor then had to negotiate and sign a non-disclosure agreement with Tacora. After that non-disclosure agreement with Tacora was signed, Cargill then sought that the potential investor sign a separate non-disclosure agreement with Cargill. Further, Greenhill required that, before Cargill and Jefferies could speak with a potential investor about a potential bid, Jefferies or Cargill was required to send emails to Greenhill confirming Cargill's understanding that the potential investor in question wanted to work exclusively with Cargill, and seeking permission to communicate with that party about a potential bid as part of the SISP. The potential investor was required to separately confirm to Greenhill that they wanted to work exclusively with Cargill before being granted access to the virtual data room. This was an added layer of process that Greenhill required.

73. For example, Jefferies emailed Greenhill on November 27, 2023 about one of the potential investors it had identified to Tacora on November 8. Since that potential investor had executed a non-disclosure agreement with Tacora, Jefferies sought (i) confirmation that Cargill could speak with that potential investor regarding the potential investment opportunity, and (ii) access to Tacora's virtual data room for that potential investor. Cargill signed its own non-disclosure agreement with that potential investor on December 1. Tacora only confirmed to Cargill on December 8 that this potential investor had access to the virtual data room, after repeated follow-ups from Cargill.

74. The process described above repeated itself as Cargill identified additional potential investors, in terms of consents needing to be obtained from Tacora and Greenhill and non-disclosure agreements needing to be negotiated and concluded. All of this took time. For example, Cargill was still identifying potential investors that it sought permission from Tacora and Greenhill to speak with in December 2023 and January 2024. Despite the urgency for Cargill of moving

quickly through the process hurdles that Tacora and Greenhill adopted as part of the SISP (given the January 19, 2024 deadline for phase 2 bids), Jefferies was often required to make numerous follow-ups with Greenhill before Tacora would take steps or confirm matters. For example, in respect of a different potential investor that Cargill had identified, that potential investor signed a non-disclosure agreement with Tacora on December 1, 2023, but Tacora did not provide the potential investor access to the virtual data room until December 15.

75. Cargill ultimately signed non-disclosure agreements with approximately 16 potential investors after the SISP began. The first non-disclosure agreement was signed on December 4, 2023 and the most recent on January 24, 2024.

76. To the extent that these potential investors, after conducting due diligence on Tacora, were interested in pursuing a bid with Cargill, Cargill and Jefferies then had to negotiate the terms under which each may be willing to partner with Cargill on a bid in the SISP.

77. All of these steps took a significant amount of time and effort. In addition, all of these steps that Tacora and Greenhill implemented restricted Cargill's ability to engage with potential investors, in a manner that was detrimental to Cargill's ability to secure a commitment from a potential investor to partner with Cargill on a bid by January 19, 2024.

78. As part of Cargill's consideration of its various options to fund during the SISP and any bid that Cargill would make, the Chief Executive Officer of Cargill Inc. ultimately determined in early January 2024 that Cargill did not want to own a majority of Tacora, but would want, at most, a minority economic ownership interest in Tacora. Owning a majority of Tacora would require Cargill to consolidate Tacora's business with Cargill's operations from an accounting standpoint,

which is something that Cargill has historically sought to avoid as a matter of policy. Cargill was prepared, however, to convert up to $100 million of capital into equity, but also wanted additional equity through one or more third party investors alongside Cargill's investment. After that decision was made, Cargill along with Jefferies continued their significant efforts, which had been pursued since the beginning of the SISP, to find a partner or partners who would be willing to join in a bid and own a 51% or more economic interest. Cargill also continued its significant efforts to undertake its own legal and financial due diligence on Tacora and to structure a bid for Tacora under the SISP. Further to that work, Cargill continued to work with its advisors to be in a position to advance its proposed recapitalization transaction by January 19, 2024.

79. On January 17, 2024, which was two days before the phase 2 bid submission date of January 19, Tacora posted an updated capitalization summary to its data room. The summary disclosed for the first time to Cargill material increases to Tacora's estimates for the amount of cash that Tacora believed it would require on closing of any transaction arising from the SISP. This new information required Cargill to address these additional cash requirements as part of its phase 2 bid. Notwithstanding Tacora providing this material information so late in the process, Cargill continued to advance its bid for January 19, 2024.

80. At no point during the SISP – not in phase 1 or phase 2 – did Tacora provide or offer to Cargill a form (or even a structure) of any proposed transaction agreement. I am advised by Mr. Chadwick, and verily believe, that after Cargill submitted its phase 1 bid on December 1, 2023, he asked Tacora's advisors if Tacora had a form of agreement that Tacora was going to produce to bidders (as contemplated by paragraph 34(d)(i) of Schedule "A" to the SISP Solicitation Order), and was advised that a form of agreement was not being provided by Tacora to the bidders.

IX. THE VALUE OF THE OFFTAKE TO CARGILL

81. I understand, based on the materials filed by Tacora in these CCAA proceedings, that after the commencement of the CCAA process, RCF partnered with the AHG and Javelin Global Commodities (SG) Pte Ltd. ("**Javelin**", and together with the AHG and RCF, the "**AHG Consortium**") in respect of a bid that the AHG Consortium ultimately delivered in the SISP (the "**AHG Consortium Bid**"). I further understand that the AHG Consortium Bid that Tacora is seeking to have approved contemplates that Cargill's Offtake Agreement and its associated obligations would be "transferred" out of Tacora into a different company that would not have assets, and that any claim by Cargill in respect of the Offtake Agreement would not be satisfied.

82. At no point during the SISP, namely from the period October 30, 2023 through to date, did Tacora ever seek to have any discussion with, or to facilitate any discussion by the AHG with, Cargill about the Offtake Agreement, or about any topic. Rather, Tacora limited Cargill to discussions with Tacora, Greenhill and the Monitor, and Tacora restricted the AHG and Cargill from speaking with each other as part of the SISP. Tacora did not have any discussion with Cargill about the size of a potential claim if the Offtake Agreement was disclaimed or terminated or assigned, or any material or detailed discussion following the submission of phase 1 and phase 2 bids in the SISP about Cargill's openness to potentially amend or modify the Offtake Agreement as part of a restructuring solution to these CCAA proceedings. Tacora also restricted the ability of Cargill or its advisors to speak with Tacora's board of directors.

83. Tacora and its advisors also never advanced their own plan under the CCAA or any restructuring or consensual solution for Tacora. They did not seek to advance a plan or a consensual solution in conjunction with any potential transaction. Rather, Tacora and its advisors

appeared content to just passively see which parties might be interested in a transaction for Tacora following a rigid adherence to the SISP, and to proceed with one transaction on the assumption that the Offtake Agreement could be "vested out". Tacora took no steps to create a CCAA plan or transaction that could proceed on a consensual basis.

84. As Cargill considered the strategy it wanted to pursue in the SISP, it took steps to value the Offtake Agreement. The profit that Cargill makes on the Offtake Agreement depends on many factors, including the volume of TPC produced by the Scully Mine, the global iron ore price, freight costs, and Cargill's ability to market and sell the TPC. Cargill's estimate for the gross proceeds, prior to costs like SG&A, execution and cost of capital, via the Offtake Agreement for 2025 is approximately $26 million.

85. I believe that if Tacora took steps in these CCAA proceedings to not honour its obligations under the Offtake Agreement, Cargill's claim against Tacora would be for more than $500 million.

X. CARGILL PHASE 2 BID

86. On January 19, 2024, Cargill Inc., CITPL and 1000771978 Ontario Limited submitted Cargill's binding Phase 2 bid materials to Cargill pursuant to the SISP (the "**Cargill Phase 2 Bid**"). A copy of the Cargill Phase 2 Bid redacted to remove certain commercially sensitive and confidential information is attached as **Exhibit "G"**.

87. The Cargill Phase 2 Bid proposed a transaction (the "**Cargill Recapitalization Transaction**") involving an investment and restructuring of Tacora and its business, and the recapitalization of Tacora and its business. The Cargill Phase 2 Bid included at Appendix "A" a detailed Recapitalization Transaction Agreement with Tacora.

88. Understanding that paragraph 39 of Schedule "A" to the SISP Solicitation Order listed 12 criteria (being (a) through (l)) that Tacora and its advisors and the Monitor could evaluate for the phase 2 bids, Cargill also included at Appendix "C" to the Cargill Phase 2 Bid an itemized list of those criteria and the key features of the Cargill Recapitalization Transaction that addressed them. A copy of Appendix "C" to the Cargill Phase 2 Bid is attached as **Exhibit "H"**.

89. Cargill believed that the Cargill Recapitalization Transaction would achieve the highest possible result for Tacora and its stakeholders, including, among other things, satisfying in full all secured debt, providing a complete or substantial recovery for unsecured creditors, and assuming the Cargill Offtake Agreement in full on its existing terms along with other key contracts and obligations. The Cargill Phase 2 Bid contemplated that Tacora's secured noteholders would be repaid in full in cash or re-instated on their terms and paid accrued interest in cash. The Cargill Phase 2 Bid contemplated as an option proceeding by way of a CCAA plan.

90. The Cargill Phase 2 Bid noted that a failure to assume the Offtake Agreement as part of any other transaction would create a claim against Tacora in excess of $500 million, which would be avoided by the Cargill Recapitalization Transaction.

91. The Cargill Phase 2 Bid was proposed to be completed without delay and was structured to avoid conflict, material litigation and additional costs that would be associated with, for example, a reverse vesting order structure that would be expected to be heavy scrutinized by the Court.

92. As at January 19, 2024, despite the significant efforts that Cargill and Jefferies had expended, and costs incurred by Cargill, Cargill was unable to secure a firm commitment from one

or more of the potential investors it had been dealing with as part of the SISP. Nevertheless, Cargill was in active dialogue with five prospective new money equity investors and five prospective debt investors, which Cargill explicitly named in the Cargill Phase 2 Bid. Accordingly, the Cargill Recapitalization Transaction Agreement contained a condition that Cargill would obtain equity commitments of at least $85 million by no later than three weeks following the execution of the Recapitalization Transaction Agreement by the parties.

93. Having participated in the SISP and sought third party participation in a bid by Cargill, I believe that based on the nature of any transaction involving Tacora, and the circumstances facing Tacora in these CCAA proceedings, it was essentially impossible for any third party to have been in a position to make a binding commitment to invest equity in Tacora by the January 19, 2024 deadline in the SISP, unless the third party had been involved with Tacora well in advance of December 2023. Additional time for third party equity was needed in order to advance the best available transaction to maximize value for all stakeholders.

XI. TACORA REFUSED TO ENGAGE WITH CARGILL FOLLOWING THE PHASE 2 BIDS OR USE DISCRETION IN THE SISP

94. Following the submission of the Cargill Phase 2 Bid on January 19, 2024, Tacora did not meaningfully engage with Cargill to address the deficiencies that Tacora perceived in the Cargill Phase 2 Bid, or otherwise.

95. Tacora's lawyers emailed Cargill's lawyers on January 19, 2024 following submission of the Cargill Phase 2 Bid, asking Cargill to provide a Word copy of the Cargill Phase 2 Bid and the amount of secured debt expenses incurred owing to Cargill and owing by Tacora. A copy of those email exchanges, without attachments, is attached as **Exhibit "I"**.

96. Counsel to Tacora and Cargill had a brief telephone call on January 22.

97. On the following day, January 23, an approximately one-hour call was held among counsel to Tacora, Greenhill, counsel to the Monitor, Cargill and Jefferies, where I understand from Mr. Chadwick, and verily believe, that Tacora's advisors sought clarifications on the Cargill Phase 2 Bid. It was made clear by the Tacora representatives that the call was for clarification only as there was a scheduled meeting of Tacora's board of directors on January 24. To my knowledge, that was the only meeting between Tacora's legal and financial representatives and Cargill's legal and financial representatives after January 19, when the Cargill Phase 2 Bid was delivered, to discuss any aspect of the Cargill Phase 2 Bid.

98. On January 25, 2024, counsel to Tacora wrote a letter to counsel to Cargill, a copy of which is attached as **Exhibit "J"**. The three-page letter stated that it was repeating what had been conveyed on the call on Tuesday, January 23, namely that it was Tacora's position that the Cargill Phase 2 Bid was not a "Phase 2 Qualified Bid" because, among other things, it was subject to a condition that additional equity financing be obtained.

99. On January 27, 2024, counsel to Cargill wrote a letter to counsel to Tacora, a copy of which is attached as **Exhibit "K"**, in response to the letter from Tacora's counsel on January 25. The letter sought to engage with Tacora to address the issues that Cargill understood that Tacora had with the Cargill Recapitalization Transaction. The letter made clear that Cargill did not agree that the Cargill Phase 2 Bid was not compliant with the SISP, and reminded Tacora that the SISP permitted Tacora to waive requirements under the SISP, which was a normal feature of any SISP.

100. The January 27 letter requested a meeting between Cargill and Tacora and its advisors, and a mark-up of the Cargill Recapitalization Transaction Agreement or a complete issues list. It stated Cargill's belief that a reverse vesting order transaction in the context of Tacora's CCAA proceedings would not be successful without the support of Cargill. The Cargill Phase 2 Bid contemplated a minimum of $85 million of new money equity (along with a minimum of $100 million of equity that Cargill would contribute), and that Tacora would have sufficient cash on hand at closing of the Cargill Recapitalization Transaction. Tacora seemed to not understand these provisions, so Cargill clarified them in the January 27 letter, given that Cargill had the same interest as Tacora (and any entity investing equity as part of the Cargill Recapitalization Transaction) that Tacora be properly funded on a go-forward basis. In light of Tacora's cash flow projections that had only been provided on January 17, Cargill asked for Tacora's cash flow model based on the Cargill Phase 2 Bid so that Cargill could work with Tacora to reach agreement on the amount of equity that the Cargill Recapitalization Transaction required.

101. Tacora did not ever agree to such a meeting or provide the requested mark-up or issues list or cash flow model.

102. On January 28, 2024, counsel to Tacora wrote to counsel to Cargill, a copy of which is attached as **Exhibit "L"**. The short one page letter did not address the points that Cargill had raised in its January 27 letter, but simply repeated Tacora's position that the Cargill Phase 2 Bid was not a compliant bid because it remained conditional on financing.

103. In response to that letter, counsel exchanged emails on January 28 and 29, a copy of which is attached as **Exhibit "M"**.

104. On January 29, 2024, counsel to Cargill wrote to counsel to Tacora. The email reported on a meeting earlier that day that counsel for Cargill had with the Monitor, and asked for a meeting with both the Monitor and Tacora that same day in order to discuss the issues raised in the correspondence from the previous days. Counsel to Tacora responded a few hours later, and advised that Tacora's board had met that evening and accepted the AHG Consortium Bid. A copy of that email exchange is attached as **Exhibit "N"**.

105. To my knowledge, at no point following Cargill's submission of the Cargill Phase 2 Bid did Tacora ever seek a meeting with Cargill, or provide a detailed list of Tacora's perceived issues with the Cargill Recapitalization Transaction or the Cargill Phase 2 Bid, or provide a mark-up of the Cargill Recapitalization Transaction Agreement.

106. It is very concerning to Cargill that after Cargill submitted the Cargill Phase 2 Bid on January 19, 2024, there was no direct dialogue or engagement between Tacora (or its advisors) and Cargill. I believe that Tacora and its advisors treated Cargill in a manner that was not appropriate in the circumstances.

107. Cargill believes that the process whereby Tacora selected the AHG Consortium Bid was prejudicial to Cargill and not fair and reasonable based on all of the circumstances. The AHG Consortium Bid advanced by Tacora, if approved, would create a claim by Cargill exceeding $500 million that would not be paid. Cargill would be the only material creditor whose claim would not be satisfied. On the other hand, the Cargill Recapitalization Transaction would satisfy all creditors and not create a claim by Cargill in respect of the Offtake Agreement. Yet despite Cargill being the fulcrum party affected by the proposed AHG Consortium Bid, and despite Cargill's long

history as an important and valued stakeholder to Tacora, Tacora essentially ignored the interests of Cargill.

XII. RECENT EVENTS

108. Even after Tacora accepted the AHG Consortium Bid, Cargill continued to advance its efforts to find an investor or investors with which to partner on a bid for Tacora. Since January 19, 2024, Tacora has impeded Cargill's ability to advance such efforts: Tacora has stated the process is over and has been resistant to advancing a restructuring solution on a dual track with any process to approve the AHG Consortium Bid .

109. Tacora has rebuffed Cargill's attempts to seek a mediation to narrow issues or find common ground on the matters at issue in this proceeding.

110. On February 14, 2024, counsel to Cargill sent a letter to counsel to Tacora, which advised of Cargill's view that Tacora's proposed transaction with the AHG investors could not be approved, and that therefore Tacora should be advancing contingency planning including to obtain the consents and approvals required to implement any asset sale transaction. A copy of that letter is attached as **Exhibit "O"**. Tacora's counsel responded to that letter on the morning of March 1, 2024, a copy of which is attached as **Exhibit "P"**, claiming it was not in position to seek consents as it did not have a definitive asset sale transaction in place. As set out in the further response from Cargill's counsel sent on the afternoon of March 1, a copy of which is attached as **Exhibit "Q"**, Tacora's response misses the point, given that Tacora is refusing to pursue any contingency plan.

XIII. CARGILL'S PROPOSED CCAA PLAN[2]

111. Notwithstanding that the SISP provides for the advancement and completion of a recapitalization transaction in order to benefit a broad range of Tacora's stakeholders and to maximize value for all stakeholders, Tacora has failed to advance a plan of compromise and arrangement under the CCAA for the benefit of its stakeholders.

112. Accordingly, Cargill has developed a Plan of Compromise and Arrangement in respect of Tacora, a copy of which is attached hereto as **Exhibit "R"** (as it may be amended, supplemented or restated from time to time in accordance with the terms hereof, the "**Plan**").

113. Cargill's proposed Plan is on substantially the same terms as the Cargill Recapitalization Transaction proposed by Cargill pursuant to the Cargill Phase 2 Bid. In summary, the key aspects of the Plan include (among others):

(a) all secured claims will be treated as Unaffected Claims under the Plan, and in particular with respect to Tacora's obligations under the Notes Indenture:

(i) all outstanding principal and accrued and unpaid interest under the Senior Priority Notes up to the Plan Implementation Date shall be satisfied in cash on the Plan Implementation Date;

(ii) accrued and unpaid interest in respect of the Senior Secured Notes up to the Plan Implementation Date shall be satisfied in cash and the Senior Secured Notes shall be treated as unaffected and remain outstanding under the Notes

[2] Capitalized terms used in this section and not otherwise defined herein shall have the meaning ascribed to such term in the Plan.

Indenture from and after the Plan Implementation Date; provided that Cargill and any one or more Senior Secured Noteholders shall be entitled to agree to the purchase by Tacora of such Senior Secured Noteholder's Senior Secured Notes for cash consideration, at a discount to par, in an amount agreed to by Cargill and such Senior Secured Noteholder(s), to be implemented on or following the Plan Implementation Date; and

(iii) the Notes Trustee Costs shall be satisfied in cash, provided that in the event that Tacora, the Notes Trustee and Cargill are unable to reach an agreement on the Notes Trustee Costs prior to the Plan Implementation Date, an amount agreed to by Tacora, the Monitor, Cargill and the Notes Trustee (or such amount as determined by the Court if Tacora, the Monitor, Cargill and the Notes Trustee cannot agree) shall be deposited in trust with the Monitor as security for payment of the Notes Trustee Costs pending an agreement on the Notes Trustee Costs by Tacora, the Notes Trustee and Cargill or pending determination thereof by the Court;

(b) Affected Unsecured Claims will receive distributions from the Affected Unsecured Creditors Aggregate Distribution Amount of $25 million (or the Canadian dollar equivalent thereof), or such other amount as agreed to by Cargill in consultation with the Monitor (provided that the Affected Unsecured Creditors Aggregate Distribution Amount shall be reduced by the aggregate amount of any Unaffected Trade Claims which may be determined by Cargill in consultation with the Monitor and Tacora) as follows:

(i) each Affected Unsecured Creditor that is a Convenience Creditor (i.e. having an Affected Unsecured Claim that is not more than $5,000) shall receive the lesser of the amount owed to the Affected Unsecured Creditor in respect of its Allowed Affected Unsecured Claim or $5,000; and

(ii) any Affected Unsecured Creditor owed more than $5,000 in respect of its Allowed Affected Unsecured Claim shall receive the lesser of the amount owed to the Affected Unsecured Creditor in respect of its Allowed Affected Unsecured Claim or its Affected Unsecured Creditor's Pro-Rata Share of the Affected Unsecured Creditors Distribution Pool;

(c) Unaffected Claims shall include:

(i) Claim secured by any of the CCAA Charges;

(ii) Unaffected Secured Claim;

(iii) Insured Claim;

(iv) Post-Filing Trade Payable;

(v) Unaffected Trade Claim;

(vi) Scheduled Unaffected Claim;

(vii) the Offtake Agreement Obligations and the OPA Obligations;

(viii) a Claim that is not permitted to be compromised pursuant to section 19(2) of the CCAA;

(ix) Claims of Employees in their capacity as Employees, Employee Priority Claims and, to the extent applicable, any Claims of Employees under or pursuant to the Collective Bargaining Agreement;

(x) Government Priority Claims; and

(xi) Environmental Liabilities;

(d) New Equity Financing will be funded to Tacora on the Plan Implementation Date in exchange for 100% of the New Tacora Common Shares to be issued pursuant to the Plan on the Plan Implementation Date (subject to dilution from the Management Incentive Plan). The aggregate proceeds of the New Equity Financing shall be sufficient to pay the amounts contemplated to be paid pursuant to the Plan in cash on the Plan Implementation Date and to fund the operations of the Business, as determined by Cargill and the other New Equity Participants. Cargill acknowledges that, as of the date of this affidavit, those amounts from any third-party are not currently committed. Cargill's portion of the New Equity Financing shall be funded by way of the Exchanged Cargill Debt Amount, being up to $100 million of Debt Obligations of Tacora owing to Cargill, comprised of (A) an amount of Debt Obligations of Tacora under the DIP Agreement, as agreed to by Cargill (the "**Exchanged DIP Amount**"), and (B) an amount of the Debt Obligations of Tacora in respect of the Advance Payment Facility Claims, as agreed to by Cargill (the "**Exchanged Advance Payment Facility Claims Amount**" and together with the Exchanged DIP Amount, the "**Exchanged Cargill Debt Amount**"). Noteholders shall be entitled to participate in the New Equity

Financing in such proportion and on such terms as may be agreed to by Cargill and such Noteholder, subject to the terms of the Plan. Each Noteholder shall have the right to elect to participate in the New Equity Financing (each a "**New Equity Electing Noteholder**");

(e) all Equity Interests (including the Existing Tacora Common Shares, Existing Tacora Preferred Shares and Existing Tacora Warrants and Options) and the Stock Option Plans shall be cancelled and extinguished, and all Equity Claims shall be released on the Plan Implementation Date;

(f) Tacora shall obtain a New Senior Secured Pre-Payment Facility in the approximate range of $150-200 million and the Senior Priority Margining Facility may be increased from $25 million to $75 million in availability to facilitate a comprehensive hedging program for Tacora on market terms;

(g) CITPL and Tacora shall agree that, from and after the Plan Implementation Date, CITPL will provide to Tacora interim access to up to seventy percent (70%) of the amounts earned by CITPL pursuant to the Offtake Agreement until the Senior Secured Notes are repaid in full, whether at or before their maturity. The terms and structure of the access to such amounts shall be agreed to by Tacora and CITPL;

(h) CITPL shall agree to extend the OPA on similar terms as previously provided to Tacora effective as of the Plan Implementation Date;

(i) the KERP Employees eligible to receive payments pursuant to the KERP in connection with the implementation of the Plan shall be paid the amounts they are

entitled to pursuant to the KERP from the KERP Funds, any remaining amounts forming part of the KERP Funds shall be released to Tacora, and the KERP Charge shall be released on the Plan Implementation Date;

(j) the Administration Charge Amount, the Transaction Fee Charge Amount and any remaining Debt Obligations of Tacora under the DIP Agreement not exchanged for New Tacora Common Shares pursuant to the Plan shall each be satisfied in cash and the Administration Charge, the Transaction Fee Charge and the DIP Charge shall each be released on the Plan Implementation Date; and

(k) the releases contemplated under the Plan shall become effective and the Directors' Charge shall be released.

114. The only affected class of creditors under the Plan will be the Affected Unsecured Creditors Class and only the Affected Unsecured Creditors will be entitled to vote on the Plan. Cargill is prepared to take input and have constructive dialogue on the CCAA Plan with Tacora, the Monitor and Tacora's stakeholders.

115. Pursuant to its Responding Cross-Motion, Cargill is seeking authority pursuant to a proposed Meeting Order (a copy of which is enclosed with Cargill's Responding Cross-Motion Record) to file Cargill's proposed Plan with the Court and authority to call a meeting of the Affected Unsecured Creditors to consider and vote on the Plan. In connection therewith, Cargill is also seeking a proposed Claims Procedure Order (a copy of which is enclosed with Cargill's Responding Cross-Motion Record), establishing a claims procedure (the "**Claims Process**"), to be

conducted by the Monitor, for the identification and quantification of the Affected Unsecured Claims against Tacora for purposes of voting on and receiving distributions under the Plan.

116. The Claims Process would run concurrently with the process to solicit votes on the Plan pursuant to the Meeting Order, to provide for an efficient parallel process in an appropriate time frame.

117. Cargill believes that the proposed Plan has many key benefits for Tacora and its stakeholders, and is superior to the proposed AHG Consortium Bid for numerous reasons. Among other key factors:

(a) the Plan treats the Noteholders as Unaffected Creditors and the claims of the Noteholders will be satisfied in full pursuant to the Plan, whereas the AHG Consortium Bid provides for the equitization of certain amounts in respect of the Senior Secured Notes that are being exchanged at a significant discount to the new funding being provided by the equity participants under the AHG Consortium Bid;

(b) the Plan treats the Offtake Agreement Obligations and the OPA Obligations as Unaffected Claims under the Plan, whereas the AHG Consortium Bid seeks to exclude such obligations and purports to "transfer" them to ResidualCo, creating a claim in excess of $500 million that cannot be satisfied, resulting in material prejudice to Cargill;

(c) Affected Unsecured Creditors will receive significant if not full recovery under the Plan;

(d) Claims of Employees, Government Priority Claims and Environmental Liabilities are all unaffected under the Plan;

(e) the New Equity Financing, combined with the New Senior Secured Pre-Payment Facility, will result in sufficient funding to efficiently and effectively operate and improve the Business for the benefit of its stakeholders;

(f) the Plan allows for the implementation of a share transaction pursuant to a CCAA plan of arrangement and eliminates the risk that a Court will not grant a reverse vesting order based on the facts and circumstances of the Tacora situation, thereby providing greater certainty that Tacora can successfully complete a share transaction; and

(g) benefits all stakeholders of Tacora and treats all creditors in a fair and reasonable manner.

118. As part of Cargill's proposed transaction under the Plan, Cargill's intention is to continue to support the Tacora business and to invest in the necessary capital projects required to achieve the 6 Mtpa nameplate production capacity of the Scully Mine. The intention under the proposed transaction is to maintain Tacora's existing employees and continue to maintain substantially all of the trade and supply relationships.

XIV. CONCLUSION

119. Consistent with its historical approach, Cargill's goal has always been to proceed with a consensual transaction that would be supported by Tacora and all key stakeholders, and that would avoid the significant costs of litigation. Cargill worked hard towards such an outcome prior to the

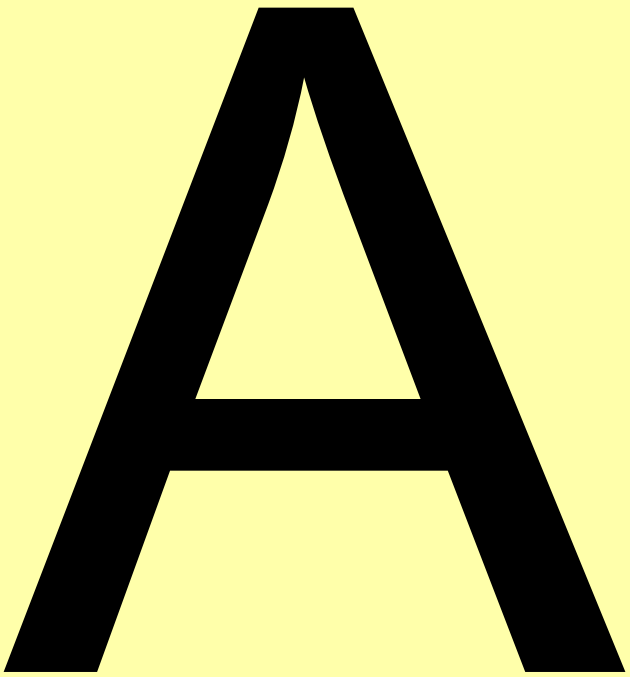
commencement of these CCAA proceedings, and continues to advance its efforts within these CCAA proceedings with that aim. Cargill hopes that Tacora will engage with Cargill in respect of Cargill's proposed Plan, as Cargill believes that such path is in the best interests of all stakeholders and creates a value maximizing option in advance of the scheduled April hearings. Cargill will continue to advance its efforts in respect of its proposed Plan in any event, but believes that Tacora's engagement would result in a more efficient and productive path forward that would benefit all of Tacora's stakeholders.

SWORN remotely by Matthew Lehtinen stated as being located in the City of Carmel in the State of Indiana, before me at the City of Toronto, in the Province of Ontario, on March 1, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits

Brittni Tee
LSO #85001P

Matthew Lehtinen


A

THIS IS EXHIBIT " A" REFERRED TO IN THE AFFIDAVIT OF MATTHEW LEHTINEN SWORN BEFORE ME THIS 1st DAY OF MARCH, 2024

Commissioner for Taking Affidavits

Corporate Office
102 NE 3rd Street Suite 120
Grand Rapids, MN 55744
Tel 218-999-7018

STOCKPILE PROVISIONAL INVOICE

INVOICE DATE	May 2, 2023
INVOICE NUMBER	1210T
BUYER	CARGILL INTERNATIONAL TRADING PTE LTD
BUYER ADDRESS	138 MARKET STREET HEX 17-01 CAPITAGREEN SINGAPORE 048946
TRAIN ID	WAB105C, WAB106A, WAB107B, WAB108C, WAB109A, WAB110B, WAB111C,& WAB112A
STOCKPILE LOCATION	SFPPN STOCK YARD, SEPT-ILES, QUEBEC, CANADA

DRAWN AT: AGAINST TELEGRAPHIC TRANSFER (WITHIN 3 WORKING DAYS FROM RECEIPT OF INVOICE BY THE BUYER)			AMOUNT (USD)	AMOUNT (CAD)
DESCRIPTION OF GOODS AND/OR SERVICES:				
COMMODITY	IRON ORE CONCENTRATE (TPC)			
LOADED TRAIN WEIGHT	116,303.00	METRIC TONS		
EMPTY TRAIN WEIGHT	26,961.00	METRIC TONS		
WEIGHT OF ORE ON TRAIN	89,342.00	METRIC TONS	(ASSUMED 1.6% STANDARD MOISTURE)	
ORIGIN:	CANADA			
TRADE/DELIVERY TERMS : DAP (PER INCOTERMS 2010) SFPPN STOCK YARD, SEPT-ILES, QUEBEC, CANADA				
THIS INVOICE IS BASED ON TONS RECEIVED BY TRAIN AND MEASURED BY SCALE WEIGHTS PROVIDED BY SFPPN PER ATTACHMENT A				
PROVISIONAL PRICE				
Provisional Payment shall be calculated based on the following formula (Pricing Date May 2nd, 2023)				
= 107.40+14.45*60.00% - (21.9802-4.00)/(1-1.6%) - 4 =	$ 85.6674	/DMT	$ 7,531,237.87	$ 10,084,283.95
QUANTITY (WET METRIC TONS) :	89,342.00	WET METRIC TONS		
LESS MOISTURE :	1.60%	(STANDARD MOISTURE)		
DRY WEIGHT (DRY METRIC TONS) :	87,912.53	DRY METRIC TONS		
GST/HST (Ref. # 73374 0724 RT0001) 5.000%			$ 376,561.89	$ 504,214.20
QST/TVQ (Ref #12271 40859 TQ 0001) 9.975%			751,240.98	1,005,907.32
TOTAL			$ 8,659,040.74	$ 11,594,405.47
(USD to CAD exchange rate 1.338994217)				
100% OF STOCKPILE PROVISIONAL VALUE FOR IRON ORE CONCENTRATE (TPC)				

For CAD Payments Only

Name of Beneficiary:	Tacora Resources Inc.
Beneficiary Address:	102 NE 3rd Street Suite 120 Grand Rapids, MN 55744, US
Name of Bank:	Bank of Montreal
Address fo Bank:	100 King Street West Toronto, ON M5X 1A3
SWIFT Code:	BOFMCAM2
Account Number	00021803574

Hope Wilson

Attachment A

Invoice Number	Train ID	Train Date	Empty Train Weight Metric Tons	Loaded Train Weight Metric Tons	Weight of Ore On Train Metric Tons	Moisture	Moisture Factor	Weight of Ore On Train Dry Metric Tons
1210T	WAB105C	4/25/2023	3,376.00	14,846.00	11,470.00	1.60%	0.984	11,286.48
1210T	WAB106A	4/26/2023	3,387.00	14,848.00	11,461.00	1.60%	0.984	11,277.62
1210T	WAB107B	4/27/2023	3,381.00	14,593.00	11,212.00	1.60%	0.984	11,032.61
1210T	WAB108C	4/28/2023	3,398.00	14,623.00	11,225.00	1.60%	0.984	11,045.40
1210T	WAB109A	4/29/2023	3,355.00	14,435.00	11,080.00	1.60%	0.984	10,902.72
1210T	WAB110B	4/29/2023	3,355.00	14,312.00	10,957.00	1.60%	0.984	10,781.69
1210T	WAB111C	4/30/2023	3,357.00	14,442.00	11,085.00	1.60%	0.984	10,907.64
1210T	WAB112A	5/1/2023	3,352.00	14,204.00	10,852.00	1.60%	0.984	10,678.37
Total			26,961.00	116,303.00	89,342.00			87,912.53

Hope Wilson

TRAIN UNLOADING REPORT

Train Identification	Unloaded Date	Loaded Train WMT	Empty Train WMT	Net Cargo WMT	Weight Scale
WAB105C	4/25/2023	14,846	3,376	11,470	M10
WAB106A	4/26/2023	14,848	3,387	11,461	M10
WAB107B	4/27/2023	14,593	3,381	11,212	M10
WAB108C	4/28/2023	14,623	3,398	11,225	M10
WAB109A	4/29/2023	14,435	3,355	11,080	M10
WAB110B	4/29/2023	14,312	3,355	10,957	M10
WAB111C	4/30/2023	14,442	3,357	11,085	M10
WAB112A	5/1/2023	14,204	3,352	10,852	M10

This is to certify that the undersigned has received the following cargo for storage in apparent good order and conditions subject to existing agreements, dated December 10th, 2019.

Cargo: Iron Ore Concentrate (TPC)
Quantity: 89,342 WMT according to above breakdown

Storage Location: SFPPN Stock Yard
Date of Issuance: 5/1/2023

Cargo Receiver: Cargill International Trading Pte Ltd.

Name: Mathieu Tremblay

Title: Director of Commerical Relations and Business Development

Date: 5/1/2023

Note: Loaded train WMT are initially recorded on the southbound trip from Wabush Scully Mine to SFPPN Stock Yard at the given scale location of M219 or M10. Empty train WMT is recorded on the northbound trip back to Wabush Scully Mine at M219 or M10, the weight is then calculated based on the southbound and northbound data from the corresponding scales.

Hope Wilson

Corporate Office
102 NE 3rd Street Suite 120
Grand Rapids, MN 55744
Tel 218-999-7018

STOCKPILE PROVISIONAL INVOICE

INVOICE DATE	May 8, 2023
INVOICE NUMBER	1211T
BUYER	CARGILL INTERNATIONAL TRADING PTE LTD
BUYER ADDRESS	138 MARKET STREET HEX 17-01 CAPITAGREEN SINGAPORE 048946
TRAIN ID	WAB113B, WAB114C, WAB115A, WAB116B, WAB117C, & WAB118A
STOCKPILE LOCATION	SFPPN STOCK YARD, SEPT-ILES, QUEBEC, CANADA

DRAWN AT: AGAINST TELEGRAPHIC TRANSFER (WITHIN 3 WORKING DAYS FROM RECEIPT OF INVOICE BY THE BUYER)				AMOUNT (USD)	AMOUNT (CAD)
DESCRIPTION OF GOODS AND/OR SERVICES:					
COMMODITY	IRON ORE CONCENTRATE (TPC)				
LOADED TRAIN WEIGHT	87,208.00	METRIC TONS			
EMPTY TRAIN WEIGHT	20,125.00	METRIC TONS			
WEIGHT OF ORE ON TRAIN	67,083.00	METRIC TONS	(ASSUMED 1.6% STANDARD MOISTURE)		
ORIGIN:	CANADA				
TRADE/DELIVERY TERMS : DAP (PER INCOTERMS 2010) SFPPN STOCK YARD, SEPT-ILES, QUEBEC, CANADA					
THIS INVOICE IS BASED ON TONS RECEIVED BY TRAIN AND MEASURED BY SCALE WEIGHTS PROVIDED BY SFPPN PER ATTACHMENT A					
PROVISIONAL PRICE					
Provisional Payment shall be calculated based on the following formula (Pricing Date May 8th, 2023)					
= 106.56+13.73*60.00% - (22.5334+4.00)/(1-1.6%) - 4 =			$ 83.8332 /DMT	$ 5,533,801.87	$ 7,409,728.70
QUANTITY (WET METRIC TONS) :			67,083.00 WET METRIC TONS		
LESS MOISTURE:			1.60% (STANDARD MOISTURE)		
DRY WEIGHT (DRY METRIC TONS) :			66,009.67 DRY METRIC TONS		
GST/HST (Ref. # 73374 0724 RT0001) 5.000%				$ 276,690.09	$ 370,486.44
QST/TVQ (Ref #12271 40859 TQ 0001) 9.975%				551,996.74	739,120.44
TOTAL				$ 6,362,488.70	$ 8,519,335.58
(USD to CAD exchange rate 1.338994217)					
100% OF STOCKPILE PROVISIONAL VALUE FOR IRON ORE CONCENTRATE (TPC)					

For CAD Payments Only

Name of Beneficiary:	Tacora Resources Inc.
Beneficiary Address:	102 NE 3rd Street Suite 120 Grand Rapids, MN 55744, US
Name of Bank:	Bank of Montreal
Address fo Bank:	100 King Street West Toronto, ON M5X 1A3
SWIFT Code:	BOFMCAM2
Account Number	00021803574

Hope Wilson

TACORA RESOURCES

Attachment A

Invoice Number	Train ID	Train Date	Empty Train Weight Metric Tons	Loaded Train Weight Metric Tons	Weight of Ore On Train Metric Tons	Moisture	Moisture Factor	Weight of Ore On Train Dry Metric Tons
1211T	WAB113B	5/2/2023	3,396.00	14,429.00	11,033.00	1.60%	0.984	10,856.47
1211T	WAB114C	5/4/2023	3,331.00	14,633.00	11,302.00	1.60%	0.984	11,121.17
1211T	WAB115A	5/5/2023	3,329.00	14,608.00	11,279.00	1.60%	0.984	11,098.54
1211T	WAB116B	5/6/2023	3,364.00	14,518.00	11,154.00	1.60%	0.984	10,975.54
1211T	WAB117C	5/6/2023	3,345.00	14,442.00	11,097.00	1.60%	0.984	10,919.45
1211T	WAB118A	5/7/2023	3,360.00	14,578.00	11,218.00	1.60%	0.984	11,038.51
Total			20,125.00	87,208.00	67,083.00			66,009.67

Hope Wilson

TRAIN UNLOADING REPORT

Train Identification	Unloaded Date	Loaded Train WMT	Empty Train WMT	Net Cargo WMT	Weight Scale
WAB113B	5/2/2023	14,429	3,396	11,033	M10
WAB114C	5/4/2023	14,633	3,331	11,302	M10
WAB115A	5/5/2023	14,608	3,329	11,279	M10
WAB116B	5/6/2023	14,518	3,364	11,154	M10
WAB117C	5/6/2023	14,442	3,345	11,097	M10
WAB118A	5/7/2023	14,578	3,360	11,218	M10

This is to certify that the undersigned has received the following cargo for storage in apparent good order and conditions subject to existing agreements, dated December 10th, 2019.

Cargo: Iron Ore Concentrate (TPC)
Quantity: 67,083 WMT according to above breakdown

Storage Location: SFPPN Stock Yard
Date of Issuance: 5/7/2023

Cargo Receiver: Cargill International Trading Pte Ltd.

Name: Mathieu Tremblay

Title: Director of Commerical Relations and Business Development

Date: 5/7/2023

Note: Loaded train WMT are initially recorded on the southbound trip from Wabush Scully Mine to SFPPN Stock Yard at the given scale location of M219 or M10. Empty train WMT is recorded on the northbound trip back to Wabush Scully Mine at M219 or M10, the weight is then calculated based on the southbound and northbound data from the corresponding scales.

Hope Wilson

Corporate Office
102 NE 3rd Street Suite 120
Grand Rapids, MN 55744
Tel 218-999-7018

STOCKPILE PROVISIONAL INVOICE

INVOICE DATE	May 9, 2023
INVOICE NUMBER	1212T
BUYER	CARGILL INTERNATIONAL TRADING PTE LTD
BUYER ADDRESS	138 MARKET STREET HEX 17-01 CAPITAGREEN SINGAPORE 048946
TRAIN ID	WAB119B
STOCKPILE LOCATION	SFPPN STOCK YARD, SEPT-ILES, QUEBEC, CANADA

DRAWN AT: AGAINST TELEGRAPHIC TRANSFER (WITHIN 3 WORKING DAYS FROM RECEIPT OF INVOICE BY THE BUYER)				AMOUNT (USD)	AMOUNT (CAD)
DESCRIPTION OF GOODS AND/OR SERVICES:					
COMMODITY	IRON ORE CONCENTRATE (TPC)				
LOADED TRAIN WEIGHT	14,536.00	METRIC TONS			
EMPTY TRAIN WEIGHT	3,386.00	METRIC TONS			
WEIGHT OF ORE ON TRAIN	11,150.00	METRIC TONS	(ASSUMED 1.6% STANDARD MOISTURE)		
ORIGIN:	CANADA				
TRADE/DELIVERY TERMS : DAP (PER INCOTERMS 2010) SFPPN STOCK YARD, SEPT-ILES, QUEBEC, CANADA					
THIS INVOICE IS BASED ON TONS RECEIVED BY TRAIN AND MEASURED BY SCALE WEIGHTS PROVIDED BY SFPPN PER ATTACHMENT A					
PROVISIONAL PRICE					
Provisional Payment shall be calculated based on the following formula (Pricing Date May 8th, 2023)					
= 106.56+13.73*60.00% - (22.5334-4.00)/(1-1.6%) - 4 =			$ 83.8332 /DMT	$ 919,784.34	$ 1,231,585.91
QUANTITY (WET METRIC TONS) :			11,150.00 WET METRIC TONS		
LESS MOISTURE :			1.60% (STANDARD MOISTURE)		
DRY WEIGHT (DRY METRIC TONS) :			10,971.60 DRY METRIC TONS		
GST/HST (Ref. # 73374 0724 RT0001) 5.000%				$ 45,989.22	$ 61,579.30
QST/TVQ (Ref #12271 40859 TQ 0001) 9.975%				91,748.49	122,850.69
TOTAL				$ 1,057,522.05	$ 1,416,015.90
(USD to CAD exchange rate 1.338994217)					
100% OF STOCKPILE PROVISIONAL VALUE FOR IRON ORE CONCENTRATE (TPC)					

For CAD Payments Only

Name of Beneficiary:	Tacora Resources Inc.
Beneficiary Address:	102 NE 3rd Street Suite 120 Grand Rapids, MN 55744, US
Name of Bank:	Bank of Montreal
Address fo Bank:	100 King Street West Toronto, ON MSX 1A3
SWIFT Code:	BOFMCAM2
Account Number	00021803574

Attachment A

Invoice Number	Train ID	Train Date	Empty Train Weight Metric Tons	Loaded Train Weight Metric Tons	Weight of Ore On Train Metric Tons	Moisture	Moisture Factor	Weight of Ore On Train Dry Metric Tons
1212T	WAB119B	5/8/2023	3,386.00	14,536.00	11,150.00	1.60%	0.984	10,971.60
Total			3,386.00	14,536.00	11,150.00			10,971.60

TRAIN UNLOADING REPORT

Train Identification	Unloaded Date	Loaded Train WMT	Empty Train WMT	Net Cargo WMT	Weight Scale
WAB119B	5/8/2023	14,536	3,386	11,150	M10

This is to certify that the undersigned has received the following cargo for storage in apparent good order and conditions subject to existing agreements, dated December 10th, 2019.

Cargo: Iron Ore Concentrate (TPC)
Quantity: 11,150 WMT according to above breakdown

Storage Location: SFPPN Stock Yard
Date of Issuance: 5/9/2023

Cargo Receiver: Cargill International Trading Pte Ltd.

Name: Mathieu Tremblay

Title: Director of Commerical Relations and Business Development

Date: 5/9/2023

Note: Loaded train WMT are initially recorded on the southbound trip from Wabush Scully Mine to SFPPN Stock Yard at the given scale location of M219 or M10. Empty train WMT is recorded on the northbound trip back to Wabush Scully Mine at M219 or M10, the weight is then calculated based on the southbound and northbound data from the corresponding scales.

Corporate Office
102 NE 3rd Street Suite 120
Grand Rapids, MN 55744
Tel 218-999-7018

STOCKPILE PROVISIONAL INVOICE

INVOICE DATE	May 16, 2023
INVOICE NUMBER	1213T
BUYER	CARGILL INTERNATIONAL TRADING PTE LTD
BUYER ADDRESS	138 MARKET STREET HEX 17-01 CAPITAGREEN SINGAPORE 048946
TRAIN ID	WAB120C & WAB121A.01
STOCKPILE LOCATION	SFPPN STOCK YARD, SEPT-ILES, QUEBEC, CANADA

DRAWN AT: AGAINST TELEGRAPHIC TRANSFER (WITHIN 3 WORKING DAYS FROM RECEIPT OF INVOICE BY THE BUYER)			AMOUNT (USD)	AMOUNT (CAD)
DESCRIPTION OF GOODS AND/OR SERVICES:				
COMMODITY	IRON ORE CONCENTRATE (TPC)			
LOADED TRAIN WEIGHT	22,445.58 METRIC TONS			
EMPTY TRAIN WEIGHT	5,261.25 METRIC TONS			
WEIGHT OF ORE ON TRAIN	17,184.33 METRIC TONS	(ASSUMED 1.6% STANDARD MOISTURE)		
ORIGIN:	CANADA			
TRADE/DELIVERY TERMS : DAP (PER INCOTERMS 2010) SFPPN STOCK YARD, SEPT-ILES, QUEBEC, CANADA				
THIS INVOICE IS BASED ON TONS RECEIVED BY TRAIN AND MEASURED BY SCALE WEIGHTS PROVIDED BY SFPPN PER ATTACHMENT A				
PROVISIONAL PRICE				
Provisional Payment shall be calculated based on the following formula (Pricing Date May 15th, 2023)				
= 106.23+13.35*60.00% - (22.4348-4.00)/(1-1.6%) - 4 =		$ 83.3754 /DMT	$ 1,409,826.32	$ 1,887,749.29
QUANTITY (WET METRIC TONS) :		17,184.33 WET METRIC TONS		
LESS MOISTURE :		1.60% (STANDARD MOISTURE)		
DRY WEIGHT (DRY METRIC TONS) :		16,909.38 DRY METRIC TONS		
GST/HST (Ref. # 73374 0724 RT0001) 5.000%			$ 70,491.32	$ 94,387.46
QST/TVQ (Ref #12271 40859 TQ 0001) 9.975%			140,630.18	188,302.99
TOTAL			$ 1,620,947.82	$ 2,170,439.74
(USD to CAD exchange rate 1.338994217)				
100% OF STOCKPILE PROVISIONAL VALUE FOR IRON ORE CONCENTRATE (TPC)				

For CAD Payments Only

Name of Beneficiary:	Tacora Resources Inc.
Beneficiary Address:	102 NE 3rd Street Suite 120 Grand Rapids, MN 55744, US
Name of Bank:	Bank of Montreal
Address fo Bank:	100 King Street West Toronto, ON M5X 1A3
SWIFT Code:	BOFMCAM2
Account Number	00021803574

Hope Wilson

Attachment A

Invoice Number	Train ID	Train Date	Empty Train Weight Metric Tons	Loaded Train Weight Metric Tons	Weight of Ore On Train Metric Tons	Moisture	Moisture Factor	Weight of Ore On Train Dry Metric Tons
1213T	WAB120C	5/9/2023	3,338.00	14,038.00	10,700.00	1.60%	0.984	10,528.80
1213T	WAB121A.01	5/10/2023	1,923.25	8,407.58	6,484.33	1.60%	0.984	6,380.58
Total			5,261.25	22,445.58	17,184.33			16,909.38

Hope Wilson

TRAIN UNLOADING REPORT

Train Identification	Unloaded Date	Loaded Train WMT	Empty Train WMT	Net Cargo WMT	Weight Scale
WAB120C	5/9/2023	14,038	3,338	10,700	M10
WAB121A	5/10/2023	14,719	3,367	11,352	M10
WAB122B	5/11/2023	14,368	3,336	11,032	M10
WAB123C	5/12/2023	13,835	3,356	10,479	M10
WAB124A	5/14/2023	14,023	3,337	10,686	M10
WAB125B	5/14/2023	14,306	3,381	10,925	M10
WAB126C	5/15/2023	13,885	3,350	10,535	M10

This is to certify that the undersigned has received the following cargo for storage in apparent good order and conditions subject to existing agreements, dated December 10th, 2019.

Cargo: Iron Ore Concentrate (TPC)
Quantity: 75,709 WMT according to above breakdown

Storage Location: SFPPN Stock Yard
Date of Issuance: 5/15/2023

Cargo Receiver: Cargill International Trading Pte Ltd.

Name: Mathieu Tremblay

Title: Director of Commerical Relations and Business Development

Date: 5/15/2023

Note: Loaded train WMT are initially recorded on the southbound trip from Wabush Scully Mine to SFPPN Stock Yard at the given scale location of M219 or M10. Empty train WMT is recorded on the northbound trip back to Wabush Scully Mine at M219 or M10, the weight is then calculated based on the southbound and northbound data from the corresponding scales.

Hope Wilson

Corporate Office
102 NE 3rd Street Suite 120
Grand Rapids, MN 55744
Tel 218-999-7018

STOCKPILE PROVISIONAL INVOICE

INVOICE DATE	May 16, 2023
INVOICE NUMBER	1214T
BUYER	CARGILL INTERNATIONAL TRADING PTE LTD
BUYER ADDRESS	138 MARKET STREET HEX 17-01 CAPITAGREEN SINGAPORE 048946
TRAIN ID	WAB121A.02, WAB122B, WAB123C, WAB124A, WAB125B, & WAB126C
STOCKPILE LOCATION	SFPPN STOCK YARD, SEPT-ILES, QUEBEC, CANADA

DRAWN AT: AGAINST TELEGRAPHIC TRANSFER (WITHIN 3 WORKING DAYS FROM RECEIPT OF INVOICE BY THE BUYER)				AMOUNT (USD)
DESCRIPTION OF GOODS AND/OR SERVICES:				
COMMODITY	IRON ORE CONCENTRATE (TPC)			
LOADED TRAIN WEIGHT	76,728.42	METRIC TONS		
EMPTY TRAIN WEIGHT	18,203.75	METRIC TONS		
WEIGHT OF ORE ON TRAIN	58,524.67	METRIC TONS	(ASSUMED 1.6% STANDARD MOISTURE)	
ORIGIN:	CANADA			
TRADE/DELIVERY TERMS : DAP (PER INCOTERMS 2010) SFPPN STOCK YARD, SEPT-ILES, QUEBEC, CANADA				
THIS INVOICE IS BASED ON TONS RECEIVED BY TRAIN AND MEASURED BY SCALE WEIGHTS PROVIDED BY SFPPN PER ATTACHMENT A				
PROVISIONAL PRICE				
Provisional Payment shall be calculated based on the following formula (Pricing Date May 15th, 2023)				
= 106.23+13.35*60.00% - (22.4348+4.00)/(1-1.6%) - 4 =			$ 83.3754 /DMT	$ 4,801,445.88
QUANTITY (WET METRIC TONS) :			58,524.67 WET METRIC TONS	
LESS MOISTURE:			1.60% (STANDARD MOISTURE)	
DRY WEIGHT (DRY METRIC TONS) :			57,588.28 DRY METRIC TONS	
GST/HST (Ref. # 73374 0724 RT0001) 5.000%				$ 240,072.29
QST/TVQ (Ref #12271 40859 TQ 0001) 9.975%				478.944.23
TOTAL				$ 5.520.462.40
100% OF STOCKPILE PROVISIONAL VALUE FOR IRON ORE CONCENTRATE (TPC)				

For USD Payments Only

Name of Beneficiary:	Tacora Resources Inc.
Beneficiary Address:	102 NE 3rd Street Suite 120 Grand Rapids, MN 55744, US
Name of Bank:	Bank of Montreal
Address fo Bank:	100 King Street West Toronto, ON M5X 1A3
SWIFT Code:	BOFMCAM2
Account Number	00024635560

Hope Wilson

Attachment A

Invoice Number	Train ID	Train Date	Empty Train Weight Metric Tons	Loaded Train Weight Metric Tons	Weight of Ore On Train Metric Tons	Moisture	Moisture Factor	Weight of Ore On Train Dry Metric Tons
1214T	WAB121A.02	5/10/2023	1,443.75	6,311.42	4,867.67	1.60%	0.984	4,789.79
1214T	WAB122B	5/11/2023	3,336.00	14,368.00	11,032.00	1.60%	0.984	10,855.49
1214T	WAB123C	5/12/2023	3,356.00	13,835.00	10,479.00	1.60%	0.984	10,311.34
1214T	WAB124A	5/14/2023	3,337.00	14,023.00	10,686.00	1.60%	0.984	10,515.02
1214T	WAB125B	5/14/2023	3,381.00	14,306.00	10,925.00	1.60%	0.984	10,750.20
1214T	WAB126C	5/15/2023	3,350.00	13,885.00	10,535.00	1.60%	0.984	10,366.44
Total			18,203.75	76,728.42	58,524.67			57,588.28

Hope Wilson

TRAIN UNLOADING REPORT

Train Identification	Unloaded Date	Loaded Train WMT	Empty Train WMT	Net Cargo WMT	Weight Scale
WAB120C	5/9/2023	14,038	3,338	10,700	M10
WAB121A	5/10/2023	14,719	3,367	11,352	M10
WAB122B	5/11/2023	14,368	3,336	11,032	M10
WAB123C	5/12/2023	13,835	3,356	10,479	M10
WAB124A	5/14/2023	14,023	3,337	10,686	M10
WAB125B	5/14/2023	14,306	3,381	10,925	M10
WAB126C	5/15/2023	13,885	3,350	10,535	M10

This is to certify that the undersigned has received the following cargo for storage in apparent good order and conditions subject to existing agreements, dated December 10th, 2019.

Cargo: Iron Ore Concentrate (TPC)
Quantity: 75,709 WMT according to above breakdown

Storage Location: SFPPN Stock Yard
Date of Issuance: 5/15/2023

Cargo Receiver: Cargill International Trading Pte Ltd.

Name: Mathieu Tremblay

Title: Director of Commerical Relations and Business Development

Date: 5/15/2023

Note: Loaded train WMT are initially recorded on the southbound trip from Wabush Scully Mine to SFPPN Stock Yard at the given scale location of M219 or M10. Empty train WMT is recorded on the northbound trip back to Wabush Scully Mine at M219 or M10, the weight is then calculated based on the southbound and northbound data from the corresponding scales.

Hope Wilson

Corporate Office
102 NE 3rd Street Suite 120
Grand Rapids, MN 55744
Tel 218-999-7018

STOCKPILE PROVISIONAL INVOICE

INVOICE DATE	May 22, 2023
INVOICE NUMBER	1215T
BUYER	CARGILL INTERNATIONAL TRADING PTE LTD
BUYER ADDRESS	138 MARKET STREET HEX 17-01 CAPITAGREEN SINGAPORE 048946
TRAIN ID	WAB127A, WAB128B, WAB129C, WAB130A, WAB131B, & WAB132C
STOCKPILE LOCATION	SFPPN STOCK YARD, SEPT-ILES, QUEBEC, CANADA

DRAWN AT: AGAINST TELEGRAPHIC TRANSFER (WITHIN 3 WORKING DAYS FROM RECEIPT OF INVOICE BY THE BUYER)				AMOUNT (USD)
DESCRIPTION OF GOODS AND/OR SERVICES:				
COMMODITY	IRON ORE CONCENTRATE (TPC)			
LOADED TRAIN WEIGHT	84,872.00	METRIC TONS		
EMPTY TRAIN WEIGHT	20,119.00	METRIC TONS		
WEIGHT OF ORE ON TRAIN	64,753.00	METRIC TONS	(ASSUMED 1.6% STANDARD MOISTURE)	
ORIGIN:	CANADA			
TRADE/DELIVERY TERMS : DAP (PER INCOTERMS 2010) SFPPN STOCK YARD, SEPT-ILES, QUEBEC, CANADA				
THIS INVOICE IS BASED ON TONS RECEIVED BY TRAIN AND MEASURED BY SCALE WEIGHTS PROVIDED BY SFPPN PER ATTACHMENT A				
PROVISIONAL PRICE				
Provisional Payment shall be calculated based on the following formula (Pricing Date May 22nd, 2023)				
= 106.74+13.69*60.00% - (21.8044+4.00)/(1-1.6%) - 4 =			$ 84.7300 /DMT	$ 5,398,737.17
QUANTITY (WET METRIC TONS) :			64,753.00 WET METRIC TONS	
LESS MOISTURE:			1.60% (STANDARD MOISTURE)	
DRY WEIGHT (DRY METRIC TONS) :			63,716.95 DRY METRIC TONS	
GST/HST (Ref. # 73374 0724 RT0001) 5.000%				$ 269,936.86
QST/TVQ (Ref #12271 40859 TQ 0001) 9.975%				538.524.03
TOTAL				$ 6.207.198.06
100% OF STOCKPILE PROVISIONAL VALUE FOR IRON ORE CONCENTRATE (TPC)				

For USD Payments Only

Name of Beneficiary:	Tacora Resources Inc.
Beneficiary Address:	102 NE 3rd Street Suite 120 Grand Rapids, MN 55744, US
Name of Bank:	Bank of Montreal
Address fo Bank:	100 King Street West Toronto, ON M5X 1A3
SWIFT Code:	BOFMCAM2
Account Number	00024635560

Hope Wilson

TACORA RESOURCES

Attachment A

Invoice Number	Train ID	Train Date	Empty Train Weight Metric Tons	Loaded Train Weight Metric Tons	Weight of Ore On Train Metric Tons	Moisture	Moisture Factor	Weight of Ore On Train Dry Metric Tons
1215T	WAB127A	5/17/2023	3,372.00	14,291.00	10,919.00	1.60%	0.984	10,744.30
1215T	WAB128B	5/18/2023	3,372.00	14,068.00	10,696.00	1.60%	0.984	10,524.86
1215T	WAB129C	5/19/2023	3,333.00	13,798.00	10,465.00	1.60%	0.984	10,297.56
1215T	WAB130A	5/20/2023	3,357.00	14,534.00	11,177.00	1.60%	0.984	10,998.17
1215T	WAB131B	5/21/2023	3,343.00	13,922.00	10,579.00	1.60%	0.984	10,409.74
1215T	WAB132C	5/22/2023	3,342.00	14,259.00	10,917.00	1.60%	0.984	10,742.33
Total			20,119.00	84,872.00	64,753.00			63,716.95

Hope Wilson

TRAIN UNLOADING REPORT

Train Identification	Unloaded Date	Loaded Train WMT	Empty Train WMT	Net Cargo WMT	Weight Scale
WAB127A	5/17/2023	14,291	3,372	10,919	M10
WAB128B	5/18/2023	14,068	3,372	10,696	M10
WAB129C	5/19/2023	13,798	3,333	10,465	M10
WAB130A	5/20/2023	14,534	3,357	11,177	M10
WAB131B	5/21/2023	13,922	3,343	10,579	M10
WAB132C	5/22/2023	14,259	3,342	10,917	M10

This is to certify that the undersigned has received the following cargo for storage in apparent good order and conditions subject to existing agreements, dated December 10th, 2019.

Cargo: Iron Ore Concentrate (TPC)
Quantity: 64,753 WMT according to above breakdown

Storage Location: SFPPN Stock Yard
Date of Issuance: 5/22/2023

Cargo Receiver: Cargill International Trading Pte Ltd.

Name: Mathieu Tremblay

Title: Director of Commerical Relations and Business Development

Date: 5/22/2023

Note: Loaded train WMT are initially recorded on the southbound trip from Wabush Scully Mine to SFPPN Stock Yard at the given scale location of M219 or M10. Empty train WMT is recorded on the northbound trip back to Wabush Scully Mine at M219 or M10, the weight is then calculated based on the southbound and northbound data from the corresponding scales.

Hope Wilson

B

THIS IS EXHIBIT "B" REFERRED TO IN THE AFFIDAVIT OF MATTHEW LEHTINEN SWORN BEFORE ME THIS 1st DAY OF MARCH, 2024

Commissioner for Taking Affidavits

Corporate Office
102 NE 3rd Street Suite 120
Grand Rapids, MN 55744
Tel 218-999-7018

VESSEL ADJUSTMENT INVOICE

INVOICE DATE	June 19, 2023
INVOICE NUMBER	1080
BUYER	CARGILL INTERNATIONAL TRADING PTE LTD
BUYER ADDRESS	138 MARKET STREET HEX 17-01 CAPITAGREEN SINGAPORE 048946
CONTRACT NUMBER:	1080
VESSEL NAME	PHAR LAP
PORT OF LOADING	SEPT-ILES, QUEBEC, CANADA
PORT OF DISCHARGE	Main Port(s), China
B/L NUMBER	1
B/L Date	June 9, 2023

DRAWN AT: AGAINST TELEGRAPHIC TRANSFER (WITHIN 3 WORKING DAYS FROM RECEIPT OF SUPPORT DOCUMENTS BY THE BUYER)	AMOUNT (USD)
DESCRIPTION OF GOODS AND/OR SERVICES:	
COMMODITY IRON ORE CONCENTRATE (TPC)	
B/L QUANTITY 174,896 WET METRIC TONS	
PACKING : BULK	
ORIGIN: CANADA	
TRADE/DELIVERY TERMS : DAP (PER INCOTERMS 2010) SFPPN STOCK YARD, SEPT-ILES, QUEBEC, CANADA	
VESSEL PROVISONAL PURCHASE PRICE FOR ADJUSTMENT	
Provisional Purchase Price of the vessel shall be calculated based on the following formula	
= 101.03+12.96*57.00%-(26.30)/(1-1.5%) = $ 81.7167 /DMT	
QUANTITY (WET METRIC TONS) : 174,896.00 WET METRIC TONS	
LESS MOISTURE: 1.50%	
DRY WEIGHT (DRY METRIC TONS) : 172,272.56 DRY METRIC TONS	
100% OF VESSEL PROVISIONAL PURCHASE PRICE VALUE FOR IRON ORE CONCENTRATE (TPC) FOR ADJUSTMENT	$ 14,077,545.10
THIS INVOICE IS BASED ON BL WEIGHT AND CERTIFICATE OF QUALITY ISSUED BY IOC	
PRIOR PROVISIONAL STOCKPILE PAID BASED ON PARCEL STOCKPILE PRICE PER ATTACHMENT A	$ 14,550,296.94
CARGO VALUE BALANCE	$ (472,751.84)
RECEIVED MARGINING OPEN SALES	$ 65,751.05
RECEIVED MARGINING FIXED SALES	-
SUBTOTAL	$ (407,000.79)
GST/HST (Ref. # 73374 0724 RT0001) 5.000%	$ (23,637.59)
QST/TVQ (Ref #12271 40859 TQ 0001) 9.975%	(47,157.00)
TOTAL	$ (477,795.38)

Pay through:

(Destination Bank) Wells Fargo Bank, N.A. (formerly known as Wachovia) New York
S.W.I.F.T. BIC CODE: PNBPUS3NNYC
Fed wire ABA Number 026005092 or
CHIPS UID Number 0509

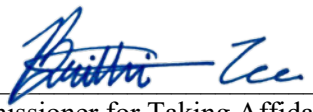
Beneficiary's Bank: (BBK field or SWIFT field 57a) Bank of Montreal,
Intl Banking H.O. Montreal
S.W.I.F.T. BIC CODE: BOFMCAM2

Hope Wilson

Beneficiary Customer: (BNF field or SWIFT field 59) 00024635560
Tacora Resources Inc.
102 NE 3rd St, Suite 120
Grand Rapids, MN 55744

C

THIS IS EXHIBIT "C" REFERRED TO IN THE AFFIDAVIT OF MATTHEW LEHTINEN SWORN BEFORE ME THIS 1st DAY OF MARCH, 2024



Commissioner for Taking Affidavits

Cargill International Trading Pte Ltd
138 Market Street, Hex 17-01 CapitaGreen,Singapore 048946
Phone: (65)6295 1112,Fax: (65) 6393-8880
Co.Reg No. 196700442D

To: The Directors
TACORA RESOURCES INC
Suite 1700, Park Place,
666 Burrard Street,
Vancouver BC V6C 2X8,
Canada

26 June 2023

Dear Sirs,

1 We refer to the Restated Offtake Contract between Cargill International Trading Pte Ltd and Tacora Resources Inc (the "***Parties***") dated 11 November 2018 as the same has been amended from time to time ("***Offtake***"). To the extent there is any conflict between the terms of this letter and the Offtake, the terms of this letter shall prevail, and all necessary consequential changes shall be deemed made to the Offtake.

2 The purpose of this letter is to change the pricing provisions and margining provisions of the Offtake as they apply to certain weights of Ore shipped pursuant to the Offtake during June 2023 to reflect new hedging arrangements entered into by Buyer on behalf and at the request of Seller on 16 June 2023 (the "***Hedges***") and also to document the treatment of certain expenses incurred as a consequences of entering into the Hedges.

3 Pursuant to the Hedges:

3.1 the hedges contained within the Fixed Price Hedge Side Letter 5 dated 15th May 2023 were terminated at a cost of USD3,825,000, USD352,871.20 has previously been paid by Seller to Buyer via past accumulated margining and USD3,472,128.80 (the "***Washout Cost***") which is a sum owed by Seller to Buyer;

3.2 an option premium of USD410,000 (the "***Premium***") is payable by Seller to Buyer; and

3.3 PI for September 2023 applicable to Ore shipped in June 2023 pursuant to the Offtake is subject to the following floor and ceiling price adjustments:

3.3.1 a floor price of USD100 per DMT in respect 200,000 DMT; and

3.3.2 a ceiling price of USD127 per DMT in respect 200,000 DMT;

4 The Washout Cost and the Premium, shall constitute Margin Advances under the Amended and Restated Advance Payment Facility between Buyer and Seller dated 29 May 2023 as amended from time to time (the "***APF***"), and shall, to the extent permitted pursuant to the terms of the APF, be immediately paid by Seller to Buyer by drawdowns under the APF. All other payments to be made by

Seller to Buyer pursuant to the terms of this letter shall, constitute Margin Advances under the APF and shall, to the extent permitted pursuant to the terms of the APF be drawn down by Seller under the APF on the date on which they become payable by Seller to Buyer.

Definitions

5 Terms defined in the Offtake shall have the same meaning in this letter, unless a contrary intention is stated.

6 In this letter, the following additional terms shall have the following meanings:

"***Affected Tons***" means, for the Relevant Month in respect of the:

(a) Floor Price, the Tranche 1 Tons;

(b) CPT1, the Tranche 1 Tons; and

"Calculation Month" means September 2023

"CPT1" means Ceiling Price Tranche 1, being USD127/DMT;

"Floor Price" means USD100/DMT;

"Hedged Price" means, in respect of Tranche 1 Tons, PI as determined in accordance with clause 9.1 below;

"Margining Price" means, in respect of a Calculation Date and in USD per DMT, the TSI 62% Index as quoted one business day prior to the relevant Calculation Date for the Calculation Month;

"Outstanding Tons" means, on a Calculation Date, in respect of:

(a) Tranche 1 Tons: 200,000 DMT less Tranche 1 Tons in respect of which the BL Date was on or before that Calculation Date; and

"Market Price" means, in respect of the Relevant Month and in USD per DMT, the TSI 62% Index as quoted in respect of the Calculation Month on the first Working day in Singapore of the calendar month after the Relevant Month;

"***Ore***" means iron ore produced from or at the Mine and bought and sold pursuant to the Offtake as described in clause 3 of the Offtake;

"***Relevant Month***" means June 2023;

"***Shortfall Tons***" means, for the Relevant Month and in respect of:

(a) Tranche 1 Tons: the number of DMT by which Ore comprised within Shipments, the BL Date of which falls within the Relevant Month, falls short of 200,000 DMT; and

"***Tranche 1 Tons***" means the first 200,000 DMT of Ore comprised within Shipments, the BL Date of which falls within the Relevant Month;

7 If any provision of this letter requires the use of an index as quoted on a date on which the index is not quoted (the "***First Date***"), then the index as quoted on the last date on which the index was quoted prior the First Date shall be used instead.

8 For Shipments part or all of which comprise Affected Tons, the changes below shall be made to the Offtake in respect of Affected Tons only.

Changes to the Offtake: Purchase Price

9 For the purposes of determining the Purchase Price of Affected Tons in accordance with clause 11.1 of the Offtake in respect of:

9.1 Tranche 1 Tons, "PI" shall mean the higher value of Floor Price and, subject to a cap equal to CPT1, the arithmetic mean (rounded to four decimal places) of the midpoint assessment of the Purchase Index for each day on which it is published during the Quotation Period; and

Changes to the Offtake: Provisional Purchase Price

10 For the purposes of determining the Provisional Purchase Price of Affected Tons in accordance with clause 13.1.3 of the Offtake in respect of:

10.1 Tranche 1 Tons, "A" shall mean the higher value of Floor Price and, subject to a cap equal to CPT1, the arithmetic mean of the last 5 published values of the Platts 62% Index for the period ending 5 days prior to the first day of the laycan of the vessel carrying the Parcel;

Changes to the Offtake: Margin Amount

11 For the purposes of determining the Margin Amount in respect of Affected Tons in accordance with clause 15.2 of the Offtake in respect of:

11.1 Tranche 1 Tons comprised within a relevant Shipment, "UPP" shall mean the updated Provisional Purchase Price, being the Provisional Purchase Price which would have been paid under clause 13.1.3 of the Offtake in respect of the Tranche 1 Tons comprised within that Relevant Shipment if the components of PPI in the formula for the Provisional Purchase Price had been based on the higher value of Floor Price and, subject to a cap equal to CPT1, the arithmetic mean of the Relevant Values of the Platts 62% Index; and

12 "***Relevant Values***", for the purposes of clause 11 above, shall mean:

12.1 if the Quotation Period of PI is not ended on the date of calculation of UPP, the last 5 published values of the Platts 62% Index prior to the relevant Calculation Date; and

12.2 if the Quotation Period of PI is ended on the date of calculation of UPP, all values of the Platts 62% Index published during the Quotation Period; and

13 In the event that a Shipment comprises both Affected Tons and non-Affected Tons, calculations of the Provisional Purchase Price, Purchase Price and UPP will be made separately for Affected Tons which are Tranche 1 Tons and non-Affected Tons, the latter being determined in accordance with the terms of the Offtake unamended by this letter.

Payment of costs of Hedges

14 In respect of the Relevant Month, the amount of a costs payment related to the Hedges ("***HCP***") shall be calculated on the first day after the Market Price is known as per the following formula:

14.1 HCP (Floor Price) = [Floor Price – Market Price] x Shortfall Tons in respect of Tranche 1 Tons, provided that if the result is a negative number it is deemed as zero;

14.2 HCP (CPT1) = [CPT1 - Market Price] x Shortfall Tons in respect of Tranche 1 Tons, provided that if the result is a positive number it is deemed as zero;

15 HCP (Floor Price) and HCP (CPT1) shall be aggregated to create an aggregate HCP ("**AHCP**");

16 If the AHCP is:

16.1 positive, its value shall be paid by Buyer to Seller; and

16.2 negative, its value (converted to a positive instead of negative) shall be paid by Seller to Buyer.

17 The receiving party shall raise a debit note for the relevant amount which shall be settled by the paying party by TT within 2 Working Days.

Margining in respect of AHCP

18 In order to provide security to both parties in respect of payments due under clause 16 above, on each Calculation Date a hedged price margin amount (***"HPMA"***) will be calculated where:

18.1 HPMA (Floor Price) = [Floor Price – Margining Price] x Outstanding Tons in respect of Tranche 1 Tons, provided that if the result is a negative number it is deemed as zero;

18.2 HPMA (CPT1) = [CPT1 - Margining Price] x Outstanding Tons in respect of Tranche 1 Tons, provided that if the result is a positive number it is deemed as zero;

19 HPMA (Floor Price) and HPMA (CPT1) shall be aggregated to create an aggregate HPMA ("**AHPMA**");

20 If AHPMA on a Calculation Date is:

20.1 positive, its value (the "***20.1 Number***") is the total value of hedged price margin to be held by Seller on that Calculation Date; and

20.2 negative, (the "***20.2 Number***") its value (converted to a positive instead of negative) is the total value of hedged price margin to be held by Buyer on that Calculation Date.

21 The following steps shall be applied to the hedged price margin number derived from clause 20:

21.1 that number shall be reduced by the amount of any hedged price margin already held by Seller (if the number is a 20.1 Number) or by Buyer (if the number is a 20.2 Number); and

21.2 if the result is:

21.2.1 still positive, that amount is the amount of hedged price margin payable by Buyer to Seller (if the number is a 20.1 Number) or by Seller to Buyer (if the number is a 20.2 Number) and,

21.2.2 negative, that amount (converted to a positive instead of negative) becomes the amount of hedged price margin payable by Seller to Buyer (if the number is a 20.1 Number) or by Buyer to Seller (if the number is a 20.2 Number)

in each case the amount being the ***"HPM Payable Amount"***).

22 On each Calculation Date, the HPM Payable Amount shall be combined with the Margin Amount (under clause 15 of the Offtake) to create a single amount payable by one party to the other and, subject to the above which shall be deemed to amend clause 15 of the Offtake as amended from time

to time, payment shall be made in accordance with the provisions of clause 15.3 of the Offtake as amended from time to time.

23 In the event of any breach of the payment obligation under clause 17 above by a party, the other party shall be entitled, without prejudice to any other remedies available to it, to offset hedged price margin held by it against any outstanding payment liability of the breaching party under clause 17.

24 Margining under this letter shall commence on the first Calculation Date after the date of this letter. After all obligations under this letter have been performed, any party which still holds any hedged price margin, shall repay that amount to the other party.

Other matters

25 If Seller breaches the terms of this letter or if an Insolvency Event occurs with respect to Seller, Seller shall be liable to pay, and shall pay to Buyer, the prevailing cost of the Hedges. Buyer will determine the prevailing cost acting in good faith, using a valuation methodology generally accepted by the market, e.g. Black-Scholes Model for option pricing, and applying relevant market parameters. For avoidance of doubt, if the Shortfall Tons in respect of Tranche 1 Tons is zero, the prevailing cost of the Hedges shall be deemed zero.

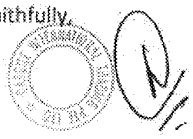
26 For the avoidance of doubt:

26.1 in respect of the Stockpile Purchase Agreement dated 17 December 2019 made between the Parties (the "***SPA***"), this letter changes the calculation of prices payable in respect of Ore under the Offtake which will be adjusted (in accordance with the terms of the SPA) to take account of amounts already paid in respect of the same Ore under the SPA; and

26.2 in accordance with clause 15 of the Offtake, if Seller or Buyer fails to perform any payment obligation pursuant to this Contract, the other Party shall have the right without prior notice to set-off such outstanding amount against any future payment owed by it to the other.

27 Clause 32 of the Offtake (Notices) and Clause 36 of the Offtake (Governing law and arbitration) are hereby incorporated into this letter with all necessary consequential amendments.

Yours faithfully,



for and on behalf of
CARGILL INTERNATIONAL TRADING PTE LTD

We agree

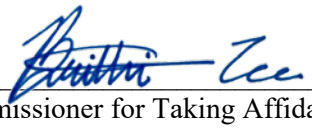
DocuSigned by:

F46C01B3793E448...

for and on behalf of
TACORA RESOURCES INC.

D

THIS IS EXHIBIT "D" REFERRED TO IN THE AFFIDAVIT OF MATTHEW LEHTINEN SWORN BEFORE ME THIS 1st DAY OF MARCH, 2024



Commissioner for Taking Affidavits

Corporate Office
102 NE 3rd Street Suite 120
Grand Rapids, MN 55744
Tel 218-999-7018

FINAL INVOICE

INVOICE DATE	February 16, 2024
INVOICE NUMBER	1080-01
BUYER	CARGILL INTERNATIONAL TRADING PTE LTD
BUYER ADDRESS	138 MARKET STREET HEX 17-01 CAPITAGREEN SINGAPORE 048946
CONTRACT NUMBER:	1080
VESSEL NAME	PHAR LAP
PORT OF LOADING	SEPT-ILES, QUEBEC, CANADA
PORT OF DISCHARGE	Main Port(s), China
B/L NUMBER	1
B/L Date	June 9, 2023

DRAWN AT: AGAINST TELEGRAPHIC TRANSFER (WITHIN 3 WORKING DAYS FROM RECEIPT OF SUPPORT DOCUMENTS BY THE BUYER)	AMOUNT (USD)
DESCRIPTION OF GOODS AND/OR SERVICES:	
COMMODITY IRON ORE CONCENTRATE (TPC)	
CIQ QUANTITY 174,647 WET METRIC TONS	
PACKING : BULK	
ORIGIN: CANADA	
TRADE/DELIVERY TERMS : DAP (PER INCOTERMS 2010) SFPPN STOCK YARD, SEPT-ILES, QUEBEC, CANADA	
FINAL PRICE	
Final Price shall be calculated based on the following formula	
=120.7925-24.3091+5.7590 = $ 102.2424 /DMT	
Purchase Index 120.7925 $/DMT	
Freight Cost 24.3091 $/DMT	
Profit Share for Tacora 5.7590 $/DMT	
QUANTITY (WET METRIC TONS) : 174,647.000 WET METRIC TONS	
LESS MOISTURE: 1.200%	
DRY WEIGHT (DRY METRIC TONS) : 172,551.236 DRY METRIC TONS	
THIS INVOICE IS BASED ON CIQ RESULTS	
100% OF VESSEL FINAL PURCHASE VALUE FOR IRON ORE CONCENTRATE (TPC)	$ 17,642,052.49
RECEIVED PROVISIONAL PRICING	(14,077,545.10)
CARGO VALUE BALANCE	$ 3,564,507.39
RECEIVED MARGINING	$ (2,738,725.22)
SUBTOTAL	$ 825,782.17
GST/HST (Ref. # 73374 0724 RT0001) 5.000%	$ 178,225.37
QST/TVQ (Ref #12271 40858 TQ 0001) 9.975%	355,559.61
TOTAL	$ 1,359,567.15

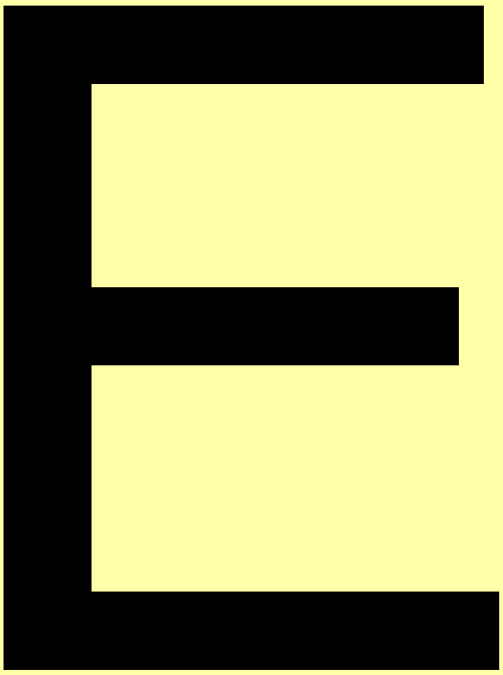
Pay through:

(Destination Bank) Wells Fargo Bank, N.A. (formerly known as Wachovia) New York
S.W.I.F.T. BIC CODE: PNBPUS3NNYC
Fed wire ABA Number 026005092 or
CHIPS UID Number 0509

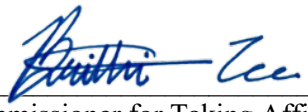
Beneficiary's Bank: (BBK field or SWIFT field 57a) Bank of Montreal,
Intl Banking H.O. Montreal
S.W.I.F.T. BIC CODE: BOFMCAM2

Hope Wilson

Beneficiary Customer: (BNF field or SWIFT field 59) 00024635560
Tacora Resources Inc.
102 NE 3rd St, Suite 120
Grand Rapids, MN 55744



THIS IS EXHIBIT "O" REFERRED TO IN THE AFFIDAVIT OF MATTHEW LEHTINEN SWORN BEFORE ME THIS 1st DAY OF MARCH, 2024



Commissioner for Taking Affidavits

Goodmans LLP

Barristers & Solicitors

Bay Adelaide Centre, West Tower
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Telephone: 416.979.2211
Facsimile: 416.979.1234
goodmans.ca

Direct Line: (416) 597-6275
cdescours@goodmans.ca

February 14, 2024

Via Email

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

Attention: Ashley Taylor and Lee Nicholson

Dear Ashley and Lee:

Re: Tacora Resources Inc. ("Tacora" or the "Company") - Consents for Tacora Transaction

As you are aware, it is the view of Cargill International Trade Pte. Ltd. and Cargill, Incorporated (together, "**Cargill**") that the Company's proposed transaction cannot be approved or implemented in its current proposed reverse vesting structure absent Cargill's consent. The Company should be advancing a contingency plan to obtain the necessary consents and approvals it would require to implement any asset sale transaction.

We note that at paragraphs 46 to 48 of the affidavit of Joe Broking sworn February 2, 2024 (the "**Broking Affidavit**"), Mr. Broking describes the Permits and Licenses (as defined in the Broking Affidavit) that would require governmental consents to be transferred, and the potential need for other governmental approvals. Tacora has time now to advance efforts to obtain any applicable consents and approvals.

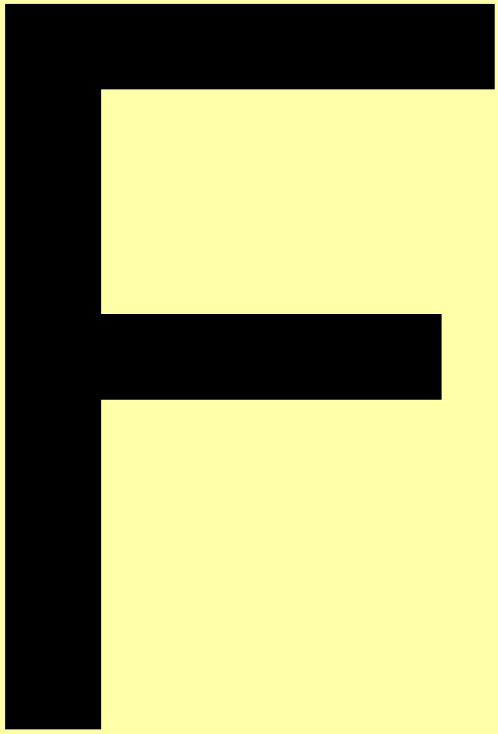
For clarity, Cargill continues to believe that an asset sale transaction on similar terms to the Company's proposed transaction with the Ad Hoc Group of Noteholders, RCF and Javelin without the assumption of Cargill's offtake agreement or the consent of Cargill will not be approved by the Court under the current facts and circumstances. However, we do not believe there should be any argument that a reason for why Tacora needs a reverse vesting order is that there is not sufficient time to obtain third party consents. Tacora clearly has the time to advance such process over the next months so that such argument by Tacora should not be relevant for the hearing scheduled for April. Tacora has the time and ability to seek such consents and should do so immediately, if not already in process.

Yours truly,
Goodmans LLP

Caroline Descours
CD/

cc: Robert J. Chadwick, Alan Mark, Peter Kolla, *Goodmans LLP*
Paul Bishop and Jodi Porepa, *FTI Consulting Canada Inc.*
Ryan Jacobs and Jane Dietrich, *Cassels Brock & Blackwell LLP*
Michael Nessim, Usman Masood, Chetan Bhandari, *Greenhill & Co. Canada Ltd.*
Jeremy Matican, *Jefferies LLC*

1396-2544-8714



THIS IS EXHIBIT "P" REFERRED TO IN THE AFFIDAVIT OF MATTHEW LEHTINEN SWORN BEFORE ME THIS 1st DAY OF MARCH, 2024

Commissioner for Taking Affidavits

Lee Nicholson
Direct: +1 416 869 5604
Mobile: +1 647 821 1931
leenicholson@stikeman.com

March 1, 2024 **By Email**

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

Attention: Caroline Descours

Re: Tacora Resources Inc. (CV-23-00707394-00CL)

We confirm receipt of your letter dated February 14, 2024. Capitalized terms not otherwise defined herein have the meaning ascribed in your letter.

Your letter encouraging Tacora to seek governmental consents to transfer Permits and Licenses is premised on the false assumption that Tacora is in a position to seek governmental consents, and that the relevant governmental authorities would consider Tacora's requests at this time. In order for Tacora to commence the process of seeking consents from the relevant governmental authorities for the transfer of transferable Permits and Licenses, the relevant governmental authorities will require applications setting forth the particulars of the definitive transaction seeking to transfer Tacora's business. The applications will require disclosure of details on the purchaser, including the purchaser's plan to operate the Scully Mine post-closing. As such, for a purchaser to seek the issuance of new Permits and Licenses (as certain Permits and Licenses held by Tacora are non-transferrable), a purchaser would need to be formed and contemplated to be acquiring the business requiring such Permits and Licenses. As you know, an asset transaction does not exist and there is no purchaser formed seeking to acquire Tacora's business. Accordingly, Tacora is not in a position to, nor does Tacora have the ability to, commence any process related to the Permits and Licenses, including advancing a plan to obtain the necessary consents and approvals to implement an asset sale transaction.

No bidder in the Solicitation Process submitted a bid capable of being consummated as an asset transaction. Cargill confirmed to Tacora and its advisors on various occasions that Tacora's tax attributes were critical in connection with any transaction to be consummated. Cargill's continued attempts to alter the transaction structure will destroy value for stakeholders, including Cargill who stands to have all their secured debt repaid in full under the Successful Bid.

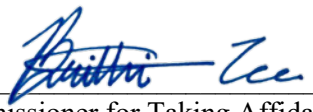
Yours truly,

Stikeman Elliott LLP

Lee Nicholson
LN

cc: Beth McGrath, *McInnes Cooper*
Robert J. Chadwick, Alan Mark, Peter Kolla, *Goodmans LLP*
Paul Bishop and Jodi Porepa, *FTI Consulting Canada Inc.*
Ryan Jacobs and Jane Dietrich, *Cassels Brock & Blackwell LLP*
Michael Nessim, Usman Masood, Chetan Bhandari, *Greenhill & Co. Canada Ltd.*
Jeremy Matican, *Jefferies LLC*

THIS IS EXHIBIT "Q" REFERRED TO IN THE AFFIDAVIT OF MATTHEW LEHTINEN SWORN BEFORE ME THIS 1st DAY OF MARCH, 2024



Commissioner for Taking Affidavits

Goodmans LLP

Barristers & Solicitors

Bay Adelaide Centre, West Tower
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Telephone: 416.979.2211
Facsimile: 416.979.1234
goodmans.ca

Direct Line: (416) 597-4285
rchadwick@goodmans.ca

March 1, 2024

Via Email

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

Attention: Lee Nicholson

Dear Lee:

Re: Tacora Resources Inc. ("Tacora" or the "Company") - Cargill International Trade Pte. Ltd and Cargill, Incorporated (together, "Cargill")

We acknowledge receipt of your letter of today in response to our letter of two weeks ago.

Your response misses the point of our letter, namely that Tacora is refusing to pursue any contingency plan for the benefit of Tacora and its stakeholders. Cargill believes such position by Tacora is unsupportable.

Cargill has been consistent in advising Tacora and other parties that to the extent the Company or any investor believes a Tacora share transaction should be implemented it requires a CCAA plan or a consensual recapitalization transaction which complies with the CCAA, is supported by its stakeholders (including Cargill) and does not prejudice any third parties (such matters have been clearly outlined in our previous correspondence and also is provided for in the Cargill Recapitalization Transaction dated January 19, 2024). Currently, Tacora has elected to proceed down neither of these key and fundamental routes. It is not Cargill altering any transaction structure – it is Tacora not applying the facts and circumstances (and the law) to its current proposed singular narrow path. Such actions by Tacora are extremely concerning to Cargill.

Goodmans LLP

Yours truly,
Goodmans LLP

Robert J. Chadwick
RJC/

cc: Caroline Descours, *Goodmans LLP*
Ashley Taylor, *Stikeman Elliott LLP*
Michael Nessim, Usman Masood, Chetan Bhandari, *Greenhill & Co. Canada Ltd.*
Jeremy Matican, *Jefferies LLC*

1380-5620-1226

4

Intentionally left blank

5

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.

AFFIDAVIT OF JEREMY CUSIMANO

(sworn March 1, 2024)

I, Jeremy Cusimano, of the City of Concord, in the State of Massachusetts, in the United States of America, make oath and say:

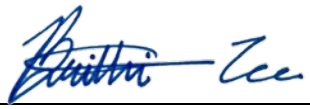
1. I am a managing director at Alvarez & Marsal Disputes and Investigations, LLC. I have been retained by Goodmans LLP on behalf of their clients, Cargill, Incorporated and Cargill International Trading Pte Ltd., to provide an expert opinion regarding the Iron Ore Sale and Purchase Contract between Tacora Resources Inc. and Cargill International Trading Pte Ltd. dated April 5, 2017, as restated on November 11, 2018, and as amended from time to time As such, I have knowledge of the matters hereinafter deposed to.

2. Attached as **Exhibit "A"** to this affidavit is a copy of the Expert Report of Jeremy Cusimano dated March 1, 2024 (the "Cusimano Report").

3. My qualifications are detailed in Section I. of the Cusimano Report.

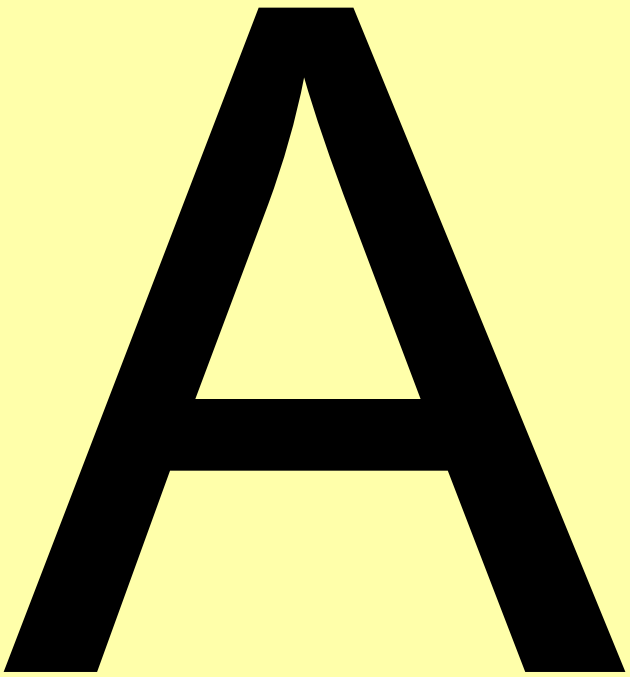
4. I have completed the Cusimano Report in compliance with my duties as an expert to the Ontario Superior Court of Justice. Attached as **Exhibit "B"** to this affidavit is an executed copy of my Form 53 - Acknowledgement of Expert's Duty in this matter dated March 1, 2024.

SWORN remotely by Jeremy Cusimano stated as being located in the City of Concord, in the State of Massachusetts, before me at the City of Toronto, in the Province of Ontario, on March 1, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

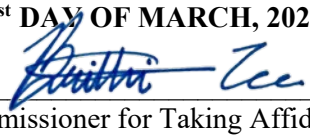


A Commissioner for taking affidavits
Name: Brittni Tee
#85001P

JEREMY CUSIMANO


A

THIS IS EXHIBIT "A" REFERRED TO IN THE AFFIDAVIT OF JEREMY CUSIMANO SWORN BEFORE ME THIS 1st DAY OF MARCH, 2024



Commissioner for Taking Affidavits

Brittni Tee
LSO# 85001P

COURT FILE NO. CV-23-00707394-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

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

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

(APPLICANT)

REPORT OF JEREMY CUSIMANO

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

MARCH 1, 2024

ALVAREZ & MARSAL DISPUTES AND INVESTIGATIONS LLC
260 FRANKLIN STREET SUITE 210
BOSTON, MA 02110

Contents

Appendices

Appendix A – Curriculum Vitae of Jeremy Cusimano

Appendix B – List of Information Considered

I. QUALIFICATIONS

1. I am a Managing Director with Alvarez & Marsal Disputes and Investigations LLC ("A&M") in Boston, Massachusetts. My practice specializes in financial markets, trading, compliance, risk, and controls. I have extensive experience in global financial markets, economic analysis, investigations into commodity and derivatives trading, and regulatory policy.
2. I hold a B.S. in Economics from the Rochester Institute of Technology and an M.S. in Environmental and Natural Resource Economics from the University of Maine. Prior to joining A&M, I was a Managing Director with Grant Thornton LLP where I led the firm's commodities and derivatives-related advisory services. I also previously served as Economic Advisor to the Director of Enforcement at the U.S. Commodity Futures Trading Commission ("CFTC") and Chief Economist for Petroleum Reserves at the U.S. Department of Energy. My full curriculum vitae, attached as **Appendix A**, lists my experience, qualifications, prior testimony during the last four years, and publications over the last ten years.
3. While serving at the CFTC, I developed and led the agency's first group of economic and market experts dedicated to the forensic analysis of trading and market events to identify potential violations of the Commodity Exchange Act. I have performed many investigations involving exchange-traded and over-the-counter ("OTC") physical commodities, financial derivatives, and other securities. Across these investigations I have developed quantitative models to analyze complex market structures and derivatives portfolios, evaluated trading and risk management strategies, and valued portfolio impacts of market activity. I have provided expert analysis to support many regulatory and law enforcement investigations on topics including potential price manipulation, disruptive trading, trade practice regulation, electronic trading systems irregularities, and fraud.

II. ENGAGEMENT AND MATERIALS REVIEWED

4. I was retained by Goodmans LLP ("Goodmans" or "Counsel") acting as Counsel for Cargill, Incorporated and Cargill International Trading Pte Ltd. (together, "Cargill") to evaluate the terms of certain contracts, documents, and other information relating to the purchase and sale of iron ore concentrate and related arrangements among Cargill and Tacora Resources Inc. ("Tacora") and prepare an expert report that summarizes key opinions.
5. Tacora, the opposing party in this matter, is subject to proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("CCAA").
6. I have been asked to address certain questions with respect to the Iron Ore Sale and Purchase Contract ("Offtake Agreement"), dated November 11, 2018, entered into between Cargill and Tacora.[1] For purposes of the Offtake Agreement, Cargill International Trading Pte Ltd. is the Buyer, and Tacora is the Seller. The Offtake Agreement is also supplemented by other agreements and amendments between the Buyer and the Seller, which offer relevant context in this matter.
7. I have been provided with and reviewed the Offtake Agreement, as well as the Iron Ore Stockpile Purchase Agreement dated December 17, 2019 ("Stockpile Agreement"), which works in conjunction with the Offtake Agreement. Additionally, I have reviewed a number of letters amending the Offtake Agreement, including a letter extending the term of the Offtake Agreement for the life of the mine ("Life of Mine Letter") dated March 2, 2020, as well as several hedging side letters ("Side Letters") executed during 2022 and 2023, which provide amendments to particular terms and calculations in the Offtake Agreement. I have also reviewed several ancillary documents to the Stockpile Agreement, including various amendments and extensions. These documents are further described below in Section IV.
8. I have also reviewed an expert report submitted by Sharon Brown-Hruska, PH.D., submitted February 2, 2024 ("Brown-Hruska Report"). Dr. Brown-Hruska submitted her report in connection with this matter at the request of Strikeman Elliott LLP, who serves as counsel for Tacora. The Brown-Hruska Report responds to the following questions with respect to the Offtake Agreement:

[1] A previous Iron Ore Sale and Purchase Agreement between the parties was dated April 5, 2017. The restated November 2018 version reflects amendments from April 2017 onward.

a. Whether the Offtake Agreement is a derivative, as that term is commonly understood by financial market authorities, commodities derivatives markets, and the commodities industry?

b. Whether iron ore offtake agreements trade on futures or options exchanges, boards of trade, or other regulated markets?

c. Whether iron ore offtake agreements are the subject of recurrent dealings in the derivatives or other over-the-counter commodities markets?

9. In particular, the Brown-Hruska Report considered whether the Offtake Agreement would be classified as a "derivatives agreement" or an "eligible financial contract" as the definitions are set forth in the Eligible Financial Contract Regulations (CCAA) SOR/2007-257.[2]

10. The CCAA and its Eligible Financial Contract Regulations allow insolvent organizations to reorganize under court supervision and special treatment may be provided for eligible financial contracts ("EFCs").[3]

11. Under the Eligible Financial Contract Regulations, a derivatives agreement is defined as "*a financial agreement whose obligations are derived from, referenced to, or based on, one or more underlying reference items such as interest rates, indices, currencies, commodities, securities or other ownership interests, credit or guarantee obligations, debt securities, climatic variables, bandwidth, freight rates, emission rights, real property indices and inflation or other macroeconomic data and includes (a) a contract for differences or a swap, including a total return swap, price return swap, default swap or basis swap; (b) a futures agreement; (c) a cap, collar, floor, or spread; (d) an option; and (e) a spot or forward*."[4] Further, in determining whether a derivatives agreement may qualify as an EFC, the rule includes "*a derivatives agreement, whether settled by payment or delivery, that (i) trades on a futures or options exchange or board, or other regulated market, or (ii) is the subject of*

[2] Eligible Financial Contract Regulations (Companies' Creditors Arrangement Act) SOR/2007-257. See Eligible Financial Contract Regulations (Companies' Creditors Arrangement Act) (justice.gc.ca).
[3] Kvisle and James Reid (2021) The ABCs of EFCs: Eligible Financial Contracts and Energy Company Insolvency Proceedings, *Alberta Law Review,* 2021 59-2, 297. See A. Introduction to Restructuring under Canada's Insolvency Statutes | The ABCs of EFCs: Eligible Financial Contracts and Energy Company Insolvency Proceedings | CanLII.
[4] Eligible Financial Contract Regulations (Companies' Creditors Arrangement Act) SOR/2007-257. See Eligible Financial Contract Regulations (Companies' Creditors Arrangement Act) (justice.gc.ca).

recurrent dealings in the derivatives markets or in the over-the-counter securities or commodities markets."[5]

12. While the Brown-Hruska Report attempted to interpret whether the Offtake Agreement was a derivative agreement or an EFC under CCAA provisions, my analysis takes a different approach. My report is instead designed to provide a technical view of how the Offtake Agreement functions and the nuances of its mechanics in practice.
13. My review of the provided materials focuses on evaluating the following inquiries, which are the basis of this report:
    a. What types of risks are faced by Cargill and Tacora as a result of the Offtake Agreement and its amendments?
    b. How do the Offtake Agreement and its amendments allow for mitigation and management of relevant risks for both Cargill and Tacora?
14. This report discusses how the Offtake Agreement works in a practical sense and how Cargill and Tacora were able to leverage it to offset risk. In addition to the documents reviewed, I relied on certain information and assumptions in formulating my opinions. Counsel shared with me information that I understand will be filed as part of an Affidavit in this matter, including information regarding material agreements and amendments entered into between Cargill and Tacora. I have assumed the relevant facts from this information to be true and have included those assumed facts in my discussion below. I have also relied upon information learned in discussions with Counsel and Cargill.
15. I have reviewed the relevant agreements and amendments provided by Counsel. However, at Counsel's request, I have omitted certain specific details of payment calculation formulas in order to preserve confidential information with respect to the pricing mechanisms.
16. I prepared this report with the assistance of other professionals at A&M working under my direct supervision. My analyses, opinions, and conclusions are based on work performed by me and those under my supervision, as well as my training, education, and experience.

[5] Eligible Financial Contract Regulations (Companies' Creditors Arrangement Act) SOR/2007-257. See Eligible Financial Contract Regulations (Companies' Creditors Arrangement Act) (justice.gc.ca).

17. In reaching my opinions, I and people working under my supervision reviewed all the relevant materials provided by counsel. All materials considered in formulating my opinion are listed in **Appendix B**.
18. My opinions herein depend solely on work performed through the date of this report. I reserve the right to supplement my opinions should further documentation be produced that bears on any of my analyses, and to respond to any other expert opinions proffered by or on behalf of the parties to this matter.
19. Selected pages from the documents and information that I considered may be used as exhibits at trial. In addition, I may prepare graphical or illustrative exhibits based on the documents and information considered, and/or my analyses.
20. My billing rate on this matter is $925 per hour. Other A&M professionals working under my supervision are being billed by A&M at their standard hourly rate. Neither my compensation nor my firm's compensation in this matter is contingent upon the outcome of this case or on the substance of my opinions.

III. SUMMARY OF OPINIONS

21. The Brown-Hruska Report opines on whether the Offtake Agreement should be defined as a futures contract, a swap, or a forward contract. However, it did not consider or address the key elements of how the relevant agreements and amendments between Cargill and Tacora functioned in practice.
22. Based on the documents that I have reviewed and information that I have been presented with, it is my opinion that the Offtake Agreement, Stockpile Agreement, and relevant amendments have characteristics that are functionally similar to financial products such as swaps and options. The mechanisms of these agreements and amendments provide hedging and risk management capabilities to the parties.
23. In the report that follows, I provide my detailed analysis addressing each of these points, among others.

IV. SUMMARY OF RELEVANT AGREEMENTS AND AMENDMENTS

24. As noted above, I have reviewed a number of contractual agreements and amendments relevant to this matter. I was also provided with information by Counsel regarding certain agreements and amendments that exist between Cargill and Tacora. This section summarizes the key agreements and amendments and describes at a high-level how they work in practice.
25. The primary contract in this matter is the Offtake Agreement. As noted above, under the Offtake Agreement, Cargill International Trading Pte Ltd. is the Buyer, and Tacora is the Seller. The Offtake Agreement was originally effective April 5, 2017, and restated on November 11, 2018, with further amendments from time to time.
26. The November 11, 2018 amendment to the Offtake Agreement was negotiated in conjunction with an equity raise by Tacora and in consideration for Cargill investing approximately $20 million of equity capital in Tacora.
27. Under the terms of the Offtake Agreement, Cargill receives 100% of iron ore concentrate production at the Wabush Scully mine (the "Mine"), which is located in Newfoundland and Labrador, Canada.
28. The Offtake Agreement was amended to last for the life of the Mine, in accordance with the Life of Mine Letter, dated March 2, 2020.
29. Payments in accordance with the Offtake Agreement may occur over several months, due to the timing of iron ore shipments and onward sales to third parties. In such cases, there is a time gap between when Cargill makes the initial payment for the iron ore, and when there is a final payment reconciliation after the iron ore is sold on to a third party. The Offtake Agreement provides for a margining facility between Tacora and Cargill to accommodate the time gap and market price fluctuations between payments. Due to changes in the underlying price index, the Offtake Agreement contemplates that invoices that are not yet finalized be marked to market. My understanding is that this takes place twice per week, with differences settled by a payment from the owing party. Cargill calculates the net amounts outstanding for all iron ore shipments, and where the net amount owed exceeds certain margining thresholds, then a payment must be made.
30. The Offtake Agreement also includes a profit-sharing formula, which allocates realized profits from the sales to third parties between Cargill and Tacora.

31. The Stockpile Agreement, dated December 17, 2019, with further amendments from time to time, supplements and modifies certain provisions of the Offtake Agreement. Importantly, the Stockpile Agreement shifts the timing for the transfer of title and risk from Tacora to Cargill. Under the Offtake Agreement, title and risk passes to Cargill when the iron ore cargo is loaded onto a vessel at port, in accordance with Incoterms 2010.[6] However, the Stockpile Agreement amends this timing, such that title and risk passes to Cargill at an earlier point, when the iron ore is unloaded at a stockpile proximate to the port (i.e., before it is loaded onto a vessel). This also advances the timing for the provisional price calculations, as there is generally a time lag between the time of delivery to the stockpile and the loading of a vessel.
32. The Offtake Agreement is occasionally amended through the use of hedging Side Letters, which are executed to revise particular terms and calculations in the Offtake Agreement, typically pricing and margin provisions. The hedging arrangements set forth in the Side Letters allow risk management activities with respect to the terms in the Offtake Agreement to be performed in a targeted and timely manner. For example, provisions in a Side Letter may be directed only at shipments for a particular month. Side Letters are a vehicle for Cargill to provide Tacora with insulation from possible adverse price movements. For example, hedging arrangements in the Side Letters may permit conversions from floating to fixed pricing, or set floor/ceiling prices.
33. I understand that Cargill has a trading desk that manages risk on a portfolio basis. Specifically, I understand that in addition to Side Letters executed with Tacora, the trading desk may also execute hedging strategies in the market to further manage its own price risk. Where Cargill is hedging in the market on a portfolio basis, these trades may not have a one-to-one relationship with a particular iron ore shipment, but rather seek to manage risk on a net basis across the entire portfolio.[7] These hedging strategies may involve various derivative instruments and extend over a period of many months.[8]

[6] Incoterms are commonly used rules in international shipping. International Chamber of Commerce (ICC), Incoterms 2010. See The Incoterms® rules 2010 - ICC - International Chamber of Commerce (iccwbo.org).
[7] Cargill actively trades physical iron ore and iron ore derivatives. The risk from some of these transactions may offset each other without the need to directly execute hedging trades.
[8] For example, I understand that Cargill actively manages its risk exposures from iron ore transactions, including the Offtake Agreement, by trading iron ore futures contracts on both the Singapore Exchange and the Dalian Commodities Exchange.

34. Cargill's payments to Tacora under the Offtake Agreement, Stockpile Agreement, and related amendments follow a general schedule, which trails the movement of the iron ore. The following is an illustration of the iron ore's progress through the supply chain: (1) first, the iron ore is extracted from the Mine; (2) it is then taken by train to the stockpile at the port of Sept-Iles, Quebec, Canada; (3) the iron ore is transferred from the stockpile to a vessel to be shipped to its sale destination; and (4) the iron ore reaches its sale destination and is delivered to a third party. Payment invoices are generated at particular points in this process.
35. With the Stockpile Agreement in place, the initial purchase is triggered when the iron ore is delivered at the stockpile.[9] At this juncture, Tacora issues a stockpile provisional invoice to Cargill.
36. Cargill arranges for onward sale of the iron ore to third parties. After arriving at the stockpile, the iron ore will be transferred to a vessel at the port for shipping. Tacora then issues a vessel adjustment invoice to Cargill.
37. As noted previously, throughout the time span between initial delivery from the Mine to the stockpile, and then to onward sale to a third party, margining and netting may also be occurring.
38. Additionally, decisions on hedging will be made. If Tacora and Cargill agree to enter into a hedging arrangement, a Side Letter will be executed to document the relevant terms and pricing. As an example, where the prevailing market price for iron ore at the time is high, Tacora may wish to lock in this higher price to avoid the risk of the market price falling before the product is priced in reference to the final index value. In such a case, Cargill would then bear this risk of a falling price at the final point of sale.
39. Lastly, once the iron ore reaches its end destination and the chemical composition is assessed, Tacora issues a final invoice to Cargill. This final invoice takes into account amounts payable to Tacora, provisional payments already paid to Tacora, and margining payments that have occurred. Because of the provisional payments and margining that take place in advance of the final invoice, the final invoice payable may result in an amount owed to Tacora, or a credit to Cargill.

[9] Without the Stockpile Agreement in place, the Offtake Agreement provides for the initial purchase point upon vessel loading.

40. The payment structures and hedging opportunities under the Offtake Agreement, Stockpile Agreement, and amendments are discussed in more detail in the following sections.
41. I understand that the Offtake Agreement, Stockpile Agreement, and relevant amendments within their expiration dates are still in place and active. Tacora requested that Cargill provide a DIP Facility, which is defined in the relevant agreement as a "*senior secured, superpriority, debtor-in-possession, interim, non-revolving credit facility*." The DIP Facility Term Sheet, dated October 9, 2023, reflects the agreement between Cargill and Tacora to provide a DIP Facility and continue existing contracts, including the Offtake Agreement and Stockpile Agreement, during CCAA proceedings. The background outlined in the DIP Facility Term Sheet explains that "*pursuant to certain of those Existing Arrangements, Cargill provides various forms of financing and credit, as well as margining, hedging, price protection and operational support, to Tacora*."

V. CARGILL'S AND TACORA'S RISKS AS A RESULT OF THE OFFTAKE AGREEMENT

A. Pricing Mechanism

42. The Offtake Agreement is a floating price contract, pursuant to which, I understand that Tacora agrees to sell to Cargill 100% of the iron ore concentrate produced at the Scully Mine. In return, Cargill agrees to pay Tacora a Provisional Purchase Price that is derived from the Platts Iron Ore Index ("Platts 62% Index").[10] Based on the Stockpile Agreement, Cargill takes title to, as well as the risk associated with, the iron ore when it is unloaded to Tacora's stockpile at the port rather than purchasing free on board ("FOB") as outlined in the initial Offtake Agreement.[11]
43. Cargill and Tacora are both subject to floating price risk throughout the lifecycle of a parcel (i.e., a specific shipment of iron ore), based on three distinct pricing points outlined in the

[10] Iron Ore Sale and Purchase Contract, Restatement, Clause 13, "Provisional Payments," 11 Nov. 2018, p. 13.
[11] Iron Ore Stockpile Purchase Agreement, Clause 3, "Sale and Purchase," 17 Dec. 2019, p. 5; Iron Ore Sale and Purchase Contract, Restatement, Clause 10, "Loading Port and Trade Terms," 11 Nov. 2018, p. 10. The Iron Order Stockpile Purchase Agreement was extended through the pendency of Tacora's CCAA Proceedings as outlined in the DIP Facility Term Sheet dated October 9, 2023.

Offtake Agreement: (a) the initial Provisional Purchase Price; (b) shipment margin amounts ("SMA") that apply while the iron ore is in transit; and (c) the final invoice (" Purchase Price"), including the profit sharing component.

44. As discussed above, the Provisional Purchase Price is derived, in part, from the Platts 62% Index. The Provisional Purchase Price ("PPI"), as articulated in the Offtake Agreement, is calculated as follows:

$$PPI = A + B$$

Where "A" is the mean of the Platts 62% Index over a defined time period and "B" is a percentage (based on the FE content of the parcel) of the average spread between the Platts 62% Index and the Platts 65% Index. certain spread values.

45. The current Provisional Purchase Price calculation has been amended under the Stockpile Agreement. Under the Stockpile Agreement, the Stockpile Provisional Price (SPP) is derived from the following calculation:

$$SPP = (A + B + C) - PFC$$

Where "A" is the mean of the Platts 62% index, "B" is a set percentage of the mean of the spread between the Platts 62% and Platts 65% index, "C" is a discount due to weight uncertainties at the stockpile, and "PFC" is the provisional freight cost.

46. The Offtake Agreement also outlines the SMA payments, which can occur when there are significant changes in the value of the Platts 62% Index while the parcel is in transit.[12] If the Platts 62% Index significantly increases from the Provisional Purchase Price, Cargill is required to make additional payments to Tacora. Alternatively, if the Platts 62% Index significantly decreases, Tacora must pay Cargill. I understand that Cargill reviews the SMA values twice a week to determine if either party needs to make a margining payment. The SMA is calculated as follows:

$$SMA = LPP - UPP$$

Where the LPP is the Provisional Purchase Price actually paid to Tacora, as described above, and the UPP is the updated Provisional Purchase Price, if it was calculated based on certain historical mean values of the Platts 62% index prior to the date the SMA was calculated on. A margin payment is only required if the value exceeds a mutually agreed upon threshold.

[12] Iron Ore Sale and Purchase Contract, Restatement, Clause 15, "Netting and Margining," 11 Nov. 2018, p. 15.

47. The Purchase Price is calculated after Cargill sells the iron ore to its customer. The Purchase Price is calculated based on three inputs: (a) the mean of the Platts 62% Index during the third calendar month following the bill of lading relating to the shipment; (b) less the freight cost, which is based in part on the mean of the Baltic Exchange Capsize Index for Route C3 adjusted to Northern Canada; and (c) plus any profit share payments due to (or from) Tacora, based on the actual price at which Cargill sold to its customer.[13]

48. Tacora shares in the profit (or loss) Cargill obtains based on final sales price paid by Cargill's customer, even though, at the time of the final sale, Tacora had no ownership of the iron ore. The profit share, as outlined in the Offtake Agreement, provides that Tacora keeps a percentage of the profit, subject to Cargill's minimum profit share requirement.[14] The profit share ("PS") is calculated using the following formula:

$$PS = \text{Seller \%} \times \text{Profit}$$

The Profit component of the profit share is derived from several factors, including the price at which Cargill sells the parcel to its customer, and adjustments for any savings or loss related to the freight costs. If the profit share exceeds $1 per DMT, Cargill will pay Tacora. If, however, the profit share is $1 per DMT or less, Tacora must pay Cargill. [15]

B. Price and Timing Risk

49. Under the terms of the Offtake Agreement, Cargill and Tacora are both subject to price and timing risk as all pricing components of the Offtake Agreement are based on a floating index. Both parties are at risk of potential changes in the Platts 62% Index between when the title to a shipment of iron ore transfers to Cargill at the stockpile and when Cargill completes the sale to its final customer and the Purchase Price invoice is issued. Both Cargill and Tacora may be required to make additional payments to the other party throughout this period, either as a result of SMAs or as a result of the changes to the index during the calculation of the Purchase Price. Additionally, as a producer of iron ore concentrate, Tacora is exposed to market price fluctuations on the Provisional Purchase Price on future deliveries to Cargill.

[13] Iron Ore Sale and Purchase Contract, Restatement, Clause 11, "Purchase price," 11 Nov. 2018, pp. 10-11.
[14] Iron Ore Sale and Purchase Contract, Restatement, Clause 11, "Purchase price," 11 Nov. 2018, pp. 10-11.
[15] Iron Ore Sale and Purchase Contract, Restatement, Clause 11, "Purchase price," 11 Nov. 2018, p. 11.

50. As discussed below, Cargill and Tacora can and have mitigated some of their pricing and timing risks by either (a) hedging exposure through exchange traded futures or options; (b) by executing Side Letters to the Offtake Agreement to hedge Tacora's floating pricing risk described above by converting the pricing to a fixed price or by Cargill selling Tacora a put option or protective collar; or (c) a combination of both.[16]

C. Liquidity Risk

51. The Offtake Agreement provides guaranteed market liquidity to Tacora. Cargill agrees to take all of Tacora's iron ore production, which eliminates any risk that Tacora will be unable to find willing buyers for its product at competitive market prices. The Offtake Agreement also eliminates the need for Tacora to maintain logistics and marketing capabilities to sell its iron ore beyond the port at Sept-Illes, Quebec.
52. Under the Offtake Agreement, Tacora receives payments due under the Provisional Purchase Price meaning that Cargill is essentially funding Tacora's operations, thus helping manage Tacora's financial liquidity risk. Tacora does not have to identify or sell the ore to the end client in order to receive payment. Cargill may reclaim some of the Provisional Purchase Price during shipment as a result of SMAs, but this only occurs where the price swings of the Platts 62% Index change the value of the shipment by greater than the margining threshold in place at that time. [17]
53. Cargill's liquidity, on the other hand, is tied up in the parcel of iron ore. With the exception of incremental margin payments made under the SMA, Cargill does not receive any payments related to the iron ore until it satisfies the terms of the purchase contract with its customer (i.e., finalizes an onward sale to a third party).

[16] By purchasing a put option, Tacora would pay Cargill for downside price protection. If market prices fell, losses from the Offtake Agreement pricing formula would be offset by revenue generated by the put option. By purchasing a protective collar, Tacora would both buy a put option from Cargill and sell them a call option. The put option would provide the same downside protection, but selling the call option reduces the cost of the hedge while also giving up the potential benefit of increasing prices.
[17] Iron Ore Sale and Purchase Contract, Restatement, Clause 15, "Netting and Margining," 11 Nov. 2018, p. 15.

VI. THE USE OF THE OFFTAKE AGREEMENT TO REDUCE RISK

A. Hedging of the Offtake Agreement by Tacora

54. As described above, Tacora has timing and pricing risk related to the Offtake Agreement as a result of the floating price nature of the Provisional Purchase Price and the Final Purchase Price.

55. I understand that Tacora does not have the ability to hedge independently, due to cash flow limitations and counterparty margining requirements. Therefore, Cargill provides hedging services to Tacora through separate amendments to the Offtake Agreement, referred to as Side Letters. I also understand that Cargill typically approaches either Tacora's Chief Executive Officer or its Chief Financial Officer around the time that a ship is loaded with iron ore at the port and asks whether the company would like to hedge the price of the iron ore. If Tacora agrees to hedge, Cargill and Tacora execute a Side Letter, which also functions as an amendment to the Offtake Agreement.

56. The Side Letters allow Tacora to manage its floating price risk, as described in further detail below. However, Cargill is not provided the same risk mitigation. As discussed in further detail in the next section, Cargill will separately manage its risk through its portfolio-based trading program.

57. As an example, a Side Letter dated July 22, 2022, notes that it changes the pricing provisions of the Offtake Agreement from floating to fixed price, "*providing to Seller a degree of insulation from anticipated iron ore market price movements*."[18] The Side Letter states that Cargill provides Tacora a fixed price payment, and then for the relevant three-month period prescribed in the letter, Cargill will also distribute hedging benefit payments ("HBP") if the price is positive. In contrast, Tacora will pay Cargill if the price is negative. These payments are based on the difference between the fixed price and the market price when calculated. Similarly, there is a margining agreement that provides payments for the difference between the fixed price and the weighted average of the TSI 62% index as quoted one business day

[18] Offtake Contract: Fixed Price Side Letter 4, 22 July 2022.

prior to the relevant calculation. Furthermore, Tacora is obligated to pay a fixed price arrangement fee to Cargill.[19]

58. As another example, a Side Letter dated June 26, 2023, provides the details of a collar hedging strategy that Cargill executed on behalf of Tacora.[20] The letter states that for the June 2023 shipment, there is both a floor price per DMT as well as a ceiling price. The Side Letter goes on to state that the Purchase Price for the contract will be the higher of either the floor price or the mean of the Purchase Index, subject to the ceiling cap. This pricing structure operates as a protective (option) collar.

59. It is my understanding that Cargill and Tacora have an existing Side Letter currently in effect from January 2024, and that due to the CCAA proceedings, Tacora has not requested any additional hedging agreements to be put in place. In practice, however, the use of Side Letters to engage in hedging activities and modify the terms of the Offtake Agreement has been typical over the course of the Offtake Agreement.

60. Under the profit sharing arrangement in the Offtake Agreement, payments are made by Cargill to Tacora based on the calculation described above in paragraph 48. However, if market prices decline sufficiently between the time of the Provisional Purchase Price and Purchase Price calculations, Tacora will need to make a payment to Cargill under the profit sharing arrangement. This floating price profit (or loss) sharing payment operates similarly to a Total Return Swap ("TRS"). A TRS is a derivative contract that replicates the cash flows of an investment in an assessment and requires parties to make payments to each other based on the performance of an underlying asset.[21] A TRS permits one party to simulate investment in the underlying asset(s) without incurring the burden of ownership of the assets(s). The TRS simultaneously permits the second party to protect itself against a decline in value of the underlying asset(s).[22] Through the profit share agreements, Tacora is able to obtain value from the iron ore without actually owning it and Cargill, alternatively, is able to protect itself from a decline in the value of iron ore through its ability to reclaim some of the Provisional Purchase Price based on the Platts 62% index.

[19] Offtake Contract: Fixed Price Side Letter 4, 22 July 2022.
[20] Tacora Hedging Letter re June 2023 Cargoes, June 26, 2023.
[21] Thomson Reuters Practical Law, Total return swap (TRS). See Total return swap (TRS) | Glossary | Practical Law (thomsonreuters.com).
[22] Thomson Reuters Practical Law, Total return swap (TRS). See Total return swap (TRS) | Glossary | Practical Law (thomsonreuters.com).

B. Hedging of the Offtake Agreement by Cargill

61. As noted above in paragraph 33, I understand that Cargill has a trading desk that manages its risk on a portfolio basis. I was advised that Cargill engages in active hedging of the risks discussed above in the derivatives market. I was further advised that unlike the Side Letters, which articulate how Cargill hedges on behalf of Tacora, Cargill's own hedging activities are not as clearly aligned to a particular instance.
62. Under this portfolio model, I understand that Cargill integrates the exposures from its contracts with Tacora into its overall trading portfolio and then executes trades based on the combined portfolio exposure. Therefore, the trades executed in the market are not always an exact hedge (i.e., one-to-one), as Cargill's overall portfolio takes into account all of its pricing exposure.

VII. CONCLUSION

63. As highlighted above in paragraphs 8 through 12, I reviewed the Brown-Hruska Report. In her report, Dr. Brown-Hruska offered an opinion on the definition of an EFC and whether or not the Offtake Agreement qualified as such.
64. The Brown-Hruska Report opines on whether the Offtake Agreement should be considered a futures contract, a swap, or a forward contract. Dr. Brown-Hruska did not consider or address the key elements of the Offtake Agreement and how it has functioned in practice alongside of the Stockpile Agreement and relevant amendments.
65. As I have described above, the design of the pricing mechanisms in the Offtake Agreement, Stockpile Agreement, and relevant amendments have characteristics (e.g., margining and total return swap-like payments) that are functionally similar to financial products. Such features allow Cargill and Tacora, as parties to the agreements, to better manage price and timing risk in the open market.
66. In operation, the Offtake Agreement, Stockpile Agreement, and relevant amendments provided hedging and other risk management services to Tacora by affording flexibility

around pricing structures, notably through the use of options, as well as flexibility around timing risks by making deliveries under the Stockpile Agreement.

VIII. FURTHER WORK

67. The opinions in this report are based on the documents and information available to me as of March 1, 2024. In the event that additional information is produced that may be relevant to this matter, I will evaluate it and update my conclusions herein accordingly.

Jeremy J. Cusimano

March 1, 2024

APPENDIX A

Curriculum Vitae of Jeremy Cusimano

Jeremy J. Cusimano
Managing Director
Alvarez & Marsal Disputes and Investigations LLC
260 Franklin Street, Suite 210
Boston, MA 02110
617-449-7811
jcusimano@alvarezandmarsal.com

Jeremy Cusimano is a Managing Director with Alvarez & Marsal Disputes and Investigation LLC in Boston, Massachusetts. He specializes in financial markets, trading, compliance, risk, and controls. He has extensive experience in global financial markets, economic analysis, investigations into commodity and derivatives trading, and regulatory policy.

Mr. Cusimano developed and led the U.S. Commodity Futures Trading Commission's first group of economic experts dedicated to the forensic analysis of trading and market events to identify potential violations of the Commodity Exchange Act. He has performed numerous investigations involving exchanged-traded and OTC physical commodities, financial derivatives, cryptocurrencies, and other securities. Across these investigations he has developed quantitative models to analyze complex market structures and derivatives portfolios, evaluated trading and risk management strategies, and valued portfolio impacts of market activity. He has provided expert analysis to support investigations and litigation to and in front of numerous regulatory and law enforcement agencies (e.g., CFTC, SEC, FERC, DOJ, NFA, FINRA, UK FCA) including examination of potential price manipulation, disruptive trading, trade practice regulation violations, electronic trading systems irregularities, and fraud.

Mr. Cusimano also has extensive experience advising clients on a range of operational challenges, including compliance, risk management, regulatory reporting, financial operations, and trade surveillance. He works with financial institutions of all sizes to ensure that the design and function of risk and compliance programs meet all operational and regulatory requirements.

Prior to joining A&M, Mr. Cusimano was a managing director with Grant Thornton LLP where he led the firm's commodities and derivatives related advisory services. Mr. Cusimano previously served as Economic Advisor to the Director of Enforcement at the U.S. Commodity Futures Trading Commission and Chief Economist for Petroleum Reserves at the U.S. Department of Energy.

Representative Experience

- Engaged by counsel for an international commodity merchant to assess claims of fraud and manipulation in global petroleum markets. The engagement required analysis of the client's physical and financial trading along with logistical and trade accounting data to assess potential regulatory concerns.

- Engaged by a large international broker and U.S. regulated Swap Dealer to assess possible misuse of customer trading information by an affiliate. This engagement required analysis of customer order flow along with communications and trading activity of the broker's affiliate to determine if its employees were exploiting customer orders.
- Engaged by counsel for a large U.S. financial institution to assess claims of potential manipulation of the S&P 500 Volatility Index (VIX). The objective of the engagement was to evaluate the nature of business activities surrounding S&P Index derivatives and to assess possible VIX manipulation. The project included analysis of exchange listed and OTC VIX linked products and S&P 500 Index options.
- Engaged by outside counsel for a U.S. based cryptocurrency trading venue to support a wide-ranging internal investigation. A&M conducted analysis of market activity to screen conduct of employees and market participants for a variety of potential conduct violations. This engagement also required an assessment of the client's trading operations for potential improvements in operational controls and liquidity management.
- Engaged by outside counsel for a large cryptocurrency trading platform to assess market supervision and trade surveillance practices. The engagement required evaluating the platform's systems and controls in place to monitor market trading practices.
- Engaged by outside counsel for a large U.S. based trading venue to analyze market activity around the launch of a new product. This engagement required analysis of trading and order submission practices to evaluate the causes of extreme volatility around the product launch. A&M's team also analyzed broader market activity and chatter to assess off-platform activity that could be related to the product launch. A&M made recommendations for new procedures relating to product launches and trading controls in thinly traded products.
- Retained by the appointed compliance monitor for a multi-billion-dollar family office to provide an independent assessment of its insider trading and market abuse trade surveillance systems and certain other trading activities pursuant to a settlement with the SEC. This project was performed concurrently with legal counsel an independent assessment of the family office's compliance with federal securities laws.
- Engaged by counsel for a U.S. based asset manager to evaluate SEC concerns regarding improper allocation of equities trades to customer accounts. This engagement required analyzing multiple years of equities trading data and allocations made to customer subaccounts to evaluate patterns of profitable and losing allocations across all customers.
- Engaged by counsel to a U.K. based trading firm to evaluate FCA concerns regarding market abuse (spoofing) in equity CFD trading in dark pools. This engagement required analyzing order messaging and trading data for equity CFDs and listed securities to evaluate possible regulatory violations.
- Engaged by outside counsel for a multi-national oil and gas company to review and analyze global propane trading activities and related evidence in response to a formal enforcement investigation into alleged market manipulation. The review included a presentation of findings and a detailed explanation of the firm's trading and risk management practices.
- Engaged by outside counsel for a large multinational integrated oil company. A&M's team is assisted counsel and their client in responding to a regulatory investigation into possible

manipulation of U.S. natural gas markets. Our team analyzed the client's trading data and market information for an 18-month period of time. We reconstructed risk positions to evaluate trading strategies and the appropriateness of market conduct. Our team also assessed market impacts of any trading activity that was deemed to be suspicious.

- Investigated allegations by an SRO that a proprietary trading firm was engaged in disruptive trading. Worked with in-house and outside counsel to evaluate patterns of market messaging activity to assess the nature of the traders' conduct and potential regulatory concerns. Also provided guidance on establishing appropriate trade surveillance systems.
- Engaged by outside counsel for an electric power generator and marketer in the United States to assist in responding to a federal regulatory inquiry into the firm's physical and financial electricity trading. Successfully performed a reconstruction and verification of trading portfolios and trade executions used in describing and explaining the firm's conduct and business practices in the marketplace.
- Engaged by counsel for a trader at a large international bank to investigate allegations of disruptive trading in European bond markets. The investigation required analyzing trading and order messaging activity in electronic bond markets to assess possible "spoofing" and to evaluate the legitimacy of the bank's activity.
- Working with counsel for a large proprietary trading firm, A&M's team analyzed multiple years of order messaging activity in U.S. Treasury Futures markets to evaluate allegations of spoofing. Our analysis included identifying and evaluating multiple trading strategies to assess how trader behavior changed over time with respect to possible regulatory violations.
- Working with a global asset management firm and its outside counsel, I assisted in a regulatory investigation in front of the UK Financial Conduct Authority. This engagement required the evaluation of allegations that a trader of the firm was engaged in spoofing in European bond futures markets. The analysis covered multiple years of the trader's market activity and messaging practices. It also established normative patterns of behavior and assessed the commercial nature of the activity at question. Provided advice and guidance on the development of a trade surveillance system.
- Engaged through outside counsel to support a large international bank in its efforts to respond to allegations that its US Treasuries and interest rate swaps traders manipulated a global interest rate benchmark. Our team provided strategy consulting services to the bank's outside counsel as well as economic consulting and market analysis services. These analyses were used to evaluate the banks market conduct in the context of its overall business activities and the Commodity Exchange Act.
- Assisted a large U.S. based financial institution in a compliance risk assessment for its FX dealing business. Advised the client on the integration of its compliance risk assessment process into the operational risk framework for its global investment bank.
- Engaged by outside counsel for a global investment bank to evaluate allegations that its traders had engaged in a scheme to manipulate foreign currency markets. Led an analysis of the bank's market activities in multiple currency pairs to distinguish dealing and speculative activities, evaluate potential market impacts, and assess possible regulatory concerns.

- Served as a consultant to a U.S. bank to assess the implementation of its Dodd-Frank mandated risk management program for its registered swap dealers. The review included evaluations of the program's documented policies and procedures, supervisory controls, as well as the systems that were put in place to execute the program requirements.
- Managed an internal audit review of risk management systems and reporting at a large financial institution. The review covered all aspects of the development, deployment, and use of risk systems, as well as the policies and procedures put in place to monitor portfolio manager risk.
- Assisted the energy trading arm of an international bank in responding to a regulatory inquiry regarding its physical and financial natural gas trading. Led an analysis of the bank's regional gas trading portfolio and assisted in assessing various risk management strategies involving financial derivatives. The analysis evaluated potential regulatory concerns regarding manipulation of physical natural gas markets and related derivatives.
- Engaged by a large international commodity merchant to assist in responding to a regulatory inquiry into its refined products trading activity. This project required the extraction of historical cleared and OTC physical and derivative trading records for use in reconstructing trader portfolios, evaluate trading strategies, assess risk exposures and identify potential regulatory concerns. The final report differentiated the various trading strategies being employed by the firm, including identification of trades that were related to hedging activities.
- Served as a consultant to an international risk management firm that offers weather related swaps and other structured derivative products to clients and is required to report its swap transactions to swap data repositories (SDR). I advised the client on reporting processes and documentation and created reporting templates for SDR submissions for each of its required reports.
- Engaged by a swap execution facility to map and document all of its internal trade data capture, transformation and reporting processes, as required by the CFTC. The engagement required identifying internal processes through interpretation of the client's data processing source code. All internal data sources and processes were mapped to external reporting formats.
- Advised a nascent futures exchange on regulatory requirements for registering with the CFTC as a Designated Contract Market. I also provided the client with advice on market design, trading operations, and necessary control systems.
- Engaged by a large Futures Commission Merchant (FCM) to review and evaluate the effectiveness of its existing internal controls and policies and procedures related to preventing, detecting, and mitigating potential violations of the Commodity Exchange Act and CFTC Regulations. Also engaged to review and evaluate the FCM's financial systems to determine the extent to which they provide real-time financial and operational data for risk management and reporting purposes. This project also required a review and evaluation of the FCM's risk management processes to ensure adequate controls and procedures are in place to limit the financial risks of the FCM, ensure adequate liquidity, and properly manage customer segregated funds.

- Managed an engagement with an international bank to serve as consultants in assessing the breadth of its investment banking activities within a recently opened administrative office. The bank's management sought to ensure the scope of its market activities were within the bounds of those permitted under Federal and State regulations and that local management controls were sufficient to monitor those activities.

Prior Testimony

- Before the Federal Energy Regulatory Commission, Docket No. EL02-71-057. Prepared answering testimony on behalf of Shell Energy North America (US), L.P. regarding the reporting of power market transactions and market surveillance.
- JAMS Arbitration (Seattle, Washington). Provided expert testimony on behalf of a cryptocurrency trading platform regarding standards of practice in market surveillance and the inability of market surveillance to prevent certain transactions. July 2022.
- US v. Smith, et. al. (Northern District of Illinois). Provided expert testimony on behalf of a defendant facing charges relating to spoofing and commodities fraud. July 2022.

Publications and Selected Presentations

- *Effectively Managing Compliance Risks Around Volatility Index (VIX) Trading*, Alvarez & Marsal LLC Publication, February 2018
- *Commodities and Derivatives Trading Operations: A Framework for Identifying and Managing Regulatory Risks*, Grant Thornton Publication, April 2013

Education

Master of Science, Environmental and Natural Resource Economics, University of Maine

Bachelor of Science, Economics, Rochester Institute of Technology

APPENDIX B

List of Information Considered

In developing this report, I relied upon my training, education, and experience, as well my review of various materials and information produced about this case. The below materials are referenced within my report:

Agreements and Amendments

Iron Ore Sale and Purchase Contract, Restatement, dated November 11, 2018.

Iron Ore Stockpile Purchase Agreement, dated December 17, 2019.

Letter updating certain terms of the Offtake Agreement, dated January 31, 2023.

Cargill/Tacora: Iron Ore Sale and Purchase Contract: Amendment and, dated March 2, 2020.

Heding Side Letters:

- Offtake Contract: Fixed Price Side Letter 4, dated July 22, 2022.
- Offtake Contract: Fixed Price Fixed Freight Cost Side Letter, dated September 8, 2022.
- Letter updating certain pricing provisions of the Offtake Agreement, dated January 9, 2023.
- Offtake Contract: Fixed Price Side Letter 5, dated May 15, 2023.
- Letter updating certain pricing provisions and margining provisions of the Offtake Agreement, dated Jun 2, 2023.
- Letter updating certain pricing provisions and margining provisions of the Offtake Agreement, dated Jun 6, 2023.
- Letter updating certain pricing provisions and margining provisions of the Offtake Agreement, dated Jun 26, 2023.
- Letter updating certain pricing provisions and margining provisions of the Offtake Agreement, dated October 24, 2023 (draft).

OPA Extension Letters:

- Tacora Iron Ore Stock Pile Purchase Agreement Extension Letter, dated December 27, 2021.
- Tacora Iron Ore Stock Pile Purchase Agreement Extension Letter, dated March 28, 2022.
- Tacora Iron Ore Stock Pile Purchase Agreement Extension Letter, dated April 29, 2022.
- Tacora Iron Ore Stock Pile Purchase Agreement Extension Letter, dated May 27, 2022.

Tacora Iron Ore Stock Pile Purchase Agreement Extension Letter, dated June 13, 2022.

Tacora Iron Ore Stock Pile Purchase Agreement Extension Letter, dated June 16, 2022.

Tacora Iron Ore Stock Pile Purchase Agreement Extension Letter, dated June 27, 2022.

Iron Ore Stockpile Purchase Agreement amendment re: Increase to 500 k DMT from 18th December 2023 until 18th January 2024, dated December 18, 2023.

DIP Facility Term Sheet, dated October 9, 2023.

Case Materials and Filings

Brown-Hruska, Sharon, *Report of Sharon Brown-Hruska, PH.D.*, February 2, 2024.

Statutory and Regulatory Information

Eligible Financial Contract Regulations (Companies' Creditors Arrangement Act) SOR/2007-257 (current to 2024-02-06 and last amended on 2016-06-14). Eligible Financial Contract Regulations (Companies' Creditors Arrangement Act) (justice.gc.ca)

Academic Papers and Other Publications

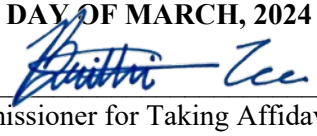
Ky Kvisle and James Reid (2021) The ABCs of EFCs: Eligible Financial Contracts and Energy Company Insolvency Proceedings, *Alberta Law Review,* 2021 59-2, 297. I. Introduction | The ABCs of EFCs: Eligible Financial Contracts and Energy Company Insolvency Proceedings | CanLII

International Chamber of Commerce (ICC), Incoterms 2010. The Incoterms® rules 2010 - ICC - International Chamber of Commerce (iccwbo.org)

Thomson Reuters Practical Law, Total return swap (TRS). Total return swap (TRS) | Glossary | Practical Law (thomsonreuters.com)

B

THIS IS EXHIBIT "B" REFERRED TO IN THE AFFIDAVIT OF JEREMY CUSIMANO SWORN BEFORE ME THIS 1st DAY OF MARCH, 2024



Commissioner for Taking Affidavits

Brittni Tee
#85001P

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.

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is Jeremy Cusimano. I live in the City of Concord, in the State of Massachusetts, in the United States of America.

2. I have been engaged by or on behalf of Cargill, Incorporated and Cargill International Trading Pte Ltd. to provide evidence in relation to the above-noted proceeding.

3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:

   (a) to provide opinion evidence that is fair, objective and non-partisan;

   (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and

   (c) to provide such additional assistance as the Court may reasonably require, to determine a matter in issue.

4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date March 1, 2024

Jeremy Cusimano

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

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding Commenced At Toronto

ACKNOWLEDGMENT OF EXPERT'S DUTY

Goodmans LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Robert Chadwick LSO#: 35165K
rchadwick@goodmans.ca

Caroline Descours LSO#: 58251A
cdescours@goodmans.ca

Alan Mark LSO#: 21772U
amark@goodmans.ca

Peter Kolla LSO#: 54608K
pkolla@goodmans.ca

Tel: 416.979.2211

Lawyers for Cargill, Incorporated and Cargill International Trading Pte Ltd.

6

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 JEREMY CUSIMANO

On Affidavit Sworn March 1, 2024
Held via Arbitration Place Virtual
on Monday, March 18, 2024, at 9:32 a.m.

CONDENSED TRANSCRIPT WITH INDEX

APPEARANCES:

Eliot Kolers RJ Reid	Counsel for the Applicant, Tacora Resources Inc.
Julie Rosenthal Brittni Tee Peter Kolla	Counsel for Cargill, Incorporated and Cargill International Trading Pte Ltd.
Shaan Tolani	Counsel for the Ad Hoc Group of Senior Noteholders
Karin Sachar	Counsel for the Consortium Bond Group
Peter Rubin	Counsel for Resource Capital Fund VII L.P.
Stephanie Voudouris	Counsel for the Monitor

INDEX

LIST OF UNDERTAKINGS, REFUSALS, AND UNDER ADVISEMENTS

Undertakings (U/T) found at pages: 26, 27

Refusals (REF) found at pages: 47

Under Advisements (U/A) found at pages: 27

LIST OF EXHIBITS

Page 5

Arbitration Place Virtual
--- Upon commencing Monday, March 18, 2024 at 9:32 a.m.
AFFIRMED: JEREMY CUSIMANO
CROSS-EXAMINATION BY MR. KOLERS:

1 Q. Good morning, Mr. Cusimano.
A. Good morning.
2 Q. Can you just state your full name for the record, please.
A. Jeremy Cusimano.
3 Q. Thank you. You swore an affidavit on March 1st, in the Tacora insolvency matter. Correct?
A. Yes, I did.
4 Q. All right. And you understand that you are here to be cross-examined on that today. Right?
A. Yes, I do.
5 Q. Okay. Can you just tell me physically where you are located right now?
A. I am physically in my home office in Concord, Massachusetts.
6 Q. Right. And are you alone in the room?

Page 6

A. I am, yes.
7 Q. And do you have any electronic devices around you other than the computer or device you are using to be examined?
A. My phone is sitting on the end of my desk.
8 Q. All right. So you will put that way, and there is no electronic communications during the course of the cross-examination.
A. Correct.
9 Q. Okay. Do you have anything physically in front of you?
Do you have your affidavit with you?
A. Yes, I have a clean copy of my affidavit in front of me.
10 Q. And no other notes or anything like that in front of you?
A. That is correct.
MR. KOLERS: Thank you. All right.
Just to begin, Ms. Rosenthal and Mr. Cusimano, I just want to confirm that, by agreement of counsel, paragraph 59 of your report,

Page 7

which is attached as exhibit A to your affidavit, has been agreed to be removed from the report, and I just want to confirm you understand that.
MS. ROSENTHAL: Sorry, Eliot, I thought that the agreement was that the first sentence was being removed.
MR. KOLERS: Sorry, I thought it was the whole paragraph, so just give me one second. I understood it to be the whole paragraph.
MS. ROSENTHAL: Shall we go off the record for a second?
MR. KOLERS: Yes.
--- (Off-record discussion)
MR. KOLERS:
11 Q. Okay. So, off the record, we have confirmed that the first sentence and first three words of the second sentence of paragraph 59 are coming out of your report, Mr. Cusimano. You understood that to be the case?
A. Yes.
12 Q. All right. And I take it you do not rely on the portion that has been removed for any part of your opinion?
A. That is correct.

Page 8

13 Q. Do you have any other changes or amendments to your report before we start getting into it?
A. No, I don't.
14 Q. Thank you. Can you turn to appendix A, which is your CV.
A. Okay, I am there.
15 Q. Okay. So I understand that you are a managing director in the Boston office of Alvarez & Marsal Disputes and Investigations LLC?
A. Yes, that is correct.
16 Q. And how long have you been at A&M?
A. Almost eight years.
17 Q. All right. And have you been a managing director for the duration of that eight years?
A. Yes.
18 Q. And always in the disputes and investigations business?
A. Functional, yes. We have had a legal entity name change over that period, but the role has been the same.
19 Q. All right. And prior to

Page 9

that eight years at A&M, you were at Grant Thornton?
A. Yes, that is correct.
20 Q. And was that also in Boston?
A. No. I lived in Washington DC area at the time.
21 Q. And for how long were you at Grant Thornton?
A. It was about three-and-half years.
22 Q. Prior to joining Grant Thornton, you were with the CFTC?
A. That is correct.
23 Q. And did you join the CFTC right out of university?
A. No.
24 Q. How long were you at the CFTC?
A. That was also approximately three-and-half years.
25 Q. Okay. When did you get your Bachelor of Science degree from Rochester Institute of Technology?
A. In 2001.

Page 10

26 Q. When did you obtain your Masters of Science from University of Maine?
A. 2003.
27 Q. What did you do between '03 and joining the CFTC?
A. I worked at the U.S. Department of Energy in the Office of Petroleum Reserves.
28 Q. That was in DC?
A. Yes.
29 Q. Okay. Jumping down in appendix A to the portion after your representative experience, you have a heading, "Prior Testimony."
A. Yes.
30 Q. Are those the only three occasions in which you have testified?
A. Yes.
31 Q. I take it the first one there, the Federal Energy Regulatory Commission, I take it -- was that as an expert witness?
A. Yes, it was.
32 Q. All right. When was that? You don't give a date.
A. That would have been in,

Page 11

I think, 2015, 2016. Actually, sorry, I don't recall exactly.
33 Q. Was it while you were at Grant Thornton?
A. I actually think it was while I was at Alvarez & Marsal.
34 Q. Okay. Okay. And then, the other two instances of testimony listed there, those were also as expert witnesses; those were both in July of 2022?
A. Yes, that is correct.
35 Q. Okay. And have you ever prior, before this engagement, either in your capacity at Alvarez & Marsal or at Grant Thornton, have you ever provided services to or for Cargill?
A. No.
36 Q. And I am going back up in your CV in appendix A to a few pages listed of representative experience. Would you agree with me that it largely relates to investigating securities and commodities market irregularities and market manipulation activity?
A. That is a large portion of it, yes.
37 Q. And I take it you would

Page 12

agree that you are not a mining-industry expert?
A. The physical side of mining, I will agree with that.
38 Q. Okay, and none of your representative work that you listed in your CV relates to iron ore mining. Correct?
A. That is correct.
39 Q. Or iron ore pricing?
A. That is correct.
40 Q. Or the sale of iron ore concentrate. Right?
A. That is correct.
41 Q. And I think I have got this, but you have a few mandates listed here relating to gas, petroleum, and electricity markets, but there are none related to mining. Correct?
A. Well, to the extent that you consider the extraction of oil and gas not to be mining, then I would agree.
42 Q. Yeah. I -- it took a long time to answer that. So I don't consider that to be mining.
I think you used the term "physical mining" before, so, if I ask that same

Page 13

question and said you have no experience relating to physical mining in your representative work, you would agree with that?

A. Mining itself, no.

43 Q. Right. And if you can then jump back up to your -- the body of your report, which is exhibit A to your affidavit, at paragraph 3, please.

A. Okay.

44 Q. So, in paragraph 3, you indicate in the second sentence that you performed many investigations involving exchange trade in over-the-counter physical commodities, financial derivatives, and other securities. Do you see that?

A. Yes.

45 Q. I take it that those were investigations relating to securities markets and securities derivatives trading. Is that right?

A. Well, commodities markets, derivatives markets, securities markets, yes, trading, marketing.

46 Q. Of securities?

A. Of commodities, derivatives, and securities.

Page 14

47 Q. Okay. All right. And is that -- that paragraph 3 starts, "While serving at the CFTC," so is that investigatory work you are talking about while you were at the CFTC or is that work you have done since you left the CFTC or both?

A. Both.

48 Q. Okay. And I take it that the investigations that you are identifying in that sentence have not involved serving before the current mandate of reviewing a bespoke sales contract between a physical miner and its offtaker. Is that correct?

A. No, I don't think that is correct.

49 Q. Okay. So can you identify when you have had occasion to do that before, that is review a bespoke sales contract between a miner and its offtaker?

A. So, over the course of the work that I have done both at the CFTC and afterward, there have been commodities that are mined where I have reviewed various contracts or pricing mechanisms for the onward sale or marketing of those products, and those

Page 15

transactions would include market transactions with individuals who were responsible for actually extracting the commodity.

50 Q. That is dealing with the pricing mechanisms?

A. Yes.

51 Q. Okay. But not the, as it were, operational side of the business. Is that fair?

A. Well, operations in a marketing context can mean the shipping and logistics and that aspect of it, and that is certainly part of my experience in terms of evaluating the contracts and the prices associated with commodity trading. In terms of the logistics of extracting ore or some other product from the ground, you know, my work doesn't extend into that space.

52 Q. Right. In answer to my earlier question about whether the investigations you have done involved reviewing bespoke sales contracts between a miner and its offtaker, you had to think for a minute before you answered. Can you give me a sense of how often you have actually looked at such agreements

Page 16

in the course of your career?

A ball park is fine. I am trying to understand if this is something you have done regularly or if this is occasional. I ask because I didn't see anything that would suggest it in your representative work.

A. I would say less than 10 if we are limiting it to those kind of primary from, you know, miner-to-the-market types of sales.

53 Q. Yes. That is less than 10 such contracts?

A. Well, less than 10 instances; some would involve multiple contracts.

54 Q. Sure. And could it be less than five?

A. Probably not.

55 Q. And I am sorry if I already asked you this, but I think, if I did, I just want to confirm; if I didn't, I do want to confirm: You are not an expert in iron ore mining. Right?

A. Mining, no.

56 Q. And I take it, as well, that you are not actually an expert in shipping or

Page 17

sales contracts for iron ore concentrate?
A. Specifically for iron ore concentrate, I am not sure how they would differ from the types of contracts for other physical commodities, but, you know, I guess not for, specifically for, iron ore concentrate if they are different.
57 Q. Thank you. If I could -- sorry, just give me one second. So, in terms of the area, your area of expertise, in coming to this particular mandate, I presume your area of expertise is in securities and derivatives and over-the-counter financial contracts?
A. My area of expertise is in commodity markets, derivatives, securities, trading and regulation.
58 Q. And I presume you are familiar with various ISDA Master Agreements for derivatives?
A. I have looked at many of them, so yes.
59 Q. And you would agree with me that the Cargill Offtake Agreement with Tacora is not an ISDA Master Agreement?
A. That is correct.

Page 18

60 Q. If you could, turn to paragraph 6 of your report, please.
A. Okay.
61 Q. You indicate there that you were engaged to address certain questions with respect to the Offtake Agreement, and you understand when I say -- throughout the examination, when we talk about "the Offtake Agreement," it will be the one you have defined in paragraph 6. Is that all right?
A. Yes.
62 Q. All right. So you indicate that you were engaged to address certain questions with respect to the Offtake Agreement, but you do not specify what those questions you were asked were in that paragraph. Correct?
A. Not in that paragraph; the question was covered in paragraph 13.
63 Q. I was actually going to say -- you say paragraph 13. Well, I was actually going to say that you actually have not set out the questions you were asked anywhere in your report. Is your evidence that you were asked -- that the two questions you are answering in your report are those two listed in paragraph 13?

Page 19

A. Yes.
64 Q. All right. So let me go back up to paragraph 12. You indicate in paragraph 12 that you have taken a different approach from that taken by Ms. Brown-Hruska in her report. Correct?
A. Yes.
65 Q. You say you take a different approach, and then you, I guess, set out your two questions in paragraph 13. But you would agree with me that your report does not attempt to provide an opinion about whether the Offtake Agreement is a derivative or an EFC under the CCAA regs. Correct?
A. That is correct.
66 Q. All right. And nor does it attempt to provide an opinion on whether the Offtake Agreement is a derivative or an EFC. Correct?
A. I am sorry. That question differs from your first one just referencing the regs? I could have misunderstood your question.
67 Q. Sorry, no. The first question was that it doesn't attempt to, and then

Page 20

the second one was that it doesn't. I guess that's a -- it doesn't actuate?
A. Okay, yes, that is correct.
68 Q. It is a very nuanced separation, that it does neither of them; it neither attempts to nor does it actually provide an opinion on that topic. Correct?
A. That is correct.
69 Q. I presume, though, that in the course of your work on this matter at some point you turned your mind to that question, that of whether the Offtake Agreement was or might be a derivative or an EFC, did you not?
A. I am not sure I understand your question.
70 Q. Well, in paragraph 12, you say that Ms. Brown-Hruska gives the opinion that she gives, and you also say and you have confirmed for me that your report takes a different approach and that it does not attempt and did not address the question that Ms. Brown-Hruska did. Correct?
A. That is correct.
71 Q. And my question for you,

Page 21

though, is: In the course of your work on the matter, did you even turn your mind to the question that Ms. Brown-Hruska addresses in her report?

A. I didn't, explicitly didn't, contemplate it for the purposes of this report, you know, largely because those, in this proceeding, those two questions are in my mind legal determinations that aren't something that requires my commentary.

72 Q. Sorry. You decided that the questions -- you were retained to respond to Ms. Brown-Hruska's report, but you considered that the questions she asked in her report didn't require your expertise or commentary?

A. I was retained to answer the questions in paragraph 13.

73 Q. Right. But my question was: So you considered the answers to the questions in paragraph 13 but never considered the question Ms. Brown-Hruska was addressing in her report?

A. The path that I chose to address the questions in paragraph 13 were in part because that is what I was retained to do. And,

Page 22

as I said, offering an opinion on the EFC definition or derivatives definition that is relevant for these proceedings is in my opinion a legal determination that is outside the scope of what I was asked to do.

74 Q. I see. I take it you don't disagree with Ms. Brown-Hruska's conclusions that the Offtake Agreement is not a derivative agreement?

A. When you look at the contract and its amendments in their entirety, it is not what I would consider to be a derivative.

75 Q. All right. In paragraph 14 of your report --

A. Okay.

76 Q. ...you indicate in the last couple of sentences that you have assumed certain facts to be true or certain information and facts to be true and that you have also relied upon information learned in discussions with counsel and Cargill. Do you see that?

A. Yes.

77 Q. I take it, though, you will agree with me that you have not in your report set out a list of the assumptions that you

Page 23

are making?

A. I think, as I say in the paragraph, if I have made assumptions or relied on information, I have indicated it in the report below.

78 Q. Right. That wasn't quite my question. My question is -- you say in paragraph 14 that you have assumed certain things to be true, and my question was: You haven't set out in your report a list of the assumptions that you are making?

In my experience, it is typical as an expert is making assumptions that he will list the assumptions, and you haven't done that. Is that fair?

A. I think I don't entirely agree. I think the -- where I have relied on information or taken something as true, it has been indicated in the report.

79 Q. All right. I am going to suggest to you that the last use of the word "assume" or "assumptions" is paragraph 14, so there are a few instances in your report where you say that you understand something to be the case.

A. Yes.

Page 24

80 Q. But, when you say you understand something to be the case, it is not clear whether that is something that you have assumed to be true or whether that is something that you were told by counsel or by Cargill.

A. That -- where those words appear, you can take those to mean that that is something that I was told by counsel or Cargill and I have assumed it to be true.

81 Q. Okay. So any time you said that you understand something -- and we will see a few of those as we go through this -- we should take it you were advised of it by counsel or by Cargill and that you have assumed it to be true?

A. As a general matter, yes.

82 Q. All right. With respect to the reference to the fact that you relied on information learned from those discussions with counsel and Cargill, the counsel you are referring to, I believe, would be Goodmans, the Goodmans firm in Toronto?

A. Correct.

83 Q. There is no other counsel involved in advising you?

Page 25

A. That is correct.
84 Q. And who at Cargill did you speak to?
A. Alanna Weifenbach and a trader who goes by "CH." I don't remember his full name.
85 Q. Did you physically meet with these people, or were they phone meetings, interviews, Zoom?
A. They were all video conversations.
86 Q. Video conversations, and how many of those did you have with Ms. Weifenbach?
A. I think two.
87 Q. And what about trader "CH"?
A. One.
88 Q. And was trader "CH" a separate meeting from the two meetings with Ms. Weifenbach?
A. Yes.
89 Q. Okay. So, in total, you had three video meetings with Cargill people?
A. I think that is right.

Page 26

90 Q. Was someone from Goodmans present for each of those meetings?
A. The first conversation I had with Alanna was an introductory conversation, and Goodmans was not present for that, but, for the others, yes.
91 Q. Okay. And do you know the dates that these three meetings took place?
A. Not off the top of my head, no.
92 Q. All right. Ms. Rosenthal, could you advise me of the dates, undertake to advise me of the dates of those three meetings?
U/T MS. ROSENTHAL: We will make best efforts to do so, yes.
MR. KOLERS: Thank you.
93 Q. Did you take notes of those meetings?
A. I don't recall. I don't think I did. I am not sure.
94 Q. Okay. Perhaps, Ms. Rosenthal, you could undertake to have Mr. Cusimano check to see if he has any notes from those meetings and to produce them if he does?

Page 27

U/A MS. ROSENTHAL: I will take the production request under advisement.
MR. KOLERS: Okay, but you will undertake to advise whether there are notes?
U/T MS. ROSENTHAL: Correct.
MR. KOLERS: Thank you.
95 Q. And, Mr. Cusimano, were these -- so you had these discussions. You don't recall whether you took notes. I take it, then, you don't recall using notes, for example, to refer to them when you were preparing your report?
Had you already prepared a draft of the report by the time you had these meetings?
A. Um, the -- it was certainly in progress, the report, a draft of the report.
96 Q. So it was more confirmatory of things than exploratory?
A. Certainly the meeting with "CH" and the probably later meeting with Alanna.
97 Q. Had they been provided with a draft of your report-in-progress at the time of the meeting?

Page 28

A. No.
98 Q. In paragraph 17 of your report, you indicate that all materials considered in formulating your opinion are listed in appendix B. Do you see that?
A. Yes.
99 Q. You will agree with me, though, that there is nothing in appendix B about the meetings or the information that you learned from the discussions with counsel or Cargill?
A. That is correct.
100 Q. Okay. Now, in section 3 of your report, which starts at paragraph 21 --
A. Okay.
101 Q. ...you set out what you say is a summary of your opinions. You don't restate the questions that you were asked, but you say that paragraph 22 is responsive to the questions in paragraph 13. That is your evidence?
A. Yes.
102 Q. And then you refer there to the Offtake Agreement, the Stockpile Agreement, and the relevant amendments, and you say that they have characteristics that are similar to swaps and options. That is -- do you see that?

Page 29

A. It is:
"...characteristics that
are functionally similar
to financial products
such as swaps and
options."
103 Q. Thank you. Swaps and options are two types of derivatives?
A. They are.
104 Q. When you give that opinion the way you have written it, I take it that you are considering all of the agreements taken together; that is the offtake, stockpile, and the relevant amendments operating together. Is that fair?
A. Yes.
105 Q. Right. And so I take it you have not considered each on their own, each on its own. Is that right?
A. No, that is not correct. I have looked at each piece separately.
106 Q. But you stated your opinion as them all operating together, even though they didn't always all operate together. Right?

Page 30

A. Yes. I believe throughout I state my opinions in the context of the contract in its entirety, including all of its amendments.
107 Q. And the Stockpile Agreement?
A. Yes.
108 Q. You understand that the -- well, I will come to it. It is okay.
When you say that they, that this is a collection of agreements, have characteristics that are functionally similar to swaps and options, I presume you are referring only to some of the characteristics of those contracts. Is that right?
So, for example, provisions relating to the physical delivery of iron ore concentrate would not be among the characteristics that are functionally similar to swaps and options?
A. Sorry. Could you restate the question you want me to answer?
109 Q. Yes. So, when you say that the collection of agreements, the offtake, stockpile, and relevant amendments, have

Page 31

characteristics that are functionally similar to financial products such as swaps and options, I am asking you to confirm that you are referring only to certain of the characteristics of those contracts.
A. By "those contracts," you are meaning the Offtake Agreement, the Stockpile Agreement, and other amendments?
110 Q. Correct.
A. Yes.
111 Q. Right. So, for example, the provisions of those agreements relating to the physical delivery of iron ore concentrate from the mine to the port would not be among the characteristics that are functionally similar to swaps and options. Right?
A. Sorry. Could you say that again?
112 Q. Yes. The provisions relating -- the provisions of the Offtake Agreement, for example, or the Stockpile Agreement, that relate to the physical delivery of iron ore concentrate from the mine to the port, those are not among the characteristics of those agreements that you have considered as being

Page 32

functionally similar to swaps and options?
A. Well, I consider the pricing aspects of the physical delivery to be part of those provisions.
113 Q. Yes. I wasn't asking about the pricing aspects. I was asking about the provisions relating to the physical delivery.
A. Can you be more specific --
114 Q. Yes.
A. Can you be more specific, other than the pricing, what you are referring to?
115 Q. So, for example, the provisions relating to the transfer of title and the timing of transfer of title of the physical iron ore concentrate, that is dealt with in the Offtake and Stockpile Agreements, but those would not be among the characteristics of those agreements that are functionally similar to swaps and options. Correct?
A. Outside the pricing aspects of that, I suppose not.
116 Q. Right. So, to short circuit this, when you talk about the fact that the Offtake Agreement, the Stockpile Agreement,

Page 33

and the relevant amendments have characteristics that are functionally similar, you are speaking only of the pricing characteristics of those agreements, in your view. Correct?

A. Well, I think they all -- they probably relate in one way or another to pricing or timing.

117 Q. Okay. So, sitting here today, your evidence is that the Offtake Agreement, the Stockpile Agreement, and the amendments are taken together -- sorry. I don't want to take them together. I want to back up for a second.

A. Okay.

118 Q. My suggestion to you, sir, is that what you have done -- and I think it is, it may well just be, the pricing component, but what you have done in your report is you have taken certain characteristics or certain aspects of these agreements and concluded that those certain aspects are functionally similar to financial products such as swaps and options. Right?

A. Not exactly. It doesn't exactly state the way in which I put it. I think

Page 34

the way that I have said it and that I have stated here is that certain characteristics of these agreements in whole or in part have -- they are functionally similar to characteristics of certain financial products such as swaps and options.

119 Q. Right. Where I am struggling here with your evidence is that you are using the term "certain characteristics of those agreements" --

A. Mm-hmm.

120 Q. ...and I am trying to suggest to you that there are aspects to those agreements that go well beyond those certain aspects that you are relying on. Right?

Your opinion may be -- let me stop there. Is that -- would you agree with that: There are aspects of the Offtake Agreement and the Stockpile Agreement that go well beyond the pricing of, of the, the pricing mechanism?

A. Sure.

121 Q. Right, and so -- I mean I am just looking at the Offtake Agreement. I don't want to mark it as an exhibit for confidentiality reasons, but I am looking at it. The contents of the Offtake Agreement include headings such as

Page 35

"Origin," "Packing," "Quantity," "Shipment Size," and "Delivery Tolerance." Those are five of the first seven items after "Definitions," "Conditions," "Precedent."

So my suggestion to you, sir, is that you have taken certain characteristics of these agreements and said that those certain characteristics may have characteristics or functions similar to certain options and swaps, right, but you haven't looked at the agreement as a whole?

You are not saying the whole agreement is like an option or swap; you are just taking certain pieces of it. Correct?

A. I am saying that the -- certain characteristics of the agreement are similar to characteristics of financial products such as swaps and options.

122 Q. Right. I take it you will agree with me that Tacora is not a borrower under the Offtake Agreement?

A. I don't have an opinion as to whether or not any of those terms would qualify them as a borrower.

123 Q. Is that outside your

Page 36

expertise?

A. It is certainly outside the questions that I was asked to look at, so it is not something I have considered in reviewing these contracts.

124 Q. Okay. If you turn to paragraph 29 of your report --

A. Okay.

125 Q. ...so paragraph 29 and paragraph 30 give a high-level overview of the pricing provisions that you have chosen to focus on. Right?

A. The pricing provisions of the contract, yes.

126 Q. And you indicate in paragraph 29 that there is an initial payment and a final payment reconciliation. Correct?

A. Yes.

127 Q. And the initial payment I think is sometimes referred to as a "provisional payment"?

A. That is correct.

128 Q. And I take it that that initial payment is an amount that is functionally an estimate of the final price but subject to a

Page 37

true-up. Is that fair?
A. I don't know that I would characterize it beyond it just being a provisional payment.
129 Q. It is a payment that is made at the time the title is transferred. Correct?
A. Yes, I understand it to be made at that time.
130 Q. Right. And, under the Offtake Agreement, that would be at the time of loading onto the ship, and, under the Stockpile Agreement, it would be the time it delivered to the stockpile. Correct?
A. That is correct.
131 Q. And so that initial payment is made, that provisional payment is made at that time, and then the final price adjustment is made at the time of the final onward sale, after the chemical composition of the ore is finally ascertained. Correct?
A. So the final invoicing is done after the final third-party sale is made.
132 Q. Right. So none of, none of these -- sorry. I shouldn't say "none." But,

Page 38

either under the Offtake Agreement or the Stockpile Agreement, there is no locking in of a price for the ore until the final invoice is rendered. Correct?
A. Well, it is not always the case.
133 Q. You have given an opinion about functional characteristics of this by -- I think, when you say that, you are referring, I take it, to side letters, whether or not certain types of side letters are in force at the time?
A. Right. That is what came the mind, that a side letter that would -- one of the ways in which they could execute a hedging side letter would be to convert the floating price to a fixed price.
134 Q. Right. They could do that, and you gave, I think, one or two examples of times when that was done. But your report is written much more generally, and those side letters are not always in force. Correct?
A. There certainly have been times where the initial transactions would take place under the terms of the Offtake Agreement or Stockpile Agreement, not under the terms of a side

Page 39

letter.
135 Q. Right. And so I will -- I will put it this way: Unless a side letter or unless there is a specific agreement to actually lock in the price, these contracts, Stockpile Agreement, Offtake Agreement, and even most of the side letters, don't actually fix the price at the time of sale. Correct -- I am sorry, until the final invoice is rendered?
A. Yes, both parties, Cargill and Tacora, carry some amount of price risk beyond the initial custody transfer.
136 Q. Right. And that is because, as you say in paragraph 42, the final price is floating?
A. Correct. We can assume that it is. Cargill could execute transactions in different ways under third parties, but, you know, I think we're -- for the purposes of my report and probably our discussion, I am assuming that it is a floating price.
137 Q. Okay. And so, as a floating price, the final price is exposed to the market?
A. Yes.

Page 40

138 Q. And that is for both Cargill and Tacora. Right?
A. Yes, absent a side letter. Yes.
139 Q. Right. And at -- you don't need to turn it up, but at paragraph 33 of her initial report, Ms. Brown-Hruska indicates that derivatives all have fixed prices or prices fixed at the time of contracting. You don't disagree with her on that?
MS. ROSENTHAL: I think, in fairness to the witness, we should put to him the paragraph you are referring to.
MR. KOLERS: I did. I said it was paragraph 33 of her first report.
MS. ROSENTHAL: Okay. I just want to make sure that he can turn it up in front of him if he would like to.
THE WITNESS: I actually don't have it in front me. I would have to open it.
MS. ROSENTHAL: Is it okay if he --
MR. KOLERS: Yeah, fine.
140 Q. If you have it handy there, I am fine with you looking at it if you

Page 41

want to open it up, if it won't take long, or we could potentially screen share it.

A. Yeah, if you have it or it is easier, then go ahead.

141 Q. Yeah, sure. I can just -- I can also just read it to you.

MS. ROSENTHAL: Well, why don't we put it --

MR. KOLERS: All right.

MS. ROSENTHAL: ...in front of him on the screen or let him open it on his computer, either/or.

MR. KOLERS: We will share it. It will just take a minute.

142 Q. Mr. Cusimano, can you see the screen and can you read it?

A. I can.

143 Q. Okay. So we are screen sharing paragraph 33 of Ms. Brown-Hruska's February 2 report, and I direct you to the first sentence of that paragraph that -- and her statement that:

"Derivatives all have prices fixed at the time of contracting."

Page 42

And I said: You don't disagree with her, do you?

A. I am not sure what exactly she was -- had in mind here. I would say that I partially agree, but it might also be too limiting of a statement in thinking about something like a floating-for-floating swap. I would agree that, in valuing derivatives, there are fixed reference points.

144 Q. All right. And, absent a side letter that actually fixes the price in our current situation, there would be no fixed reference points in the Offtake Agreement's pricing. Correct?

A. No, that is not correct.

145 Q. I will come back to that. We can take that down. Can you go back to paragraph 31 of your own report.

A. Okay.

146 Q. You indicate that:

"The Stockpile Agreement shifts the timing for the transfer of title and risk."

That is your second sentence

Page 43

of paragraph 31. Do you see that?

A. Yes.

147 Q. And, in the next sentence, that:

"Under the Offtake Agreement, title and risk passes to Cargill when the iron ore is loaded."

Right?

A. Correct.

148 Q. And do you agree with me that the risk that is transferred at that point is a risk to the ore, that is that Cargill becomes responsible for insuring the ore against loss?

A. It is. It is certainly the physical risk to the ore. Also, there is also economic risk that is transferred at that time.

149 Q. Economic risk in terms of loss but not -- that there is no pricing risk transferred at that time. Right?

A. Well, the kind of additional -- what I mean by that is the additional exposure, economic exposure, that Tacora maintains after that custody transfer, it is not through the formulas. It is not a kind of

Page 44

one-for-one exposure, and so there is still additional economic risk that Cargill takes on that Tacora does not.

150 Q. And that is risk I think -- I think the risk you are referring to there is risk -- we will come to it in a minute, but it is risk that Cargill may then choose to send to its trading desk. Right?

A. They could, some of it anyway.

151 Q. All right. So in paragraph fifty -- well, 32 refers to side letters, and then, if you jump to 54 of your report --

A. Okay.

152 Q. -- you deal with some of the hedging that we have been averting to here. You refer in 55 to the fact that Cargill can offer the opportunity to Tacora to hedge or to enter into a side letter. Right?

A. Yes.

153 Q. And this paragraph 55 is an example of a paragraph you said "I understand" a couple of times, so this is information you were provided, I take it?

Page 45

A. Yes.
154 Q. So, absent a side letter being in place, so you understand that Tacora doesn't -- I think you said this earlier, that it is not that there are times when there are side letters in place and there are times when side letters are not in place. Correct?
A. Correct.
155 Q. And the side letters all have different characteristics and different natures. I think you have referred to that in your report; they are not all the same?
A. Correct.
156 Q. And so, absent a side letter being in place, you would agree that Tacora is exposed to pricing risk while the shipment is in transit because of the floating nature of the price. Right?
A. Absent a side letter, Tacora is constantly exposed to pricing risk, before it is at port and when it is in transit, until it has been, the final invoice is, settled.
157 Q. Right. And the -- you -- paragraph 55 refers to the opportunities that Cargill can provide to Tacora to enter into a side

Page 46

letter to mitigate some of that risk, but you understand that doing so is not a requirement to these agreements. Right?
A. Correct.
158 Q. And, as we have already said, they are not in place for every shipment?
A. That is my understanding.
159 Q. Okay. And I take it it would also be your understanding that, when such side letters are put in place, each one is individually negotiated between Cargill and Tacora?
A. That is my understanding, yes.
160 Q. And you also understand that there is no side letter in place at this time?
A. I believe you are asking me about something that you have requested we not discuss.
MS. ROSENTHAL: Right.
MR. KOLERS:
161 Q. No, I have not. There is no side letter in place at this time. I take it from your answer you are unsure about that, other

Page 47

than the thing that has been removed?
MS. ROSENTHAL: Yeah.
THE WITNESS: I am not sure how you want me to answer this. You have asked for something to be removed that reflects my understanding, and now you are asking me to discuss it.
MR. KOLERS:
162 Q. I am not asking you to discuss it.
REF MS. ROSENTHAL: I am going to object to the question. Based on the agreement we had, I don't think it is a fair question.
MR. KOLERS: Well...
MS. ROSENTHAL: But maybe I have misunderstood. I wasn't part of all the discussions. If you want to go off the record and discuss it, we can.
MR. KOLERS: Let's go off for one second.
--- (Off-record discussion)
MR. KOLERS:
163 Q. Can you turn back to paragraph 33 of your report, please. I am just showing you that for fairness. You refer to

Page 48

Cargill's trading desk also as you have been advised about it, and then paragraphs 61 and 62 of your report address it again.
A. Yes.
164 Q. I presume you have not actually reviewed or analyzed any of Cargill's trades that are managed by that desk, in the course of preparing your report?
A. That is correct.
165 Q. And, sir, am I right that the hedging strategies that you are describing there that Cargill undertakes are between Cargill and counterparties other than Tacora?
A. Yes. But --
166 Q. And that --
A. Sorry. To the extent that there isn't a side letter in place, then there would be executing hedges or risk-management trades elsewhere.
167 Q. And the hedging strategy or risk-management strategy you are speaking about there and the various -- you refer to various derivative instruments -- those do not emanate from the Offtake Agreement or the Stockpile Agreement. Correct?

Page 49

A. Sorry, just to be clear, which paragraph of my report are you currently referencing?

168 Q. Paragraphs 61 and 62.

A. Okay.

169 Q. My question was: The activities you are describing there do not emanate from the Offtake Agreement or the Stockpile Agreement. Right?

A. I would have to -- I would probably say the opposite. So the hedging activities emanate from the Stockpile or Offtake Agreement because those are the underlying risk that ultimately needs to be hedged.

170 Q. Sorry, but you talk about them hedging on a portfolio basis. That would be Cargill's entire portfolio of -- and not specifically related to any particular shipment?

A. So what that means is the risk that emanates from the Stockpile or Offtake Agreement or hedging side letters is taken into Cargill's portfolio and it is possible that other business activities could naturally offset the risk and therefore wouldn't require hedging of the incremental exposure.

Page 50

But, to the extent that there is uncovered incremental exposure, they could choose to hedge that in the market.

171 Q. Right. But that is on the portfolio basis; that is all of Cargill's activities at any particular point in time that is being factored in together, of which the Offtake or Stockpile Agreement may be just one piece. Correct?

A. Well, hence the incremental exposure piece, so the net impact of the -- any particular Cargill under the Offtake Agreement or its amendments is unknown without considering other activity that has been executed at the same time.

172 Q. Right. And that is -- and, and -- fine, that is fine. It is correct that...

So we are talking about the third-party hedging activities that Cargill's trading desk does on its portfolio basis, of which Tacora is not a counterparty. Tacora would derive no benefit from those trades. Correct?

A. In a sense they do, in that the pricing mechanism of these contracts

Page 51

allows the risk to be hedged and, when/if Cargill is willing to change the pricing terms through a side letter, they are taking on risk that needs to be hedged and Tacora is having the benefit of that or --

173 Q. I understand you want to keep referring to the side letters. My question was about the Offtake Agreement or under the Stockpile Agreement and the Offtake Agreement. You keep putting back all the agreements together, and I am talking absent a particular side letter, and we are talking about your paragraph 61 and 62, which are Cargill's own trading desk, under its own -- for its own benefit.

So those hedges, those trades that Cargill does for its own account at its own trading desk, they do not benefit Tacora; they benefit Cargill. Correct?

MS. ROSENTHAL: I just want to clarify the question because you asked a question, Mr. Cusimano answered, you suggested that he had not taken into account the premise of your question, which was that there is no side letter in effect.

I didn't hear that in your

Page 52

first question, so I think, if you are going to re-put the question to him again, if the premise of your question is "no side letter in effect," I think you should make that clear on the record and then have him answer.

MR. KOLERS:

174 Q. Sir, do your opinions in your report depend on the existence of the side letters?

A. No, not entirely.

175 Q. Not entirely, but they are a key component of it?

A. I think I have opinions that are specific to the hedging side letters, but, beyond those, my overall opinions are not dependent on the side letter or side letters.

176 Q. All right. So, absent hedging side letters being in place, that trading activity that you are describing or referring to in paragraphs 61 and 62 of your report provides no benefit to Tacora. Correct?

A. I am sorry. I think that is still too narrow of a characterization.

When you look at this transaction or any similar type of transaction, if

Page 53

Cargill doesn't have the ability to manage risk, the pricing structure is going to be entirely different; they are going to charge Tacora more. So, if they have some ability to manage their risk in the market, that is going to give them the opportunity to offer better pricing.

That basic principle I think we have to assume applies here. I will agree that Tacora is not a party to these transactions and they are not participating in the end profit or loss results specific to those hedging trades.

177 Q. I will take that answer because that is what I was getting at. The other part of your answer, I take it, is some macroeconomic consideration, but that is fine. Can you go back to paragraph 60.

A. Okay.

178 Q. You make -- you indicate that the floating-price profit-or-loss-sharing payment operates similarly to a total return swap. That is in the middle of paragraph 60. Do you see that?

A. Yes.

179 Q. And -- but, just to be clear, the floating-price profit that you are

Page 54

referring to there, or loss sharing, that is what you refer to elsewhere as the profit-share component of the purchase price. Is that right?

A. No. It is the kind of true-up that is done with the final invoice.

180 Q. Yeah, the -- I see. Okay. So when the purchase price is finally confirmed?

A. Well, there is the purchase price calculation, and then from that calculation looking at, comparing, the purchase price to the provisional purchase price and any margin payments that were never made, those three pieces combine to give you your final invoice true-up.

181 Q. Right. So the, the -- it's the purchase price for the ore is -- we talked about this earlier. You have the provisional payment made at the outset and the true-up done when the chemical composition is known and the delivery is made at the end. Correct?

A. I am not following what you are asking me.

182 Q. It is okay. We discussed

Page 55

earlier that a -- that the provisional or initial payment of the purchase price is made at the time of title transfer.

A. Yes.

183 Q. In Newfoundland. Right?

A. In Quebec.

184 Q. Quebec, I am sorry. In Quebec, that is right. The final true-up of that purchase price is done months later, after final sale and the chemical composition is finally established. Right?

A. I agree, yes.

185 Q. Okay. And so your reference to this total return swap here, you are speaking only about the final true-up piece of the calculation?

The event that takes place --

A. No, I think I am referring to the process more broadly, from the point in time of the provisional purchase price and custody transfer on through the final invoicing.

186 Q. I am not following you. When you, in the middle of paragraph 60, where you are -- sorry. The beginning of paragraph 60

Page 56

refers to the profit-sharing arrangement in the Offtake Agreement.

A. Mm-hmm.

187 Q. And then that sentence we were looking at, where you refer to TRS, it refers to the floating-price profit-or-loss-sharing payment.

A. Right.

188 Q. And sorry if I am not understanding what you are saying, but I am asking you if that is a reference to the final true-up payment.

A. Well, if you are asking me about the total return swap, the final payment is not sufficient to make the comparison that I am making. So the total-return-swap comparison is actually the fairly simple one that I am making, in that there is a point in time in which a provisional purchase price is established and there is a custody transfer of the ore at that point in time. From that point onward, Tacora doesn't own the ore, and yet they maintain an economic interest in the ore until such time as it has been sold on to a third party. And there are formulas that determine at that point in time the

Page 57

final invoicing, how the purchase price is established, how the profit-share component of that purchase price is determined.

But, ultimately, the true-up payment at final invoicing, the difference between the final purchase price and provisional price and then margin payments that are made over time, that is the, the kind of settlement payment, if you will, that I am comparing to the settlement of something like a total return swap.

MR. KOLERS: Can we take a 5-minute break? I just want to think about that for a second. Can we take a 5-minute break? I'm almost done. So let's come back at 11:00.

--- Recess taken at 10:53 a.m.

--- Upon resuming at 11:04 a.m.

MR. KOLERS:

189 Q. Mr. Cusimano, when we broke, we were talking about paragraph 60 of your report and the sentence in the middle of that paragraph that refers to a total return swap. Footnote 21 of your report cites the Thomson Reuters Practical Law Ontario Glossary for the definition. Do you see that?

A. Yes.

Page 58

190 Q. That is the definition you relied on in preparing your report?

A. It is an example of my general understanding of what a basic total return swap is that is representative.

191 Q. Okay. So I am going to screen share. My colleague Mr. Reid is going to screen share that definition. Do you recognize this as the one you footnoted?

A. Yes.

192 Q. All right. So I just want to understand something here. Would you agree with me that the way this total return swap works is that a gain by party A results in a loss by party B?

A. So that is kind of the basic premise that is being laid out, in a kind of simplistic way, yes.

193 Q. So the -- you say "simplistic," but it is fair to say that, the total return swap, it is effectively bidirectional exposure. Right?

You wouldn't have both sides gaining, for example, with a price increase. Right?

Page 59

A. Well, swaps can be as complicated as you want them to be.

194 Q. We are using your simple definition, as you said, of a total return swap and not trying to get into synthetic derivatives and other kinds of things. I am just talking about what you yourself have reported on giving an opinion that there is some similarity between the floating-price profit-sharing payment and a TRS.

So let's just say your simple definition or a generic -- you have cited the simple, generic definition -- doesn't really contemplate two winners on the trade. Correct?

A. So, I mean, I can answer that with respect to the transaction between Tacora and Cargill.

195 Q. I don't want to get overcomplicated, myself, here right now. I mean I'm using your definition.

MS. ROSENTHAL: Well, Eliot, in fairness, let him give his answer.

MR. KOLERS: Well, no. I want him to answer my question, which is about the definition he is citing. I am trying to understand the basic premise about the derivative

Page 60

that he has referred to here, the total return swap.

196 Q. It would not be normal or typical under a total return swap that both sides gain on an increase in the market price. Right?

A. I wouldn't agree with your characterization of "normal" or "typical." This doesn't contemplate kind of, you know, risk-based returns; it doesn't contemplate the cost of entering into a transaction or having somebody write the swap for you.

This is providing a very plain, vanilla example of the structure of a total return swap where one side is gaining exposure to an underlying asset or index.

197 Q. Sorry. When you are saying "this," do you mean the definition --

A. Yes.

198 Q. ...the definition that we are referring to here?

A. Yes.

199 Q. That you cite in your report?

A. Yes.

MR. KOLERS: All right. Okay.

Page 61

Can we mark this as an exhibit, this definition, just so it is handy? I guess it would be Exhibit 1. Exhibit 1 would be the Practical Law Glossary definition of "total return swap" cited by Mr. Cusimano at footnote 21 of his report.

EXHIBIT NO. 1:
Practical Law Glossary definition of "total return swap" cited by Mr. Cusimano at footnote 21 of his report.

MR. KOLERS:

200 Q. I just have a small handful of questions left, sir. If we go back to paragraph 25 of your report -- sorry. Can you hear me okay? All right.

A. Okay, I am there.

201 Q. Okay. You refer to the Offtake Agreement as the primary contract in the matter and that Cargill is the buyer and Tacora is the seller. Right?

A. Yes.

202 Q. And you understand that, under the Offtake Agreement, Cargill is purchasing 100 per cent of the iron ore concentrate produced

Page 62

at the Scully Mine by Tacora?

A. Yes.

203 Q. And in that, so the Offtake Agreement I mean, I take it you would characterize it as a contract of purchase and sale, buyer and seller agreement?

A. Yes.

204 Q. And you would agree with me, I take it, that the Offtake Agreement is not traded on any futures or options exchanges or any other regulated markets?

A. This specific agreement?

205 Q. Yes.

A. It is my understanding that this specific agreement is not traded on any exchange.

206 Q. All right. Thank you. Those are my questions. I am not sure if anybody else has questions for you.

MR. TOLANI: No additional questions here.

MS. ROSENTHAL: Can I just have two minutes to confer with my colleagues to see if I have any re-exam?

MR. KOLERS: Sure.

Page 63

MS. ROSENTHAL: Let's just go off the record for two minutes.

--- Recess taken at 11:11 a.m.

--- Upon resuming at 11:12 a.m.

MS. ROSENTHAL: I do have one question in re-exam.

RE-EXAMINATION BY MS. ROSENTHAL:

207 Q. Mr. Cusimano, you will recall that just a few minutes ago Mr. Kolers put before you the -- he put up on the screen the excerpt from Thomson Reuters Practical Law that was the definition of "total return swap." Do you recall that?

A. Yes.

208 Q. And he asked you -- he put to you this proposition. He said: "Your simple generic definition doesn't contemplate two winners on the trade, does it?"

And you said: "I can answer that with respect to Tacora and Cargill."

But then you weren't permitted to give your answer, so I would ask you to give that answer now, please.

A. Okay. So what I meant by that -- and maybe take this in two pieces.

Page 64

So, from Tacora's perspective, the analogy to the total return swap is relatively straightforward, even despite the complexities of the formulas that determine final prices and invoicing. So Tacora transfers custody of iron ore at a provisional purchase price but maintains some economic interest in the value of that iron ore until the final sale and invoicing is done. So that could result in a payment in either direction, so where they are receiving some payment and participation in upside if there was upside or, if prices fell, they could also be responsible for making a payment to Cargill, essentially returning some of the payment that they initially received.

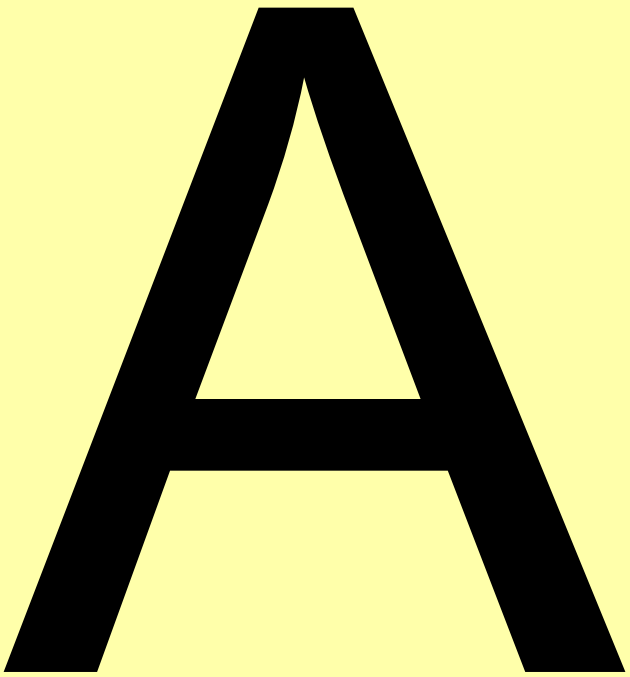
From Cargill's perspective -- I think this is where the confusion enters, where the payments are a little different for the formulas. And so, if prices go up, you could have a situation where Tacora is receiving a chunk of the additional profit and Cargill is receiving a chunk of additional profit. And so the point that I was making is that scenario departs from the plain, vanilla description of how, you know, a total return swap could be structured, but I think

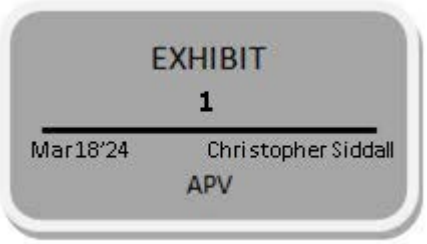
it also is reflective of the risk that Cargill is taking, the fact that they are essentially entering into a contract that provides this facility to Tacora. So, if they were actually separately executing a swap, Cargill wouldn't do that for free. They would expect to be compensated through the pricing mechanism or an actual fee, as they are in the hedging side letters.

So that is really the point with respect to the Cargill portion of it, that it is a little different. I think that is reflective of the kind of risk structure of the transaction and the service that they are providing back to Tacora.

MS. ROSENTHAL: Thank you. Those are my questions. I think we are done.

--- Whereupon the proceeding concluded at 11:16 a.m.


A



Glossary

Total return swap (TRS)

Glossary | **Maintained** | United Kingdom

Also called a total rate of return swap, it is a derivative contract that replicates the cash flows of an investment in an asset (usually a debt or equity security, basket of securities, index or other financial instrument). In addition, a TRS also requires the parties to make payments to each other based on the performance of the underlying asset. Accordingly, one party, Party A, receives payment from the other, Party B, based on the appreciation in value of the asset(s) over a certain specified period (often monthly) or makes payments to Party B based on a decline in value of the asset during the specified period.

A TRS permits Party A to simulate investment in the underlying asset(s) without incurring the burden of ownership of the asset(s), including any adverse balance-sheet implications. The TRS simultaneously permits Party B to protect itself against a decline in value of the underlying asset(s).

The absence of a transfer of ownership in the underlying asset(s) allows greater flexibility and requires reduced up-front capital to execute a trade. This also means a party to a total return swap can be more highly leveraged.

TRS documents are usually based on International Swap and Derivatives Association (ISDA) standard documents.

For more on TRS, see *Practice note, Equity derivatives: overview (UK): Total return swaps*. For more on documenting swaps using ISDA documentation, see *Practice note, ISDA documents: overview (UK)*.

END OF DOCUMENT

7

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.

AFFIDAVIT OF WILLIAM GULA

(sworn March 1, 2024)

I, William Gula, of the City of Toronto, in the Province of Ontario, make oath and say:

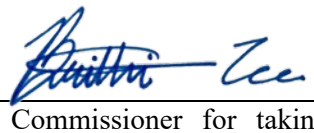
1. I am a senior advisor at Morrison Park Advisors. I have been retained by Goodmans LLP on behalf of their clients, Cargill, Incorporated and Cargill International Trading Pte Ltd. to provide an expert opinion regarding the Iron Ore Sale and Purchase Contract between Tacora Resources Inc. and Cargill International Trading Pte Ltd. dated April 5, 2017, as restated on November 9, 2018 and as amended from time to time, and other related agreements. As such, I have knowledge of the matters hereinafter deposed to.

2. Attached as **Exhibit "A"** to this affidavit is a copy of the Expert Report of William Gula dated March 1, 2024 (the "**Gula Report**").

3. My qualifications are detailed in Part I of the Gula Report, and my curriculum vitae is included as Appendix A to the Gula Report.

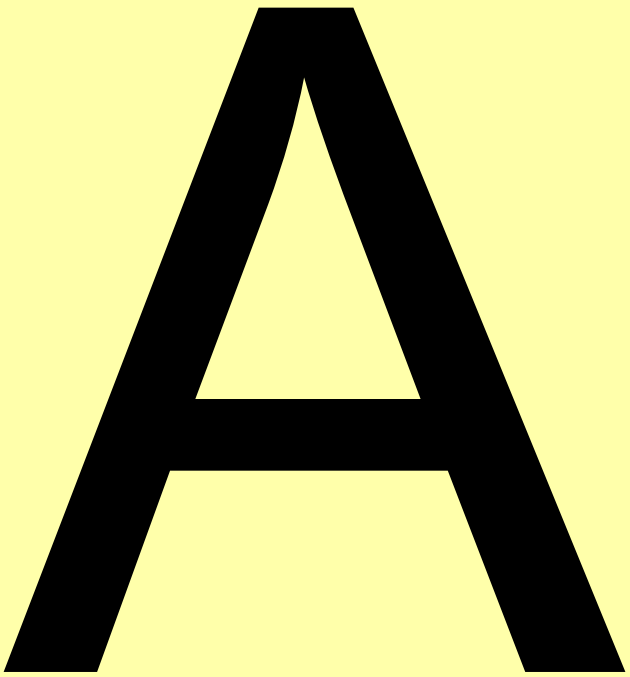
4. I have completed the Gula Report in compliance with my duties as an expert to the Ontario Superior Court of Justice. An executed copy of my Form 53 - Acknowledgement of Expert's Duty in this matter dated March 1, 2024 is included as Appendix B to the Gula Report.

SWORN remotely by William Gula stated as being located in the City of Naples, in the State of Florida, before me at the City of Toronto, in the Province of Ontario, on March 1, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

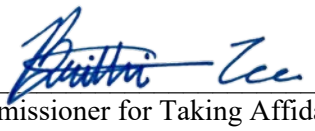


A Commissioner for taking affidavits
Name: Brittni Tee
LSO # 85001P

WILLIAM GULA


A

THIS IS EXHIBIT "A" REFERRED TO IN THE AFFIDAVIT OF WILLIAM GULA SWORN BEFORE ME THIS 1st DAY OF MARCH, 2024



Commissioner for Taking Affidavits

Brittni Tee
LSO # 85001P

EXPERT OPINION OF WILLIAM GULA

PART I - QUALIFICATIONS

1. I am a Senior Advisor at MPA Morrison Park Advisors Inc. ("MPA"). MPA is an independent investment bank providing financial and strategic advisory services for clients requiring specialized investment banking expertise. I am also a lawyer, but I no longer practise law.

2. I have over 45 years of experience in senior investment banking and law in the M&A, corporate finance and corporate governance contexts.

3. From 1979 until 1997, and then again from 2004 until 2011, I practised law at Davies Ward Phillips & Vineberg LLP (formerly Davies Ward & Beck), one of Canada's leading law firms, specializing in M&A, securities and corporate finance and corporate governance.

4. On the investment banking side, I was Head of the M&A Group at Bank of Nova Scotia from 1997-2004 and have been a Senior Advisor (formerly Managing Director) at MPA since 2011.

5. From February 2011 until November 2020, I was on the Board of Directors and a member of the Audit and Corporate Governance and Compensation Committees of Orbit Garant Drilling Inc., a TSX-listed mining services company. From 2018 until 2020, I was the Chair of the Corporate Governance and Compensation Committee of that company.

6. I hold an ICD.D designation from the Institute of Corporate Directors.

7. I have advised clients on transactions with a cumulative total value of well over $135 billion, including some of the largest and most complex Canadian transactions, from both financial and legal perspectives. My focus has been on advising boards, special committees, companies, and shareholders on transformational transactions, including mergers, take-over defence and sale, hostile and friendly acquisitions, related party transactions and restructurings, leveraged buy-outs, proxy contests, corporate finance and shareholder activism.

8. I have advised numerous mining companies, including base metals mining companies and iron ore mining companies, on mergers and acquisitions and financing transactions, both as a lawyer and as an investment banker.

9. I also have experience providing expert testimony and/or expert reports to courts, regulatory bodies and arbitration panels in connection with M&A and corporate governance matters.

10. A copy of my curriculum vitae that outlines in greater detail my training, background and work experience is attached as Appendix A.

PART II - MANDATE

11. This Expert Opinion Report (the "Report") has been prepared for Goodmans LLP on behalf of their clients, Cargill, Incorporated and Cargill International Trading Pte Ltd. (collectively, "Cargill") in connection with certain proceedings (the "Proceedings") under the CCAA involving Tacora, in particular Court File No. 23-00707394-00CL.

12. The questions that I have been asked to address are as follows:

    (a) Please discuss the challenges faced by junior base metals mining companies in raising capital;

(b) Please discuss offtake agreements generally and, in particular, their use in the context of a junior base metals mining company, such as an iron ore mining company; and

(c) Please comment on the Tacora Offtake Arrangements.

13. My acknowledgment of an expert's duty in Form 53 under the *Rules of Civil Procedure*, is attached as Appendix B. In giving my expert opinion in the Proceedings, I am aware that it is my duty to assist the court by providing evidence that is fair, objective and non-partisan, to provide opinion evidence that is related only to matters within my areas of expertise, and to provide such additional assistance as the court may reasonably require to determine a matter in issue.

14. The materials and facts I have relied on in reaching my opinion are set out in this Report. A list of the materials that I have relied on and reviewed in giving this Report is attached as Appendix C. I have also been instructed by counsel to assume the facts set out in the background section and elsewhere which are not ascertainable from the terms of the agreements and documents themselves.

15. In addition, and under my direction, my colleagues, Stephen Altmann, Julian Storz and Dalton Austin, whose *curricula vitae* are attached as Appendices D, E and F, respectively, performed research, analyses and other support work for me on this matter. I have reviewed and adopt their work; however the opinions are my own.

16. The opinions in this Report are based on my understanding of the relevant facts. I reserve the right, but will not be under any obligation, to revise my opinions and the content of this Report to address information that becomes known to me after the date of this Report.

17. This Report has been prepared for use in the Proceedings. It is not to be used for any other purpose, and I specifically disclaim any responsibility for losses or damages incurred through use of the Report for any other purpose. It should not be reproduced in whole or in part without my express written permission, other than as required by Counsel in connection with the Proceedings.

18. While a number of the views expressed herein are based in whole or in part on my experience as a practicing lawyer, I express no legal opinion as to any of the matters referred to in this Report.

19. All amounts herein are expressed in U.S. dollars unless otherwise stated.

PART III — CERTAIN BACKGROUND FACTS

20. A summary of certain of the relevant background facts on which I rely in giving this Report is set out in this section below. These background facts are derived from my review of the materials referred to in Appendix C and facts I have been instructed by counsel to assume.

Background

21. Tacora purchased the Scully Mine as part of a CCAA process in 2017, pursuant to an asset purchase agreement signed in early June 2017. At the time of the asset purchase, the mine was on care and maintenance and, therefore, was not producing iron ore. The Tacora Offtake Agreement (as defined and described in more detail below) was entered into before Tacora actually completed the asset purchase, but after it had submitted its binding offer as part of the CCAA process.

22. In between June 2017 and November 2019, Tacora took steps to get the mine back into production. In order to restart mining operations at the Scully Mine, in 2018 Tacora raised approximately US$100 million of equity and US$100 million of project debt. The original Tacora Offtake Agreement (as defined below) was in place before this financing was raised. The November 11, 2018 amendment to the Tacora Offtake Agreement was negotiated in conjunction with the equity

raise and in consideration for Cargill investing approximately US$20 million of equity capital in Tacora.

23. The mine began producing in November/December 2019.

24. In May 2021 and February 2022, Tacora refinanced its existing long term debt borrowings.

25. The Scully Mine is an iron ore mine in Labrador. The iron ore mined from the Scully Mine is taken by train to the port of Sept-Iles, Quebec, after which it is shipped to markets, including China. Cargill pays Tacora for the iron ore at the port under the Tacora Stockpile Agreement, as defined and discussed in more detail below, where title transfers to Cargill.

The Tacora Offtake Arrangements

26. There is an offtake agreement between Tacora, as seller, and Cargill, as buyer, of 100% of the iron ore concentrate production at the Scully Mine, dated April 5, 2017 and restated on November 11, 2018, and as further amended from time to time (the "Tacora Offtake Agreement"). The Tacora Offtake Agreement was amended in 2020 to last for the life of the Scully Mine.

27. The Tacora Offtake Agreement provides for a margining facility, which threshold was originally set at US$5 million for each of Tacora and Cargill. The threshold for Tacora has subsequently been increased, while the threshold for Cargill has remained at US$5 million. There are various payments made among Tacora and Cargill which stretch out over many months in respect of each specific iron ore shipment, since there is a gap of many months between when Cargill makes a first payment for the iron ore, and when there is a final reconciliation after the iron ore has been sold to a third party. The margining facility under the Tacora Offtake Agreement provides for periodic marking-to-market during this interim period and provides that if Tacora owes amounts to Cargill during this period, Tacora does not need to make immediate payment to Cargill, so long as the amount owed by Tacora does not exceed the margining threshold.

28. There is a stockpile agreement dated December 17, 2019, as amended from time to time, between Cargill and Tacora, which works in conjunction with the Tacora Offtake Agreement (as further amended from time to time, the "Tacora Stockpile Agreement"). It provides for payment of a provisional purchase price by Cargill to Tacora when iron ore concentrate is unloaded to a stockpile at the port, as opposed to later after a vessel is loaded in port as it would be under the Tacora Offtake Agreement. The Tacora Stockpile Agreement works in conjunction with, and is part of, the Tacora Offtake Agreement.

29. There is an advanced payments facility agreement, initially dated January 3, 2023, as amended and restated on May 29, 2023 and further amended on June 23, 2023 (the "APF"), pursuant to which Cargill initially made advanced payments to Tacora against future deliveries under the Offtake Agreement of US$30 million (US$15 million of which funded the cost to Cargill of option premiums for price floor hedges that Tacora entered, and US$15 million in cash). As part of the amendment and restatement of the APF on May 29, 2023, Cargill agreed to provide a US$25 million margining facility (to increase the amount of the margining facility under the Tacora Offtake Agreement), to fund Tacora's margin amounts under the Tacora Offtake Agreement by way of deemed advances instead of cash payments.

30. The iron ore mined from the Scully Mine is taken by train to the port of Sept-Iles, Quebec. Cargill pays Tacora for the iron ore at the port under the Tacora Stockpile Agreement, as set out in stockpile provisional invoices that are delivered by Tacora to Cargill.

31. Once the iron ore is loaded onto a ship at the port, Tacora then issues a vessel adjustment invoice to Cargill for the iron ore actually on the vessel. This can result in either an amount owing to Tacora or a credit to Cargill, depending on if the amount Cargill already paid for that iron ore pursuant to

the stockpile provisional invoices, and any subsequent margin payments, was more or less than the amount on the vessel adjustment invoice.

32. Either before or contemporaneous to when a ship is loaded with iron ore at the port, Cargill will typically approach a Tacora representative about whether Tacora wishes to hedge the price for iron ore that is subject to the Tacora Offtake Agreement and the Tacora Stockpile Agreement. The hedges are used to manage the risk of iron ore price fluctuations. If Tacora agrees to such a hedge, then Cargill and Tacora execute a written amendment to the Tacora Offtake Agreement, to document the hedge and amend the pricing formula in the Tacora Offtake Agreement.

33. After the iron ore reaches its final destination, a final invoice is issued by Tacora to Cargill. This final invoice will take into account the amount payable to Tacora pursuant to the Tacora Offtake Agreement as amended by any hedging arrangements incorporated as part of the Offtake Agreement, provisional payments already paid to Tacora under the Tacora Stockpile Agreement, and margining advances paid to/received from Tacora pursuant to the Tacora Offtake Agreement and APF. This can result in either an amount owing to Tacora or a credit to Cargill under the final invoice.

34. As noted above, there is a time gap between when there is a first payment by Cargill to Tacora further to a stockpile provisional invoice and any payment owing under the final invoice. The pricing under the Tacora Offtake Agreement and the related agreements described above is dependent on the price of iron ore, which fluctuates through time. These price fluctuations can lead to large swings in the amounts that may be owed by Cargill to Tacora (or vice versa) for any particular shipment of iron ore between each of the invoicing and payment dates noted above (for example, between the time iron ore arrives at the port and is loaded on the vessel, or between the time it is loaded on the vessel and arrives at its destination).

35. To address this volatility, twice weekly Cargill calculates the net amounts outstanding for all Tacora iron ore shipments under the relevant agreements including the Tacora Offtake Agreement. If the amount owing to or from Tacora exceeds the thresholds in the margining facilities described above, including under the Tacora Offtake Agreement, then a payment needs to be made. If Tacora owes an amount to Cargill that is below the threshold in the margining facilities, then Tacora does not need to make any payment at that time.

36. The Tacora Offtake Agreement, as amended, the Tacora Stockpile Agreement, as amended, and the APF are collectively referred to as the “Tacora Offtake Arrangements”.

37. The provisional purchase price paid by Cargill to Tacora is largely based on the “Platt 62 Index”, which is an industry price index for iron ore concentrate of a 62% purity. Then there is a “premium” added onto that base, to account for the fact that Tacora’s iron ore concentrate can have a purity of higher than 62%. That “premium” is then shared between Tacora and Cargill. There is then a further reckoning between the parties, when the iron ore is actually sold to the end user (usually several months after the arrival of the ore at the port).

38. The actual purchase price is a formula which takes into account fluctuations in the Platts 62% index, freight costs, and the profit share owing to Cargill for premium iron ore.

39. At the time of sale to the end user, there is a “true-ing up”, whereby there is either a further payment by Cargill to Tacora (for example, if the iron ore index prices have risen since the time of the provisional purchase price payment), or a repayment by Tacora to Cargill (for example, if the iron ore index prices have fallen).

40. Other than the revenue and financing provided to Tacora through these agreements, there are no other sources of day-to-day revenue or financing available to Tacora in respect of working capital.

41. Accordingly, Tacora has no other source of working capital or liquidity for its operations, outside of the Tacora Offtake Arrangements.

PART IV – OPINIONS

A. Challenges Faced by Junior Base Metals Mining Companies in Raising Capital

42. Generally speaking, base metals mining, including iron ore mining, is a highly capital-intensive business. This is especially the case as regards the development and construction of a mine and related facilities. At the same time, junior base metals miners that do not have producing assets face significant challenges in raising capital to advance their mining projects.

43. One of the significant challenges is that the bulk of the funding is required upfront, that is before ore production from the mine can take place to produce cash flow for the operation.

44. This upfront capital is required to develop the mine and then construct the mine infrastructure and related facilities necessary for the mine to go into production.

45. Typically, once in production, base metals mines have a long mine life, which in effect amortizes the upfront costs of the development and construction of the mine and related facilities.

46. Generally, a junior base metals mining company will seek equity, debt and/or alternative financing to fund these significant upfront capital costs.

47. Due to the long mine life of the typical base metals mine, these capital funding arrangements tend to be long term.

48. However, because of the significant risks associated with base metals mining generally and in the initial development and construction of the mine and related facilities, as well as the lack of any cash flow until the mine is in production, junior base metals mining companies have limited access to traditional sources of funding such as equity and debt financing, especially given the relatively large amount of financing typically required.

49. Furthermore, accessing the equity capital markets has been difficult for junior base metals mining companies in recent years due to lower returns, higher risks, more stringent ESG requirements and increased political and jurisdictional uncertainty for equity investors. In general, this has led to an outflow of capital and less capital being available for mining companies through equity capital raises.

50. There has also been some constriction in the availability of debt financing for mine construction projects. Several global commercial banks and export credit agencies focused on project debt financing have stopped providing funding for junior base metals mining companies. Consequently, the financing of projects using solely traditional project debt finance from these sources is becoming less common. This has been partially offset by natural resource focused private debt funds entering the debt capital markets. However, these private debt funds typically have higher investment return requirements for their capital than conventional banks and export credit agencies focused on project debt financing, making such financing more expensive for the mining companies.

51. As a result, the market has developed a number of alternative sources of financing for junior base metals mining companies to overcome these barriers.

52. These alternative sources of financing include streaming and royalty agreements (generally associated with precious metals producers, but sometimes used in base metals mining), offtake agreements and other arrangements which generally provide for the forward sale of the expected

production from a mine. A more detailed discussion of the operation of offtake agreements and their function in providing financing is set out below.

53. These alternative sources may in some cases be the sole source of financing for a particular project or company. In other cases, these alternative sources of financing also enable the mining company to access additional and more traditional sources of capital which, together with the alternative sources of financing, form the overall financing "package" available to the mining company.

B. Offtake Agreements generally and their use in the context of a junior base metals mining company, such as an iron ore mining company

Offtake Agreements Generally

54. In the context of a base metals mining company, an offtake agreement ("Offtake Agreement") is a contract between the mining company (the "Producer" or "Seller") and another party (the "Offtaker" or "Buyer") who takes delivery of all or a defined portion of the base metals production of the Producer over a period of time.

55. Generally speaking, Offtake Agreements obligate the Producer to sell to the Offtaker, and the Offtaker to purchase from the Producer, all or specified portions of the Producer's production of metals either at specified prices or at prices determined by formula, often with reference to an industry-recognized market benchmark price or index.

56. Offtake Agreements for iron ore mines can vary in terms of pricing as negotiated between the parties. Given the long mine life of the typical iron ore mine, an Offtake Agreement for an iron ore mining company also typically lasts many years. Such long-term Offtake Agreements will typically include pricing formulas tied to market benchmarks or indices.

57. In the case of iron ore, the pricing mechanism in Offtake Agreements can be influenced by various factors such as market conditions, quality of the ore, transportation costs, and the negotiation leverage of the parties.

58. Offtake Agreements are typically entered into before the construction of the mine and related facilities to secure a revenue stream for the future production of the mine. Offtake Agreements typically only become effective once the mine is producing. They are entered into at a time when there are no assurances of future production and when future metals prices and demand are unknown.

59. Offtakers for iron ore mines can include end users of the mine production (such as steel producers) or trading companies that act as "middlemen" between the Producer and the end user. The latter type of Offtakers include major commodities trading companies with high creditworthiness that have significant expertise in the distribution and sale of the iron ore.

60. Major Offtakers include such companies as Cargill, Trafigura, Glencore, IXM, Thyssenkrupp Materials Trading and Boliden. Some of these Offtakers are also end users or have affiliates who are end users of base metals, including iron ore.

Advantages of Offtake Agreements in the Context of Iron Ore Mining Companies

61. Offtake Agreements may themselves provide financing and may also be a pre-condition for the obtaining of additional financing or be packaged with other financing. The position of the Offtaker as a party providing financing is reinforced by the fact that Offtakers often provide additional and related forms of financing as well.

62. Like many other forms of financing, Offtake Agreements can provide the Producer with guarantees of the advance of funds well in the future. Offtake Agreements provide a Producer with a steady and more assured source of funds, which may be used by the Producer to fund its day-to-day operations. Such funds may replace the need for other sources of financing, such as working capital loans.

63. In addition to providing assured revenue for the Producer's production, Offtake Agreements generally serve to eliminate credit risks associated with the payment for the Producer's production, since the Offtaker is typically a highly credit worthy party. In this sense, the Offtaker acts as a "factor" for the Producer's goods.

64. A further significant advantage to the Producer of an Offtake Agreement is that it often provides the Producer with payment on a timelier basis than would otherwise be the case if the Producer had to sell its production to an end user.

65. This is because base metals like iron typically have a very complex and lengthy supply chain involving bulk transport, refining and other factors. The supply chain has multiple steps, each with its associated costs and risks. Once at port, handling fees are imposed based on the physical properties of the material and ocean and freight charges are added based on the specified destination port, moisture content of the material, insurance and other matters. If the ore requires smelting and refining, then treatment charges and refining costs are tacked on.

66. An Offtake Agreement that provides for upfront payment for production at the port local to the mine (usually at the rail head) offers significant advantages to the Producer in that payment is received months in advance of delivery of the production to the end user, and the various risks associated with transport and delivery are avoided or mitigated.

67. Such upfront payments provide an additional source of financing to the Producer and significant cash flow advantages.

68. Further, such upfront payments can transfer some or all of the risk of fluctuations in the market price of the iron ore, during the period from delivery of the iron ore to the local port and delivery of the iron ore to the end user, from the Producer to the Offtaker. This period can last several months and the Offtaker is typically far better positioned to manage this risk than is the Producer.

C. The Tacora Offtake Arrangements

69. I have reviewed a summary of the Tacora Offtake Arrangements included in Exhibit C.

70. Based on my experience as an investment banker and lawyer, the Tacora Offtake Arrangements are typical of Offtake Agreements generally but provided some additional advantages to Tacora.

71. In my view, the Tacora Offtake Arrangements provided or made available various types of financing to Tacora that provided it with working capital, liquidity and cash flow, as further detailed below:

    (a) Since Tacora does not have any working capital loan arrangements, it has been utilizing the cash flow provided by Cargill through the Tacora Offtake Arrangements to fund its operations on day-to-day basis. While not a traditional financing arrangement like a bank loan, the Tacora Offtake Arrangements serve the same purpose in Tacora's operations;

    (b) Further, The Tacora Offtake Arrangements provide for payment to Tacora by Cargill of a "provisional purchase price" upon unloading of iron ore concentrate to a stockpile at the local port. As discussed above, this provides cash flow to Tacora months in advance of what would otherwise be the case if payment was to be made upon delivery of the iron ore to the end

user. This both provides enhanced liquidity to Tacora and eliminates or reduces risks associated with the shipment of iron ore to the end user;

(c) The margining facility in the Tacora Offtake Agreement can provide financing to Tacora;

(d) The APF provides liquidity to Tacora; and

(e) The hedging arrangements entered into between Tacora and Cargill provide Tacora price stability and revenue predictability.

72. In my opinion, the Tacora Offtake Agreement and the Tacora Stockpile Agreement provided Tacora with financing for its operations.

Dated: March 1, 2024

_____

William Gula

APPENDIX A

William Gula

Senior Advisor, Morrison Park Advisors
9 Temperance Street | Suite 300 |Toronto | Ontario M5H 1Y6
Bus: 416-861-2243; Cell: 647-963-0976
bgula@morrisonpark.com

OVERVIEW

- Investment banker and lawyer, with over 45 years of experience in senior investment banking and legal roles
- One of few senior professionals combining both legal and financial M&A and other critical situation experience and advice
- Currently, Senior Advisor (formerly Managing Director) at Morrison Park Advisors, an independent, partner owned investment banking advisory firm
- Practiced law for over 25 years (including 23 years as partner) at one of Canada's leading law firms, specializing in mergers and acquisitions, corporate finance/securities and corporate governance
- Headed Mergers & Acquisitions Group at major Canadian investment bank for 7 years; built and managed significant revenue generating division with staff of 35
- Have advised clients on well over $135 billion of M&A transactions, including some of the most complex and ground-breaking transactions in Canada, from both financial and legal perspectives
- Significant focus on advising boards, special committees, companies and shareholders on transformational transactions, including mergers, take-over defence and sale, hostile and friendly acquisitions, related party transactions and restructurings, leveraged buy-outs, proxy contests and shareholder activism
- Also have significant experience providing expert testimony and/or expert reports to courts, regulatory bodies and arbitration panels in connection with M&A and other financial matters
- Trusted financial and legal advisor to numerous CEOs, boards and board committees and shareholders in both transactional and day-to-day contexts
- Strategic thinker, able to provide unbiased, independent advice focused on problem solving
- Strong business instincts with the ability to read situations as well as develop and retain valued relationships

BOARD EXPERIENCE

Member of Board of Directors of Orbit Garant Drilling Inc., a TSX listed company, from 2011-2020. Also Chair of Corporate Governance and Compensation Committee (2018-2020) and member of Audit Committee.

Advisor to numerous Boards and Special Committees including in respect of transactions included in the list of Selected Transactions below.

Holder of ICD.D designation.

Scotia Capital Markets - Board and Executive Committee - Board 1997-2004, Executive Committee 1997-2000.

MANAGEMENT EXPERIENCE

Managed the M&A Group at Scotia Capital Markets from 1997 - 2004. Responsible for Group profit and loss, reporting to the Head of Investment Banking and subsequently to Head of Canadian Capital Structuring. Member of senior management team of Scotia Capital Markets. Also built the M&A Group from a professional staff of 2 to 25, together with 10 support staff.

PROFESSIONAL EXPERIENCE

Morrison Park Advisors, Senior Advisor	July 2015 -
Morrison Park Advisors, Managing Director	2011 – June 2015
Hansell LLP, Partner	June 2015 – December 2016
Davies Ward Phillips & Vineberg LLP, Partner	2005 - 2011
Scotia Capital Markets Inc., Managing Director and Head of Mergers & Acquisitions	1997 - 2004
Davies Ward & Beck, Partner	1981 - 1997
Davies Ward & Beck, Associate	1979 - 1980

EDUCATION

L.L.B., University of Toronto	1977
B. Sc. (Honours), University of Toronto	1974
Called to Ontario Bar	1979

INTERESTS

Avid golfer and amateur musician

COMMUNITY INVOLVEMENT

Former Trustee of the Baystock Foundation, which organized and ran an annual "battle of the bands" to raise funds for children's charities.

Member of Donalda Club, former Men's Golf Captain and involved in various golf committees.

SELECTED ACCOMPLISHMENTS

Lead advisor (either as legal or financial advisor) on well over $135 billion of M&A transactions (selected transaction list is attached).

Have been recognized in various guides and directories as a leading M&A and/or corporate lawyer in Canada, including: Expert Guides' *Guide to the World's Leading Mergers and Acquisitions Lawyers*; Lexpert®/American Lawyer *Guide to the Leading 500 Lawyers in Canada*; the *Canadian Legal Lexpert® Directory*; Lexpert® *Guide to the Leading US/Canada Cross-Border Corporate Lawyers in Canada* in M&A; Chambers Global's *The World's Leading Lawyers for Business* and *Leaders in their Field*; *The Best Lawyers in Canada* ; IFLR 1000 *Guide to the World's Leading Financial Law Firms*.

Have been lecturer at law schools, and various educational conferences. Former editor of *Canadian Securities Law Precedents* and *Canadian Corporation Precedents*. Served as an assistant to the authors of the Report to the Ontario Securities Commission of the Committee to Review the Provisions of the Securities Act (Ontario) relating to Take-Over Bids and Issuer Bids from 1982 to 1983.

SELECTED TRANSACTION EXPERIENCE

I have been involved, generally as lead or co-lead advisor (either as legal or financial advisor), to the following, among many others:

- Corporate Governance and Nomination Committee of public company (name confidential) on external management contract
- Covalon Technologies in connection with review of strategic alternatives
- Callidus Capital (advised the Special Committee and provided a fairness opinion) in connection with a going private transaction
- Economical Insurance Committee of Non-Mutual Policy Holders in connection with First Demutualization of a Canadian P&C Insurance Company
- Concordia Healthcare (provided fairness opinion to Board on capital restructuring)
- Millar Western Special Committee in connection with debt restructuring and Plan of Arrangement
- Concordia Healthcare Special Committee in connection with its review of strategic alternatives
- Trez Capital Mortgage Investment Corp Special Committee in connection with its review of strategic alternatives
- Tuckamore Capital Management Special Committee on private placement of common shares to Orange Capital in midst of proxy contest
- McGraw-Hill Ryerson Special Committee on acquisition of minority shares by McGraw-Hill Education.
- Brookfield Canada Office Properties Special Committee on purchase of Bay Adelaide Centre East Development and Brookfield Place Calgary East Tower Development (2 separate transactions)
- Prime Restaurants on sale to Fairfax Financial.
- Mobilicity Group (provided fairness opinion to Board on proposed sale to Telus).
- CA Bancorp on review of strategic alternatives and sale to CDJ Capital.
- WGI Heavy Minerals on sale to Opta Minerals.
- Maudore Minerals (various acquisition and sale transactions).
- Paladin Labs on unsolicited bid to acquire Afexa Life Sciences.

- Nunavut Iron Ore Acquisition Inc. on $500 million hostile take-over bid for and subsequent acquisition of 30% of Baffinland Iron Mining Corporation. This transaction involved proceedings before the Ontario Securities Commission.
- Patheon Inc. special committee on strategic alternative review and $600 million hostile insider bid defence re bid made by JLL Partners. This transaction involved numerous court and regulatory body proceedings regarding directors fiduciary duties and securities law matters.
- Brookfield Infrastructure Partnership special committee on $1.1 billion related party transaction.
- Rothmans Canada Inc. special committee on $2.2 billion sale to Phillip Morris International.
- Trizec Canada Inc. on $8.9 billion sale of Trizec Properties and Trizec Canada to Brookfield Properties.
- Agricore Inc. board and special committee on several hostile bid defences, mergers, and eventual acquisition by Saskatchewan Wheat Pool – total transaction value of over $3 billion. These transactions involved several court proceedings involving director fiduciary duty issues.
- Dynatec Inc. special committee on $1.6 billion sale to Sherritt International Inc.
- Retirement Residences REIT special committee on strategic alternative review and $2.8 billion sale to Public Sector Pension Investment Board.
- Entertainment One Income Fund special committee on strategic alternative review and $200 million sale to Marwyn Investment Management.
- Wheaton River Minerals Inc. on US$2 billion merger with Goldcorp Inc. and related proxy contest
- Masonite Inc. on $3.1 billion sale to KKR.
- Canadian Apartment Properties REIT on $510 million merger with Residential Equities REIT.
- Empire Inc. on $1.5 billion acquisition of Oshawa Group Limited and $2 billion of divestitures, including food services business and interest in US based grocery chain.
- Allstream Inc. on $1.7 billion sale to Manitoba Telecom Inc.
- Manulife Financial Corporation on $6.3 billion bid to acquire Canada Life, and US$11.1 billion acquisition of John Hancock.
- Rogers Communications Inc. on $5.6 billion bid to acquire Videotron and insider bid for Rogers Wireless Communications Inc.
- West Fraser Timber Co. Ltd. on $1.3 billion acquisition of Weldwood of Canada.
- Argentina Gold on $200 million hostile takeover bid by Barrick Gold and $300 million sale to Homestake Mining. This transaction involved proceedings before the BC Securities Commission
- Luscar Coal Income Fund on hostile bid to acquire Manalta Coal and $1 billion hostile bid by and sale to Sherritt Coal Partnership.
- Decoma International Inc. special committee on related party transaction.
- Southam Inc. special committees on several insider bids and related party transactions.
- Tesma Inc. special committee on related party transaction.
- Canadian Tire Corporation, Ltd. on the purchase of Mark's Work Wearhouse.
- T. Eaton Company Ltd. on review of strategic alternatives, including the sale out of CCAA protection to Sears Canada Inc. and the liquidation of its assets.
- Sobeys Inc. on various potential acquisitions, including A&P Canada.
- Rexel S.A. in its $900 million acquisition of Westburne

- Fortis Inc. on $1.4 billion acquisition of Western Canadian utility assets from Aquila Inc.
- Dylex Inc. special committee of independent directors in connection with a proposed restructuring.
- Cambridge Shopping Centres special committee on $500 million insider bid by and sale to Ivanhoe.
- Call Net Enterprises Inc. on $1.8 billion acquisition of Fonorola Inc.
- Unihost Corp. on hostile bid by and sale to W-Westmont
- Morguard REIT special committee in connection with its acquisition of Devan Properties, an owner of mostly regional malls in Ontario and Western Canada
- Harrowston Inc. on hostile bid defence and $210 million sale to TD Capital Partners.*
- BurCon Properties special committee on $700 million merger with Oxford Properties
- Abitibi-Consolidated on $2 billion unsolicited bid for Avenor Inc.
- Sun Media Corp. special committee on hostile bid defence and $1 billion sale to Quebecor Inc.
- NewTel Enterprises independent committee on $3 billion merger to form Alliant.
- Maclean Hunter Inc. on $3.2 billion hostile bid by and sale to Rogers Communications Inc. and numerous private M&A transactions. The hostile bid transaction involved court proceedings relating to director fiduciary duties.
- Onex Corporation on $2.3 billion bid for John Labatt, $750 million acquisition of Celestica Inc. and several other private M&A transactions
- The Loewen Group on US$3.2 billion hostile bid by Service Corporation International
- Pouliot family in connection with sale of CFCF Inc. to Videotron Inc.
- Falconbridge Inc. in connection with take-over defence against hostile bid by Noranda Inc., including white knight alternative bid by AMAX Inc. and adoption of poison pill.
- Olympia & York Developments in connection with numerous acquisitions, including Gulf Canada Resources, Abitibi Inc. and Hiram Walker Resources. The latter transaction involved significant litigation relating to directors' fiduciary duties in resisting a hostile takeover.
- Royal Bank in connection with acquisition of Dominion Securities
- Bank of Montreal in connection with acquisitions of Burns Fry Limited and Nesbitt Burns
- Hiram Walker Resources in connection with plan of arrangement to distribute its interests in Abitibi, Gulf Canada and GW Utilities (predecessor to Enbridge Inc.) to public shareholders. This was a groundbreaking transaction in that it was the first significant plan of arrangement to use a "butterfly" tax reorganization to distribute a holding company's interests in several other publicly traded companies.
- Southam Inc. in connection with share swap transaction with Torstar Inc. and various takeover defence matters. These transactions involved several significant corporate governance issues as a result of the attempts by Conrad Black and affiliates to take control of Southam by way of a creeping takeover, including Southam's adoption of a poison pill and challenges before the Ontario Securities Commission.
- WIC Western International Communications Inc. on various attempts by its control shareholder group to take the company private. This transaction involved numerous corporate governance issues as regards the relationship between a control group and the controlled company.
- Southam Inc. in connection with its sale of its interest in Sellkirk Communications

- Lac Minerals in connection with the hostile take over bid by a third party and subsequent sale to Barrick Gold. This included ground-breaking proceedings before the Ontario Securities Commission relating to Lac's poison pill.
- Conwest Exploration, in connection with its sale to Alberta Energy Corp
- Burlington Industries in connection with hostile bid by Domtex Inc.
- Simpsons Inc. independent directors in connection with the hostile bid made by Hudson's Bay Company in 1979. As part of the takeover defense, Simpsons distributed its ownership interest in Simpson Sears (predecessor of Sears Canada) to its shareholders as an extraordinary dividend which created the publicly traded company that became Sears Canada.
- Union Gas in connection with hostile bid made by a group led by George Mann. This included ground-breaking proceedings before the Ontario Securities Commission.

EXPERT OPINION EXPERIENCE

I have provided an Expert Report and/or Testimony as financial advisory, legal and/or governance expert to the following:

- York Downs Golf Club, in connection with Plan of Arrangement
- Undisclosed matter, in connection with shareholder dispute arbitration proceeding (appeared at arbitration hearing and provided subsequent opinion)
- Undisclosed matter, in connection with shareholder dispute arbitration proceeding (appeared at arbitration hearing)
- Cineworld PLC in connection with litigation involving proposed acquisition of Cineplex Inc.
- Undisclosed matter, in connection with certain corporate finance matters (did not proceed to trial)
- Wilks Brothers in connection with a proposed Arrangement involving Calfrac Well Services and related entities (appeared at trial)
- Aphria Inc. in connection with litigation involving a hostile take-over bid made by Green Growth Brands Inc. (appeared at trial)
- Sears Canada Inc. directors and other defendants in connection with litigation involving dividends paid by Sears Canada in 2012 and 2013 (did not proceed to trial)
- David Baazos in connection with charges of insider trading brought by Quebec Securities Commission (did not proceed to trial)
- Detour Gold in connection with claim against Paulson & Co. (did not proceed to trial)
- Undisclosed matter relating to alleged negligence of solicitor in M&A transaction (did not proceed to trial)
- Undisclosed company in connection with proxy contest litigation (did not proceed to trial)
- Hecla Mining in connection with hostile bid for Dolly Varden Silver (BC Securities Commission) (appeared before Commission)
- KeyReit in connection with Huntingdon hostile bid (Ontario Securities Commission).

- Aurizon Mines in connection with Alamos Gold hostile bid (BC Securities Commission).
- Paladin Labs in connection with unsolicited bid for shares of Afexa Life Sciences (Alberta Securities Commission) (appeared before Commission)
- Public company in connection with proposed Arrangement (did not proceed to trial).
- Party to contractual dispute arising from M&A transaction (Arbitration - parties not disclosed).
- Domtar Inc. in connection with contract litigation involving George Weston Inc. (Ontario Superior Court of Justice) (did not proceed to trial).
- Argentina Gold on hostile takeover bid by Barrick Gold (BC Securities Commission) (appeared before Commission)

APPENDIX B

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.

ACKNOWLEDGMENT OF EXPERT'S DUTY

My name is William Gula. I live in the City of Toronto, in the Province of Ontario.

I have been engaged by or on behalf of Cargill, Incorporated and Cargill International Trading Pte Ltd. to provide evidence in relation to the above-noted proceeding.

I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:

to provide opinion evidence that is fair, objective and non-partisan;

to provide opinion evidence that is related only to matters that are within my area of expertise; and

to provide such additional assistance as the Court may reasonably require, to determine a matter in issue.

I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date March 1, 2024

William Gula

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

APPENDIX C

1. Relied upon and reviewed materials are listed below

   (a) Financial statements for Tacora Resources Inc. for the years 2018, 2021, and 2022

   (b) Tacora Resources Inc. Amended and Restated Preliminary Prospectus dated May 22, 2018

   (c) Iron Ore Sale and Purchase Contract dated November 11, 2018

   (d) Offtake letter from Cargill International Trading Pte Ltd to Tacora Resources dated January 31, 2023

   (e) Iron Ore Stockpile Purchase Agreement dated December 17, 2019

   (f) Tacora Iron Ore Stock Pile Purchase Agreement Letters from December 27, 2021 to June 27 2022

   (g) Iron Ore Stockpile Purchase Agreement amendment dated December 18, 2023

   (h) Email from Leon Davies to Joe Broking with the subject line titled “OPA” regarding a temporary weight increase dated April 26, 2023

   (i) Wetcon Purchase and Sale Agreement termination notice dated December 7, 2023

   (j) Publicly available press releases as found on Tacora Resources company website

APPENDIX D

STEPHEN J. ALTMANN, *Hon. BSc. Geophysics, M.B.A.*

8 Elsley Court, Dundas, Ontario, L9H 6Z2
stephen.altmann@gmail.com | M: 647-504-0108 | H: 905-627-8151

PROFILE

30 years of investment banking with metals & mining experience including senior capital markets expertise in corporate finance, mergers & acquisitions, plus senior mining executive industry experience and corporate industry experience.

Completed over $25 billion in financings and advisory assignments. Comprehensive experience with equity, convertible, project and debt financings. Significant M&A experience including plan of arrangements, amalgamations, asset sales and acquisitions, valuations and fairness opinions.

EXPERIENCE

MPA Morrison Park Advisors
Managing Director
01/2012 – Present (9 yrs)

MPA is an independent investment bank providing financial and strategic advisory services for clients requiring specialized investment banking expertise.

MPA Morrison Park Advisors

Key Responsibilities: Investment Banking
Provide merger and acquisition advisory services to senior executives and directors of private and public companies in the metals and mining sector. Services include mergers, asset sales and acquisitions, fairness opinions, and valuations.

Selected Achievements and Current Transactions:
- Advisor to Andean Precious Metals on $90 million acquisition of a gold producer
- Advisor to Ascot Resources on $200 million project financing
- Advisor to South American corporations on sale of copper assets valued at $60M.
- Sale of Mineros Don Nicolas, a gold producer in Argentina for $60 million.
- Advisor to First Nations on $1.2 billion Greenstone Gold project.
- Advisor to Scorpio Mining on $65M merger with US Silver & Gold.
- Advisor to Maudore Minerals on $20 million gold asset purchase.

ECU Silver Mining Inc.
President & Director
01/2007 – 12/2011 (5 yrs)

ECU was a TSX listed gold and silver mining company with assets in Mexico and market capitalization of $300 million and merged with Golden Minerals in Sep 2011.

ECU

Key Responsibilities: Public Company Executive
Direct corporate growth though exploration to production and identify strategic acquisitions, mergers or joint ventures. Manage equity and debt financings and increase the Company's profile in the capital markets. Help manage a team of 20 employees.

Selected Achievements:
- Directed sale of Company for $300 million through merger with Golden Minerals.
- Managed and executed company growth from exploration to production.
- Completed $100 million in equity, equity-linked and debt financings.
- Introduced institutional ownership and increased trading liquidity of shares.
- Attracted research coverage from major financial institutions.
- Managed acquisition of strategic gold/silver milling operations.

Desjardins Securities Inc.
Managing Director
Investment Banking
09/2004 – 12/2006 (2 yrs)

DSI is the brokerage firm of Desjardins Group, the largest cooperative financial group in Canada.

Desjardins

Key Responsibilities: Investment Banking
Head of corporate finance mining team. Focus on coordinating investment banking mining initiative and generation of new business.

Selected Achievements:
- Lead in $30 million bought-deal for $250 million copper company Corriente Res.
- Lead in $15 million bought-deal for $200 million gold company Anatolia Minerals.
- Lead in $20 million marketed deal for $100 million coal company Fortune Minerals.
- Co-lead in $7.5 million flow-through for $100 million gold producer Richmont Mines.
- Co-manager in $25 million bought-deal for nickel company Skye Resources.
- Co-manager in $65 million private placement for gold producer Semafo.
- Co-manager in $25 million bought-deal for gold company Mundoro Mining.

STEPHEN J. ALTMANN, *Hon. BSc. Geophysics, M.B.A.*

8 Elsley Court, Dundas, Ontario, L9H 6Z2
stephen.altmann@gmail.com | M: 647-504-0108 | H: 905-627-8151

EXPERIENCE (continued)

SCOTIA CAPITAL INC.
Director
Mergers & Acquisitions
08/2000 – 07/2004 (4 yrs)

Scotia Capital is the investment banking division of Scotiabank, the 3rd largest bank in Canada.

Key Responsibilities: Investment Banking
Business generation and providing financial advisory services to major Canadian and International corporations in the Mining and Industrial Products sector.

Selected Achievements:
- Advisor to Cookson Group plc, a US$1 billion U.K. listed company.
- Acquisition and defense mandate for Agnico Eagle, a $12 billion gold producer.
- Strategic Advisor to Royal Group Technologies sold to Georgia Gulf for $1.6 billion.
- Strategic Advisor to Inco Ltd sold to CVRD for $17 billion.
- Strategic Advisor to CHC Helicopters sold to private equity firm for $3.5 billion.
- Advisor to BAE SYSTEMS, a US$8.6 billion U.K. listed company.

CREDIT SUISSE FIRST BOSTON
Vice-President
Investment Banking
01/1998 – 06/2000 (2.5 yr)

Credit Suisse Group is a world-leading global financial services company.

Key Responsibilities: Investment Banking
Corporate finance coverage of Canadian and U.S. publicly listed corporations. Responsible for managing and supporting equity financings and M&A mandates.

Selected Achievements:
- Advisor to Rio Algom, acquired by BHP-Billiton for $1.9 billion.
- Advisory mandate for Inco Ltd., a $17 billion senior nickel producer.
- Advisor to Placer Dome on a US$1.1 billion takeover of Getchell Gold.
- US$285 million bought deal equity financing for Inco Ltd.
- Sale of Kemess Gold-Copper mine for US$180 million.

RBC CAPITAL MARKETS
Vice-President
Investment Banking
09/1994 – 12/1997 (3 yrs)

RBCCM is the investment banking division of Royal Bank, the largest bank in Canada.

Key Responsibilities: Investment Banking
Corporate finance coverage of Canadian and U.S. publicly listed corporations. Responsible for managing and supporting equity financings and M&A mandates.

Selected Achievements:
- $500 million equity/convertible offering for Rio Algom, a $1.7 billion copper producer.
- $45 million equity financing for diamond producer Dia Met Minerals.
- Advisor to Potash Corporation on US$1.2 billion acquisition of Arcadian Corporation.
- Advisor to Potash Corporation on US$800 million acquisition of Texasgulf.
- Advisor to Agrium Inc. on the $1.0 billion merger with Viridian Inc.
- Advisor to Hemlo Gold on $1.5 billion merger with Battle Mountain Gold.
- Defense advisor to Lac Minerals with eventual sale to Barrick Gold for $1.6 billion.

BOARD OF DIRECTOR ROLES
- ASCOT RESOURCES TSX *02/2023 - Present*
- AVIDIAN GOLD TSX-V *04/2021 – Present*
- MUNDORO CAPITAL TSX-V *10/2021 – Present*
- HIGH TIDE RESOURCES CSE *10/2021 – Present*
- LYDIAN INTERNATIONAL TSX *07/2014 – 03/2020 (6 yrs)*
- AQM COPPER INC. TSX-V *11/ 2010 – 01/2017 (6 yrs)*
- ECU SILVER MINING TSX *01/ 2007 – 12/2011 (5 yrs)*

OTHER EXPERIENCE
- GOLDEN MINERALS COMPANY **Strategic Advisor**, *09/2011 – 12/2011 (<1 yr)*
- ESSO RESOURCES CANADA LTD., **Senior Geophysicist**, *01/1986 – 08/1992 (6 yrs)*

EDUCATION
- MBA, *Finance*, McMaster University 1992 – 1994
- BSc (HONOURS), *Geophysics*, Western University 1981 – 1985

APPENDIX E

Julian N. Storz

Investment Banking Vice President, MPA Morrison Park Advisors Inc.
9 Temperance Street, Suite 300
Toronto, Ontario, M5H 1Y6
jstorz@morrisonpark.com

Professional Experience

12/2019 – Present
MPA Morrison Park Advisors Inc., Investment Banking, Vice President

- Acquisition of Golden Queen by Andean Precious Metals for $90 million
- Fairness opinion re. the sale of Spark Power to American Pacific Group for $140 million
- Anglo Asian Mining on several strategic acquisition opportunities
- Pembrook Copper and Minandex on their sale of the Pecoy copper development asset
- Alxar on its sale of the Sierra Norte copper development asset
- Pro Form on its sale to Transtar Autobody Technologies, a portfolio company of Blue Point Capital Partners
- Ascot Resources on its $50 million equity capital raise with Ccori Apu, an affiliated company to Compañía Minera Poderosa
- Expert testimony report regarding litigation in relation to a royalty TSX IPO transaction
- Fair value for the shares of Baffinland Iron Mines under the dissent procedures of the Ontario Business Corporations Act
- Sale of gold producer in Argentina for $60 million
- Advisor to First Nation on economic opportunities

07/2018 – Present
Certified Derivatives Trader (currently not practiced)

12/2017 – 02/2018
HSBC, Investment Banking, Co-op Analyst

- Issuance of three-, five- and ten-year Daimler bonds in the total amount of $4.0 billion
- Issuance of ten-year BMW bond in the total amount of $1.1 billion

07/2017 – 11/2017
PwC, M&A and Transaction Services, Co-op Analyst

- Sale of $2.2 billion real estate portfolio to Signa
- Financial Due Diligence to various Real Estate PE firms

Education

09/2018 – 08/2019 Strathclyde Business School, UK (M.Sc. Investment and Finance)
03/2015 – 07/2018 School of International Finance NGU, DE (B.Sc. International Financial Management)

APPENDIX F

DALTON AUSTIN

Investment Banking Analyst | MPA Morrison Park Advisors Inc. | daustin@morrisonpark.com
9 Temperance Street, Suite 300
Toronto, Ontario, M5H 1Y6

PROFESSIONAL EXPERIENCE

Morrison Park Advisors *July 2023 – Present*
Investment Banking Analyst

- Advisor to Andean Precious Metals on the $90 million acquisition of Golden Queen Mining
- Advisor to First Nation on Impact Benefit Agreement
- Responsible for supporting transaction execution and conducting company, financial, and market research and analysis, within the mining sector
- Previously completed two separate 4-month internships with Morrison Park Advisors

Lee & Associates *May 2021 – August 2021*
Debt, Equity & Corporate Finance, Co-op Analyst

- Supported group heads with mortgage origination opportunities

Equitable Bank *January 2020 – April 2020*
Commercial Mortgage Underwriter, Co-op Analyst

- Financial Due Diligence on annual reviews for loans originated with the Commercial Finance Group

EDUCATION

Toronto Metropolitan University *September 2018 – May 2023*
School of Accounting and Finance
Bachelor of Commerce, Finance Major

- **Academics:** Graduated with Distinction, Dean's List, Awarded the Ted Rogers Entrance Scholarship ($10,000)
- **Case Competitions:** National Investment Banking Competition Semi-finalist (top 12 of 300 internationally), McGill ESG Case Competition semi-finalist, Goodman Gold Challenge Case Competition finalist

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.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding Commenced At Toronto

AFFIDAVIT OF WILLIAM GULA
(sworn March 1, 2024)

Goodmans LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Robert Chadwick LSO#: 35165K
rchadwick@goodmans.ca

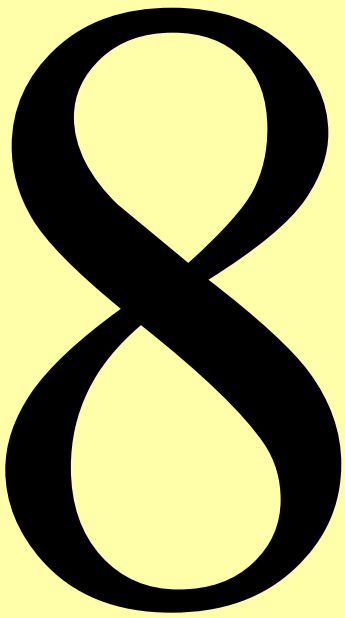
Caroline Descours LSO#: 58251A
cdescours@goodmans.ca

Alan Mark LSO#: 21772U
amark@goodmans.ca

Peter Kolla LSO#: 54608K
pkolla@goodmans.ca

Tel: 416.979.2211

Lawyers for Cargill, Incorporated and Cargill International Trading Pte Ltd.



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 WILLIAM GULA

On Affidavit Sworn March 1, 2024
Held via Arbitration Place Virtual
on Wednesday, March 20, 2024, at 4:01 p.m.

CONDENSED TRANSCRIPT WITH INDEX

APPEARANCES:

Eliot Kolers Lee Nicholson	Counsel for the Applicant, Tacora Resources Inc.
Alan Mark Robert Chadwick Sarah Stothart	Counsel for Cargill, Incorporated and Cargill International Trading Pte Ltd.
Shaan Tolani Richard Swan	Counsel for the Ad Hoc Group of Senior Noteholders
Carla Breadon	Counsel for the Consortium Bond Group
Peter Rubin	Counsel for Resource Capital Fund VII L.P.
Kiyan Jamal	Counsel for the Monitor

INDEX

LIST OF UNDER ADVISEMENTS

Under Advisements (U/A) found at pages:
18, 19, 37

LIST OF EXHIBITS

Page 5

Arbitration Place Virtual
--- Upon commencing Wednesday, March 20, 2024 at 4:01 p.m.
AFFIRMED: WILLIAM GULA
CROSS-EXAMINATION BY MR. SWAN:
1 Q. Good afternoon, Mr. Gula. My name is Richard Swan. I am with the Bennett Jones firm, and I represent the Ad-Hoc Group of noteholders and the so-called consortium, in this case.
A. Okay.
2 Q. I am going to ask you some questions about your affidavit and, in particular, your report. But first, I am obliged to ask you where you are located and if anyone else is with you at the moment?
A. I am in Naples, Florida, and there is no one else here with me, in my room, or in my office.
3 Q. All right. And do you have any notes or documents in front of you?
A. Just my -- a copy of my report.
4 Q. Excellent. Thank you. Now having had a chance to review your affidavit

Page 6

and your report, do you have any changes or revisions that you would like to make to either your affidavit or your report?
A. I do not.
5 Q. Thank you. And did you review it in the last day or two in preparation for this examination?
A. I did.
6 Q. Can you tell me when you were retained, sir?
A. I believe it was about a month ago. I am not sure of the exact date. I have to check my records, but sometime in February.
7 Q. All right. We were provided today with a retainer that bears the date February 21, 2024.
A. Yes.
8 Q. Does that sound right to you?
A. It sounds right. So it has been about -- around that time.
9 Q. All right.
MR. SWAN: Let's mark a copy then of your retainer agreement dated February 21,

Page 7

2024 as Exhibit 1 on this examination.
EXHIBIT NO. 1:
Retainer agreement dated February 21, 2024 re Mr. Gula.
MR. SWAN: And that is the version that was provided to me by Ms. Stothart this afternoon, at 1:47 p.m.
10 Q. And in addition to your retainer agreement, did you have either a letter of instructions or an e-mail of instructions that was provided to you by counsel?
A. No.
11 Q. And have you rendered an account in this matter?
A. I have not.
12 Q. Sir, your e-mail is dated February the 24th -- sorry, the retainer letter is dated February 24. Having regard to that date, when did you actually start working on this matter?
A. I would have to go back to again my records, probably a week before that, or something in that range.
13 Q. I see. So you started

Page 8

working on this in advance of the actual retainer letter?
A. Yes.
14 Q. So in respect of your report, sir, you expressly do not offer any legal opinions in your report, do you?
A. That is correct.
15 Q. And you don't in any way attempt to place any legal characterizations on any of the agreements in issue in this case, do you?
A. I do not.
16 Q. Did you speak with any representatives of Tacora in connection with the preparation of your report?
A. No.
17 Q. Did you ask to speak with any representatives of Tacora in connection with the preparation of it?
A. I did not.
18 Q. So it must naturally follow then that you did not get the perspective of any Tacora representatives on the operation of any of the agreements you refer to in your report?
A. Only insofar as my

Page 9

discussions with counsel and my review of the documents.

Q. And the discussion with counsel was limited to discussion with counsel for Goodmans?

A. Correct.

Q. You didn't speak for counsel for Tacora, did you?

A. No, I did not.

Q. And did you speak with any representatives of Cargill aside from Goodmans, their lawyers, did you speak with any representatives of Cargill in connection with the preparation of this report?

A. No, I did not.

Q. Did you ask to speak to any representatives of Cargill?

A. No.

Q. And I take it it therefore must follow that you didn't get the perspective of any representatives of Cargill, specifically, aside from their lawyers, on the actual operation in practice of these agreements?

A. Again, only insofar as they are reflected in the documents I reviewed.

Page 10

Q. Okay. Having not spoken to a representative of Tacora or a representative of Cargill, you -- it must follow as a matter of logic that you did not get the perspective of either of those representatives from either of those companies about the actual operation of these agreements, did you?

A. Not directly, no.

Q. When you say "not directly", by indirectly you mean you reviewed the agreements, right?

A. Correct.

Q. And you spoke to counsel for Cargill, being Goodmans?

A. Correct.

Q. And who at Goodmans did you speak with?

MR. MARK: I don't think he has to tell you that, Mr. Swan.

MR. SWAN: Well, if it is the source, sir, if it is the only source of his information, I think he does.

THE WITNESS: Well, it wouldn't be my only source.

MR. SWAN:

Page 11

Q. Aside from looking at documents, the only person who you spoke to about this case was someone, or more than one person, from Goodmans. Is that right?

A. Yes. And I also spoke to other members of my firm, which I have recited in my report.

Q. Right. You spoke to other members of your firm, but -- who helped you prepare the report?

A. Right.

Q. But aside from people within your firm, they had no direct knowledge of this case, did they?

A. Direct knowledge? Not through discussions with Cargill representatives or Tacora representatives.

Q. Okay. And --

A. But the documents speak for themselves, I believe.

Q. So I understand you say the documents speak for themselves.

A. Yes.

Q. But the only -- aside from within your firm, the only person outside of

Page 12

your firm that you spoke with about this case in preparation of your report was someone from Goodmans?

A. Correct.

Q. And my question is who was that?

THE WITNESS: Am I to answer that, Mr. Mark?

MR. MARK: Mr. Gula spoke to me, primarily.

MR. SWAN:

Q. So the answer is primarily Mr. Mark?

A. Yes.

Q. And did Mr. Mark give you a summary of the facts?

A. He did.

Q. And did he do that in writing or did he do that orally?

A. Both.

Q. And what did he give you in writing?

A. I received a note from one of his partners, I guess, having a summary of the background facts.

Page 13

39 Q. I see. And have you included that within your report?
A. It is embodied in my report, not the specific document. No.
40 Q. The note is not included?
A. I am going to see, here.
41 Q. I didn't see it.
A. No. I don't think the note is included.
42 Q. And if you could just take a moment to look at paragraph 69 of your report?
A. Paragraph 69?
43 Q. Paragraph 69.
A. Yes, okay. I am there.
44 Q. You say:
"I have reviewed a summary of the Tacora offtake arrangements included in exhibit C."
A. Yes.
45 Q. What are you referring to, there?
A. That is the note that I got from Goodmans.

Page 14

46 Q. And what is exhibit C?
A. Exhibit C is attached. The offtake arrangements are included in exhibit C, but the summary is not included in exhibit C.
47 Q. I see. So when you say exhibit C --
A. And it is just what it said.
48 Q. When you say exhibit C, you actually mean to say appendix C?
A. My apologies. Yes.
49 Q. All right. So what you mean to say in paragraph 69 is that you have reviewed a summary of the offtake arrangements that are listed in appendix C, is what you actually mean to say?
A. That is right. It should have said appendix C, not exhibit C.
50 Q. All right. And the summary is the document that Goodmans prepared for you that includes, apparently, a summary of the offtake arrangements?
A. Yes.
51 Q. And why did you not include that summary in your report?

Page 15

A. I can't give you an answer. I had the summary, and I also looked at the actual documents themselves. And then I included a listing of the background facts which I rely on, which are located in section -- part 3 of my document, of my report. And those are the arrangements that I rely on.
52 Q. And we will come to this in a minute, but those background facts in part C of your report, some of them are drawn from this summary note that you received?
A. Some of them are. Yes.
53 Q. And some of them are drawn from your review of the actual agreements?
A. Yes.
54 Q. And you do not say which are drawn from the summary note and which are drawn from the review, your review, of the agreements, do you?
A. Well, what I say is:
"These facts are derived from my review of the materials referred to in appendix C, and the facts I have been instructed by

Page 16

counsel to assume."
55 Q. And those facts are as set out in this note?
A. Those facts are set in part 3 of my report.
56 Q. Right. But the facts that you were instructed to assume were the facts that were set out in this note that you received from Goodmans?
A. No. That's not correct.
57 Q. Okay. Tell me what is correct?
A. What is correct is I received a summary of the agreements from Goodmans, which was sort of a starting point. I then reviewed the documentation. I had several discussions with Goodmans. There was a progression of discussions. And the facts which I rely upon which are -- I have been instructed in part by counsel to assume and based on my review of the materials, are set out in my report.
58 Q. So a combination of the summary note that you refer to in paragraph 69 that is a summary of the offtake arrangements, right? That is part of it?

Page 17

A. Yes.
59 Q. And the second part is what you were told by counsel from Goodmans in your discussions with them?
A. Well, there are three parts. There is the -- what I was told, or --
60 Q. I am coming to part 3.
A. Okay.
61 Q. But part 2 --
A. All right.
62 Q. ...is what you were told by Goodmans in your discussions with them?
A. Yes.
63 Q. And the third part is what you gleaned from your own review of the agreements?
A. Yes.
64 Q. And the proposition that I put to you is that a person reading your report and reading the background facts section in part 3 would not know in respect of each paragraph whether the information in that paragraph came from either the summary note, what you were told by Goodmans or what you yourself gleaned from reviewing the reports, would they?

Page 18

A. Not specifically, no.
65 Q. And the summary note that you got from Goodmans is not listed in your appendix C as the materials that you relied on and reviewed, is it?
A. No.
MR. MARK: You have asked that question already, Mr. Swan.
THE WITNESS: Yeah, I guess...
MR. SWAN:
66 Q. And when you spoke to Goodmans and got information, background fact information, did you take notes on that?
A. Yes, from time to time.
67 Q. Do you still have those notes?
A. Somewhere, yes.
68 Q. All right. I would like you to produce for me the notes based on your conversations with Goodmans setting out the background facts?
U/A MR. MARK: I will take that under advisement, Mr. Swan.
MR. SWAN:
69 Q. And I am not interested

Page 19

in any notes that you might have made in discussing what might be privileged, such as Goodmans' theory of the case. But I am interested in those parts of the notes that set out the facts as described to you.
I would also like a copy of the summary note, the written summary note that was provided to you by Goodmans.
U/A MR. MARK: I will take that in the same under advisement.
MR. SWAN:
70 Q. Mr. Gula, do you have direct experience with other iron ore offtake agreements aside from the Tacora/Cargill iron ore Offtake Agreement?
A. My experience is based on my years of experience in corporate finance and M&A. I have dealt with many mining companies. I have worked with companies relating to offtake agreements. I have not drafted an offtake agreement. I am not intimately familiar with the minutiae of the offtake agreements, but I am familiar with the general usage of offtake agreements by the mining companies.
71 Q. So let's break that

Page 20

answer down into a few parts. You have never draft an offtake agreement?
A. No, I have not.
72 Q. And, according to the last answer you gave, you are not familiar with the minutiae of offtake agreements?
A. In the sense that I have never drafted one, so I don't -- I couldn't rhyme off to you every section of every offtake agreement, by memory.
73 Q. And have you previously reviewed an iron ore offtake agreement, aside from this one?
A. I can't remember.
74 Q. You don't remember. Well, do you remember having --
A. Probably. I have been practising both investment banking and law for over 40 years. So yeah, sometime in that period, I probably did review one.
75 Q. Well, I am not interested in probably.
A. Not in the next -- not in the last couple of years. How is that?
76 Q. I am not as interested in

Page 21

probably. Do you know whether you have reviewed an iron ore offtake agreement before?
A. I can't tell you right now, the name of the company or whatever of the offtake agreement that I reviewed. But I probably did look at one in the past. That is my answer.
77 Q. Again, you are saying probably.
A. Yeah.
78 Q. You don't specifically remember doing it, right now?
A. No.
79 Q. And you can't name the company whose offtake agreement you -- iron ore offtake agreement you might have reviewed, in the past?
A. I can't, at this time. No.
80 Q. And in terms of your background on this matter, I assume you have not visited the Scully Mine site?
A. I have not. It would be pretty cold there, right now, I think.
81 Q. Maybe not that much colder than it is here, actually.

Page 22

I assume you have not visited the Sept-Îles or Pointe-Noire facilities at the port on the St. Lawrence River?
A. I have not. I have been to Sept-Îles, but I have not visited the port.
82 Q. All right. But you didn't visit Sept-Îles in connection with the preparation of this report?
A. No. No, I did not.
83 Q. And have you read or did you read the expert report of Jeremy Cusimano before you completed your report?
A. No, I did not.
84 Q. Have you since read the expert report of Jeremy Cusimano?
A. You will have to remind me, I have read a record, a motion record that was filed by Goodmans. And I am not sure if it was in that or not.
85 Q. Well, it was in the same motion record as your report. Mr. Cusimano is from the Alvarez & Marsal Disputes and Investigations firm?
A. Yes. Yes, I did peruse that report. This was after I had provided my

Page 23

report.
86 Q. After your report?
A. Yes.
87 Q. All right. So in terms of the facts that you were given by Goodmans, both in the written summary and orally, I take it you didn't do any independent investigation to determine whether those facts were true or not?
A. What do you mean by independent? I looked at the documentation that I have recited in the appendix.
88 Q. Aside from reading the agreements and the other documentation listed in the appendix, appendix C to your report, which are --
A. Right.
89 Q. ...technically all or almost all agreements --
A. Yes.
90 Q. ...you didn't, for example, independently seek to determine what Tacora's sources of financing were, did you? You relied on what you were told by Goodmans?
A. In terms of the sources of financing, yes.

Page 24

MR. MARK: Well --
THE WITNESS: Sorry.
MR. MARK: Sorry, I thought Mr. Gula said "and the documents", Mr. Swan.
MR. SWAN: And the documents?
MR. MARK: Yeah. Yeah, I think he has told you a few times in terms of what he recites as the facts comes both from his own review of the agreements and the other documents that he has referenced in --
MR. SWAN: Appendix B.
MR. MARK: ...B, right, which includes financial statements. It is not just the agreements.
THE WITNESS: Yes. And there was a draft prospectus, although that was just draft. We also looked at a number of press releases that were issued by Tacora over the years.
MR. SWAN: Right.
91 Q. And just to be clear, you are not proposing to give evidence of the truth of the facts that are set out in your report, are you? You offer an opinion, but you are not proposing to give evidence on the truth of the

Page 25

facts. Those are facts you were asked to assume?
A. Yes.
92 Q. And just to take an example of that, if you look at paragraph 41?
A. Paragraph 41?
93 Q. Yes, of your report?
A. Yes.
94 Q. That is a fact that you were asked to assume?
A. Yes.
95 Q. And equally, at paragraph 40, that was a fact that you were asked to assume?
A. At 40?
96 Q. Yes.
A. Yes, that is correct.
97 Q. And did you become aware that at various times there were side letters that were entered into between Tacora and Cargill relating to hedging and other arrangements?
A. Generally, yes.
98 Q. And were you aware or did you know that there are no currently operative side letters?
A. Not specifically.
99 Q. You didn't know that?

Page 26

A. Well, I was aware there were side letters. In the package of documents I reviewed, there are several side letters, extensions and such.
100 Q. And did you observe that none of them were operative, after January of 2024?
A. I can't specifically recall if I did, no. The answer is no, I am not aware if they were.
101 Q. And I take it you would not hold yourself out as an expert on margining in respect of iron ore shipments?
A. No, I am not an expert on margining.
102 Q. And you are not an expert on the so-called Platts 62 index?
A. No.
103 Q. Had you dealt with the Platts 62 index before this case?
A. I haven't dealt with the Platts 62 index, no. I have dealt with other indexes, but not that one.
104 Q. And did someone in this case explain the Platts 62 index to you?

Page 27

A. Generally. It's --
105 Q. And did someone --
A. Sorry.
106 Q. Who explained it to you?
A. That would have been Goodmans.
107 Q. Well, we will leave that. Do you know whether iron ore prices have gone up or down in the last two months?
A. I haven't reviewed a pricing model of iron ore prices over the last two months. No. It wasn't relevant to my opinion.
108 Q. All right. So if I told you that iron ore prices have come down materially in the last two months, that wasn't a fact that you knew?
A. No.
109 Q. And, sir, you are aware and in fact you state so in your report that Tacora -- the Tacora mine, the Scully Mine, is an operating and producing facility, isn't it?
A. I know it has operated. I am not sure if it is still in operation, right now.
110 Q. You don't know one way or

Page 28

the other whether the mine is operating?
A. Well, they are in CCAA.
111 Q. But in answer to my --
A. I am not aware.
112 Q. Yes?
A. I am not aware if they are operating today. No, I am not.
113 Q. And do you know whether they have been operating since they went into CCAA?
A. I do not.
114 Q. You do know that the mine got up and running in 2019, don't you?
A. Yes. One of the facts I refer to in my opinion.
115 Q. Right. And it is in paragraph 19?
A. Yes. I was looking for the paragraph. Exactly. Well, it is not in 19, actually.
116 Q. Sorry, it is not in 19. It is in paragraph 23.
A. Yes.
117 Q. All right.
A. I was not advised that

Page 29

the mine had ceased operating, so I would assume that the mine is continuing to operate.

118 Q. But you are not sure, one way or the other, to be certain?

A. To be certain, that is right.

119 Q. Let's look at paragraph 42 of your report.

A. Yes.

120 Q. And in paragraph 42, you say in the third sentence:

"At the same time, junior base metals miners that do not have producing assets face significant challenges in raising capital to advance their mining projects."

Do you see that?

A. Yes, I do.

121 Q. And you agree with me that Tacora does have a producing mine, doesn't it?

A. It does now.

122 Q. And it has had one, since

Page 30

2019?

A. Yes.

123 Q. So that sentence doesn't apply to Tacora, does it?

A. No. This is generally speaking, in discussion of junior miners. And really, the context here is getting going, getting the mine going.

124 Q. Right. But --

A. We are talking about the development and construction of a mine and the related facilities.

125 Q. Right. But you and I agree that the Tacora mine is up and running and has been since 2019?

A. Yes, yes.

126 Q. So the comment that:

"Junior base metal miners that do not have producing assets face significant challenges..."

...that does not specifically apply to Tacora, does it?

A. Yeah, because they have a

Page 31

producing asset. Correct.

127 Q. And similarly, paragraph 43 of your report does not apply to Tacora, once again, because it is a producing asset. Right?

A. Well, this again, the context of this is the putting the mine into production. So the time frame that I am talking about is before the mine is in operation. So all this is general background about junior base metals mining companies and how they need to raise capital to get their facility going.

128 Q. I understand. But again, to the extent that you are referencing challenges to get a mine up and running, you and I agree that the Tacora mine has been running since 2019. Correct?

A. Right. It has been running.

MR. MARK: Are you suggesting they have never faced a challenge. Or are you asking him if a --

MR. SWAN:

129 Q. It is not a challenge that Tacora faces today, because they have a producing mine. Correct?

Page 32

A. Well, they still face challenges. It is not --

130 Q. Yes. But this --

A. This is not referring to -- this is referring to the context of a junior mine getting into production.

131 Q. Right. But, and just to be clear, since the Tacora mine is up and running and has been since 2019, this is not a challenge referenced in paragraph 43 of your report that Tacora is facing today, is it?

A. Sure. They may have -- they still may have challenges, but I am not talking about those challenges in 42 and 43.

132 Q. Right. Or in 44, for that matter?

A. Yeah. We are talking about the development of a mine.

133 Q. Right, a hypothetical mine, as opposed to the Tacora mine, specifically?

A. Yeah. This is talking about junior base metals mining, in general.

134 Q. And the statement in your paragraph 49 is an at-large statement again? You don't intend to direct it specifically at Tacora,

Page 33

and specific efforts it has made to access equity markets, do you?

A. Correct.

135 Q. And in paragraph 50 of your report, you speak of the fact that several global commercial banks and export credit agencies have stopped providing funding for junior base metal mining companies?

A. Yes.

136 Q. Do you see that?

A. This is all in the context of mining construction.

137 Q. Right. Again, something that --

A. Yes.

138 Q. ...again doesn't specifically apply because the Tacora mine is operating, isn't it?

A. Well, it did apply at one time.

139 Q. But it doesn't today, does it?

A. Yeah. This, the context again of this is the development of a mine, and the reason why offtake agreements are entered into

Page 34

prior to production.

140 Q. And, sir, in respect of paragraph 50 of your report, you say several banks have stopped lending. You didn't name and, indeed, you don't say that all banks have stopped lending to junior mining companies?

A. No, I -- no, I haven't. I haven't said all banks.

141 Q. And to the extent that there is a gap by the fact that some banks have withdrawn from that market, to some extent that has been filled by private lenders and --

A. Mm-hmm.

142 Q. ...private debt funds. Right?

A. Yes.

143 Q. And you have not independently inquired into what steps Tacora took to raise equity funding, did you?

A. No. I just have the press releases they issued and the financial information that they had reported.

144 Q. And you didn't take any independent steps to inquire into what efforts Tacora took to raise debt financing, did you?

Page 35

A. No.

145 Q. At paragraph 53 of your report, if you could look at that?

A. Mm-hmm.

146 Q. Again, you are speaking at large and not specifically about Tacora, are you?

A. Yes, that is true.

147 Q. Can you look at paragraph 55 of your report?

A. Yes.

148 Q. And in paragraph 55, you describe what an offtake agreement is?

A. Mm-hmm.

149 Q. Is that a description that you developed independently? Or did you get that from a source?

A. It is a combination, I suppose.

150 Q. And what does that mean?

A. It is based upon my understanding of -- just based on my experience, my having read this agreement. And also, I have read a few research articles on the nature of offtake agreements, generally available research

Page 36

kind of articles.

151 Q. Are these research articles that you have listed in your report?

A. I have not, I guess. No. It was just general background review, so...

152 Q. So this description might have come from an article that you haven't listed in your report?

A. It did not come from an article. That is something that I put together after review of some articles and some other information --

153 Q. Now --

A. ...including the offtake agreements, themselves, in the offtake agreements.

154 Q. Sitting here today, do you know what those articles were?

A. I would have to go back to my notes.

155 Q. Do you have them, in notes?

A. I probably have -- I would have to go back. I may have copies of them somewhere, kept in my file. I don't have my file in front of me.

Page 37

156 Q. Would you provide me with your notes that you might have taken?
U/A MR. MARK: We will take that under advisement.
THE WITNESS: Yeah.
MR. SWAN:
157 Q. And you say in paragraph 56 that -- various things. You say:
"Offtake agreements for iron ore mines can vary in terms of pricing as negotiated between the parties."
A. Mm-hmm.
158 Q. :
"Given the long mine life of the typical iron ore mine, an offtake agreement for an iron ore mining company also typically lasts many years."
A. Yes.
159 Q. And in preparing this report and drafting that paragraph, I think, based

Page 38

on what you told me earlier, you did not actually look at any other iron ore offtake agreements, did you?
A. I did not. But I am aware of one or two others, and they're -- you know, I didn't look at them, specifically.
160 Q. Right. And when you say you are aware of them, you are aware of them from your practice, years ago?
A. I am aware of them in my practice, yeah, my general practice in corporate finance and legal practice and investment banking practice.
161 Q. And when we are talking about iron ore offtake agreements, are we talking about something that you might have read 20 years ago?
A. I wouldn't say 20. No.
162 Q. All right. But --
A. It wasn't last year.
163 Q. Specifically, in writing paragraph 56 and indeed in writing the entire report, you did not go and look at any other offtake agreements, did you?
A. I did look at -- we

Page 39

researched other offtake agreements in the market, and we looked at press releases issued by other companies describing those offtake agreements in general terms. We did not look at the underlying document, the underlying offtake agreement document.
So we looked at probably 12 or 15 other references in the market to offtake agreements; some are iron ore, some are other metals. And we looked at the press releases underlying those, and the descriptions contained in those press releases, but did not look at the underlying document.
164 Q. Anyway, that was a long answer. So let's break it down into pieces?
A. Yeah, yes.
165 Q. So -- and you knew that was coming, didn't you?
First of all, what you told me was you personally did not look at any other offtake agreements for the purpose of preparing this report. Right?
A. Correct. Correct.
166 Q. And your colleagues, Mr. Altmann, Mr. Austin and Mr. Storz who helped you

Page 40

prepare the report, as far as you know they didn't look at any offtake agreements either?
A. Not the agreements. They did look at, as I said, the public disclosure of those agreements as contained in press releases, MD&A reports, financial -- and financial statements.
167 Q. Okay. So they did not look at the agreements, themselves?
A. No.
168 Q. And the disclosure about those other agreements, none of that is listed in your appendix C, is it?
A. It is all public information.
169 Q. Well, let's start with my question: It is not listed in appendix C, is it?
A. Not listed in appendix C.
170 Q. And sitting here today, do you know the names of the companies in respect of which public disclosure relating to offtake agreements was looked at?
A. I would have to be going by memory. I would have to go back to my notes on that.

Page 41

171 Q. You don't remember?
A. There were, like, 15 of them.
172 Q. And you don't remember the names of any of them?
A. I remember some of the names of the providers of the offtake, the offtakers. I mean, some of those are listed in one of the other paragraphs down below, in paragraph 60: Cargill, Trafigura, Glencore, IXM, Thyssenkrupp Materials and Boliden. All of those were counterparties to the offtake agreements.
I can't rhyme off for you the names of the actual offtake parties, the --
173 Q. The producers?
A. ...producing mining companies. No.
174 Q. You can't name any of the producers?
A. No.
175 Q. All right. These were not all iron ore, were they?
A. They are not all iron ore. Some of them are iron ore.
176 Q. And to be clear, what

Page 42

your team looked at were what? Public disclosure on the existence of it? Or what did they look at?
A. They are public disclosure of the existence and, in some cases, they are summaries of the agreements, and also a financial statement disclosure and MD&A disclosure.
177 Q. And did you personally look at that? Or it was other members of your team?
A. I looked at the summary prepared by members of my team.
178 Q. So they looked at something, and they prepared a summary for you?
A. Correct. I looked at some of the underlying press releases, but not all.
179 Q. Look at paragraph 61 of your report.
A. Mm-hmm.
180 Q. Just take a moment to read that.
A. Yes.
181 Q. And again, this may sound repetitive, but that was not -- that statement was

Page 43

not based on the actual review of any offtake agreement, was it?
A. No. Again, it is -- it is gleaned from the other examples that I mentioned before, the press releases and other public disclosure. And also the articles I looked at, and also my general experience.
182 Q. And sir, your -- I take it you are not aware of the annual profits that Cargill made under this Offtake Agreement, are you?
A. No, I am not.
183 Q. You don't have any idea what they were, do you?
A. No. It is not relevant to me.
184 Q. And nor do you know what the cumulative profits were that Cargill made under this Offtake Agreement?
A. No.
185 Q. Did you ask?
A. I did not ask for those specific numbers, no.
186 Q. And in the absence of having that information, you are not in any

Page 44

position to offer a view on the reasonableness of the profit-sharing split under this offtake, are you?
A. I am not in a position to mention that. No.
187 Q. And if you look at section C of your report, just before -- that begins with paragraph 69?
A. Yes.
188 Q. And in paragraph 69, you refer to this exhibit C that I have asked for, yes.
A. This is the appendix C.
189 Q. Sorry, yes. Yes.
A. I think we clarified that already.
190 Q. You refer to the summary, rather, that you were given by Goodmans. Do you see that?
A. Yes.
191 Q. That is the document that Mr. Mark has taken under advisement as to whether he is going to produce it to me.
A. Correct.
192 Q. And I take it that your

Page 45

opinion as set out in paragraphs 70 through 72 is based in part on that summary of the offtake arrangements that you were provided, by Goodmans?

A. Well, as I said before, the summary is a starting point. I reviewed the summary. I also looked at the actual agreements, and they are consistent. So...

MR. MARK: Mr. Swan, what I can tell you if it is any assistance for your present examination that what was indicated to Mr. Gula was the information about the operation of these agreements that is contained in the Lehtinen affidavit. So that is essentially what he was given.

THE WITNESS: Yes.

MR. SWAN: Well, "essentially" is not the same as what he was given. So I have made my request and you have it.

MR. MARK: No, I have your request, but I was just trying to be helpful, if you are trying to explore with Mr. Gula what facts that he had in mind. I am telling you it was the facts that are set out in Mr. Lehtinen's affidavit. We have not given him any other information.

Page 46

MR. SWAN:

193 Q. And, in paragraph 70 through 72, Mr. Gula --

A. Mm-hmm.

194 Q. ...you offer no opinion on the reasonableness of the pricing under the offtake. Right?

A. I do not. I don't.

195 Q. And, in paragraph 71, you talk about the types of financing that is provided to Tacora, and how the Offtake Agreement might be seen to provide working capital liquidity and cash flow. Do you see that?

A. Yes. I see 71, yes.

196 Q. And again, in that respect you did not make any inquiry into and offered no opinion on the reasonableness of the pricing for that?

A. No.

197 Q. And you offer no opinion on the effective cost of capital in terms of those arrangements?

A. No. I have not offered an opinion on the effective cost of capital.

198 Q. And you offer no opinion

Page 47

on the effective interest rates that might be charged?

A. No.

199 Q. And that same question applies if you look at paragraph 72 of your report?

A. Mm-hmm.

200 Q. You say:

"In my opinion, the Tacora Offtake Agreement and the Tacora Stockpile Agreement provided Tacora with financing for its operations."

Do you see that?

A. Yes, yes.

201 Q. And beyond that, you offer no opinion on whether the pricing of that financing was reasonable?

A. I do not.

202 Q. And, in fact, you don't know what the pricing of that financing was, do you?

A. Well, nothing beyond what

Page 48

is in the agreements themselves.

203 Q. And you offer no opinion on that, do you?

A. That is correct.

MR. MARK: Sorry, on what? Sorry, on what?

MR. SWAN: On the reasonableness of the pricing.

204 Q. Let's take it in pieces. You offer no opinion on the reasonableness of the pricing, do you?

A. I offer no -- no, that is correct.

205 Q. And equally in respect of paragraph 72, to take up your answer from a moment ago, you offer no opinion on either the effective cost of capital or the effective interest rate, do you?

A. No.

206 Q. And you make no comparison to those factors versus other offtake agreements that might exist in the market, do you?

A. I do not. All those are beyond the scope of my engagement.

207 Q. All right.

MR. SWAN: Mr. Kolers may have some further questions for you but, subject to the advisements and any refusals or undertakings, those are all of my questions, sir. Thank you.

THE WITNESS: Okay. Thank you.

MR. KOLERS: Can we just please take five minutes?

MR. MARK: Sure.

--- Recess taken at 4:52 p.m.

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

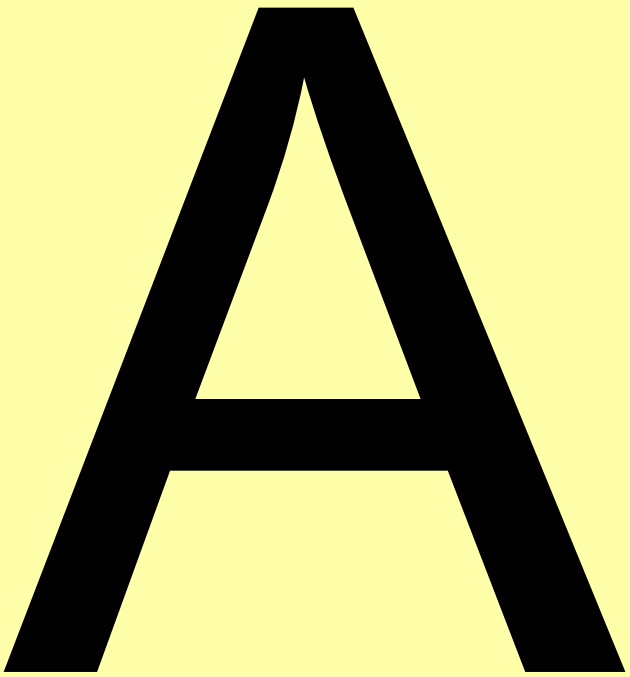
MR. KOLERS: I have no questions. Thank you.

MR. MARK: Thank you. I have no questions in re-examination. Thank you, Mr. Gula.

THE WITNESS: Thank you.

MR. MARK: I think we are done for the day.

--- Whereupon the proceeding concluded at 4:54 p.m.


A

Goodmans LLP

Barristers & Solicitors

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Telephone: 416.979.2211
Facsimile: 416.979.1234
goodmans.ca

Direct Line: 416.597.4259
jrosenthal@goodmans.ca

February 21, 2024

Delivered via Email

William Gula
Morrison Park Advisors Inc.
9 Temperance Street, Suite 300
Toronto, ON M5H 1Y6

Dear Mr. Gula:

Re: In the Matter of a Plan of Compromise or Arrangement of Tacora Resources Inc.
Court File No. CV-23-00707394-00CL

This letter confirms the retention of Morrison Park Advisors Inc. ("MPA") by Goodmans LLP ("Counsel") on behalf of Cargill, Incorporated and Cargill International Trading Pte Ltd. (collectively, the "Client") to provide independent expert consulting services in connection with the above-referenced litigation. This may include the giving of evidence in the form of a written expert report, live oral testimony, attendance at cross-examinations, among other things, all in connection with the above-referenced litigation. We confirm that MPA understands that its work on this engagement is to be performed at the direction of Counsel.

To the extent that expert conclusions or opinions are formed, MPA will provide its best independent judgment without regard to the impact that such conclusions or opinions may have upon the above referenced matter.

All materials disclosed to MPA by Counsel and the Client, and the work it provides Counsel and the Client hereunder, are confidential and proprietary, and we confirm that MPA agrees to abide by all reasonable restrictions placed by Counsel on the dissemination of such materials and work.

All communications between MPA and Counsel or the Client, either oral or written, as well as any materials or information developed or received pursuant to this arrangement, are intended to be made or prepared for purposes of assisting Counsel in the above-referenced litigation. We confirm that all such communications will be treated by MPA as confidential.

MPA has confirmed that it has no conflicts in providing the expert consulting services described herein. In that regard, the names that MPA has searched for conflicts are:

- Our clients - Cargill, Incorporated and Cargill International Trading Pte Ltd.
- Opposing party and insolvent company in restructuring - Tacora Resources Inc.

Goodmans LLP

- Other opposing parties - Snowcat Capital Management LP, Brigade Capital Management, LP, Millstreet Capital Management LLC, MSD Partners, LP, O'Brien-Staley Partners, Resource Capital Fund VII L.P., and Javelin Global Commodities (SG) Pte Ltd

MPA will bill for all professional services at hourly rates on a monthly basis, with the Client to be solely responsible for the payment of invoices. Rates for team members on this project are as follows:

William Gula - $1,500 per hour

Brent Walker, Stephen Altmann (Managing Directors) - $1,200 per hour

Julian Storz (VP) - $700 per hour

Dalton Austin (Analyst) - $400 per hour

We look forward to working with you on this matter.

Yours truly,

Goodmans LLP

Julie Rosenthal

Agreed to and Accepted: **Morrison Park Advisors Inc.**

By: _____

Date: February 22, 2024

1416-7214-6698

9

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

(Applicant)

AFFIDAVIT OF JOE BROKING
(Sworn February 2, 2024)

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

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

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

3. Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in my affidavit sworn on October 9, 2023 (the "**First Broking Affidavit**"), A copy of the First Broking Affidavit (without exhibits) is attached hereto as **Exhibit "A"**. All references to currency in this affidavit are references to United States dollars, unless otherwise indicated.

4. I swear this affidavit in support of a motion by Tacora for the issuance of an order (the "**Approval and Reverse Vesting Order**"), among other things:

(a) approving the subscription agreement entered into between Tacora, as issuer, and a consortium consisting of the Ad Hoc Group, RCF VII CAD LLC (an affiliate of Resource Capital Fund VII L.P. ("**RCF**")), and Javelin Global Commodities (SG) Pte Ltd. ("**Javelin**"), as investors (collectively, the "**Investors**") dated January 29, 2024 (the "**Subscription Agreement**");

(b) approving the transactions (the "**Transactions**") contemplated in the Subscription Agreement and authorizing and directing Tacora to take such additional steps and execute such additional documents as are necessary or desirable for the completion of the Transactions;

(c) granting releases (the "**Releases**") in favour of: (i) Tacora, ResidualCo, and ResidualNoteCo (both as defined below) and their respective present and former directors, officers, employees, legal counsel and advisors; (ii) the Monitor, its legal counsel, and their respective present and former directors, officers, partners, employees and advisors; (iii) the Notes Trustee and its respective present and former directors, officers, partners, employees and advisors; and (iv) the Investors and their respective present and former directors, officers, employees, legal counsel and advisors (collectively, the "**Released Parties**"), from any and all present and future liabilities of any nature or kind in connection with the CCAA Proceedings, the Subscription Agreement and related documents, and Tacora's assets, business or affairs (collectively, the "**Released Claims**");

(d) extending the Stay Period to facilitate closing of the Transactions; and

(e) sealing the confidential exhibits related to the Bids received in the Solicitation Process and the Cargill Agreements (as defined below).

I. BACKGROUND

A. Initial Order and Stay Extension Order

5. Tacora is a private company focused on the production and sale of high-grade and quality iron ore products that improve the efficiency and environmental performance of steel making. The Company is the second largest employer in the Labrador West region, employing

approximately 460 employees, and is an important part of the local and provincial economy of Newfoundland.

6. As of the commencement of the CCAA Proceedings, Tacora had approximately $298 million in secured debt. As of the date of this affidavit, Tacora has drawn approximately $66 million under the DIP Facility. Tacora's secured debt is owing primarily to (a) holders of Senior Notes and Senior Priority Notes; and (b) Cargill in respect of an Advance Payments Facility and the DIP Facility. As described in the First Broking Affidavit, the secured indebtedness (other than the DIP Facility) shares the same collateral and security package and is subject to an intercreditor agreement between the parties. The secured debt (not including accrued interest) and its respective priority rankings are summarized in the below chart and detailed in the First Broking Affidavit:

	Cargill	Senior Noteholders
First Ranking	$65,600,000 of Advances under the DIP Facility	
Second Ranking	$4,717,648 of Margin Advances and Prepay Advances pursuant to the Advance Payments Facility	$27,521,634 of Senior Priority Notes
Third Ranking	$30,000,000 of Initial Advances pursuant to the Advance Payments Facility	$225,000,000 of Senior Notes in principal and $9,281,250 in unpaid interest
Total	$100,317,648	$261,802,884

7. In the First Broking Affidavit, I described, among other things, the events leading up to the Company's CCAA filing, the urgent need for relief under the CCAA, and the Company's intention to conduct a court-approved Solicitation Process to secure a going concern solution that would maximize value for Tacora and its stakeholders.

8. On October 10, 2023, Tacora sought and obtained protection under the CCAA pursuant to the Initial Order granted by this Court, which, among other things:

(a) appointed FTI as Monitor of the Applicant;

(b) granted a stay of proceedings in favour of the Applicant and its D&Os until and including October 20, 2023;

(c) approved the DIP Agreement entered into on October 9, 2023, between Tacora and Cargill Inc., as the DIP Lender, pursuant to which Tacora was authorized to borrow up to the Initial Advance of $15,500,000, and granted a corresponding DIP Charge in the principal amount of the Initial Advance and the Post-Filing Credit Extensions up to the maximum principal amount of $20,000,000; and

(d) granted the Administration Charge in the amount of $1,000,000 and the Directors' Charge in the amount of $4,600,000.

9. On October 13, 2023, this Court granted the Stay Extension Order, extending the Stay Period from October 20, 2023, to and including October 27, 2023. The Stay Extension Order facilitated a deferral of the Comeback Motion from October 19, 2023, to October 24, 2023, in order for the motion to proceed in a more orderly manner.

10. On October 27, 2023, this Court granted an order extending the Stay Period from October 27, 2023, to and including October 31, 2023, pending the release of this Court's decision with respect to the ARIO and the Solicitation Order.

11. On October 30, 2023, this Court granted the ARIO, which, among other things:

(a) extended the Stay Period until and including February 9, 2024;

(b) authorized Tacora to borrow up to $75,000,000 under the DIP Agreement;

(c) approved the Greenhill Engagement Letter and granted the corresponding Transaction Fee Charge up to the maximum principal amount of $5,600,000, as security for Greenhill's Transaction Fee;

(d) approved the KERP and granted a first-ranking KERP Charge against the KERP Funds in the amount of $3,035,000, as security for payments under the KERP; and

(e) increased the Directors' Charge from $4,600,000 to $5,200,000.

12. Additionally, on October 30, 2023, this Court granted the Solicitation Order, which, among other things: (a) approved the Solicitation Process to solicit offers or proposals for a sale, restructuring, or recapitalization transaction in respect of Tacora's assets and business operations; and (b) authorized and directed Tacora, Greenhill and the Monitor to immediately commence the Solicitation Process.

13. On January 24, 2024, this Court granted: (a) an order extending the Stay Period from February 9, 2024, to and including March 18, 2024, to provide Tacora sufficient time to complete the Solicitation Process and seek approval of the Successful Bid; and (b) an order approving the Premium Finance Agreement which provides Tacora with financing to renew certain property insurance policies.

14. A copy of the Solicitation Order (which includes the Solicitation Process as a Schedule) is attached hereto as **Exhibit "B"**. Copies of all filings in the CCAA Proceedings, are available on the Monitor's website at: http://cfcanada.fticonsulting.com/Tacora

15. The Solicitation Process has concluded and Tacora now seeks this Court's approval of the Successful Bid (as defined below), and the Transactions contemplated therein through the proposed Approval and Reverse Vesting Order.

II. DESCRIPTION OF SOLICITATION EFFORTS

A. The Pre-Filing Strategic Process

16. As set out in the First Broking Affidavit, prior to initiating these CCAA Proceedings, the Company engaged Greenhill in January 2023 to formally commence a strategic process to explore, review, and evaluate a broad range of alternatives for the Company, including sale opportunities or additional investments into Tacora (the "**Pre-Filing Strategic Process**"). The Pre-Filing Strategic Process is described in the Affidavit of Michael Nessim sworn February 2, 2024 (the "**Nessim Affidavit**").

17. Starting in July 2023, following the initial phase of the Pre-Filing Strategic Process and the failure to complete a sale of Tacora to an interested party who executed a letter of intent, Cargill and the Ad Hoc Group commenced discussions regarding a consensual restructuring and recapitalization transaction for the Company. Cargill and the Ad Hoc Group had also

previously engaged in discussions as early as March, 2023. These later discussions between Cargill and the Ad Hoc Group eventually involved RCF as a potential new equity participant. RCF has previously been contacted by Greenhill in the Pre-Filing Strategic Process and had separately engaged in discussions with Cargill regarding a transaction. These discussions continued almost through to the commencement of the CCAA Proceedings and culminated in a meeting between Cargill, RCF and the Ad Hoc Group on October 3, 2023. During this time the Company fully supported achieving a consensual resolution between the parties and encouraged both Cargill and the Ad Hoc Group to be flexible and offer the concessions necessary to reach an acceptable transaction to restructure and recapitalize Tacora outside of a CCAA proceeding. However, following the October 3 meeting between the parties it became clear that the parties would be unable to reach an agreement and Tacora would need to commence these CCAA Proceedings in order to obtain the necessary financing to fund operations and to conduct a competitive solicitation process to determine the best transaction available in the circumstance to permit the continued operation of Tacora and necessary investment in the Scully Mine.

B. Conduct of the Solicitation Process[1]

18. On October 30, 2023, the Court granted the Solicitation Order, which, among other things, authorized Tacora to undertake a sale, investment and services solicitation process (the "**Solicitation Process**" or the "**SISP**") to solicit interest in, and opportunities for: (a) a sale of all or substantially all, or certain portions of the Property or the Business; or (b) an investment in, restructuring, recapitalization, refinancing or other form of reorganization of Tacora or its Business as a going concern, or a combination thereof (collectively, the "**Transaction Opportunity**"). The Solicitation Process also provided the ability for interested parties to investigate and conduct due diligence regarding an opportunity to arrange an offtake, service or other agreement in respect of the Business (the "**Offtake Opportunity**" and together with the Transaction Opportunity, the "**Opportunity**").

19. In short, the Solicitation Process was designed to be broad and provide Tacora with the latitude to pursue a range of transactions, including an asset sale, a share sale (including a reverse vesting structure) or a plan of arrangement.

20. Below is a high-level summary of the conduct of the Solicitation Process. A detailed

[1] All capitalized terms used in this subsection and not otherwise defined have the meanings ascribed to them in the Solicitation Process.

summary of the conduct of the Solicitation Process is set forth in the Nessim Affidavit. I understand that the Monitor will provide further details and its comments on the Solicitation Process in a report to be filed with the Court.

(i) Phase 1

21. On December 1, 2023, the Phase 1 Bid Deadline, Tacora received seven non-binding term sheets, which consisted of: (a) two letters of intent ("**LOIs**") that expressed an interest in both the Transaction Opportunity and the Offtake Opportunity; (b) three LOIs that expressed an interest solely in the Transaction Opportunity; and (c) two indications of interest that expressed an interest solely in the Offtake Opportunity.

22. Following the Phase 1 Bid Deadline, Greenhill, in consultation with Tacora's counsel, Stikeman Elliott LLP ("**Stikeman**"), management of the Company and the Monitor, assessed the seven Bids received in accordance with the Solicitation Process. Following that assessment and review and consideration by the Board, five of the Phase 1 Bids were determined to be Phase 1 Qualified Bids. Greenhill advised six of the Phase 1 Bidders and Financing Parties interested in the Offtake Opportunity that, in order to pursue a standalone proposal, they would need to significantly improve the terms of their Bids to enhance the value available to Tacora's stakeholders. Greenhill also proposed an alternative option for these Phase 1 Bidders and Financing Parties to join in a potential consortium bid with Cargill in an effort to enhance the potential value that could be offered by these Phase 1 Bidders and Financing Parties.

(ii) Phase 2

23. On January 19, 2024, the Phase 2 Bid Deadline, Tacora received three Phase 2 Bids, which included:

(a) the Investors' Bid for all the shares of Tacora, which is described in detail below;

(b) a Bid from Cargill for all the assets of Tacora; and

(c) a Bid from "**Bidder #3**" for all the shares of Tacora pursuant to a reverse vesting order.

24. On January 24, 2024, the Board held a meeting with the Company's advisors, Greenhill and Stikeman, the Monitor and counsel to review and assess the Phase 2 Bids and determine

whether each of these Bids constituted a Phase 2 Qualified Bid and consider next steps and the path forward following the Phase 2 Bid Deadline (the "**January 24 Board Meeting**").

25. At the January 24 Board Meeting, the Company, with input and advice from Greenhill and Stikeman, and in consultation with the Monitor, determined that only the Investors' Bid met all of the requirements for a Phase 2 Qualified Bid. Under the Solicitation Process, in order to constitute a Phase 2 Qualified Bid, a Phase 2 Bid was required to, among other things:

(a) be binding and irrevocable until the selection of the Successful Bidder;

(b) be in the form of duly authorized and executed transaction agreements;

(c) include written evidence of a firm commitment for financing or other evidence of an ability to consummate the proposed transaction;

(d) not be subject to the outcome of unperformed due diligence, internal approvals, or contingency financing;

(e) set forth in detail any conditions to closing or required approvals, the anticipated time frame and any anticipated impediments for obtaining such approvals;

(f) fully disclose the identity of each entity that will be entering into the transaction or the financing (including through the issuance of equity and/or debt in connection with such Bid) or that is sponsoring, participating or benefiting from such Bid; and

(g) be accompanied by a non-refundable cash Deposit equal to ten percent (10%) of the total cash component of the purchase price or investment contemplated under the Phase 2 Bid.

26. At the January 24 Board Meeting, the Company, with input and advice from Greenhill and Stikeman, and in consultation with the Monitor, also assessed the merits of each of the Phase 2 Bids with reference to the non-exhaustive list of considerations set out in the Solicitation Process, to evaluate whether to waive compliance with the qualification criteria for Cargill and/or Bidder #3 and also whether to declare the Investors' Bid the Successful Bid, including:

(a) the purchase price and net value of the Bid (including assumed liabilities and other obligations to be performed by the Phase 2 Bidder);

(b) whether the Bid included a firm, irrevocable commitment for financing of the transaction;

(c) the claims likely to be created by such Bid in relation to other Bids;

(d) the counterparties to the transaction identified, or not identified, in the Bid;

(e) the terms of the transaction documents;

(f) the closing conditions and other factors affecting the speed, certainty and value of the transaction;

(g) the planned treatment of stakeholders, including employees;

(h) the assets included or excluded from the Bid;

(i) any restructuring costs that would arise from the Bid;

(j) the likelihood and timing of consummating the transaction; and

(k) whether the Bid provides the capital sufficient to implement post-closing measures and transactions.

27. The Phase 2 Bid submitted by Cargill was contingent on raising new equity financing and contained a number of other problematic features, including:

(a) the Bid was structured as an asset sale but contained a condition that requires that the purchaser be satisfied, in its sole discretion, that the Company's tax attributes be preserved in all material respects and available to be utilized by the purchaser, which is not possible in an asset sale. Cargill referenced in their bid letter that their Phase 2 Bid could be implemented in a different manner but no definitive documents were provided in respect of such alternative structures;

(b) the Bid did not specify the new equity participants to be new majority owners of the Company (or the purchaser) following Closing as the Bid was contingent on raising new equity from third parties. This adversely impacted the Company's ability to evaluate necessary regulatory approvals and the ability and willingness

of the potential equity participants to provide further necessary financing for the business;

(c) the Bid contained conditions which were likely not achievable based on the Company's analysis, including, among other things, (i) a minimum cash condition; (ii) a condition to maintain tax attributes (as noted, a different structure would have been required to preserve tax attributes); and (iii) a financing condition to raise new equity;

(d) the Bid contained no commitment from Cargill (or any other equity participant) to provide any new capital to the Company; and

(e) even assuming the contingent financing could be raised from third parties, the Bid did not provide sufficient financing to adequately capitalize the Company to fund required capital expenditures and operating costs necessary to achieve the required "ramp up" of production at the Scully Mine to allow for the business to sustainably operate in the future.

28. The Phase 2 Bid submitted by Bidder #3, among other things:

(a) contemplated reinstatement of Tacora's DIP facility and all of Tacora's other secured debt, including debt obligations which had matured, and was contingent on obtaining extensions of such debt obligations;

(b) required certain key contracts of Tacora to be renegotiated on terms acceptable to Bidder #3;

(c) did not provide for the assumption or payment of the Company's trade claims; and

(d) did not provide for sufficient financing to fund emergence costs and required capital expenditures and operating costs.

29. Following this assessment and careful consideration of all alternatives available to Tacora, the Board, with input and advice from Greenhill and Stikeman, and in consultation with the Monitor, exercised its good faith business judgement and determined that it was not in the Company's interest to waive any requirements of the Solicitation Process to qualify those Bids

at that time. As part of this assessment, consideration was given to the structure of the Investors' Bid (which requires a new marketing agreement for the sale of iron ore) and the unsecured claim created by excluding the current Offtake Agreement under the Transactions. The January 24 Board Meeting adjourned without a final decision on declaring a Successful Bid and Tacora's advisors were instructed to respond to Cargill and Bidder #3 outlining the concerns regarding their Phase 2 Bids (which was consistent with the feedback provided to Cargill prior to the January 24 Board Meeting) and to continue negotiations with the Investors regarding their Phase 2 Qualified Bid to secure the best terms for the Company available in the circumstances.

30. On January 25, 2024, Stikeman, on behalf of the Company, communicated to Cargill that its Phase 2 Bid did not constitute a Phase 2 Qualified Bid (which followed previous feedback provided to Cargill's advisors on January 22 and 23, 2024). A copy of the January 25 letter sent by Stikeman to counsel to Cargill is attached hereto as **Exhibit "C"**. On January 27, 2024, counsel to Cargill sent a letter to Stikeman, a copy of which is attached hereto as **Exhibit "D"**. Stikeman responded to counsel for Cargill in a letter dated January 28, 2024, reiterating the feedback previously provided by the Company, a copy of which is attached hereto as **Exhibit "E"**. Additional e-mail correspondence between the parties is attached hereto as **Exhibit "F"**.

31. On January 28, 2024, the Board continued the January 24 Board Meeting and their review and assessment of the Bids, and considered the correspondence received from counsel to Cargill, before adjourning without determining the Successful Bid. On January 29, 2023, I understand that representatives of Cargill met with the Monitor and its counsel to discuss, among other things, their Phase 2 Bid and concerns regarding the current process and decision-making in the Solicitation Process. In the evening of January 29, 2024, the Board again resumed the January 24 Board Meeting to evaluate the Bids and consider declaring a Successful Bid following advancement in negotiations with the Investors regarding their Phase 2 Qualified Bid.

32. At the meeting on January 29, 2024, the Board received an update from the Monitor on its discussions with Cargill. The Board was also informed that Cargill would like to meet directly with the Board and management to discuss their Bid (which request was previously made in their correspondence). The Board considered this request and ultimately determined, with input from Tacora's advisors, that such a meeting was not necessary or appropriate. Having

considered the advice and recommendations from Greenhill and Stikeman and in consultation with the Monitor, the Board exercised their good faith business judgement and unanimously determined that the Investors' Phase 2 Qualified Bid should be declared the Successful Bid under the Solicitation Process. Additionally, the Company did not declare a Phase 2 Bid submitted by Cargill or Bidder #3 as a Back-Up Bid as neither met the necessary criteria to constitute a Phase 2 Qualified Bid.

33. In making the decision not to waive strict compliance with the Phase 2 Qualified Bid requirements for Cargill and Bidder #3 or further extend deadlines in the Solicitation Process, the Board exercised their business judgement and considered, among other things, that each of those Bids was not actionable due to uncertain conditions which were contingent on factors outside of the Company's control and that even if such conditions could be satisfied, there was insufficient capital for post-closing measures.

34. The conditions to Cargill's Phase 2 Bid required all new cash contemplated by the Bid to be raised as equity from third party sources; none of which had been committed. The Company, with the advice of Greenhill and Stikeman, and with the benefit of the Monitor's views, did not have confidence that such financing could be achieved in the circumstances and further delay to the SISP to allow for continued solicitation of potential equity financing for the Bid posed material risks for the Company given operational and iron ore price uncertainty and continuing negative cash flow from operations. This assessment was informed by advice from Greenhill and management of the Company considering, among other things, (a) the potential equity financing parties that Cargill was engaging with and their involvement in the Pre-Filing Strategic Process, the Solicitation Process and the DIP solicitation process; (b) the Company's past efforts to raise capital with the current capital structure and the Offtake Agreement; (c) the need to execute upon a transaction and emerge from these CCAA Proceedings in a timely manner, and (d) Cargill's unwillingness to backstop any new equity commitment, which indicated uncertainty as to whether they could raise this capital. The condition remained in Cargill's Bid notwithstanding the fact that Cargill had the financial wherewithal to backstop the equity commitment and sufficient time to seek an equity partner in parallel with moving for court approval and closing of the transaction.

35. The conditions to Bidder #3's Phase 2 Bid would have required extensive negotiations with the Ad Hoc Group and Cargill, the outcome of which is highly uncertain and would result in inevitable delays. I understand that Tacora's advisors communicated these significant

deficiencies to Bidder #3 following the Board meeting on January 28, 2024.

36. In addition to the deficiencies of the other Phase 2 Bids, the Investors' Phase 2 Qualified Bid represents a successful outcome to the SISP for the Company and its stakeholders. The Investors' Bid continued to be the best and only actionable Bid in the circumstances and was superior to the other Phase 2 Bids as the Investors Bid, among other things:

(a) represents the highest total bid value of the Phase 2 Bids;

(b) provides a significant Deposit to the Company demonstrating the Investors' commitment to closing the Transactions;

(c) results in the lowest amount of funded debt remaining on the Company's balance sheet post-closing and extended the maturity dates of such debt which better aligned with the Company's business plan and anticipated "ramp up" over the next several years;

(d) reduces the Company's annualized debt service from $21.2 million pre-filing to $12.6 million post-emergence to allow for additional funding to be used for necessary operating costs and capital expenditures;

(e) provides for repayment in full of all the Company's secured debt in cash or through the mechanism of the credit bid by the Investors (who control approximately 92.4% of the Senior Notes);

(f) provides for the assumption of, *inter alia*, the Company's Pre-Filing Trade Amounts, Post-Filing Trade Amounts, and the payment in full of the Company's Cure Costs, subject to the Cure Costs Cap of $27,900,000 (each as defined in the Subscription Agreement);

(g) includes a firm, irrevocable commitment to finance the Transaction;

(h) contains limited conditions to closing and no expected regulatory approvals;

(i) provides sufficient equity and new debt to fund emergence costs and the Company's ongoing operational costs;

(j) provides significant new capital to partially fund the Company's contemplated capital expenditure plan to ramp up production at the Scully Mine; and

(k) provides for the ongoing employment of all the Company's employees.

37. On January 29, 2024, the Subscription Agreement was entered into between Tacora and the Investors. A copy of the Subscription Agreement (without Schedules) is attached hereto as **Exhibit "G"**.

III. RELIEF SOUGHT

A. Approval of the Subscription Agreement[2]

(i) Key Terms of the Subscription Agreement

38. The key terms of the Subscription Agreement are summarized below.

Key Terms	Subscription Agreement
Investors	The Ad Hoc Group which holds an aggregate of approximately 88.7% of the Senior Notes and together with RCF and Javelin (holding in aggregate 92.4% of the Senior Notes).
Purchased Assets	The New Securities, which includes, among other things, the Subscribed Shares, Backstopped Shares, Takeback Shares, Takeback SSN Warrants and RCF Warrants. The New Securities include all the issued outstanding equity interests in the Company on closing. All contracts, other than the Excluded Contracts will remain with the Company. Excluded Liabilities include, without limitation, all Claims relating to any Excluded Assets and Excluded Contracts, other than Assumed Liabilities, including any Claims in respect of the Disputed Litigation Costs, the APF, the Cargill Stockpile Agreement and the Cargill Offtake Agreement, other than the Excluded Ore MTM Liabilities.
Purchase Price	The subscription price for the New Securities consists of the (1) Cash Consideration; (2) Credit Bid Consideration; and (3) Assumption of Assumed Liabilities. (1) Cash Consideration ($268,650,000)

[2] All capitalized terms used in this subsection and not otherwise defined have the meanings ascribed to them in the Subscription Agreement.

	The Cash Consideration consists of $225 million of equity through the New Equity Offering Cash Consideration and $45 million principal amount of debt through the $43,650,000 of New First Out SSN Cash Consideration. (2) Credit Bid Consideration (approximately $250 million) An amount equivalent to all amounts and obligations owing by the Company to the Senior Secured Noteholders under the Senior Secured Notes and Senior Secured Notes Indenture, including the principal amount of indebtedness outstanding thereunder, interest accrued thereon as of the Closing Date, subject to the Closing Sequence, reasonable and documented fees incurred by the Exchanging Senior Secured Noteholders, plus any other fees owing by the Company, which are not paid under the Closing Sequence, under the Senior Secured Notes Indenture. (3) Assumption of Assumed Liabilities Assumed Liabilities are discussed in greater detail below.
Deposit	$26,865,000
Transaction Structure	Reverse vesting structure.
Regulatory Approvals	The Company and the Investors are to work together to determine whether any material Permits and Licenses required from any Governmental Authority or under any Applicable Law relating to the business and operations of the Company are required to be obtained in order to permit the Company and the Investors to complete the Transaction.
Outside Date for Closing	April 26, 2024
Employees	All employees will continue to be employed by the Company on the same terms and conditions as they currently enjoy, except in respect of change of control payments for senior management, which amounts shall be waived or are Excluded Liabilities. The Investors acknowledge and agree that the Company shall remain subject to any collective agreement with the Company and shall inherit all obligations and liabilities associated with any collective agreement which applies to the Continuing Employees.
Assumed Liabilities	• All liabilities in respect of Continuing Employees; • Liabilities which relate to the Business under any Retained Contracts, Permits and Licenses or Permitted Encumbrances (in each case, to the extent forming part of the Retained Assets) arising out of events or circumstances that occur after the

	Closing and including Liabilities in respect of the Continuing Employees except change of control payments for senior management; • Cure Costs in relation to Retained Contracts, up to a maximum aggregate amount of $27,900,000 for such Cure Costs; • The Pre-Filing Trade Amounts and Post-Filing Trade Amounts; and • The Excluded Ore MTM Liabilities.
Administrative Expense Reserve	On the Closing Date, the Monitor shall be paid an Administrative Expense Reserve equal to $9 million for the benefit of Persons entitled to be paid the Administrative Expense Costs. Any unused portion of the Administrative Expense Reserve after payment or reservation for all Administrative Expense Costs, as determined by the Monitor, shall be transferred by the Monitor to the Company. The Administrative Expense Costs include: • The reasonable and documented fees and costs of the Monitor and its professional advisors and the professional advisors of the Company, ResidualCo and ResidualNoteCo in each case for services performed prior to and after the Closing Date, relating directly or indirectly to the CCAA Proceedings or the Subscription Agreement, including without limitation, costs required to wind down and/or dissolve and/or bankrupt ResidualCo and ResidualNoteCo and costs and expenses required to administer the Excluded Assets, Excluded Contracts, Excluded Liabilities, ResidualCo and ResidualNoteCo; • Amounts owing in respect of obligations secured by the CCAA Charges; • Any Liability of the Company that ranks in priority to the Senior Secured Notes as determined by Final Order of the Court or pursuant to a priority claims process approved by Order of the Court; • Disputed Litigation Costs up to a maximum aggregate amount of C$6,176,809; and • Costs related to a premium for a run-off policy of the Company's existing director and officer liability insurance policy, which shall be paid exclusively from the Administrative Expense Reserve.
Key Conditions to Closing	• Court approval of the Approval and Reverse Vesting Order which becomes a Final Order (not vacated, set aside, or stayed, and the time within which an appeal or request for leave to appeal must be initiated has passed with no appeal or leave to appeal having been

	initiated); • The Rail Agreement shall have been renegotiated on terms and conditions acceptable to the Investors, acting reasonably; and • Net Debt immediately following the Closing Time shall not exceed $150 million.
New Offtake and Working Capital Facility	Company will enter into the Javelin Agreements with Javelin, which include the Javelin Master Agreement, the Javelin Working Capital Annex, and the Javelin Marketing Agreement (new offtake agreement). The Javelin Agreements provide for, among other things: • Javelin to act as marketer of iron ore concentrate; • The sale and purchase of iron ore concentrate; and • A secured working capital facility of up to $100 million for the Company.

39. The execution of the Subscription Agreement represents the culmination of extensive solicitation efforts on the part of Tacora and Greenhill, which commenced in March 2023 and continued after the commencement of the CCAA Proceedings in accordance with the Solicitation Process.

40. I believe that the Pre-Filing Strategic Process leading up to the commencement of the CCAA Proceedings and the conduct of the Court-approved Solicitation Process resulted in a broad and robust canvassing of parties potentially interested in Tacora's business and assets. Further, I believe that the timelines under the Solicitation Process were sufficient to allow all potentially interested parties to properly participate. I am advised by the Monitor that it also believes the timelines and terms of the Solicitation Process were made well known to all participants and were reasonable in the circumstances.

41. The benefits of the Transactions include the following, among others:

(a) payment in full in cash of Tacora's senior priority debt, including the DIP Facility (estimated to be approximately $72 million as of the targeted Closing Date), the Senior Priority Notes which total approximately $29 million, and the Senior Secured Hedging Facility (as defined in the Note Indentures) which totals approximately $4.7 million;

(b) payment in full in cash of the APF (including the Post-Filing Credit Extensions) net of any set-off claims against Cargill;

(c) the cancellation of the Senior Secured Notes through the mechanism of the Investors' credit bid, in exchange for the Takeback Shares, the Takeback SSNs and Takeback Warrants;

(d) assumption of all Tacora's equipment capital leases, including the payment of all amounts outstanding under the leases in cash, which indebtedness totals approximately $28 million;

(e) assumption of all outstanding Pre-Filing Trade Amounts and Post-Filing Trade Amounts;

(f) continued employment of all current employees;

(g) provision of a new working capital facility of up to $100 million for ongoing operational costs, deferred maintenance costs and capital expenditures;

(h) funding of an Administrative Expense Reserve to fund, among other things, necessary wind-down costs; and

(i) the offtake arrangements with Javelin through the Javelin Agreements.

42. The Transactions result in a reduction of Tacora's pre-filing indebtedness of approximately $119.3 million, from approximately $325.6 million to $206.3 million.

43. The Transactions contemplate the replacement of the Offtake Agreement with a new offtake agreement to be provided by Javelin. The Transactions also contemplate that the Offtake Agreement and its associated obligations will be transferred and "vested out" to ResidualCo (as defined below). The unsecured claim in favour of Cargill against ResidualCo from this transfer and "vesting out" will not be satisfied. It is important to note that neither of the Phase 2 Bids submitted by Cargill or Bidder #3 proposed to pay out in full in cash Tacora's other secured or priority claims, unlike the Bid by the Investors, which does.

44. As a result of the Transactions, Tacora will be well positioned to continue operating as a going concern as the second largest employer in the Labrador West region, preserving

employment for all its approximately 460 employees and ongoing business relationships for all or virtually all its suppliers of goods and services.

(ii) Reverse Vesting Structure

45. The Transactions contemplated in the Subscription Agreement have been structured as a "reverse vesting" transaction. Instead of an asset sale where all purchased assets are purchased and transferred to the purchaser "free and clear" of encumbrances and all excluded assets, the Transactions contemplate a share transaction whereby:

(a) the Investors will subscribe for and purchase various Securities of Tacora, who will, in turn, cancel and terminate all of its existing equity securities. As a result, the Investors and other holders of Senior Secured Notes that receive Takeback Shares will become the sole shareholders of Tacora; and

(b) all Excluded Assets, Excluded Contracts, Excluded Liabilities, and Excluded Senior Notes will be transferred and "vested out" to corporations to be incorporated by Tacora in advance of the Closing Date ("**ResidualCo**" in relation to the Excluded Assets, Excluded Contracts, and Excluded Liabilities, and "**ResidualNoteCo**" in relation to the Excluded Senior Notes), so as to allow the Investors to acquire Tacora's business and assets on a "free and clear basis".

46. Tacora operates in a regulated environment where it is required to maintain various permits and licenses to maintain its mining operations. Tacora maintains eight material permits and licenses and six mining claims, leases, and other property rights that are required to maintain its mining operations and allow Tacora to perform exploration work on various parts of the Scully Mine, as well as other forest resource licenses and fire permits (collectively, the "**Permits and Licenses**"). Each of these Permits and Licenses would need to be in place for any prospective purchaser to continue operations at the Scully Mine.

47. I am advised by Beth McGrath of McInnes Cooper that the transfer of many of these Permits and Licenses under a traditional asset sale transaction structure requires the consent of the relevant government authority or lessor, and in some cases, requires advance discussions between a purchaser and the relevant government authority or lessor. This process may be complicated by the fact that several of the Permits and Licenses are issued by different government departments (both federal and provincial), some of which have no prescribed

transfer process.

48. It is my belief that the ability to transfer these permits and licenses to a third-party purchaser and the timing of any such transfer is uncertain and has the potential to be significantly delayed. For example, the transfer of many Permits and Licenses may require that a purchaser satisfy the relevant governmental authority that its scope of operations will be substantially the same as Tacora, and could potentially give rise to an assessment of whether the purchaser will be required to facilitate consultation with indigenous or community groups. There are also governmental approvals that Tacora is seeking that are critical to future operations of the Scully Mine that may be delayed further due to the logistics of transferring an application that has been underway for approximately 2 years for approval, which has not yet been obtained.

49. Accordingly, the Subscription Agreement was structured as a reverse vesting transaction because: (a) it will permit Tacora to maintain its Permits and Licenses and contracts with various commercial counterparties without the probable and potentially significant risks and costs associated with delays in attempting to transfer same, allowing for the seamless continuation of operations at the Scully Mine; and (b) it will preserve Tacora's tax attributes.

50. As outlined in the First Broking Affidavit, fluctuations in the price of iron ore can have a significant impact on Tacora's liquidity. Given the volatile nature of the iron ore market, highlighted by the decrease in the price of iron ore since the beginning of January 2024 (from approximately $144/tonne on January 3, 2024, to $132/tonne on January 31, 2024), the uncertainty associated with securing the transfer of Permits and Licenses and the potential for delays in such transfers creates significant risk and uncertainty for the Company and its stakeholders.

51. The reverse vesting structure will also permit the preservation of Tacora's tax attributes, which include:

(a) net operating losses in the approximate amount of $450 million;

(b) undepreciated capital cost in the approximate amount of $182 million;

(c) share issuance costs in the approximate amount of $15 million;

(d) Canadian exploration expenses in the approximate amount of $1.1 million; and

(e) Canadian development expenses in the approximate amount of $17 million.

52. I understand that the Subscription Agreement was structured as a reverse vesting transaction because: (a) it will ensure that Tacora continues to enjoy the benefits of its Permits and Licenses and contracts with various commercial counterparties and avoid the risks associated with attempting to transfer same; and (b) it will permit the preservation of Tacora's tax attributes. I further understand that the advantages associated with a reverse vesting structure were an important consideration for the Investors in pricing their Phase 2 Qualified Bid.

53. The Subscription Agreement provides that to the extent the proposed Approval and Reverse Vesting Order is not granted, and the structure of the Transaction is converted into an asset sale, the parties thereto shall amend the structure of the Transactions accordingly, so long as the availability of Permits and Licenses and tax attributes are not adversely impacted by the amended structure of the Transactions (and if the tax attributes are adversely impacted, the Investors and Company shall negotiate, in good faith, the value of such impact and will agree to revise the consideration payable under such updated structure to reflect that decrease in value arising from the adverse impact to the tax attributes or as a result of additional costs that may need to be incurred in connection with assigning any Permits and Licenses or applying for and obtaining any replacement Permits and Licenses). However, I believe that if the Approval and Reverse Vesting Order is not granted, a conversion of the Transactions into an asset sale structure would re-open negotiations with the Investors, add significant risks and uncertainties to the closing of the Transactions and could result in a material deterioration in value being offered by the Investors for the benefit of Tacora and its stakeholders.

54. I do not believe that completing the Transactions under a "reverse vesting" structure will result in any material prejudice or impairment to any of Tacora's creditors' rights, including Cargill, that they would not otherwise suffer under an asset sale structure. For example, I understand creditors whose liabilities will be vested out of Tacora into ResidualCo would experience the same treatment if the transaction was implemented through an asset transaction. Further, I understand the Subscription Agreement maintains the rights that creditors would otherwise have in an asset sale transaction. For example, though no assignment of contracts is contemplated as part of the Transactions, the Subscription Agreement provides for the payment of all Cure Costs owing under the Retained Contracts (up to a maximum aggregate amount of $27,900,000) and payment of Pre-Filing Trade Amounts as an Assumed Liability (up to a maximum aggregate amount of $26,525,915), which I understand would otherwise be

required in an asset sale transaction.

55. Finally, based on my involvement with the Pre-Filing Strategic Process and the Solicitation Process, I believe that:

(a) the process leading to the proposed Transactions, which began with the Pre-Filing Strategic Process, was reasonable in the circumstances;

(b) Tacora's secured creditors, including Cargill, were actively involved in the Pre-Filing Strategic Process;

(c) the Monitor was actively involved in the Solicitation Process and was consulted by Tacora throughout;

(d) the consideration to be received by the Company in respect of the Transactions is reasonable and fair, considering the market value of the Company and the broad canvassing of potentially interested parties during the Pre-Filing Strategic Process and the Solicitation Process;

(e) Tacora has now tested the market on two separate occasions with the benefit of experienced advisors. The Transactions, if approved by this Court, will result in a going concern solution for Tacora's business and represent the best possible outcome for Tacora, its creditors, and other stakeholders in the circumstances; and

(f) the Monitor and Tacora's major secured creditor group, the Senior Noteholders, are supportive of the relief sought on this motion, and each other secured creditor of Tacora, including Cargill, will be paid in full in respect of their secured debt.

B. Replacement of Offtake Agreement

56. In the First Broking Affidavit, I provided a summary overview of the Offtake Agreement and the Stockpile Agreement. Copies of the Offtake Agreement, the Stockpile Agreement, and the amendment to the Offtake Agreement extending the term to a "life-of-mine" agreement (collectively, the "**Cargill Agreements**") are collectively attached hereto as **Confidential Exhibit "H"**. Below are further details on these contracts.

(i) Process of Shipment & Stockpile Agreement

57. Pursuant to the Offtake Agreement, Tacora is obligated to sell 100% of the iron ore concentrate production at the Scully Mine to Cargill for the life of the Scully Mine. The sale of the iron ore concentrate is subject to the Stockpile Agreement, which works in conjunction with the Offtake Agreement.

58. The iron ore concentrate from the Scully Mine is loaded onto a train that travels to the Port and unloaded from the train and placed into a stockpile at the Port. Pursuant to the Stockpile Agreement, Tacora sends Cargill an invoice at the end of each seven-day period (typically on Monday) for the iron ore that was shipped to the stockpile during the prior week. Cargill pays Tacora a provisional purchase price within three working days of receiving the invoice (typically on Wednesday). Pursuant to, and subject to the specific terms of, the Stockpile Agreement, all iron ore purchased by Cargill becomes Cargill's property at the moment of delivery by Tacora to the stockpile.

59. The iron ore concentrate from the stockpile located at the Port is loaded onto vessels that ship the iron ore concentrate to final customers at various locations overseas.

(ii) Volume of Sales

60. The Offtake Agreement requires Tacora to produce, at a minimum, four million wet metric tonnes ("**WMT**") of iron ore concentrate each "**Contract Year**" (being each calendar year from 2019-2024). The precise volume of sales in the 4 – 6 million WMT range is referred to as the "**Nominated Tonnage**", which is nominated by Tacora in its sole discretion to Cargill at least three calendar months prior to the start of a Contract Year.

61. Tacora may also be obligated to supply iron ore concentrate in excess of the Nominated Tonnage, as the Offtake Agreement provides Cargill with an option to buy any iron ore concentrate produced from the Scully Mine in excess of the Nominated Tonnage per Contract Year. Tacora may be liable to Cargill for damages under certain conditions relating to shortfall or changes in production.

(iii) Payments

62. Payment by Cargill to Tacora under the Offtake Agreement proceeds in three stages:

(a) first, by three business days prior to the first laycan (i.e., the first day a vessel may arrive at the terminal port to pick-up iron ore), the provisional purchase price is calculated. Tacora sends an invoice to Cargill once the vessel is loaded at the Port and Cargill pays Tacora the provisional price for the iron ore concentrate shortly thereafter. While the Stockpile Agreement is effective the provisional price is compared to the average stockpile provisional price that was already paid with a true-up payment paid as appropriate. If the Stockpile Agreement is no longer in force, no true-up payment occurs as no prior payments will have been made for the iron ore concentrate delivered to the stockpile;

(b) second, for tonnes on the ocean, Tacora and Cargill calculate and agree on mark-to-market amounts twice a week on Monday and Wednesday based on the average of the last five pricing days for Platts 62% Index, which is a benchmark index used by S&P Global Commodity Insights and based on standard specifications for iron ore fines (i.e., powders). If the mark-to-market exceeds certain threshold amounts, a Margin Payment is made either by Cargill or Tacora. In general, Margin Payments are due from Cargill to Tacora if iron ore prices rise from the date on which the vessel is loaded at the Port, and Margin Payments are due to Cargill from Tacora if iron ore prices fall from the date of which the vessel was loaded at the Port; and

(c) third, Tacora and Cargill calculate the final purchase price, which is the commodity price, less freight costs plus a profit share. The commodity price is calculated using the arithmetic mean of the Platts 62% Index from the third calendar month after the vessel sails. The freight costs are calculated using the BECI-C3 index (Baltic Exchange Capesize Index for routes from Tubarao, Brazil to Qingdao, China) and other provisions. The profit share (as defined in the Offtake Agreement) is based on the final sales price for the final customer over a base index (which is the Platts 62% Index). Cargill and Tacora split the Profit Share based on a formula, as outlined in the Offtake Agreement. The final sales price which flows into the profit share is negotiated between Cargill and the final

customer based on a third-party contract. Tacora and Cargill determine who is owed a payment in respect of a shipment after the final purchase price can be calculated and compared to the provisional purchase price and true-up sums paid for that shipment.

(iv) Amendments and Side Letters

63. At various stages following the inception of the Offtake Agreement, when the Company determined in its good faith business judgement to mitigate the risk of price fluctuations of the Platts 62% Index, the Company would enter into side letters with Cargill to change the pricing mechanism under the Offtake Agreement for specific periods of time and specified quantities of iron ore to be sold under the Offtake Agreement. The Company entered into thirteen side letters prior to the commencement of the CCAA Proceedings. When the Company sold iron ore to Cargill pursuant to the Offtake Agreement without any side letters in place, the Company was exposed to all price fluctuations in the Platts 62% Index following the date of delivery of the iron ore to Cargill under the Stockpile Agreement and the Offtake Agreement.

64. These side letters were designed to supplement and provide risk-sharing arrangements for specific transactions that were executed under the Offtake Agreement. Some examples include:

(a) the amendment dated March 10, 2022, has the concept of a "Fixed Price" per dry metric ton ("**DMT**"), which impacts the calculation of the final purchase price by replacing the Platts 62% Index value with the Fixed Price; and

(b) the amendment dated May 15, 2023, also includes the concept of a "Fixed Price" per DMT, which replaced the Platts 62% Index value with the Fixed Price.

65. None of the side letters fixed the final price received by Tacora under the Offtake Agreement, which always continued to include a profit share component based on Cargill's sales to end users of the iron ore.

66. As of February 1, 2024, all amendments and side letters with respect to changing the Platts 62% Index aspect of the pricing formula under the Offtake Agreement are no longer in effect. Accordingly, only the base formula provisions in the Offtake Agreement apply with respect to the price of iron ore sold to Cargill, which does not provide any price protection, hedging, or other risk mitigation to Tacora.

(v) New Javelin Marketing Agreements

67. As set out above, the Solicitation Process specifically contemplated the ability of potential bidders to examine the Offtake Opportunity and determine whether the Offtake Agreement should be assumed, or a new offtake agreement should be entered into. For instance, an LOI could only be considered a Phase 1 Qualified Bid if it met the requirement of, among other things, identifying whether the Phase 1 Bidder intended to assume or maintain the existing Offtake Agreement with Cargill on its existing terms or any proposed amendments, and if not, whether the Phase 1 Bidder anticipated requiring to be paired with a financing party interested in the Offtake Opportunity. As set out above, only the LOI from Cargill contemplated assumption of the Offtake Agreement.

68. As referenced above, the Subscription Agreement provides that the Offtake Agreement and the Stockpile Agreement are Excluded Liabilities which are to be transferred to ResidualCo. Additionally, on closing of the Transactions, the Company will enter into the Javelin Agreements (as defined in the Subscription Agreement and described above). The Javelin Agreements provide for a number of advantages to the Company relative to the current Offtake Agreement with Cargill.

69. The benefits and advantages of the Javelin Agreements include, among other things:

(a) Cost: 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. These benefits will also grow significantly if either interest rates fall or Tacora no longer requires working capital financing, which would be expected following the "ramp up" of production and if iron ore prices remain high over a sustained period of time.

(b) Flexibility: The Javelin Agreements have a fifteen year term as opposed to being a "life-of-mine" contract like the current Offtake Agreement. These agreements also provide that Tacora has an option to terminate on the later of six years or delivery of 27 million tonnes of iron ore concentrate. The shorter term coupled with the option to terminate provides more flexibility and optionality for the Company with respect to Tacora's operations (for example, Tacora has an option to develop its own marketing force upon termination of the Javelin Agreements)

or execute on a strategic transaction. In the Pre-Filing Strategic Process, certain parties indicated that an inability to replace or renegotiate the Offtake Agreement with Cargill and sell the iron ore for their own account was problematic in any acquisition of or investment into Tacora.

(c) Transparency: The Javelin Agreements have an "open-book" approach wherein Tacora approves all transactions with end-customers, which provides Tacora with greater visibility on the sale of its iron ore concentrate. Currently, Cargill does not provide this type of transparency to Tacora.

C. Need for Expedited Emergence from CCAA

70. I am concerned about the significant damage that will result to Tacora and its stakeholders if Tacora cannot emerge from these CCAA Proceedings as a going concern in an expedited manner.

71. As outlined above, the volatile nature of the iron ore market, which is difficult to mitigate through hedging activities while the CCAA Proceedings are ongoing, can have a rapid and significant negative impact on Tacora's already limited liquidity. As set out above, iron ore prices have already fallen from approximately $144/tonne on January 3, 2024, to $132/tonne on January 31, 2024. If iron ore prices fell by a similar amount over the next several weeks, Tacora could run out of excess liquidity (inclusive of remaining availability under the DIP Facility) by the start of April and would require additional funding from the existing DIP Lender or a new DIP lender to continue operating in the normal course.

72. However, even on the assumption that Tacora can access additional incremental liquidity through additional financing to maintain operations, Tacora and its stakeholders will be prejudiced if the Transactions cannot close quickly. In the First Broking Affidavit, I described how Tacora has been attempting to ramp up production of iron ore concentrate to nameplate capacity of approximately 6.0 Mtpa and the need for additional capital investments to be made during this ramp up phase, which could not be made given Tacora's significant liquidity challenges. The Company's contemplated capital expenditure plan to ramp up production at the Scully Mine requires the Company to make such capital investments as soon as possible. The Transactions provide significant new capital to partially fund the Company's contemplated capital expenditure plan—but such necessary capital investments cannot be made until the Transactions close. Further, any additional debt incurred by Tacora under the DIP Facility will

result in less available capital for these capital investments, which are critical for the sustainability and stability of Tacora's operations moving forward, as the Company will continue to operate at a deficit until it can ramp up production to levels where the Company operates at a profit.

73. Tacora's numerous trade creditors, many of which are small businesses, have not been paid amounts owing prior to the commencement of these CCAA Proceedings. The Company has encountered questions and resistance from certain suppliers who are extending credit to the Company. The Transactions provide for the assumption of the Company's pre-filing trade amounts, post-filing trade amounts, and payment in full of all cure costs in relation to contracts being retained under the Subscription Agreement. Expedited closing of the Transactions will alleviate the concerns of and provide certainty to Tacora's trade creditors, as these creditors will be addressed in accordance with the Subscription Agreement, while having the benefit of continuing to supply on a long-term basis to a much stronger and well-capitalized Tacora.

74. Further, as the second largest employer in the Labrador West region, a delayed emergence from these CCAA Proceedings will result in uncertainty for a significant number of employees. Multiple employees have resigned during these CCAA Proceedings, and I understand that most of these employees have communicated that the uncertainty relating to the CCAA Proceedings was a key reason for their resignation. The Transactions provide for the ongoing employment of all the Company's employees—expedited closing of same will have a positive impact on this significant stakeholder group.

D. Releases

75. As set forth in the draft Approval and Reverse Vesting Order, the Applicants are seeking the issuance of the Releases in favour of the Released Parties, being:

(a) Tacora, ResidualCo, and ResidualNoteCo and their respective present and former directors, officers, employees, legal counsel and advisors;

(b) the Monitor, its legal counsel, and their respective present and former directors, officers, partners, employees and advisors;

(c) the Notes Trustee and its respective present and former directors, officers, partners, employees and advisors; and

(d) the Investors and their respective present and former directors, officers, employees, legal counsel and advisors.

76. The Releases in favour of the Released Parties are being sought in order to achieve certainty and finality for the Released Parties in the most efficient and appropriate manner given the circumstances.

77. The Released Parties made significant and material contributions in connection with Tacora's efforts to address its financial difficulties, the Pre-Filing Strategic Process, the Solicitation Process, the CCAA Proceedings, and the Transactions, which provide for a going concern solution for Tacora's business and represents the best alternative reasonably available to Tacora in the circumstances.

78. During these CCAA Proceedings, many of the Released Parties were a necessary part of the successful restructuring and continued in their capacity as directors and/or officers, despite the increase in risk and scrutiny due to the insolvency proceedings. The CCAA Proceedings resulted in the Transactions, which represent a going concern outcome where the Investors are paying in full in cash or assuming most of Tacora's liabilities, and all of Tacora's approximately 460 employees preserve their employment.

79. The Released Parties are not named in any existing or threatened litigation involving the Applicant. Tacora is not aware of any potential claims against the Released Parties. The Released Claims also explicitly carve out any claims resulting from: (a) fraud or wilful misconduct; and (b) that are not permitted to be released pursuant to section 5.1(2) of the CCAA.

80. Throughout the CCAA Proceedings, Tacora issued press releases announcing that it had filed for CCAA protection, commenced the Solicitation Process and entered into the transactions to sell its business to the Investors. Further, each of the parties who have commenced or threatened litigation against the Applicant will receive notice of this motion.

E. Sealing

81. I understand that the Nessim Affidavit includes a summary of the Phase 2 Bids and the Monitor may include one or more Confidential Appendices in its report and other materials may contain confidential information regarding the economic terms of the three Phase 2 Bids. The Applicant will be seeking to have such confidential information sealed until further Order of the

Court. I believe that disclosure of the confidential information regarding the Phase 2 Bids at this time could pose a serious risk to the objective of maximizing value in these CCAA Proceedings, including because disclosure of the economic terms of the Phase 2 Bids received in the Solicitation Process may impair any efforts to remarket the Company if the Transactions do not close.

82. The Applicant has filed **Confidential Exhibit "H"**, being copies of the Cargill Agreements, under seal, because the Applicant understands that Cargill may seek a sealing order in respect of these Cargill Agreements.

IV. CONCLUSION

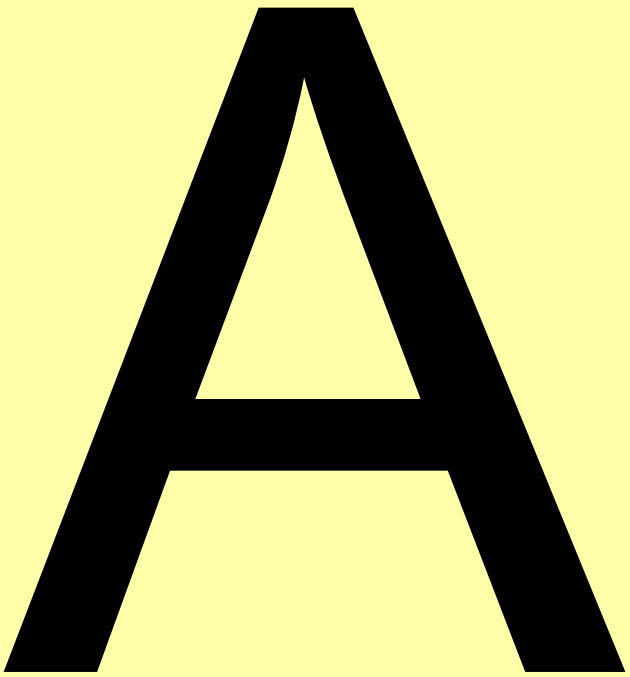
83. For the reasons set out above, I believe that it is in the best interests of Tacora and its stakeholders that the Approval and Reverse Vesting Order be granted.

84. I swear this affidavit in support of the Applicant's motion seeking approval of the Approval and Reverse Vesting Order and for no other or improper purpose.

SWORN remotely via videoconference, by Joe Broking, stated as being located in the City of Grand Rapids, in the State of Minnesota, before me at the City of Toronto, in Province of Ontario, this 2nd day of February, 2024, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*.	DocuSigned by: Joe Broking 9EBB6BB7AB484D8...
Rambaran	
Commissioner for Taking Affidavits, etc. Natasha Rambaran | LSO #80200N	**JOE BROKING**

EXHIBIT "A"
referred to in the Affidavit of
JOE BROKING
Sworn February 2, 2024

A Commissioner for Taking Affidavits
Natasha Rambaran | LSO #80200N


A

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

Applicant

AFFIDAVIT OF JOE BROKING
(Sworn October 9, 2023)

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

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

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

3. All references to currency in this affidavit are references to United States dollars, unless otherwise indicated.

4. This affidavit is sworn in support of the Applicant's application (the "**Application**") to commence proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). The Applicant is seeking an initial order (the "**Initial Order**") in the form of the draft order included at Tab 4 of the Application Record:

(a) declaring that Tacora is a debtor company to which the CCAA applies;

(b) staying proceedings and remedies taken or that might be taken against or in respect of Tacora, its assets, property, and undertakings (the "**Property**"), its business, or its directors and officers (the "**D&Os**"), except as otherwise set forth in the Initial Order (the "**Stay**"), for an initial period of ten (10) days (the "**Stay Period**");

(c) granting Tacora continued and uninterrupted access to the Bank Accounts, with the associated banks not having the power to restrict Tacora's rights in any way in respect of the Bank Accounts associated with the Cash Management System (as defined herein);

(d) appointing FTI Consulting Canada Inc. ("**FTI**" or the "**Proposed Monitor**") as an officer of this Court in these CCAA Proceedings to monitor the assets, business and affairs of Tacora (once appointed in such capacity, the "**Monitor**");

(e) approving a DIP Facility Term Sheet (the "**DIP Agreement**") entered into by Tacora on October 9, 2023 with Cargill, Incorporated ("**Cargill Inc.**", and in its capacity as the DIP lender, the "**DIP Lender**") pursuant to which the DIP Lender has agreed to advance to Tacora a total amount of up to $75,000,000 (the "**DIP Facility**"), which will be made available to Tacora during these CCAA Proceedings, of which an initial amount of $15,500,000 will be advanced to Tacora during the initial 10-day Stay Period (the "**Initial Advance**");

(f) granting the following priority charges against the Property:

i. an "**Administration Charge**" against the Property in the initial amount of $1,000,000, as security for the payment of the professional fees and disbursements incurred and to be incurred by the Proposed Monitor, counsel to the Proposed Monitor, counsel to the Company, and Greenhill in respect of its monthly advisory fee, in connection with the CCAA Proceedings both before and after the making of the Initial Order;

ii. a "**Directors' Charge**" against the Property in the initial amount of $4,600,000 in favour of Tacora's D&Os as security for the Company's obligation to indemnify such D&Os for obligations and liabilities they may

incur in such capacities after the commencement of the CCAA Proceedings, including with respect to employee vacation pay which may have accrued prior to the commencement of these proceedings, but which may become due and payable after the commencement of these proceedings, except to the extent that such obligation or liability was incurred as a result of a D&O's gross negligence or wilful misconduct; and

iii. a "**DIP Charge**" against the Property as security for Tacora's obligations under the DIP Agreement.

5. I also swear this affidavit in support of a motion (the "**Comeback Motion**"), which the Company proposes to be heard on or about October 20, 2023, for:

(a) an amended and restated Initial Order (the "**ARIO**") in the form of the draft order included at Tab 6 of the Application Record:

(i) extending the Stay Period until and including February 9, 2024;

(ii) authorizing Tacora to borrow up to $75,000,000 under the DIP Agreement;

(iii) approving the engagement letter between Tacora and Greenhill & Co. Canada Ltd. ("**Greenhill**") dated January 23, 2023 (the "**Greenhill Engagement Letter**"), pursuant to which Greenhill has agreed to provide services for, among other things, undertaking a strategic review process to explore, review, and evaluate a broad range of transaction alternatives for the Company;

(iv) approving the key employee retention plan (the "**KERP**") and authorizing the Applicant to pay an amount to secure the KERP to the Monitor (the "**KERP Funds**");

(v) granting a first-ranking "**KERP Charge**" against the KERP Funds in the amount of $3,035,000, as security for payments under the KERP; and

(vi) granting and/or maintaining the following priority charges (collectively, the "**Charges**") against the Property:

(A) the Administration Charge in the amount of $1,000,000;

(B) an increase to the Directors' Charge to $5,200,000; and

(C) a "**Transaction Fee Charge**" against the Property in the maximum amount of $5,600,000, as security for Greenhill's Transaction fee (as defined below), which ranking is set out further below.

(b) an order (the "**Solicitation Order**") in the form of draft order included at Tab 8 of the Application Record

(i) approving the sale, investment, and services solicitation process (the "**Solicitation Process**") in a form substantially similar to the form attached as Schedule "A" to the Solicitation Order; and

(ii) authorizing Tacora, Greenhill, and the Monitor to immediately commence the Solicitation Process.

I. OVERVIEW

6. Tacora is a private company that is focused on the production and sale of high-grade and quality iron ore products that improve the efficiency and environmental performance of steel making and, subject to final process verification and economic assessment, the development of a high purity manganese product for advanced battery technology. The Company owns and operates the Scully Mine (the **"Scully Mine"**), an iron ore concentrate producer located near Wabush, Newfoundland and Labrador, Canada with a production capacity of six (6) million tonnes per annum ("**Mtpa**"). The Company employs approximately 450 employees. The Company is a critical customer for several businesses in Wabush who provide goods and services to the Company and who in turn, provide employment to the local community.

7. The Scully Mine has a sixty year operating history of producing premium quality iron ore concentrate, however, it was shut down in 2014 by its former owner, Cliffs Natural Resources (now Cleveland-Cliffs Inc.), subsequently put on care and maintenance and sold under CCAA proceedings. Tacora acquired the Scully Mine on July 18, 2017, as part of the court-supervised sale process under the Cliffs CCAA. Following the acquisition, Tacora raised significant capital

and invested heavily in the Scully Mine to restart mining operations and commercial production, which was achieved in 2019 when Tacora was able to ship its first vessel of iron ore concentrate. Today, Tacora is the second largest employer in the Labrador West region and is an important part of the local and provincial economy.

8. Since restarting mining operations in 2019, Tacora has been attempting to ramp up production of iron ore concentrate to nameplate capacity of approximately 6.0 Mtpa. Despite its efforts to achieve a sustainable long-term operation, Tacora has encountered various operational challenges during the ramp up phase, and, since the third quarter of 2022, has been experiencing significant liquidity challenges due to a confluence of factors, including, capital constraints, human resources constraints, equipment failures, difficult capital project execution, various operational issues, high indebtedness and iron ore price volatility.

9. During this period of strained liquidity, Tacora has worked collaboratively with Cargill (as defined below) and an Ad Hoc Group of Senior Noteholders (the "**Ad Hoc Group**"), the Company's primary secured creditors, to address its liquidity challenges by raising additional capital, deferring various debt obligations and pursuing other initiatives. The Company also commenced a process led by Greenhill to explore various strategic alternatives for the benefit of Tacora and its stakeholders, including potential sale and recapitalization transactions. The strategic process, which is detailed further below, has produced interest from multiple parties but the Company has not been able to implement a viable transaction yet.

10. The current filing and commencement of the CCAA Proceedings stems from Tacora's need for additional capital to address an imminent liquidity shortfall resulting from the factors described herein as well as the maturity and payment due dates of various debt obligations and the Q2 2023 royalty payment owed to MFC Royalty (described below). The debt obligations include the maturity of obligations under its Advance Payments Facility totaling approximately $34.7 million on October 10, 2023, $27.5 million under its Senior Priority Notes, and an interest coupon payment under its Senior Notes totaling approximately $9.3 million, where the maturity and expiry of the applicable grace respectively occur concurrently with the maturity of the Advance Payments Facility.

11. The CCAA Proceedings will allow Tacora to access the DIP Facility and secure interim financing to ensure the Company can continue to operate the Scully Mine in the ordinary course, preserve the going-concern value of the Scully Mine and complete a strategic process

to execute upon a value-maximizing sale or recapitalization transaction for the benefit of the Company's stakeholders. During the CCAA Proceedings, the safety, health, and continued employment of our valued workforce, as well as Tacora's sound environmental practices will be maintained. Securing the benefit of the Stay and the DIP Facility under the Initial Order is critically important to allow Tacora to maintain its business and operations for the benefit of its creditors, employees, suppliers, and other stakeholders and avoid another shut down of the Scully Mine, which I believe would have a devastating impact on the local community and destroy significant value created by the mine restart. Tacora is a producer of high-quality iron ore needed for green steel production and has a bright future once it addresses its financial issues via these CCAA Proceedings.

II. TACORA

A. Tacora

12. Tacora was initially incorporated pursuant to the *Business Corporations Act* (British Columbia) ("**BCBCA**") on January 12, 2017 under the name "MagGlobal CA Inc.". Tacora subsequently changed its name to "Tacora Resources Inc." on May 16, 2017. On January 13, 2023, the Company was continued from the BCBCA to the *Business Corporations Act* (Ontario) . Tacora's registered office is located at 199 Bay Street, 5300 Commerce Court West, Toronto, Ontario. A copy of the corporate profile report for Tacora dated as of September 5, 2023 is attached hereto as **Exhibit "A".**

13. Tacora's shareholders are a collection of prominent mining investors. A capitalization table showing the Company's ownership on a non-diluted and fully diluted basis is attached hereto as **Exhibit "B".**

B. Tacora Subsidiaries

14. Tacora has three subsidiaries: (a) Knoll Lake Minerals Limited ("**Knoll Lake**"); (b) Tacora Resources LLC ("**Tacora US**"); and (c) Tacora Norway AS ("**Tacora Norway**" and together with Knoll Lake and Tacora US, the "**Tacora Subsidiaries**"). The Tacora Subsidiaries are based in Canada, the United States and Norway, respectively. None of the Tacora Subsidiaries have material assets or liabilities and, accordingly, the Tacora Subsidiaries are not Applicants in these CCAA Proceedings. A copy of the current organization chart of Tacora and the Tacora Subsidiaries is attached hereto as **Exhibit "C".**

(i) Knoll Lake

15. Knoll Lake is incorporated pursuant to the *Canada Business Corporations Act*. Knoll Lake is a non-operating subsidiary of Tacora. As part of the acquisition of the Scully Mine in 2017, Tacora acquired approximately 58.2% of the issued and outstanding shares of Knoll Lake. The ownership interest in Knoll Lake relates to a legacy asset that was included as one of several ancillary assets acquired as part of the acquisition of the Scully Mine. The other significant shareholder is 1128349 B.C. Ltd. (the beneficiary of the MFC Royalty described below), who owns approximately 39.5% of the issued and outstanding shares of Knoll Lake.

(ii) Tacora US

16. Tacora US is incorporated pursuant to the laws of the State of Delaware. Tacora US is wholly owned by Tacora. Tacora US does not have any material assets or liabilities.

17. In the ordinary course of business, Tacora does make limited payments to Tacora US to fund certain salaries and wages for certain U.S. based employees and rent for the head-office location in Grand Rapids, Minnesota. Payment is calculated using a cost-plus method. As of the date of this affidavit, there is an intercompany balance related to these transactions between Tacora and Tacora US, such that Tacora is indebted to Tacora US in the approximate amount of $800,000.

(iii) Tacora Norway

18. Tacora Norway is incorporated under the laws of Norway. On January 13, 2021, Tacora Norway was formed for the purpose of acquiring Sydvaranger Mining AS ("**Sydvaranger**"), which owned a non-operating iron ore open pit, mineral processing plant, and port in Norway (the "**Sydvaranger Mine**").

19. On February 15, 2023, following defaults under certain indebtedness owing by Sydvaranger and certain of its subsidiaries to Orion Resources Partners, OMF Fund II H Ltd. ("**Orion**"), all the issued and outstanding shares in the capital of Sydvaranger were transferred to an affiliate of Orion, as part of Tacora's liquidity preservation efforts.

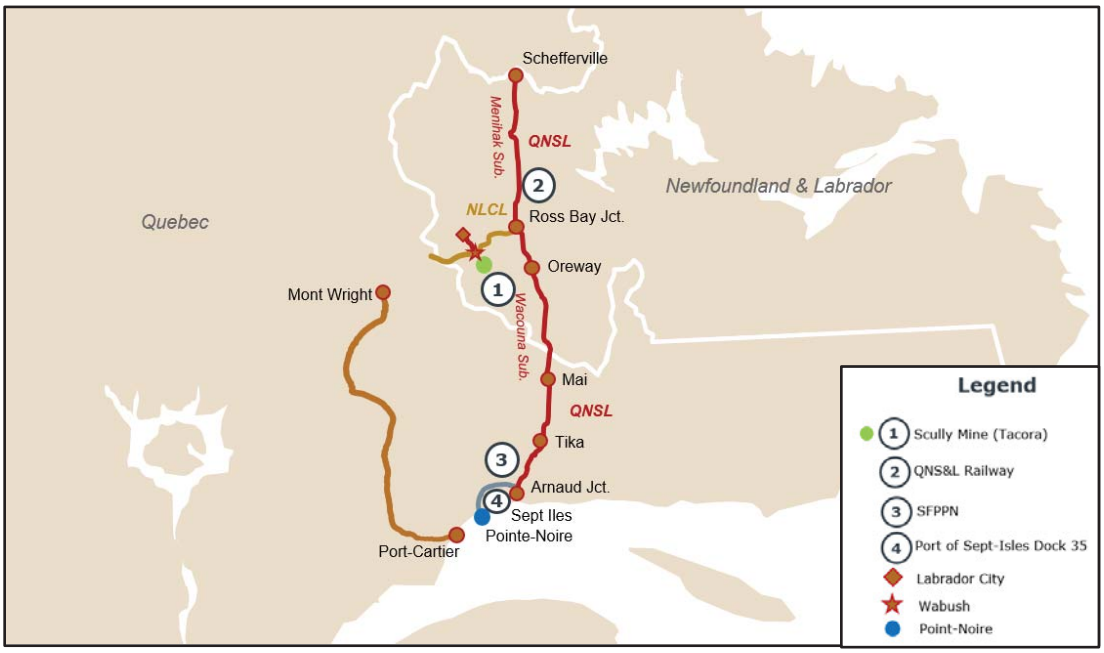
III. TACORA'S BUSINESS AND OPERATIONS

20. The Company's sole mining asset is the Scully Mine, which covers an area of approximately 32 square kilometers in the Labrador iron ore trough. The Scully Mine started operations in 1965 and closed in 2014 due to the shut down and liquidation of the Canadian operations of Cliffs Natural Resources (now Cleveland-Cliffs Inc.) which occurred under CCAA proceedings before the Superior Court of Quebec. Tacora acquired the Scully Mine on July 18, 2017, as part of the court-supervised sale process under the CCAA.

21. During the period where the Scully Mine was in operation up until 2014, it produced between 2.7 and 6 million tons of iron ore concentrate annually. Since the restart of operations in 2019, the Scully Mine produced 3.0 million tonnes in 2020, 3.2 million tonnes in 2021 and 3.1 million tonnes in 2022. The iron ore concentrate produced at the Scully Mine has an average concentrate grade of 65.9% Fe (iron) and low impurities, which is a highly desirable quality product that commands a premium price in the market relative to benchmarks due to its unique characteristics.

22. The Scully Mine is a conventional surface mining operation whereby ore is removed from the earth using drill and blast techniques and subsequently loaded with electric and diesel hydraulic shovels and transported with mining haul trucks. The ore is moved for processing to the Scully Mine plant (the "**Plant**") located on the mine site. At the Plant, the ore is crushed and subsequently subjected to mineral processing techniques to remove waste material and reduce moisture content to achieve high-grade iron ore concentrate for shipping and sale. The Plant at the Scully Mine is shown below.

23. The iron ore concentrate is shipped on a railroad via the Wabush Lake Railway to the Québec North Shore and Labrador Railway (the "**QNS&L Railway**"), which connects to Sept-Îles Junction, located on the St. Lawrence River on Quebec's north shore. From there, the iron ore concentrate is unloaded in the Port of Pointe-Noire yard (the "**Port**"), and then reclaimed onto vessels and shipped to Europe, the Middle East, and East Asia. The map below displays the transportation of iron ore concentrate from the Scully Mine to the Port.



24. Following Tacora's acquisition of the Scully Mine and completion of a mining feasibility study, Tacora focused on obtaining the necessary financing to restart the Scully Mine. Tacora was able to raise over $350,000,000 of debt and equity capital to finance the necessary restart investments at the Scully Mine which included, project detailed engineering, pit dewatering, select upgrades at the Plant, logistics related improvements, a new mining equipment fleet and implementing the necessary operating, product and marketing strategies as discussed further below.

25. On May 25, 2019, the first crude iron ore was delivered to the crusher at the Scully Mine and the first mill was successfully restarted on May 28, 2019. At the end of August 2019, Tacora shipped 69,770 wet metric tons of iron ore concentrate to its first customer in the United Kingdom. Following the restart, Tacora has continued to ramp up production at the Scully Mine

in an effort to achieve nameplate capacity of 6.0 Mtpa.

A. Rail Agreements

26. As set out above, iron ore concentrate is first shipped from the Scully Mine on the Wabush Lake Railway to the QNS&L Railway. The QNS&L Railway is the only rail transportation option available to the Scully Mine for shipping product to the Port near Sept-Îles. The Wabush Lake Railway is owned by Tacora and operated by Western Labrador Rail Services Inc. ("**WLRS**") and the QNS&L Railway is owned and operated by Québec North Shore and Labrador Railway Company, Inc ("**QNS&L**"), a wholly owned subsidiary of the Iron Ore Company of Canada who operates another mine in the Labrador iron ore trough. QNS&L is a common carrier and is a federally regulated railway offering bulk, through-freight, and way-freight rail services on the QNS&L Railway.

27. Tacora is a party to several contracts with WLRS and QNS&L for the transportation of its iron ore concentrate from the Scully Mine to the Port.

28. The primary agreement with WLRS is a railroad operation and maintenance services agreement dated as March 12, 2019 (as amended, the "**WLRS Rail Agreement"**). Pursuant to the WLRS Rail Agreement, WLRS provides Tacora with manpower and railroad services to operate the railroad track owned by Tacora between the Scully Mine and Wabush Lake Junction. The railcars used on this section of railway are rented by Tacora from QNS&L.

29. The primary agreement with QNS&L is a transportation agreement dated as of November 3, 2017 (as amended, the "**QNS&L Rail Agreement**"). The QNS&L Rail Agreement provides that QNS&L will carry iron ore concentrate produced at the Scully Mine on Tacora-supplied railcars between Wabush Lake Junction in Labrador City, Newfoundland and Labrador to the Sept-Îles Junction in Sept-Îles, Québec. Tacora and QNS&L are also party to a locomotive rental agreement dated as of November 8, 2017 pursuant to which QNS&L makes available and leases to Tacora the locomotives used by Tacora for hauling its iron ore concentrate to the Port.

30. Under the QNS&L Rail Agreement, QNS&L hauls a minimum monthly tonnage of iron ore concentrate, ensures available transportation capacity, leads and actively participates in appropriate operations management and coordination procedures between QNS&L and Tacora, and supplies sufficient labour and infrastructure as necessary to provide the rail transportation

services contemplated. The QNS&L Rail Agreement also prescribes various capacity and volume commitments on the part of each of QNS&L and Tacora, and sets forth specific maximum and minimum monthly tonnages of iron ore concentrate that may be tendered for transportation in any month.

B. Port Agreements

31. Société Ferroviaire et Portuaire de Pointe Noire s.e.c. ("**SFPPN**") operates the Port used by Tacora (which is the multi-user port located in Sept-Îles, Quebec) that provides facilities to unload iron ore concentrate from trains delivered from the QNS&L Railway. The facilities and services provided at the Port include a short line rail, product unloading, material handling, product storage, and a conveyor connection to a dock at the Port utilized by the Company. SFPPN's conveyor connection to the dock provides the Company with access to large bulk commodity carriers, including up to VLOC bulk vessels, to export the Company's product.

32. The use of the Port and the provision of services by SFPPN is set out in a long-term operational agreement with an effective date of December 22, 2022 (the "**Port Agreement**"). Pursuant to the Port Agreement, among other things, SFPPN grants Tacora guaranteed access to SFPPN's equipment, throughput and storage capacity necessary to transport iron ore concentrate to the port infrastructure. The Port Agreement has a term until December 22, 2027, but is renewed automatically for consecutive intervals of one year each until December 31, 2041, unless the parties mutually agree not to continue their relationship.

33. On April 19, 2018, Tacora also executed an assignment of contractual rights agreement with New Millennium Iron Corp. ("**NML**"), pursuant to which NML assigned 6.5 million metric tonnes of NML's Port capacity with the Sept-Iles Port Authority (the "**Port Authority**") to Tacora (the "**NML Assignment Agreement**"). The NML Assignment Agreement provided Tacora with additional Port capacity to ship the iron ore concentrate it produces. Accordingly, in November 2018, Tacora and the Port Authority entered into a contract, pursuant to which the Port Authority agreed to reserve Port capacity of 6.5 million metric tonnes of iron ore concentrate per year for Tacora. The Port Authority loads the iron ore concentrate onto the vessels for shipment to Europe, the Middle East, and East Asia.

C. Offtake Agreement & Stockpile Agreement

34. Tacora sells 100% of the iron ore concentrate production at the Scully Mine to Cargill International Trading Pte Ltd. ("**Cargill**") pursuant to an offtake agreement between Tacora, as seller, and Cargill, as buyer, dated April 5, 2017, and restated on November 9, 2018 (as amended from time to time, the "**Offtake Agreement**"). Pursuant an amendment dated March 2, 2020, the term of the Offtake Agreement was extended to a life of mine contract such that Tacora is required to sell and Cargill is required to buy all iron ore concentrate produced at the Scully Mine while it remains operational. The sale of the iron ore concentrate is also subject to a stockpile agreement between Tacora, as seller, and Cargill, as buyer, dated December 17, 2019 (the "**Stockpile Agreement**"), which works in conjunction with the Offtake Agreement.

35. As set out above, the iron ore concentrate from a stockpile located at the Port is loaded onto vessels that ship the iron ore concentrate to final customers at various locations overseas. The vessels are arranged by Cargill and Cargill markets and sells Tacora's iron ore concentrate to customers in Europe, the Middle East, and East Asia pursuant to the Offtake Agreement. Due to the high Fe (iron) content, the iron ore concentrate is marketed as high-grade premium blending concentrate that is used to upgrade other commodity grade and sub-commodity grade products, particularly from Australia.

36. Payment by Cargill to Tacora under the Offtake Agreement proceeds in roughly three stages:

(a) First, by three (3) business days prior to the first laycan (i.e., the first day a vessel may arrive at the terminal port to pick-up iron ore), the provisional purchase price is calculated. Tacora sends an invoice to Cargill once the vessel is loaded at the Port and Cargill pays Tacora for the iron ore concentrate shortly thereafter. While the Stockpile Agreement is effective the provisional price is compared to the average stockpile provisional price that was already paid with a true-up payment paid as appropriate. If the Stockpile Agreement is no longer in force, no true-up payment occurs as no prior payments will have been made for the iron ore concentrate delivered to the stockpile;

(b) Second, for tonnes on the ocean, Tacora and Cargill calculate and agree on mark-to-market amounts twice a week on Monday and Wednesday based on the average of the last five pricing days for Platts 62% Index, which is a benchmark

index used by S&P Global Commodity Insights and based on standard specifications for iron ore fines (i.e. powders). If the mark-to-market exceeds certain threshold amounts, a Margin Payment is made either to Cargill or Tacora (any payment being a "**Margin Payment**"). In general, Margin Payments are due from Cargill to Tacora if iron ore prices rise from the date of which the vessel is loaded at the Port, and Margin Payments are due to Cargill from Tacora if iron ore prices fall from the date of which the vessel is loaded at the Port; and

(c) Third, Tacora and Cargill calculate the final purchase price, which is the commodity price, less freight costs plus a profit share. The commodity price is calculated using the arithmetic mean of the Platts 62% Index from the third calendar month after the vessel sails. The freight costs are calculated using the BECI-C3 index (Baltic Exchange Capesize Index for routes from Tubarao, Brazil to Qingdao, China) and other provisions. The profit share (as defined in the Offtake Agreement), which is based on the final sales price for the final customer over a base index (which is the Platts 62% Index). Cargill and Tacora split the Profit Share based on a formula, as outlined in the Offtake Agreement. The final sales price which flows into the profit share is negotiated between Cargill and the final customer based on a third-party contract. Tacora and Cargill determine who is owed a payment in respect of a shipment after the final purchase price can be calculated and compared to the provisional purchase price and true-up sums paid for that shipment.

37. Previously under the Offtake Agreement, Margin Payments were only due if the total mark-to-market amounts owed was over $5,000,000 in Tacora's favour or $7,500,000 in Cargill's favour. This was amended pursuant to the Second APF Amendment (as defined below) under which the threshold in favour of Cargill was removed and such Margin Payments were satisfied as deemed Margin Advances (as defined below) under the Advance Payments Facility.

38. While the Stockpile Agreement is in place, rather than paying Tacora the provisional purchase price after a vessel is loaded, Cargill will pay Tacora such amount when iron ore concentrate is unloaded to a stockpile at the Port. Pursuant to the Stockpile Agreement, Tacora sends Cargill an invoice at the end of each 7-day period (typically on Monday) for the iron ore concentrate that was delivered to the stockpile during the week prior. Cargill then subsequently would pay Tacora a provisional purchase price within three (3) business days of receiving the

invoice (typically on Wednesday). Pursuant to the Stockpile Agreement, all iron ore concentrate purchased by Cargill becomes Cargill's property at the moment of unloading by Tacora to the stockpile. The Stockpile Agreement provides Tacora with significant working capital while it remains in effect. As result of the Stockpile Agreement, Tacora receives weekly cash receipts, rather than payments only when vessels are loaded, which occurs approximately every 3-4 weeks. While the Stockpile Agreement was initially scheduled to terminate on October 10, 2023, the Company will continue to have the benefit of the Stockpile Agreement during the CCAA Proceedings as a result of the Company entering into the DIP Agreement with Cargill Inc., unless an Event of Default exists under the DIP Agreement.

39. As noted above, Tacora relies on Cargill for 100% of its revenue from the Scully Mine as Cargill purchases all of the iron ore concentrate produced from the Scully Mine and Tacora does not have any other purchasers of iron ore concentrate. It is crucial for Tacora's business that the Company continue to have a source to sell its iron ore concentrate to during the CCAA Proceedings.

D. MFC Royalty

40. On November 17, 2017, Tacora entered into an amendment and restatement of consolidation of mining leases (the "**MFC Royalty**") with 0778539 B.C. Ltd. (formerly, MFC Bancorp Ltd.) ("**MFC**"), pursuant to which the parties agreed to amend and restate a lease which provided Tacora with tenure and mining rights to certain premises constituting the Scully Mine in exchange for an ongoing royalty payment based on production. A copy of the MFC Royalty is attached hereto as **Exhibit "D"**.

41. Pursuant to the MFC Royalty, Tacora is required to pay 1128349 B.C. Ltd. (the beneficiary of the MFC Royalty) 7% of its net revenue (less certain expenses determined in accordance with the calculations set out therein) derived from the sale of its iron ore concentrate. Tacora must pay these amounts on or before the 25th day of January, April, July, and October each year (the **"Quarterly Payments"**). Tacora has made the required Quarterly Payments to MFC other than the payment due July 25, 2023, which totals C$5,865,004, inclusive of a 20% withholding tax of C$1,173,000 owed to the Government of Newfoundland & Labrador if and when the payment is made. The MFC Royalty provides for a 30-day grace period before failure to make a Quarterly Payment constitutes a default and an additional 60-day notice period to cure such default before MFC may exercise remedies under the MFC

Royalty. In order to preserve liquidity and maintain operations at the Scully Mine, the Company initially determined it would be prudent to utilize the 30-day grace period. Subsequently, the Company also continued to delay such payment given the limited available liquidity for the Company.

42. On May 19, 2023, MFC commenced arbitration proceedings (the "**MFC Arbitration**") against Tacora for alleged underestimated Quarterly Payments for the duration of the MFC Royalty. MFC has alleged that the Offtake Agreement does not constitute an "arm's length, bona fide contract of sale" and accordingly, different provisions apply to the calculation of the Quarterly Payments. The underpayment amount alleged by MFC is "at least" $2,781,625. The Company vigorously contests this allegation. A tribunal of arbitrators have been appointed to preside over the MFC Arbitration but otherwise the arbitration has not materially advanced. If the MFC Arbitration proceeded in the normal course, it is anticipated that it would take until at least June 2024 before a hearing on the merits.

E. Environmental Matters

43. Tacora maintains the required permits and licenses to conduct the mining activities at the Scully Mine**.**

44. On September 28, 2017, Tacora prepared and submitted an Environmental Assessment Registration ("**EA Registration**") to the Government of Newfoundland and Labrador in accordance with the *Newfoundland and Labrador Environmental Protection Act* (Newfoundland and Labrador). The government of Newfoundland and Labrador placed the document on a public notice period, responded to public comments, and released the reactivation project from further environmental assessment on November 21, 2017.

45. Tacora prepared and submitted a reactivation plan, a development plan, a rehabilitation and closure plan and an operating certificate of approval application to the Government of Newfoundland and Labrador that related to environmental and other operational impacts of resuming operations at the Scully Mine. Following completion of a feasibility study, Tacora received approvals in respect of its plans and application from the applicable Government of Newfoundland and Labrador authorities.

46. Pursuant to a Notice of Intention and Direction from the Department of Environment and Climate Change ("**DECC**") dated July 27, 2023, the Company was made aware of certain Total

Suspended Solids ("**TSS**") exceedances at the Scully Mine. The Company has assigned teams to develop and commence an actionable plan to mitigate its TSS exceedances and expects to share its plan with the DECC in due course.

47. I understand that the relevant municipal and provincial government authorities are supportive of Tacora's efforts to maintain compliance with all environmental requirements. Tacora is not aware of any other material environmental issues at the Scully Mine.

F. Employees

48. Tacora employs approximately 450 people, the majority of whom are full time employees. Tacora employs two (2) people on contract. The employee breakdown is set out below:

	Scully Mine	Head Office
Full Time / Part Time	Full Time: 442	Full Time: 8
Unionized / Non-Unionized	Unionized: 283 Non-Unionized: 181	Unionized: 0 Non-Unionized: 8
Salaried / Contract	Salaried: 166 Hourly: 298	Salaried: 6 Hourly: 2

49. Tacora has 13 US-based employees who primarily work from a head office based in Grand Rapids, Minnesota. These US-based employees have employment contracts with Tacora. However, payroll, payroll tax and corporate income tax filings for these employees are processed through Tacora US. Through the CCAA Proceedings, Tacora will continue to make payments on behalf of Tacora US to fund these amounts.

50. Of the employees, approximately 64% are paid on an hourly basis and approximately 36% are salaried. Approximately 283 of Tacora's hourly employees are subject to a collective

bargaining agreement (the "**CBA**") and are represented by the United Steelworkers Local 6285 (the "**USW**"). The current CBA with the USW came into effect on January 11, 2023, and remains in full force and effect until December 31, 2027.

51. Pursuant to the CBA, Tacora contributes five (5) percent of all its employees' base salary to a group registered retirement savings plan managed by Mercer Planisphere, effective as of November 1, 2017 (the "**Group RRSP**"). In fiscal year 2022, Tacora was responsible to contribute approximately $1,970,512 to the Group RRSP, which has been fully paid by Tacora. Tacora is responsible to contribute approximately $3,115,381 to the Group RRSP in fiscal year 2023. As at September 1, 2023, Tacora has contributed $2,140,381 to the Group RRSP in respect of fiscal year 2023. Payments to the Group RRSP are made following each payroll.

52. Tacora is current in the payment of wages to its employees. Accrued vacation pay as at September 1, 2023, inclusive of accruals**,** is approximately $563,369. The accrued vacation pay is broken down as follows: (a) $22,574 for Canada-based corporate employees; (b) $134,125 for US-based employees; and (c) $406,669 for employees at the Scully Mine and Plant.

53. Tacora does not have a registered pension plan.

G. Other Contractors and Consultants

54. Tacora also contracts with various local service providers that make available staff to assist Tacora with its operations on a regular basis. Certain of these contractors have staff at the Scully Mine for each shift worked by regular Tacora employees. Certain of these services providers provide general labour and others perform specialized tasks at the Scully Mine related to repair and maintenance at the Plant.

55. Additionally, in February 2023, Tacora engaged Partners in Performance ("**PIP**") to initiate an operational stabilization and turnaround program at the Scully Mine for a period of 20 weeks, commencing on February 27, 2023. PIP is a global management consulting firm providing specialized services in the metals and mining industry. PIP has had a dedicated team of individuals that are regularly on-site at the Scully Mine who have been assisting Tacora implement operation initiatives to ramp up production at the Scully Mine and also design a capital plan for required project to achieve the nameplate capacity of 6.0 Mtpa.

56. On July 21, 2023, Tacora entered into another agreement for consulting services with PIP. PIP was engaged for a period of 26 weeks, commencing on July 24, 2023. PIP is currently

providing a team that are regularly on-site at the Scully Mine to continue the operational stabilization and turnaround program and to assist Tacora develop and action a capital project plan to ramp up to 6.0 Mtpa.

57. Tacora intends to continue the engagement with PIP through these CCAA Proceedings.

H. Cash Management

58. Tacora uses a cash management system (the "**Cash Management System**") in the ordinary course of business to, among other things, collect funds and pay expenses associated with its operations. This Cash Management System provides Tacora with the ability to efficiently and accurately track and control corporate funds and to ensure cash availability.

59. As part of this Cash Management System, Tacora maintains four bank accounts (the "**Bank Accounts**"):

(a) Bank of Montreal: USD operating account;

(b) Bank of Montreal: CAD operating account;

(c) Bank of Montreal: CAD collateral account; and

(d) JPMorgan Chase: USD operating account.

60. Payments flowing to Tacora pursuant to the Offtake Agreement are received in Tacora's Bank of Montreal: USD operating account. To the extent payments are required to be made in Canadian dollars, Tacora exchanges such funds at the available rates provided by Bank of Montreal ("**BMO**") and transfers them to the CAD operating account for disbursement. There are no regular cash sweeps. The collateral account described above previously held funds to secure a corporate credit card line of credit, however, Tacora recently closed such line of credit.

61. The two BMO Bank Accounts used for operational purposes are subject to: (a) a blocked account agreement dated January 9, 2023, entered into between BMO, Tacora and the Notes Trustee (as defined herein); and (b) a blocked account agreement dated January 9, 2023, entered into between BMO, Tacora, the Notes Trustee and Cargill.

IV. TACORA'S FINANCIAL POSITION

A. Financial Statements

62. A copy of Tacora's audited financial statements for the fiscal year ended December 31, 2022, are attached hereto as **Exhibit "E"**.

63. A copy of Tacora's unaudited monthly report for the month ended July 31, 2023, is attached hereto as **Exhibit "F"** (the "**July Balance Sheet**"). The July Balance Sheet is the most recent balance sheet prepared by the Company.

B. Assets

64. As appears from the July Balance Sheet, the assets of Tacora had an unaudited net book value of approximately $360,660,000 consisting of the following:

Assets	**Approximately ($)**
Current assets	
Cash and cash equivalents	12,466,000
Restricted cash, escrow	117,000
Receivables	8,303,000
Inventories	46,684,000
Prepaids	10,650,000
Total current assets	*78,220,000*
Non-current assets	
Mining property, land, plant & equipment	223,286,000
Port prepayments	46,024,000
Deposits	13,136,000
Total non-current assets	*282,446,000*
Total	360,666,000

B. Liabilities

65. As appears from the July Balance Sheet, the liabilities of Tacora had an unaudited net book value of approximately $427,545,000 and consisted of the following:

Liabilities	Approximately ($)
Current liabilities	
Accounts payable	36,989,000
Accrued liabilities	79,984,000
Total current liabilities	*116,973,000*
Non-current liabilities	
Debt	239,765,000
Lease liabilities	29,041,000
Royalties payable	13,125,000
Deferred tax liability	0
Rehabilitation obligation	28,641,000
Total non-current liabilities	*310,572,000*
Total	427,545,000

V. TACORA'S INDEBTEDNESS

66. The majority of Tacora's liabilities consist of its debt and lease liabilities, which are described further below.

A. Secured Obligations

67. Tacora has approximately $298 million in secured debt owing primarily to (a) holders of Senior Notes and Senior Priority Notes (each as defined below) (the "**Senior Noteholders**");

and (b) Cargill in respect of an Advance Payments Facility (as defined below). As described further below, the secured indebtedness shares the same collateral and security package and is subject to an intercreditor agreement between the parties. The secured debt and its respective priority rankings are summarized in the below chart and detailed further below:

	Cargill	Senior Noteholders
First Ranking	$4,717,648 of Margin Advances and Prepay Advances pursuant to the Advance Payments Facility	$27,521,634 of Senior Priority Notes
Second Ranking	$30,000,000 of Initial Advances pursuant to the Advance Payments Facility	$225,000,000 of Senior Notes in principal and $9,281,250 in unpaid interest
Total	$34,717,648	$261,802,884

68. Copies of personal property security searches in respect of Tacora in Ontario and Newfoundland and Labrador conducted as at August 29, 2023, and September 1, 2023, respectively, are attached hereto as **Exhibits "G"** and **"H"**.

(i) Senior Notes

69. In May 2021, Tacora issued $175,000,000 of Senior Notes bearing interest at a rate of 8.25% (the "**Initial Senior Notes**") pursuant to an indenture (the "**Senior Notes Indenture**"), among Tacora and Wells Fargo Bank, National Association, as trustee and collateral agent for the Initial Senior Notes.

70. In February 2022, Tacora issued an additional $50,000,000 of Senior Notes bearing interest at a rate of 8.25% (together with the Initial Senior Notes, the "**Senior Notes**") pursuant to a second supplemental indenture, among Tacora and Computershare Trust Company, N.A., as successor to the initial trustee, and collateral agent for the Senior Notes (the "**Notes Trustee**").

71. The aggregate principal amount outstanding pursuant to the issued Senior Notes is $225,000,000. Interest on the Senior Notes is payable semi-annually in arrears on May 15 and November 15 of each year. An interest payment which was originally due May 15, 2023, in the amount of approximately $9,281,250 remains outstanding under the Senior Notes. As set out further below, the applicable grace period under the Senior Notes Indenture with respect to the interest payment was extended to the earlier of (a) November 3, 2023; or (b) the occurrence of the termination or acceleration of the Advance Payments Facility (which currently is scheduled to occur on October 10, 2023), with the consent of the majority of Senior Noteholders as part of Tacora's liquidity preservation efforts.

72. Tacora's obligations in respect of the Senior Notes are secured by, among other things:

(a) a general security agreement dated May 11, 2021, executed by Tacora in favour of the Notes Trustee. Pursuant to the agreement, Tacora granted the Notes Trustee security interests in substantially all Tacora's present and after-acquired personal property;

(b) an assignment of material contracts dated May 11, 2021, executed by Tacora in favour of the Notes Trustee. Pursuant to the agreement, Tacora assigned all its right, title and interest in and to various material contracts to the Notes Trustee;

(c) a deed of hypothec dated August 3, 2021, executed by Tacora in favour of the Notes Trustee, as amended by a deed of correction dated August 16, 2021, between the same parties. Pursuant to the agreement, Tacora hypothecated all its present and future movable and immovable property to and in favour of the Notes Trustee;

(d) a share pledge agreement dated August 4, 2021, executed by Tacora in favour of the Notes Trustee. Pursuant to the agreement, Tacora pledged the issued and outstanding shares of Tacora Norway to and in favour of the Notes Trustee; and

(e) a debenture dated August 9, 2021, executed by Tacora in favour of the Notes Trustee, as amended by a debenture amending agreement dated February 16, 2022. Pursuant to the debenture, Tacora granted a security interest in substantially all its owned real estate holdings to and in favour of the Notes Trustee

(collectively, the "**Senior Notes Security**").

73. Copies of the above-referenced documents have not been attached to this affidavit given their length. However, copies are available upon request. Further, though a hypothec is registered in Canada, no material portion of the Property is located in Quebec. If the Stockpile Agreement is no longer in effect during the CCAA Proceedings, it is possible that there will be Property in Quebec that arises during the CCAA Proceedings as iron-ore concentrate is unloaded into the stockpile at the Port which will no longer become the property of Cargill.

(ii) Senior Priority Notes

74. As a result of Tacora's liquidity challenges (which are described in greater detail below), in May 2023, Tacora engaged with the Ad Hoc Group of the Senior Notes to raise additional capital to support the operations of the Company. Tacora and the Notes Trustee entered into an amended and restated base indenture dated May 11, 2023, as supplemented by the first supplemental indenture dated May 11, 2023, and the second supplemental indenture dated May 11, 2023 (collectively, the "**Senior Priority Notes Indenture**", and together with the Senior Notes Indenture, the "**Note Indentures**").

75. Pursuant to the Senior Priority Notes Indenture, Tacora issued $27,000,000 of senior priority notes bearing interest at a rate of 13.00%, with 9.00% being paid via cash and 4.00% being paid via payment-in-kind (the "**Senior Priority Notes**"). Interest on the Senior Priority Notes is to be paid monthly in arrears on the first business day of the month following the month in respect of which interest is being paid.

76. The terms of the Senior Priority Notes were negotiated with the Ad Hoc Group and were sold to certain holders of the Senior Notes for proceeds of $25,000,000. The Senior Priority Notes are secured by the Senior Notes Security and initially matured upon the earlier of: (a) September 8, 2023; (b) the consummation by Tacora of a restructuring or recapitalization transaction; and (c) maturity or an event of default under certain of Tacora's other debt and payment obligations. The Senior Priority Notes rank senior to the Senior Notes and the Initial Advances.

77. Initially, the grace period was thirty (30) days before an event of default occurred for non-payment of interest due under the Senior Notes and the Senior Priority Notes (May 15, 2023). However, the Senior Priority Notes Indenture extended the grace period from thirty (30)

to sixty (60) days, such that there would be no event of default under the Senior Notes and Senior Priority Notes for non-payment of interest until July 15, 2023.

78. Tacora entered into a third supplemental indenture dated June 23, 2023 (the "**Third Supplemental Indenture**") to modify the Note Indentures and to provide for, among other things: (a) the proceeds of indebtedness incurred pursuant to a Senior Secured Hedging Facility (as defined in the Senior Priority Notes Indenture) to be used to fund Tacora's working capital needs; (b) an increase in the amount of indebtedness and liens with payment priority over the Senior Priority Notes that could be incurred under the Senior Priority Notes Indenture; and (c) a further extension of the grace period before a default in the payment of interest on the Senior Notes and the Senior Priority Notes constitutes an event of default to September 12, 2023 (120 days following the original interest payment date of May 15, 2023).

79. Tacora entered into a fourth supplemental indenture dated September 8, 2023 (the "**Fourth Supplemental Indenture**") to modify the Note Indentures and to provide for, among other things, an extension to the maturity date under the Senior Priority Notes and a further extension of the grace period before a default in the payment on the Senior Notes to the earlier of (a) November 3, 2023; or (b) the occurrence of the termination or acceleration of the Advance Payments Facility.

80. Copies of the above-referenced documents have not been attached to this affidavit given their length. However, copies are available upon request.

(iii) Advance Payments Facility

81. In or around December 2022, Tacora required additional financing to fund operations through the Company's liquidity challenges. On January 3, 2023, Tacora, as seller, and Cargill, as buyer, entered into an advance payment facility agreement (as amended from time to time, the "**APF Agreement**"). Pursuant to the APF Agreement, Cargill provided Tacora with an advance payment facility (the "**Advance Payments Facility**") under which Cargill made advance payments under the Offtake Agreement in the total principal amount of $30,000,000 (the "**Initial Advances**") to Tacora. Until termination of the APF Agreement, Cargill is required to continue paying Tacora for iron ore concentrate under the Offtake Agreement and may not credit such deliveries against the outstanding balance of the Advance Payments Facility.

82. The Initial Advances consisted of three components: (a) a deemed advance of $15,000,000 that was retained by Cargill as consideration for entering into the First Offtake Amendment and guaranteeing a floor price of $105 per tonne for Platts 62% Index under the Offtake Agreement for 250,000 tonnes per month of volume shipped via vessel from January 2023 to May 2023; (b) an initial advance of $10,000,000 to fund Tacora's working capital and other expenses which was funded on January 9, 2023; and (c) a subsequent advance of $5,000,000 which was funded on February 24, 2023. The Initial Advances rank *pari passu* with the Senior Notes and junior to the Senior Priority Notes.

83. The Advance Payments Facility was originally scheduled to be repaid on or before May 1, 2023, with repayment being made, at Cargill's option, either: (a) via weekly deliveries of product in accordance with the Offtake Agreement; or (b) in cash. Tacora and Cargill entered into an amendment to the APF Agreement on April 29, 2023, which, among other things:

(a) extended the maturity date of the Advance Payments Facility from May 1, 2023 to June 14, 2023;

(b) provided that the maturity date was automatically further extended to July 14, 2023, if the applicable grace period to make interest payment due May 15 in respect of the Senior Notes was extended for the same timeframe; and

(c) issued Cargill penny warrants equal to 25% of Tacora's common shares on a fully diluted basis.

84. Subsequently, on May 29, 2023, Tacora and Cargill entered into an Amended and Restated APF Agreement (the "**Second APF Amendment**") to provide Tacora with additional liquidity. The Second APF Amendment provided for a new facility under the Advance Payments Facility whereby Cargill would make margin advances ("**Margin Advances**") of up to $25,000,000 to Tacora. The Margin Advances were primarily made to finance the Margin Payments, as described above, that may be payable to Cargill under the Offtake Agreement. The outstanding amount of Margin Advances fluctuate daily based on the Platts Index 62% price movement. The Margin Advances rank *pari passu* with the Senior Priority Note and senior to the Senior Notes and the Initial Advances. Pursuant to the Second APF Amendment, the maturity date of the Advance Payments Facility was extended to September 12, 2023.

85. On June 23, 2023, Tacora entered into a further amendment to the APF Agreement (the "**Third APF Amendment**") to provide greater flexibility to Tacora on utilizing the new margin facility provided by the Second APF Amendment. Under the Third APF Amendment, Cargill, in its sole discretion, could make additional prepay advances ("**Additional Prepay Advances**" and together with the Margin Advances, the "**Senior Priority Advances**") to Tacora utilizing any availability under the $25,000,000 facility created by the Second APF Amendment. On June 29, 2023, Cargill made an Additional Prepay Advance in the amount of $3,000,000. No further Additional Prepay Advances have been made by Cargill and the only Additional Prepay Advance was repaid by Tacora. Additional Prepay Advances are repayable upon demand and rank *pari passu* with the Senior Priority Note and the Margin Advances, and senior to the Senior Notes and the Initial Advances. A copy of the Third APF Amendment, which includes the current version of the APF Agreement is attached hereto as **Exhibit "I"**.

86. In connection with discussions and negotiations between Tacora's stakeholders regarding a potential consensual recapitalization transaction, as described below, Cargill agreed to extend the maturity date of the Advance Payments Facility from time-to-time, most recently to October 10, 2023.

87. As of the date of this affidavit, there is approximately $4.7 million of Senior Priority Advances outstanding.

88. Tacora's obligations (including the Initial Advances, Margin Advances and Additional Prepay Advances) under the APF Agreement are secured with a collateral and security package substantially similar to the Senior Notes Security, including by, among other things:

(a) a debenture dated January 9, 2023, executed by Tacora in favour of Cargill. Pursuant to the agreement, Tacora granted a security interest in substantially all of its owned real property holdings to and in favour of Cargill;

(b) a general security agreement dated January 9, 2023, executed by Tacora in favour of Cargill. Pursuant to the agreement, Tacora granted Cargill security interests in substantially all of Tacora's present and after-acquired personal property;

(c) an assignment of material contracts dated January 9, 2023, executed by Tacora in favour of Cargill. Pursuant to the agreement, Tacora assigned all its right, title,

and interest in and to various material contracts to Cargill;

(d) an assignment of insurance dated January 9, 2023, executed by Tacora in favour of Cargill. Pursuant to the agreement, Tacora assigned all its right, title, and interest in and to various insurance policies to which Tacora is a beneficiary of, to Cargill;

(e) a hypothec on movables dated January 9, 2023, executed by Tacora in favour of Cargill. Pursuant to the agreement, Tacora hypothecated all its present and future movable property to and in favour of Cargill; and

(f) a share pledge agreement dated January 9, 2023, executed by Tacora in favour of Cargill. Pursuant to the agreement, Tacora pledged a security interest in all the issued and outstanding shares of Tacora Norway to and in favour of Cargill.

89. The various rankings of the obligations set forth above are governed pursuant to an intercreditor agreement dated January 9, 2023 (the "**Initial Intercreditor Agreement**") and a collateral agency and intercreditor agreement dated May 11, 2023 (the "**Second Intercreditor Agreement**", and collectively, the "**Intercreditor Agreements**"), each between Tacora, the Notes Trustee and Cargill.

(iv) Caterpillar Equipment Leases

90. On April 15, 2019, Tacora, as lessee, and Caterpillar Financial Services Limited, as lessor ("**Caterpillar**") entered into a master lease agreement (the "**Caterpillar MLA**") providing for a lease facility in the maximum amount of $14,500,000 to finance open pit mining equipment.

91. Pursuant to the Caterpillar MLA, Caterpillar has financed various pieces of mining equipment for use at the Scully Mine. As at July 2023, the capitalized lease obligation owing by Tacora to Caterpillar is approximately $1,586,997 for mining equipment financed pursuant to the Caterpillar MLA.

92. Further, on April 6, 2023, Tacora provided a deposit in the amount of C$978,963 to Toromont Industries Ltd. ("**Toromont**"), a dealer for Caterpillar-branded equipment to purchase a Caterpillar 994K wheel loader (the "**Wheel Loader**") to replace Tacora's old equipment. Accordingly, Toromont ordered the Wheel Loader on April 6, 2023. The Wheel Loader is expected to arrive in late October 2023.

93. Tacora and Toromont reached an agreement whereby Tacora made weekly payments to Toromont up to July 24, 2023, to cover the required deposit amount of C$1,957,926.

94. The Wheel Loader is important to the continuing operation of Tacora's business, as Tacora's current piece of equivalent equipment is at the end of its useful life.

95. During the CCAA Proceedings, Tacora will use a portion of the DIP Facility, if approved by this Court, to pay the remaining 80% of the purchase price for the Wheel Loader.

(v) Komatsu Leases

96. Komatsu Financial provided financing to Tacora for the purchase of various Komatsu branded equipment and certain non-Komatsu branded equipment in connection with Tacora's mining operations at the Scully Mine.

97. Each piece of equipment was financed by Komatsu Financial, which Tacora would own after Komatsu Financial was paid in full.

98. As at July 2023, Tacora is indebted to Komatsu Financial in the approximate amount of $26,132,147 pursuant to the various sales contracts that Tacora has with Komatsu Financial in respect of the financed equipment.

(vi) Sandvik Leases

99. On August 18, 2022, Tacora, as lessee, and Sandvik Canada, Inc. dba Sandvik Financial Services Canada ("**Sandvik**") entered into a master equipment lease agreement (the "**Sandvik MLA**").

100. On August 18, 2022, Tacora and Sandvik entered into various equipment schedules as part of the Sandvik MLA. Pursuant to these equipment schedules to the Sandvik MLA, Sandvik agreed to finance the purchase of various pieces of equipment in connection with Tacora's operations at the Scully Mine.

101. As at July 2023, the capitalized lease obligation owing by Tacora to Sandvik is $1,363,256 for mining equipment financed pursuant to the Sandvik MLA and equipment schedules thereto.

B. Unsecured Obligations

(i) ACOA Debt

102. On June 15, 2021, Tacora and Atlantic Canada Opportunities Agency ("**ACOA**") entered into a contribution agreement (the "**First ACOA Agreement**"). The First ACOA Agreement accepted Tacora's previously submitted application for assistance pursuant to a national innovation program established to provide support to business productivity and scale-up.

103. Pursuant to the First ACOA Agreement, ACOA provided Tacora with C$500,000 and is required to make principal-only monthly payments in the amount of C$8,333 starting from April 1, 2022, through March 1, 2027.

104. On March 9, 2022, Tacora and ACOA entered into a second contribution agreement (the "**Second ACOA Agreement**"). The Second ACOA Agreement accepted Tacora's previously submitted application for assistance pursuant to a national initiative to support regional recovery and stimulus that positioned local economies for long-term growth by transitioning to a green economy, fostering an inclusive recovery, enhancing competitiveness, and creating jobs.

105. Pursuant to the Second ACOA Agreement, ACOA provided Tacora with C$3,300,000 in funding to support the expansion of the Scully Mining Operation's manganese reduction circuit from six to eight lines. Tacora is required to make principal-only monthly payments in the amount of C$27,500 starting July 1, 2023, through June 1, 2033.

106. On February 1, 2023, Tacora and ACOA entered into a third contribution agreement (the "**Third ACOA Agreement**"). The Third ACOA Agreement accepted Tacora's previously submitted application for assistance pursuant to a national innovation program established to provide support to business productivity and scale-up.

107. Pursuant to the Third ACOA Agreement, ACOA agreed to provide Tacora with C$1,250,000 in funding to support the assessment, design, and planning for the development of a manganese processing facility. To date, Tacora has received C$252,103 under the Third ACOA Agreement. To the extent that the Third ACOA Agreement is fully funded, Tacora is required to make principal-only monthly payments in the amount of C$17,360 starting from January 1, 2025 through December 1, 2030.

108. Tacora's obligations to ACOA under the First, Second, and Third ACOA Agreements are

unsecured.

(ii) Impact and Benefit Agreement

109. Tacora acknowledges that its operations at the Scully Mine take place on lands which the Innu Nation members have historically used for traditional purposes and lands which are of environmental, cultural, economic, and spiritual importance to the Innu Nation members. On March 21, 2018, Tacora and Innu Nation Inc. (the "**Innu Nation**") entered into an impact and benefit agreement (the "**IBA**") to establish a long-term and mutually beneficial relationship between the parties.

110. Pursuant to the terms of the IBA, Tacora makes quarterly payments to the Innu Nation based on the quantum of iron ore concentrate that it ships. Tacora pays the Innu Nation C$0.10 per tonne of iron ore concentrate shipped up to the point in time as shown on a quarterly cash flow statement when the Scully Mine cumulative cash flow becomes positive, and then C$0.25 per tonne shipped afterwards.

V. TACORA'S FINANCIAL DIFFICULTIES

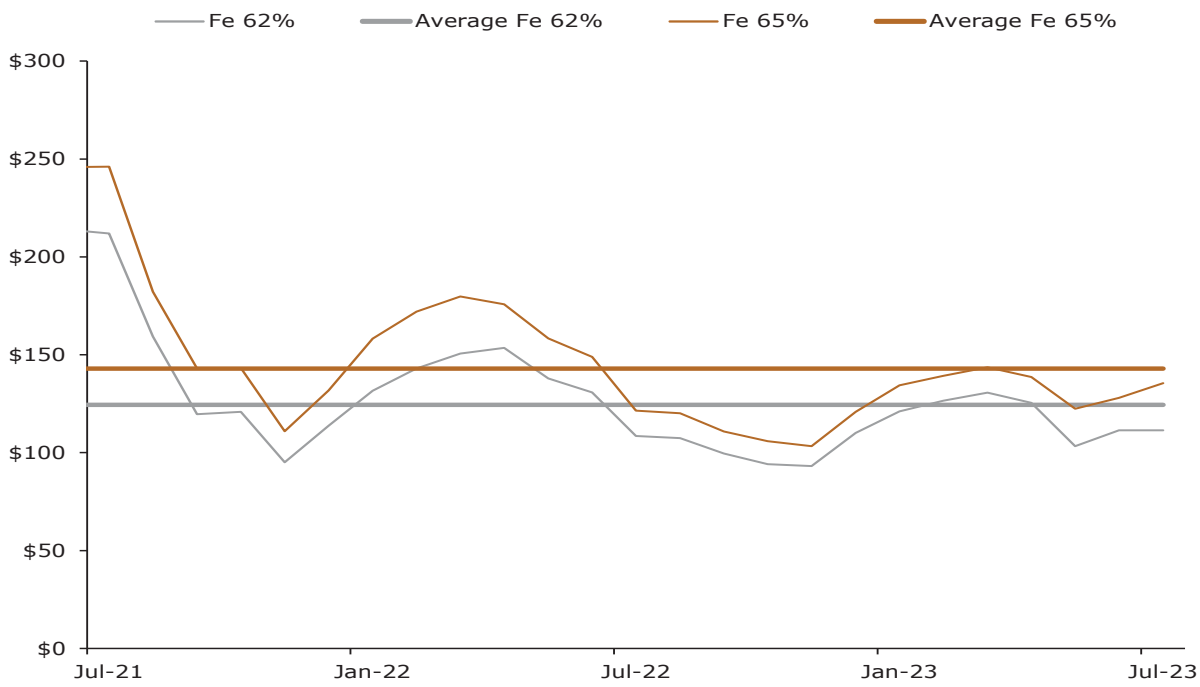
111. Since the successful re-start of operations in 2019, several factors including, capital constraints, human resources constraints, equipment failures, operational challenges and other issues have led to Tacora reaching average production levels of around 3.0 Mtpa from 2020 to 2022, which is well below its name-plate production capacity of 6.0 Mtpa resulting in high operating cash cost per tonne due to the high fixed-cost nature of Tacora's business.

112. In 2022, Tacora completed three significant capital projects: the Screen Plant, Scavenger Spirals and Manganese Reduction Circuits (together, the "**Big Three Capital Projects**") which required investment of over $60 million. The Big Three Capital Projects are critical to ramping up production at the Scully Mine to reach nameplate capacity of 6.0 Mtpa. The Screen Plant was designed to provide for extra milling capacity by separating certain ore that does not requiring milling to be processed. However, upon the Screen Plant becoming operational in August 2022, the Company suffered from extended downtime due to significant operational issues across all facets of the operation. Several design flaws were discovered with the Screen Plant and it required significant attention from management and Plant employees, diverting attention away from required preventative maintenance work throughout the Plant.

113. Tacora also suffered several other operational issues that were not directly related to the Big Three Capital projects resulting in frequent unplanned downtime and lost production. As a result of these operational challenges, production volume of iron ore concentrate was negatively impacted through the balance of 2022 resulting in higher cost of production per tonne. Iron prices also traded down from June 2022 (approximately $130/tonne) through October 2022 (approximately $76/tonne) primarily due to Covid-19 restrictions and declining real estate construction activity in China. The lower iron price environment through that period combined with higher operating cost per tonne caused Tacora to operate with negative margins per tonne. Consequently, Tacora's cash on balance sheet declined from $66 million as of Q2 2022 to $17 million as of Q3 2022. These challenges placed significant pressure on Tacora's liquidity and as described further herein, Tacora had to raise new capital in order to continue operating.

114. In early 2023, Tacora established a cross-functional task force consisting of dedicated Tacora employees supported by technical experts from Cargill and PIP to initiate an operational stabilization and turnaround program. This program led to Tacora achieving record monthly iron ore concentrate production in March, April and May, resulting in a run-rate annual production of approximately 4.8 Mtpa. However, in June, Tacora's operations were significantly and negatively affected by wildfires in Quebec which forced the QNS&L Railway to temporarily shutdown its rail haulage services. The rail shutdown prevented Tacora from delivering any iron ore concentrate to the Port for the first 10-days of June and only allowed for sporadic deliveries through the balance of the month. This effectively shut off Tacora's ability to earn revenue and generate cash in June. The disruption to the rail service also significantly disrupted the dry-end operations of the Plant which requires a consistent cycling of trains to operate smoothly. The dry-end of the Plant, where moisture is removed from processed iron ore, faced continued operational issues through the month of July and August. In addition, the iron market volatility continued with the Platts 62% Index trending down significantly from approximately $125 at the beginning of April 2023 to $99 at the beginning of May 2023.

115. Below is a chart showing the volatility and price decreases of iron ore described above and beginning July 2021 through July 2023, as measured by the Platts 62% Index and the Platts 65% Index.



116. The confluence of issues described above have significantly impacted the Company's liquidity. For over a year, the Company has had to operate with minimal amounts of cash, limiting its ability to continue necessary investments for ramp up of the Scully Mine, and requiring management to expend significant time and effort with various initiatives to obtain short-term financing injections in order to continue operating and assist with the Strategic Process described below.

VI. TACORA'S RESPONSE TO FINANCIAL DIFFICULTIES

A. Liquidity Management Efforts

117. Starting in September 2022, Tacora commenced exploring a variety of options to access additional liquidity and capital for its business to continue operating with the financial difficulties set forth above. On November 11, 2022, Tacora closed an issuance of 15,000,000 Class C Preferred Shares to Cargill for proceeds of $15,000,000. These funds were primarily used to make the semi-annual interest payment that was due in respect of the Senior Notes on November 15, 2022 and fund the Company's operations.

118. Subsequently, facing a difficult liquidity situation at 2022 year-end, Tacora negotiated and entered into the APF Agreement with Cargill on January 3, 2023 (the details of which are described above) and the initial funding closed January 9, 2023. The Advance Payments Facility, which provided the Company with critical liquidity to keep operating, initially matured on May 1, 2023 (shortly before the May 15 due date for the next interest payment in respect of the Senior Notes). In conjunction with the Advance Payments Facility or shortly thereafter, the Company also commenced various other efforts to preserve liquidity and value for stakeholders, which included:

(a) Engaging Greenhill and commencing the Strategic Process (as defined below);

(b) Negotiating amendments to the Port Agreement and Railway Agreement with SFPPN and QSN&L, respectively, which addressed payment timing to preserve additional liquidity for the Company;

(c) Transferring Sydvaranger, a former subsidiary of Tacora Norway, to Orion as Tacora had previously been funding approximately $500,000 per month to fund care and maintenance expenses at the Sydvaranger Mine and the project economics had been negatively impacted due to higher than expected capital expenditures and the decline in iron ore prices and it was unlikely Tacora would have been able to achieve the required funding was necessary to avoid defaults under the royalty agreement with Orion; and

(d) Engaging PIP, a mining operations consultant, to assist with operational turnaround and efficiency initiatives at the Scully Mine.

119. In April 2023, the Company negotiated an extension of the maturity of the Advance Payments Facility with Cargill and also commenced discussions with the Ad Hoc Group to provide additional financing and payment deferrals to the Company. The need for additional liquidity was exacerbated by the fall in iron ore prices in April and May. During this period, the Company determined it was prudent to not make the interest payment under the Senior Notes Indenture due on May 15, 2023, given the liquidity situation and ongoing discussions with the Ad Hoc Group.

120. In May 2023, with the support of the Ad Hoc Group, the Company commenced a consent solicitation to amend the Senior Notes Indenture to, among other things, (a) permit the

issuance of the Senior Priority Notes on a senior basis to the existing Senior Notes; (b) extend the interest grace period under the Senior Notes Indenture to sixty (60) days which allowed the Company to continue deferring the May 15 interest payment without an event of default until July 15; and (c) create a new basket under the Senior Notes Indenture to permit the new Senior Secured Hedging Facility (as defined in the Note Indentures) of up to $25 million that would rank *pari passu* with the Senior Priority Notes. Over 90% of the Senior Noteholders consented to the proposed amendments and the Senior Note Indenture was amended as a result. On May 11, 2023, the Ad Hoc Group purchased $27,000,000 of Senior Priority Notes immediately following closing of the consent solicitation which provided the Company with additional liquidity.

121. On May 29, 2023, Tacora utilized the new basket available under the Notes Indentures to enter into the Second APF Amendment with Cargill to provide for $25,000,000 of Margin Advances that funded Margin Payments under the Offtake Agreement and replaced a limited $7,500,000 line of credit existing under the Offtake Agreement while any Margin Advances or Additional Prepay Advances were outstanding.

122. On June 20, 2023, Tacora commenced another consent solicitation with support from the Ad Hoc Group to further amend the Note Indentures to include the modifications contemplated by the Third Supplemental Indenture, which included, among other things: (a) permitting proceeds of indebtedness incurred pursuant to the Senior Secured Hedging Facility to be used to fund Tacora's working capital needs, rather than only funding Margin Payments under the Offtake Agreement; and (b) an extension of the interest grace period to 120 days which would allow the continued deferral of the May 15 interest payment until September 12, 2023. On June 23, 2023, the consent solicitation successfully closed and the Company and Cargill concurrently effected the Third APF Amendment to permit the Additional Prepay Advances. On June 29, 2023, Cargill advanced $3,000,000 to the Company as an Additional Prepay Advance. This additional liquidity provided by Cargill was necessary for the Company to continue operating with the challenges created by the Quebec wildfires.

123. On September 6, 2023, in an effort to further discussions between Tacora's stakeholders on a consensual recapitalization transaction, Tacora commenced another consent solicitation with support from the Ad Hoc Group to further amend the Note Indentures to include the modifications contemplated by the Fourth Supplemental Indenture, which included, among other things: an extension to the maturity date under the Senior Priority Notes and a further extension of the grace period before a default in the payment on the Senior Notes and the Senior Priority

Notes constitutes an event of default to the earlier of (a) November 3, 2023; or (b) the occurrence of the termination or acceleration of the Advance Payments Facility. The additional time provided the Company with additional time to discuss with its secured creditors and another potential investor regarding a potential recapitalization transaction. On September 8, 2023, the consent solicitation successfully closed with 100% consent of holders of Senior Priority Notes and consent of holders representing over 91% of the principal amount of the Senior Notes.

124. The Company also pursued other initiatives in response to the Quebec wildfires, which included:

(a) Negotiating further payment deferrals with SFPPN and QSN&L;

(b) Negotiating payment holidays in respect of their leases with Komatsu; and

(c) Negotiating deferment of tax and capital works payments owed to the Town of Wabush pursuant to a grant-in-lieu of taxes.

125. Subsequently, to further enhance the Company's liquidity position in the face of continued negative cash flow, Cargill and the Company entered into a Wetcon Purchase and Sale Agreement (the "**Wetcon Agreement**") dated July 10, 2023, whereby Cargill agreed to purchase a stockpile of 172,000 tonnes of wet concentrate from Tacora, located at the Scully Mine. Pursuant to the Wetcon Agreement, Cargill could make an upfront payment of $5,000,000 to Tacora for 117,000 tonnes of wet concentrate. Payment of the remaining $2,300,000 is due to Tacora upon conversion and shipment of the remaining 55,000 tonnes of wet concentrate. The Wetcon Agreement also provides an option for Cargill to purchase up to an additional 53,000 tonnes of wet concentrate (for a total of 225,000 tonnes) as an additional deferred amount and contemplates that any additional wet concentrate added to the stockpile purchased by Cargill automatically becomes the property of Cargill. The Wetcon Agreement confirmed that the Stockpile Purchase Agreement would terminate on the earlier of September 12, 2023, or an event of default and acceleration of the Advance Payments Facility. The Stockpile Purchase Agreement termination date was subsequently extended on numerous occasions and most recently to October 10, 2023. As at September 4, 2023, there were approximately 194,741 tonnes of wet concentrate at the Wetcon stockpile (the "**September 4 Wetcon Amount**").

126. On September 12, 2023, as part of the discussions between Tacora's stakeholders and to assist the liquidity of the Company, the Wetcon Agreement was amended to provide that Cargill would make payment of $3,954,171.43 in full and final satisfaction of all deferred amounts owing by Cargill to Tacora under the Wetcon Agreement in respect of the September 4 Wetcon Amount.

B. Strategic Process

127. As described above, on January 23, 2023, Tacora engaged Greenhill to assist with a strategic review process to explore, review, and evaluate a broad range of alternatives for the Company, including sale opportunities or additional investment into Tacora (the "**Strategic Process**"). Greenhill also assisted the Company with the various capital raises described above to improve the Company's liquidity position.

128. Commencing in March 2023, Greenhill reached out to 31 financial and strategic parties in connection with a potential sale or financing transaction. Numerous parties executed confidentiality agreements with the Company and Greenhill and the Company facilitated due diligence for parties interested in the opportunity. The Company subsequently received several letters of intent and term sheets in respect of potential transactions. The Company executed a letter of intent for a sale of the Company and facilitated advanced due diligence for the party. However, recently, the interested party advised it was no longer interested in advancing the transaction completed by its letter of intent.

129. Most recently in the Strategic Process, Cargill, the Senior Noteholders and another party engaged in significant, advanced discussions regarding a consensual restructuring and recapitalization transaction to address Tacora's liquidity issues, over leveraged capital structure, and need for additional investment to achieve nameplate capacity of 6.0 Mtpa. The Company understood that an agreement in principle was reached between the parties in mid-September, however, following advanced discussions on a binding agreement and the Company's best efforts to encourage a consensual resolution, the parties were unable to reach agreement that would avoid the need to file for protection under the CCAA.

130. In these CCAA Proceedings, the Company intends to continue the Strategic Process, with the assistance of Greenhill, and will seek to have a Solicitation Process, in the form included in the Application Record, approved at the Comeback Motion. The proposed Solicitation Process was designed by the Company, in consultation with Greenhill, its legal

advisors, and FTI in its capacity as Proposed Monitor. The Company expects to provide further evidence regarding the proposed Solicitation Process prior to the Comeback Motion. The Solicitation Process will solicit bids in connection with potential sale or recapitalization transactions. The Solicitation Process will also contemplate that interested parties will be informed that they will be able to assume the Offtake Agreement or pair with other offtake partners as a financing source for their proposed sale or recapitalization transaction.

C. Need for CCAA Protection

131. Despite the capital previously raised by the Company, as described above, Tacora is facing another imminent liquidity crisis. Tacora is unable to fund its obligations generally as they come due. In addition, the APF Agreement is set to terminate on October 10, 2023, which will trigger the maturity of the Senior Priority Notes and the Senior Notes.

132. As set out in the cash flow projection (the "**Cash Flow Forecast**") that was prepared by the Company and reviewed by the Proposed Monitor for the period from the date of filing to March 1, 2024, a copy of which is attached hereto as **Exhibit "J"**, Tacora will have a negative cash balance for the week beginning October 15, 2023. As is clear from the Cash Flow Forecast, Tacora critically needs interim financing (including prior to the Comeback Motion) to continue operating in the ordinary course and to fund these CCAA Proceedings.

133. In addition to the liquidity constraints of the business, as described above, Tacora also has several imminent debt maturities and scheduled interest payments that it will not be able to satisfy. In particular, the following amounts become due within the next week:

(a) Approximately $34.7 million in respect of the Advance Payments Facility, including the Initial Advances and Margin Advances, which is due October 10, 2023;

(b) Approximately $27.5 million plus accrued interest in respect of the Senior Priority Notes, which, pursuant to the Fourth Supplemental Indenture, will be due on the occurrence of the termination or acceleration of the Advance Payments Facility (which is due on October 10, 2023)[1]; and

[1] Prior to the Fourth Supplemental Indenture entered into on September 8, 2023, the Senior Priority Notes matured on September 8, 2023.

(c) Approximately $9.2 million in respect of unpaid interest on the Senior Notes, where, pursuant to the Fourth Supplemental Indenture, the applicable grace period expires on the occurrence of the termination or acceleration of the Advance Payments Facility (which is due on October 10, 2023).[2]

134. In anticipation of the Company's liquidity issues and impending debt maturities and interest payments, Greenhill commenced a solicitation process to obtain debtor-in-possession ("**DIP**") financing on behalf of Tacora on August 14, 2023 (the "**DIP Process**"). Following the DIP Process and extensive arm's length negotiations to achieve the best terms possible in the circumstances, the Company selected Cargill Inc.'s proposal as the best available option and the parties worked to substantially finalize an agreement. I understand that a representative from Greenhill is swearing an affidavit to provide details on the DIP Process.

135. On October 9, 2023, Tacora entered into the DIP Agreement with Cargill Inc. A copy of the DIP Agreement (without schedules) is attached hereto as **Exhibit "K**".

136. The primary terms of the DIP Agreement are summarized immediately below:

Summary of Key Terms of the DIP Agreement	
DIP Lender	Cargill, Incorporated
Maximum DIP Facility Amount	$75,000,000 <u>Permitted Uses</u> • Pay the reasonable and documented professional and advisory fees and expenses (including legal and fees and expenses) of Tacora and the Monitor; • Pay the reasonable and documented DIP Lender Expenses; • Pay the interest, fees and other amounts owing to the DIP Lender under the DIP Agreement; and • Fund, in accordance with the DIP budget, Tacora's funding requirements during the CCAA Proceedings.
Funding/Availability	Initial Advance – $15,500,000 Subsequent Advances – Bi-weekly advances of no less than $1,000,000, with amounts determined based on the funding needs of Tacora as set forth in the DIP budget.

[2] Prior to the Fourth Supplemental Indenture entered into on September 8, 2023, the applicable grace period before an event of default occurred for unpaid interest on the Senior Notes was September 8, 2023.

Interest	Interest is payable on all amounts drawn under the DIP Facility at a rate of 10% per annum in cash. Interest on all advances under the DIP Facility are calculated and compounded on a monthly basis on the principal amount of such advances and any overdue interest remaining unpaid.
Fees	Tacora is required to pay an exit fee in an amount equal to 3% of the maximum availability of $75,000,000 to the DIP Lender (the "**Exit Fee**") as compensation for the DIP Lender's commitment to provide DIP financing to Tacora. The Exit Fee is payable upon the earlier of (a) completion of a successful Restructuring Transaction (as defined below); and (b) the indefeasible repayment in full of the DIP Facility and all other obligations of Tacora under the DIP Agreement and/or cancellation of all remaining commitments in respect thereof. The Exit Fee is only earned upon the Court issuing the ARIO.
Security	Priority DIP Charge ranking senior to all encumbrances, except: • Priority payables; • Other Charges; and • Liens in favour of secured parties that did not receive notice.
Permitted Variance (vs DIP Budget)	Up to 15% relative to the aggregate disbursements (excluding the DIP Lender Expenses (as defined in the DIP Agreement)) on a cumulative basis since the beginning of the period covered by the applicable DIP budget.
Maturity	The earlier of: • October 10, 2024; • Closing of any restructuring, financing, refinancing, recapitalization, sale, liquidation, workout, plan of compromise or arrangement in accordance with the CCAA or other material transaction of, or in respect of, Tacora or all or substantially all of Tacora's business, assets, or obligations (collectively, "**Restructuring Transactions**"); • Date on which Tacora's obligations under the DIP Agreement are voluntarily prepaid in full and the DIP Facility is terminated; • Conversion of the CCAA Proceedings into a proceeding under the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (as

	amended); and • Occurrence of any event of default under the DIP Agreement that has not been cured.
Milestones	Tacora is permitted to pursue a Solicitation Process approved by the Court with the following milestones, which may be extended by Tacora in accordance with the proposed Solicitation Order: • The deadline for the receipt of non-binding letters of intent: (a) for potential Restructuring Transactions; and/or (b) to provide Tacora with an offtake, services or other agreement in respect of the Tacora's business, must be no later than December 1, 2023; • Final deadline for the receipt of binding bids: (a) for potential Restructuring Transactions; and/or (b) to provide Tacora with an offtake, services or other agreement in respect of Tacora's business, must be no later than January 19, 2024 (the "**Bid Deadline**"); and • Closing of transaction(s) for potential Restructuring Transactions; and/or (b) in respect of an offtake, services or other agreement in respect of the Tacora's business, must occur no later than February 29, 2024.
Other Provisions	Unless an Event of Default then exists, Cargill Inc. shall cause Cargill to continue to make the deemed Margin Advances under section 2.2 of the APF Agreement to fund any Margin Amounts (as defined therein) required to be funded from and after the Initial Order and all such Margin Advances shall be secured by the DIP Charge. Unless an Event of Default then exists, Cargill Inc. shall cause Cargill to (a) continue to provide Tacora with the services of a full time operational consultant and two (2) part-time capital project consultants, in a manner consistent with past practice, to assist with Tacora's business and operations (the "**Existing Services**"); and (b) provide other services (including consulting or advisory services or technical support) whether provided through third parties or by employees of Cargill that may be agreed by Tacora and Cargill from time to time, with consent of the Monitor (the "**Additional Services**", and together with the Existing Services, collectively, the "**Services**"). The Existing Services shall continue to be provided at no cost, consistent with past practice and the cost of the Additional Services shall be mutually agreed, with the consent of the Monitor. Provided that no Event of Default has occurred, Cargill Inc. shall cause Cargill to: (a) extend the term of the Stockpile Agreement to the maturity date under the DIP Agreement; (b) continue to perform its

	obligations under the Offtake Agreement; and (c) continue to honour and perform in respect of any existing side letters entered into between Tacora and Cargill in respect of hedges for the sale and purchase of iron ore under the Offtake Agreement. Among others, the occurrence of the following event shall constitute an Event of Default under the DIP Agreement: • The termination, suspension or disclaimer of the Existing Arrangements (as defined in the DIP Agreement), or the taking of any steps to terminate, suspend or disclaim (if permitted under the CCAA) any of the Existing Arrangements (which, for greater certainty, shall not include (a) the commencement and prosecution of the Solicitation Process, including the solicitation of an alternative offtake or service agreement, or (b) taking any step or related action pursuant to a binding agreement entered into in respect of a Restructuring Transaction at or after the Bid Deadline, including executing such agreement, seeking court approval of such binding agreement or taking any steps in connection with consummating the Restructuring Transaction pursuant to such binding agreement) in each case at or after the Bid Deadline, without prejudice to any rights that Cargill may have pursuant to section 32 (including subsection 32(9)(c)) of the CCAA or otherwise.

137. The DIP Agreement is subject to customary covenants, events of default, conditions precedent, and representations and warranties made by the Applicant to the DIP Lenders. This includes, among other things, this Court approving a DIP Charge securing all obligations of the Applicant under or in connection with the DIP Agreement.

VII. THE PROPOSED INITIAL ORDER & ARIO

A. Stay of Proceedings

138. As set out above, without the requested Stay and approval of the DIP Agreement (as defined below), the Applicant will be in default of its secured obligations and will face a liquidity crisis such that it will be unable to meet its liabilities as they become due.

139. The Applicant urgently requires the Stay to protect the value of its business which will allow it to:

(a) obtain the funding necessary to continue operations;

(b) concurrently explore potential strategic alternatives, including:

(i) additional financing or refinancing;

(ii) a sale, investment, and services solicitation process for part, all or substantially all of its assets; and

(iii) continue negotiations with stakeholders.

140. As set out in the Cash Flow Projection, with the funds to be advanced under the DIP Agreement, the Applicant expects to have sufficient cash to fund its projected operating costs during these CCAA Proceedings.

141. The Applicant therefore requests the Stay for an initial period of ten days, and, if granted by this Court, the Applicant will subsequently request an extension of the Stay Period until and including February 9, 2024 at the Comeback Motion.

B. Continued Access to Cash Management System

142. The Applicant's continued and uninterrupted access to the Cash Management System and the bank accounts associated thereunder are critical to the Applicant's ongoing business. If the Applicant's access to its bank accounts is blocked or restricted, the Applicant will not be able to operate in the normal course.

143. The Applicant therefore requests that it be granted continued access with full authority to manage its bank accounts associated with the Cash Management System, and that neither Bank of Montreal nor JPMorgan Chase will restrict the Applicant's rights in any way in respect of the bank accounts associated with the Cash Management System.

C. Appointment of FTI as Monitor

144. FTI has consented to act as the Monitor of the Applicant, subject to Court approval. FTI has retained Cassels Brock & Blackwell LLP as its counsel. A copy of FTI's consent to act is attached hereto as **Exhibit "L"**.

145. I am advised by the Applicant's legal counsel that FTI is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (as amended) and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2)

of the CCAA.

146. I understand that FTI has extensive experience in matters of this nature and is therefore well suited to this mandate.

147. FTI is familiar with the assets and operations of Tacora and its key suppliers as it was the Monitor in the Cliffs CCAA proceedings where the Scully Mine was acquired by Tacora. FTI was also previously engaged by Tacora in connection with cash flow forecasting and liquidity enhancement initiatives.

148. FTI has provided no accounting or auditing advice to the Applicant. Fees payable to FTI pursuant to its engagement letter are based on hours worked multiplied by normal hourly rates. FTI is not entitled to any success-based or other contingency-based fee with respect to any of the services provided.

149. I am advised by Nigel Meakin of FTI that the Proposed Monitor is supportive of the relief sought by Tacora in the Initial Order, as described in this affidavit. Mr. Meakin has also advised me that the Proposed Monitor will be filing a pre-filing Monitor's report in respect of such relief.

D. Approval of Greenhill Engagement and Transaction Charge

150. As set out above, Tacora engaged Greenhill to assist with initiating a strategic review process to explore, review, and evaluate a broad range of alternatives focused on ensuring its financial liquidity. A copy of the Greenhill Engagement Letter is attached hereto as **Exhibit "M"**.

151. Pursuant to the Greenhill Engagement Letter, commencing as of May 1, 2023, Greenhill is to be paid a monthly financial advisory fee of $125,000 per month in connection with its services in continuing to assist Tacora with pursuing an actionable refinancing or sale transaction. In addition to the monthly fee, the Greenhill Engagement Letter also provides for the payment of certain fees in the event that a successful transaction involving Tacora is implemented. The Greenhill Engagement Letter contemplates that a number of different fees could apply depending on the type of transaction effected.

152. The M&A Fee with respect to any M&A Transaction (each as defined in the Greenhill Engagement Letter) is a function of the transaction value multiplied by the applicable transaction fee percentage. Pursuant to the Greenhill Engagement Letter, Greenhill will be paid the following fees in the event of a successful transaction involving Tacora:

(a) $2,500,000, if the transaction value is $200,000,000 or lower;

(b) between $2,500,000 and $3,750,000, if the transaction value is between $200,000,000 and $500,000,000; and

(c) 0.75% if the transaction value is $500,000,000 or higher (which represents a minimum of $3,750,000).

153. If Tacora completes a Restructuring Transaction, pursuant to the Greenhill Engagement Letter Greenhill will be paid a Restructuring Transaction Fee (each as defined in the Greenhill Engagement Letter) equal to 1.00% of the aggregate value of the Senior Priority Notes and 0.50% of the face value of the Senior Priority Advances, subject to a minimum payment of $2,000,000.

154. Pursuant to the Greenhill Engagement Letter, Greenhill will be paid the following Financing Fees (as defined in the Greenhill Engagement Letter, and together with the M&A Fee or the Restructuring Transaction Fee, the "**Transaction Fee**") if the Company raises new capital:

(a) 1.00% of the face amount of any senior secured debt raised, including without limitation, any DIP financing raised;

(b) 2.00% of the face amount of any junior secured debt raised;

(c) 3.00% of the face amount of any unsecured or subordinated debt raised;

(d) 4.00% of any hybrid capital raised; and

(e) 5.00% of any equity capital or capital convertible into equity raised, including, without limitation, equity underlying any warrants, purchase rights or similar contingent equity securities.

155. At the Comeback Motion, in order to secure the Transaction Fee, Tacora will seek approval of the Transaction Fee Charge over the Property to the maximum amount of $5,600,000. The Transaction Fee is proposed to rank ahead of the DIP Charge.

156. I believe the granting of the Transaction Fee Charge is appropriate in the circumstances, as Greenhill has worked extensively with Tacora since its initial engagement in January 2023,

has worked diligently in soliciting proposals from several potential investors, and its continued involvement will be critical to the successful completion of a transaction as part of the CCAA Proceedings that will maximize value for all of Tacora's stakeholders.

E. KERP

157. At the Comeback Motion, Tacora will seek approval of the KERP and the related KERP Charge. Prior to the Comeback Motion, the Applicant will provide further details regarding the proposed KERP. The DIP Lender has agreed to a KERP of up to $3,035,000 for the Company's key employees (the "**Key Employees**").

158. If a KERP is not approved, I believe it is likely that certain Key Employees will pursue other employment options. In particular, skilled labour is critical to the operation of the Scully Mine and there is already a shortage of skilled labour in Wabush, Newfoundland and Labrador and the surrounding area. There are other mining operations which are relatively close to the Scully Mine and I believe Key Employees who provide skilled labour will easily secure employment with these nearby mining operations.

159. Additionally, finding alternative, qualified individuals will be challenging, disruptive, costly, and time consuming for the Applicant, particularly given the Key Employees' institutional knowledge related to the business. I also believe that the Key Employees will be critical to operational success for the business of the Company through these CCAA Proceedings. Additionally, the Key Employees will be critical to advancing the proposed sale and investment solicitation process, and such Key Employees will be required in responding to due diligence requests related to Tacora and its business.

160. The proposed ARIO contemplates that the Applicant will be authorized to the pay the KERP Funds to the Monitor and the KERP Charge will rank first on such KERP Funds.

F. Administration Charge

161. The Applicant seeks the Administration Charge on the Property in the maximum amount of $1,000,000 to secure the fees and disbursements incurred in connection with services rendered to the Applicant, both before and after the commencement of the CCAA Proceedings by:

(a) The Monitor and its counsel, Cassels Brock & Blackwell LLP;

(b) Stikeman Elliott LLP, McInnes Cooper and Davis Polk & Wardwell LLP, the Applicant's counsel; and

(c) Greenhill in respect of its Monthly Advisory Fee (as defined in the Greenhill Engagement Letter).

162. The Administration Charge is proposed to rank in priority to all other security interests, claims of secured creditors, trusts, liens, charges and encumbrances, statutory or otherwise in favour of any person, other than a person who has not received notice of the Application (the "**Encumbrances**").

163. Tacora requires the expertise, knowledge, and continued participation of the proposed beneficiaries of the Administration Charge during these CCAA proceedings in order to complete a successful restructuring. Each of the beneficiaries of the Administration Charge will have distinct roles in the Applicant's restructuring.

164. Tacora has worked with the Proposed Monitor to estimate the proposed quantum of the Administration Charge. I am advised that the Proposed Monitor believes that the Administration Charge is reasonable and appropriate in the circumstances, given the services to be provided by the beneficiaries of the Administration Charge and the complexities of the CCAA Proceeding

G. DIP Facility and DIP Charge

165. As set out above, Tacora critically needs interim financing (including prior to the Comeback Motion). Accordingly, Tacora entered into the DIP Agreement with the DIP Lender.

166. Within the initial Stay Period, Tacora is requesting authority to draw up to a maximum amount of $15,500,000 under the DIP Agreement. As shown in the Cash Flow Forecast, given Tacora's liquidity situation, the Company will require this Initial Advance under the DIP Agreement to continue operating in the ordinary course within the initial Stay Period. The Company is highly sensitive to potential production issues at the Plant and/or iron ore price movements, which are highly volatile. Accordingly, to ensure the Company is able to continue operating in the ordinary course, it requires additional funding for contingency items and sufficient minimum liquidity amounts.

167. The DIP Charge is proposed to rank behind all the other Charges. The DIP Charge will also secure (a) post-filing credit extensions from Cargill related to post-filing Margin Advances

under the Advance Payments Facility; and (b) post-filing Services, in the principal amount of $20,000,000.

168. At the Comeback Motion, Tacora will request authority to draw up to the maximum amount permitted under the DIP Agreement, being $75,000,000.

169. The Proposed Monitor has advised that it is supportive of the approval of the DIP Agreement and DIP Charge.

170. Accordingly, I believe that it is appropriate in the circumstances for this Court to approve the DIP Agreement and the DIP Charge.

H. Directors' Charge

171. To ensure the ongoing stability of the Company's business during the CCAA Proceedings, the Applicant requires the active and committed involvement of its D&Os. The D&Os have indicated, however, that due to the potential personal exposure associated with certain Company liabilities where D&Os may be liable, they cannot continue their service with the Applicant unless the Initial Order grants them certain protections commonly granted to directors and officers of companies involved in CCAA proceedings.

172. The Company maintains directors and officers' liability insurance (the "**D&O Insurance**") for the D&Os, which provide up to $10,000,000 in coverage. It is uncertain whether all claims for which the D&Os may be personally liable will be covered by the D&O Insurance given the convoluted nature of the exclusions provided for under the D&O Insurance and potential coverage positions that may be taken by the insurer. It is also uncertain whether the amount of coverage provided by the D&O Insurance will be sufficient to adequately protect the D&Os from liability and to incentivize the D&Os to continue their service with Tacora.

173. Absent approval by this Court of the Directors' Charge in the amounts set out above, I have been advised that all of Tacora's D&Os will resign, which would, in all likelihood, render these CCAA Proceedings much more challenging, and possibly much more costly, and also likely destroy potential value of the business to the detriment of Tacora's creditors and other stakeholders.

174. Accordingly, the Applicant seeks a charge on the Property in the amount of $4,600,000 to secure payment under the indemnity granted by the Initial Order in favour of the D&Os. At the

Comeback Motion, Tacora will seek to increase the Directors' Charge to $5,200,000. The Directors' Charge is proposed to rank immediately after the Administration Charge and ahead of all other Encumbrances. It is intended that the Directors' Charge will only apply in circumstances where the D&O Insurance is insufficient or ineffective.

175. The Proposed Monitor has advised that it is supportive of the proposed Directors' Charge and quantum thereof.

176. I believe that in these circumstances, the requested Directors' Charge is reasonable and adequate given, notably, the complexity of their business, and the corresponding potential exposure of Tacora's D&Os to personal liability, especially in the present context. The quantum of the Directors' Charge contemplated in the Initial Order was specifically sized by the Company, in consultation with the Proposed Monitor, based upon the potential director liabilities that could be outstanding at any time during the CCAA Proceedings.

I. Proposed Ranking of the Court-Ordered Charges

177. The proposed ranking of the Court-ordered Charges in the Initial Order is as follows:

First – Administration Charge (to the maximum amount of $1,000,000);

Second – Directors' Charge (to the maximum amount of $4,600,000); and

Third – DIP Charge.

178. The proposed ranking of the Court-ordered Charges in the ARIO is as follows:

First – Administration Charge (to the maximum amount of $1,000,000);

Second – Directors' Charge (to the maximum amount of $5,200,000);

Third – Transaction Fee Charge (to the maximum amount of $5,600,000); and

Fourth – DIP Charge.

179. Pursuant to the proposed Initial Order, the Charges on the assets and property of the Company would rank in priority to all other security interests, trusts, liens, charges, encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any person, notwithstanding the order of perfection or

attachment, except for (a) any secured creditor of the Company who does not receive notice of this Application; and (b) Permitted Priority Liens (as that term is defined in the DIP Agreement). The proposed ARIO contemplates that the Charges would rank ahead of all Encumbrances on a subsequent motion on notice to those persons likely to be affected thereby.

180. As set out above, the proposed ARIO provides for the granting of a first-ranking priority KERP Charge over the KERP Funds. All other Charges shall rank subordinate to the KERP Charge as against the KERP Funds in the priorities set out above.

VII. CONCLUSION

181. For the reasons set out above, I believe that it is in the interest of Tacora and its stakeholders that Tacora be granted protection under the CCAA in accordance with the terms of the proposed Initial Order and the terms of the proposed ARIO.

182. I swear this affidavit in support of the Application and for no other or improper purpose.

SWORN remotely via videoconference, by Joe Broking, stated as being located in the City of Grand Rapids, in the State of Minnesota, before me at the City of Toronto, in Province of Ontario, this 9th day of October, 2023, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*. DocuSigned by: 36124C4218DD47C... Commissioner for Taking Affidavits, etc. Philip Yang | LSO #82084O	DocuSigned by: 9EBB6BB7AB484D8... **JOE BROKING**

10

Intentionally left blank

11

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

(Applicant)

AFFIDAVIT OF JOE BROKING
(Sworn March 11, 2024)

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

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

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

3. Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in my affidavits sworn on October 9, 2023 (the "**First Broking Affidavit**"), October 15, 2023, January 17, 2024, and February 2, 2024 (the "**Fourth Broking Affidavit**").

4. All references to currency in this affidavit are references to United States dollars, unless otherwise indicated.

5. I swear this affidavit in support of a motion by Tacora for the issuance of a Second Amended and Restated Initial Order:

(a) extending the Stay Period until and including May 19, 2024;

(b) approving the DIP Facility Term Sheet (the "**Replacement DIP Agreement**") entered into by Tacora on March 10, 2024, with the Investors or their affiliates (in such capacity, the "**DIP Lenders**"), pursuant to which the DIP Lenders have agreed to advance up to approximately $188 million to Tacora to replace the existing DIP Facility and fund Tacora's operations (the "**Replacement DIP Facility**");

(c) authorizing and directing Tacora to repay the DIP Facility with Cargill from proceeds of the Replacement DIP Facility;

(d) granting a corresponding DIP Charge against the Property as security for Tacora's obligations under the Replacement DIP Agreement; and

(e) increasing the Transaction Fee Charge from $5,600,000 to $5,989,917.50.

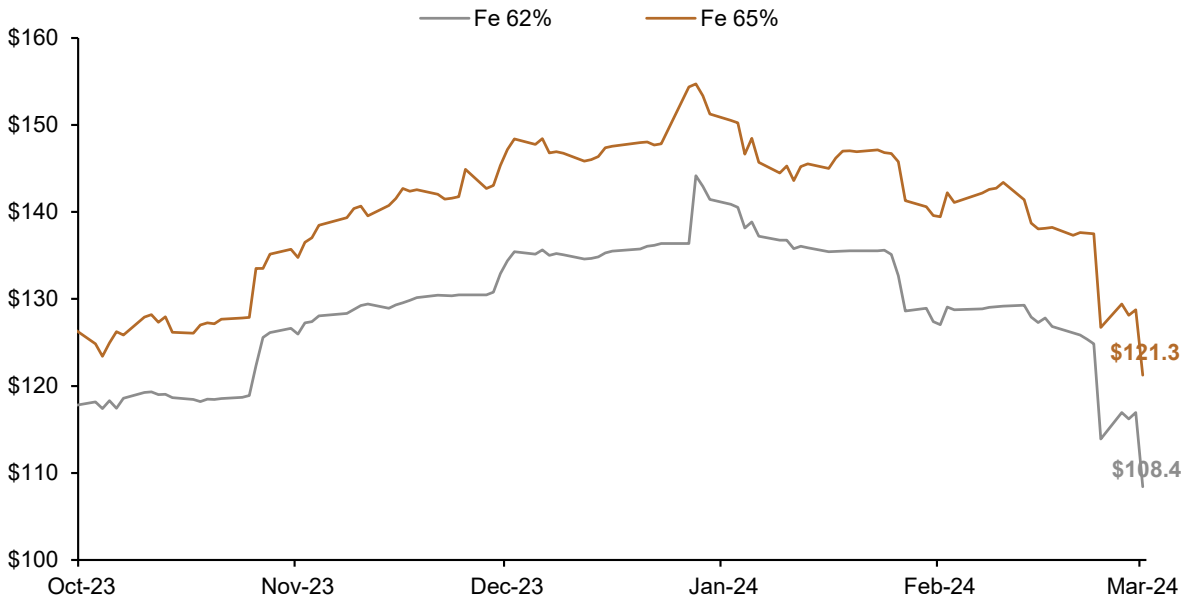
6. I also swear this affidavit in support of a motion by Tacora for the issuance of an order approving the commercial premium finance agreement (the "**A&L Premium Finance Agreement**") dated as of March 4, 2024, between Tacora and Marsh Canada Limited – Toronto ("**Marsh**"), as insurance broker, with respect to Tacora's auto and liability insurance policies.

A. Recent Volatility in Iron Ore Prices

7. As set out in the First Broking Affidavit and the Fourth Broking Affidavit, the iron ore market can be volatile and fluctuations in the price of iron ore can have a rapid and significant impact on Tacora's liquidity. At the time, I swore the Fourth Broking Affidavit, the price of iron ore had fallen from approximately $144/tonne at the beginning of January 2024 to $132/tonne on January 31, 2024. In my affidavit, I noted that if prices fell by a similar amount Tacora could run out of excess liquidity[1] (inclusive of any remaining availability under the DIP Facility) by the start of April, and would require additional funding from the existing DIP Lender or a new DIP lender to continue operating in the ordinary course. Unfortunately, that scenario came to pass over on a timeline that

[1] The term "excess liquidity" refers to the Company's attempts to maintain minimum cash on hand of $10 million at all times.

was even quicker than as contemplated in the Fourth Broking Affidavit. The price of iron ore fell from $132/tonne on January 31, 2024, to $116.65/tonne on March 8, 2024. Over this most recent weekend, the price of iron ore dropped an additional $8.25/tonne and is now $108.40/tonne (as of March 11, 2024). Below is a chart showing the volatility and price decreases of iron ore described above and beginning October 2023 and ending March 11, 2024.



8. The direct impacts of the recent decreases in the price of iron ore on Tacora's liquidity are:

(a) Tacora's revenues from the production of iron ore have been lower than forecasted as payments by Cargill to Tacora under the Offtake Agreement are predominantly based upon the Platts 62% Index price;

(b) Tacora was required to submit a DIP advance request on February 26, 2024, for the remaining maximum amount of $19,500,000 available under the DIP Facility weeks earlier than anticipated (Tacora had previously forecast that availability under the DIP Facility would remain until early/mid-April 2024); and

(c) Tacora owing Cargill Margin Payments under the Offtake Agreement. Over recent weeks, based on the amount of iron ore in transit, every $1/tonne price decrease in iron ore prices (Platts 62% Index) results in an approximately $1.5 million margin payment under the Offtake Agreement. With the most recent fall in iron ore prices, Tacora reached the maximum principal amount of $20,000,000 available under the

> Post-Filing Credit Extensions (as defined in the DIP Agreement), which means that all of Tacora's margin payments under the Offtake Agreement are contemplated to be settled in cash. Tacora expects Cargill to deduct any such payments from receipts due to Tacora from Cargill under the Stockpile Agreement directly impacting Tacora's liquidity.

9. With this iron ore price volatility, Tacora remains in a vulnerable position and further price decreases could have a significant negative impact on Tacora's ability to operate in the ordinary course. The recent volatility also emphasizes the risks detailed in the Fourth Broking Affidavit if Tacora cannot emerge from the CCAA Proceedings with an improved balance sheet in a timely manner. I continue to believe that extending these CCAA Proceedings without implementing the only actionable restructuring solution available places the Company and all its stakeholders at significant risk.

10. As set out in the Fourth Broking Affidavit, even assuming Tacora can access additional incremental liquidity through additional DIP financing, the Scully Mine requires critical capital investment for Tacora to become profitable. Without capital improvements to increase production, Tacora will continue to generate losses, which in turn will require additional financing. During the CCAA Proceedings this financing is only available through DIP financing. Adding additional debt on Tacora during the CCAA Proceedings will result in less capital being available for these capital investments upon emergence.

B. Replacement DIP

11. Due to the drastic impact on Tacora's liquidity resulting from the decreases in the price of iron ore, Tacora solicited DIP proposals from both Cargill and the Investors. On February 20, 2024, the Monitor provided initial cash flow forecasts to both parties and Stikeman requested DIP proposals. Due to the further drop in iron ore pricing shortly after delivery of the cash flow forecasts, the Company had to revise its initial cash flow forecast and requested each of the parties increase the amount of financing available under their DIP proposals to address the market changes. The Monitor provided the revised cash flow forecast to the parties on February 27, 2024.

12. Following receipt of initial proposals from Cargill and the Investors, Stikeman and Greenhill, in consultation with the Monitor, communicated key issues in each party's DIP proposal and negotiated with both parties to secure the best possible terms for the Company. Following

these negotiations, the DIP proposals from each of the Investors and Cargill were provided to the Company's Board and management. Following receipt of advice from Greenhill and Stikeman, and after receiving input and views from the Monitor, the Board exercised their good faith business judgement and determined that the Investors' DIP proposal was the best DIP facility available to the Company.

13. On March 9, 2024, Tacora entered into the Replacement DIP Agreement with the Investors or their affiliates. A copy of the Replacement DIP Agreement is attached hereto as **Exhibit "A"**.

14. The primary terms of the Replacement DIP Agreement are summarized immediately below[2]:

Summary of Key Terms of the Replacement DIP Agreement	
DIP Lenders	The Investors or their affiliates
Maximum DIP Facility Amount	$188,000,000 (less the Deposit as set out below) <u>Permitted Uses</u> • Repay all amounts owing to Cargill under the DIP Agreement • Pay the reasonable and documented professional and advisory fees and expenses (including legal fees and expenses) of Tacora and the Monitor • Pay the reasonable and documented DIP Lenders' Expenses • Pay the interest, fees, and other amounts owing to the DIP Lenders under the Replacement DIP Agreement • Fund Tacora's funding requirements during the CCAA Proceedings in accordance with the DIP Budget
Deposit	Following issuance of the Second Amended and Restated Initial Order approving the Replacement DIP Agreement, the $26.865 million paid by the Investors and held by the Monitor in trust pursuant to the Subscription Agreement (the "**Deposit**") may be accessed by Tacora to fund operations pursuant to the Second Advance. The DIP Lenders and Tacora agreed to amend the Subscription Agreement to provide that if the Deposit becomes payable to Tacora in accordance with the Subscription Agreement after the Deposit is released to Tacora pursuant to the Replacement DIP Agreement, the DIP Obligations shall be reduced by the amount of the Deposit released to Tacora.

[2] Capitalized terms used in this table and not otherwise defined have the meanings ascribed to them in the Replacement DIP Agreement.

Funding & Availability	Initial Advance – $130,000,000 Second Advance – If required as contemplated by the DIP Budget, the principal amount of up to $38,000,000. Third Advance – If required as contemplated by the DIP Budget, the principal amount of up to $15,000,000. Fourth Advance – If required as contemplated by the DIP Budget, the principal amount of up to $5,000,000. The DIP Lenders shall fund a maximum amount of $161,135,000 of the Replacement DIP Facility. The remaining $26,865,000 shall be funded from the Deposit paid by the DIP Lenders and held by the Monitor in trust pursuant to the Subscription Agreement as part of the Second Advance.
Interest	Interest is payable on all amounts drawn under the Replacement DIP Facility (including the Deposit when released to Tacora) and the DIP Lenders' Expenses at a rate of 10% per annum payable monthly in arrears in cash on the last Business Day of each month. However, Tacora may elect at any time to pay the interest in-kind (the "**PIK Election**"). If Tacora utilizes the PIK Election, Tacora shall pay the interest on the aggregate outstanding principal amount of the DIP Advances by adding such accrued interest to the principal amount of the DIP Obligations on the last Business Day of each calendar month. If the PIK Election is utilized by Tacora, the DIP Lenders agree that: (a) if the Transactions close, Tacora may pay all accrued interest that was paid-in-kind by the issuance of common shares of Tacora at the issue price under the Subscription Agreement; and (b) in any other case, interest that was paid-in-kind shall be payable in cash at the earlier of (i) the Maturity Date; and (ii) the indefeasible repayment in full of the Replacement DIP Facility and all other DIP Obligations and/or cancellation of all remaining commitments in respect thereof. Interest on all advances under the Replacement DIP Facility is calculated and compounded on a monthly basis.
Fees	Tacora is required to pay: • An Exit Fee in an amount equal to 1.5% of the aggregate committed amount of the Replacement DIP Facility (less the Deposit, being $161,135,000), being $2,417,025; and • If Tacora elects to extend the Maturity Date from June 1, 2024, to June 30, 2024, an Extension Fee in an amount equal to 1.5% of the aggregate committed amount of the Replacement DIP Facility (less the Deposit), being $2,417,025. If the Transactions close, Tacora shall have the option to pay the Exit Fee

	(and the Extension Fee if earned) by the issuance of common shares of Tacora at the issue price under the Subscription Agreement. In any other case, the Exit Fee (and the Extension Fee if earned) shall be payable in cash at the earlier of (i) the Maturity Date; and (ii) the indefeasible repayment in full of the Replacement DIP Facility and all other DIP Obligations and/or cancellation of all remaining commitments in respect thereof. The DIP Lenders agree that if the Deposit becomes payable to the DIP Lenders under the Subscription Agreement, such amount shall be deemed to be committed under the Replacement DIP Facility and shall remain with the Monitor to be advanced to Tacora. If the Deposit becomes payable to the DIP Lenders under the Subscription Agreement, the Exit Fee and the Extension Fee shall be increased by a commensurate amount, to be allocated among the DIP Lenders based on their allocations of the Deposit.
Security	Priority DIP Lenders' Charge ranking senior to all encumbrances, except the Permitted Priority Liens which includes: • The Administration Charge • The Directors' Charge • The KERP Charge (if applicable) • The Transaction Fee Charge • Certain Liens
Permitted Variance (vs DIP Budget)	Up to 15% relative to the aggregate disbursements (excluding the DIP Lenders' Expenses) on a cumulative basis since the beginning of the period covered by the applicable DIP Budget.
Maturity	The earlier of: • The occurrence of any Event of Default which is continuing and has not been cured; • The completion of a Restructuring Transaction; • The conversion of the CCAA Proceedings into a proceeding under the *Bankruptcy and Insolvency Act* (Canada); • The date on which the DIP Obligations are voluntarily prepaid in full and the Replacement DIP Facility is terminated; and • June 1, 2024, provided that such date may be extended by the Borrower to June 30, 2024.

15. In choosing between the two DIP proposals, the Company's Board, with the assistance of Greenhill, and under the supervision of the Monitor, reviewed the DIP proposals to determine which DIP proposal would best serve the interests of the stakeholders of the Company as a whole by enhancing the prospects of a successful restructuring. Among other things, the Company considered the following factors:

(a) the cost of the financing, including the interest rate and fees;

(b) the Company's cash flow forecast and the anticipated timeline to close a restructuring transaction;

(c) the Phase 2 Bids received by the Company during the Solicitation Process,

(d) the alignment of interests between each DIP lender and the Company and its stakeholders;

(e) the potential risks of each DIP proposal;

(f) potential prejudice to the Company's stakeholders; and

(g) the views of the Monitor.

(i) Economic Terms

16. The economic terms of the Replacement DIP Agreement and Cargill's DIP proposal are substantially similar, but the Replacement DIP Facility provides certain key enhancements that benefit the Company:

(a) *Availability*. The Replacement DIP Facility from the Investors provides for availability of $188 million compared to the Cargill DIP proposal which provides for a total of $147.5 million (including the Post-Filing Credit Extensions). The differential accounts for the fact that Tacora may no longer having the benefit of the Stockpile Agreement if the Replacement DIP Agreement is approved by the Court and Cargill elects not to extend the Stockpile Agreement. The liquidity available in the Replacement DIP Agreement and Cargill's DIP proposal are substantially similar;

(b) *Interest*. The Replacement DIP Facility has the same interest rate as Cargill's DIP proposal – 10% per annum, compounding monthly. However, the Replacement DIP Facility provides an option for Tacora to pay interest in-kind, which Tacora expects to do. The feature allows Tacora to preserve additional liquidity during the CCAA Proceedings and, as referenced below, equitize the interest that would otherwise be owed in cash under the Cargill DIP proposal;

(c) *Earned Fees*. The Replacement DIP Agreement provides for an Exit Fee of 1.5% of the amount committed under the Replacement DIP Facility, which is approximately $2,417,025. The Cargill DIP proposal provides for an incremental $1.05 million in exit fees, which represents 2% of the incremental committed financing of $52.5 million;[3] and

(d) *Equitization of Fees and Interest*. As set out above, if the Transactions close, Tacora has the option to equitize the Exit Fee (and Extension Fee if earned) and accrued interest by paying such amounts in common shares of Tacora. Equitizing such amounts would allow the Company to preserve critical cash and invest such amounts in necessary capital expenditures. Conversely, the Cargill DIP requires its exit fees and interest, which were expected to total in excess of $3 million, to be paid in cash.

17. A redline comparison of the Replacement DIP Agreement compared to the existing DIP Agreement with Cargill is attached hereto as **Exhibit "B"**.

18. In addition to the economic considerations, there are several other factors which make the Replacement DIP Agreement superior to the Cargill DIP proposal.

(ii) Alignment of Interests

19. The Replacement DIP Agreement represents a significant investment of new money in Tacora by the members of the Consortium, including RCF and Javelin. In addition to providing the necessary liquidity to permit the Company to continue operating in the ordinary course while it seeks approval of the Successful Bid, this investment constitutes a critical commitment to Tacora and its future success. The Ad Hoc Group is owed approximately $230 million in pre-filing secured debt and have committed to invest a further approximately $128 million in Tacora pursuant to the Subscription Agreement. RCF and Javelin were not significant stakeholders of Tacora prior to the CCAA Proceedings and hold only an immaterial portion of the Senior Secured Notes (which I understand were purchased shortly before the CCAA Proceedings). Their commitment to advance approximately $100 million of DIP financing to Tacora in advance of their

[3] The Replacement DIP Agreement also provides that the Investors will earn an Extension Fee of 1.5% of the amount committed under the Replacement DIP Facility (not including the Deposit, unless it becomes payable to the DIP Lenders under the Subscription Agreement) if the Company elects to extend the Maturity Date from June 1, 2024, to June 30, 2024. However, the Company believes that emergence prior to June 1, 2024, is critical to the Company's ongoing operations and future success.

commitment to invest over $140 million of new equity in Tacora pursuant to the Subscription Agreement (which transactions remain subject to Court approval) demonstrates RCF's and Javelin's commitment and motivation to complete the Transactions and in my view, provides the Company, its stakeholders and the Court with more certainty that Tacora will emerge successfully from these CCAA Proceedings.

20. The impact of the DIP investment, in addition to providing critical funding, is to align the interests of the Investors with those of Tacora and its stakeholders – the emergence of Tacora from the CCAA as soon as possible pursuant to a successful restructuring. As set out in the Fourth Broking Affidavit, Tacora conducted the Court-ordered Solicitation Process. Following the Phase 2 Bid Deadline, the Board exercised their good faith business judgement and unanimously determined that the Investors' Phase 2 Bid was the only Phase 2 Qualified Bid and also the best Bid received. The Investors' Phase 2 Bid was the only Bid that deleveraged the Company's capital structure and provided capital to Tacora upon closing to improve the Company's operations.

21. The benefits of the Transactions with the Investors are outlined in the Fourth Broking Affidavit. Without repeating all of the benefits, the Transactions provide for the assumption of all of Tacora's equipment capital leases and the vast majority of Tacora's contractual obligations, assumption of all outstanding Pre-Filing Trade Amounts and Post-Filing Trade Amounts, and continued employment of all current employees. Tacora's significant stakeholder groups' interests are therefore also aligned with the Investors' interests.

22. The Transactions contemplated by the Subscription Agreement, if approved by this Court, represent the best available outcome for Tacora, its creditors, and other stakeholders in the circumstances. Notwithstanding that Cargill possessed the necessary knowledge regarding Tacora's operations and the required financial wherewithal to submit a Phase 2 Qualified Bid, Cargill chose not to. Instead, Cargill is acting contrary to the interests of Tacora and its other significant stakeholder groups by opposing approval of the Transactions in an attempt to protect the Offtake Agreement. Cargill is attempting to delay the Company's emergence from CCAA Proceedings for its own benefit. Such actions jeopardize the only actionable restructuring transaction available to the Company and places the Company and its stakeholders at risk for the reasons outlined above and in the Fourth Broking Affidavit. I do not believe that having the Company's critical interim financing dependent on a party acting in an adversarial manner to Tacora's restructuring efforts is in the best interest of the Company or its stakeholders.

(iii) Flexibility

23. Under the existing DIP Agreement with Cargill and its DIP proposal, the termination, suspension or disclaimer of the Existing Arrangements (including the Offtake Agreement and the Onshore Agreement), or the taking of any steps to terminate, suspend or disclaim any of the Existing Arrangements (other than in certain limited circumstances) constitutes an Event of Default. The Company attempted to negotiate the removal of this event of default but was unsuccessful. Conversely, the Replacement DIP Agreement does not include any such restrictions.

24. The Successful Bid contemplates the replacement of the Offtake Agreement with a new offtake provided by Javelin. If the Successful Bid is approved by the Court, the Company may need to take steps in contemplation of the termination of the Offtake Agreement prior to closing the Successful Bid in order to ensure an orderly transition to Javelin. Under Cargill's DIP proposal, such steps would constitute an Event of Default and could result in Cargill immediately terminating its DIP Facility.

C. Stay Extension

(i) Tacora's Recent Activities

25. On January 24, 2024, this Court granted an extension of the Stay Period to and including March 18, 2024. Tacora has been working in good faith and with due diligence to advance its restructuring within these CCAA Proceedings since that date.

26. Tacora, with the assistance of Greenhill and the Monitor, as applicable, has among other things:

(a) continued to operate in the ordinary course of business;

(b) finalized the Solicitation Process by accepting the Investors' Bid as the Successful Bid;

(c) finalized definitive transaction documents for the Successful Bid with the Investors;

(d) settled a schedule for the hearing of the sale approval motion;

(e) updated and revised its cash flow forecast to address the recent, significant decrease in iron ore prices;

(f) engaged in discussions with the Canada Revenue Agency regarding the refund of income tax credits;

(g) solicited and negotiated additional DIP financing;

(h) entered into an insurance premium financing agreement with FIRST Insurance Funding of Canada Inc. for the funding of Tacora's automotive and liability insurance policies;

(i) scheduled a Court hearing to hear a dispute between Tacora and MFC involving certain pre-filing claims asserted against Tacora by MFC; and

(j) responded to creditor and stakeholder enquiries regarding these CCAA Proceedings.

(ii) Need to Extend the Stay Period

27. Tacora is seeking an extension of the Stay Period from March 18, 2024, to and including May 19, 2024. The extension of the Stay Period is necessary and appropriate in the circumstances to provide Tacora with sufficient time to bring its sale approval motion pursuant to the litigation schedule ordered by this Court, obtain the Court's decision, and in the event the Court approves the Subscription Agreement and the Transactions contemplated therein, to close the Transactions.

28. Given Tacora's activities since the last order extending the Stay Period, I believe that Tacora has acted, and is continuing to act, in good faith and with due diligence in these CCAA Proceedings.

29. Tacora has prepared an updated cash flow forecast which will be attached to the Monitor's Third Report (the "**Updated Cash Flow Forecast**"). The Updated Cash Flow Forecast reflects that, should the price of spot price of iron ore remain stable, Tacora is expected to maintain sufficient liquidity to fund operations should the Replacement DIP Agreement be approved until and including May 19, 2024.

30. I believe that the proposed extension of the Stay Period will provide significant benefits to

Tacora's stakeholders. Further, I understand that the Monitor supports the proposed extension of the Stay Period and the approval of the Replacement DIP Agreement and will be providing further details with respect to the appropriateness of the requested extension of the Stay Period in its Third Report.

D. Insurance Orders

31. On January 25, 2024, this Court granted an order (the "**Property Financing Agreement Approval Order**") approving the commercial premium financing agreement (the "**Property Financing Agreement**") dated January 10, 2024, between Tacora and Marsh, with respect to Tacora's property insurance policies. Tacora's various property insurance policies were set to renew on December 21, 2023. Pursuant to the Property Financing Agreement, FIRST Insurance Funding of Canada Inc. ("**FIRST Canada**") agreed to provide financing in the amount of C$2,885,497.54 towards the required C$3,925,847 for the renewal of the property insurance policies held by Tacora. The agreement was subject to Tacora making a down payment of C$1,040,349.46 towards the Financed Policies and this Court granting Property Financing Agreement Approval Order. A copy of the Property Financing Agreement Approval Order is attached hereto as **Exhibit "C"**.

32. Tacora's various auto and liability insurance policies were set to renew on March 1, 2024. Historically, Tacora has financed the annual premiums due under its auto and liability insurance policies.

33. On March 4, 2024, Tacora entered into the A&L Premium Finance Agreement, pursuant to which FIRST Canada has agreed to provide financing in the amount of C$467,134.42 towards the total premium amount of C$692,051.00 for the renewal of certain auto and liability insurance policies held by Tacora (the "**A&L Financed Policies**"). The agreement is subject to Tacora making a down payment of C$224,916.58 towards the A&L Financed Policies and this Court granting the proposed order sought on this motion.

34. Tacora is seeking approval of the A&L Premium Finance Agreement and issuance of an order carving out certain exceptions to the ARIO, in order to give effect to the terms of the A&L Premium Finance Agreement.

35. The proposed order is on substantially the same terms as the Property Financing

Agreement Approval Order granted by this Court.

36. Among other things, the proposed order provides:

(a) the validity and priority of the Court-ordered priority charges set out in paragraphs 47 and 50 of the Second Amended and Restated Initial Order are not applicable to any unearned premiums under the A&L Financed Policies;

(b) approval of Tacora's assignment to FIRST Canada of a security interest in the A&L Financed Policies in accordance with the terms of the A&L Premium Finance Agreement;

(c) notwithstanding paragraphs 4 and 14 – 16 of the Second Amended and Restated Initial Order, approval of FIRST Canada's right as agent under the A&L Premium Finance Agreement, after providing thirty (30) days' written notice to the Applicant and the Monitor, to: (i) cancel the A&L Financed Policies; (ii) receive all sums assigned to FIRST Canada; and (iii) execute and deliver on behalf of the Applicant all documents relating to the A&L Financed Policies; and

(d) if and after any of the A&L Financed Policies are cancelled, providing for FIRST Canada to have the right to receive all unearned premiums and other funds assigned to FIRST Canada as security.

37. It is crucial to Tacora's business that it maintains auto and liability insurance. Given Tacora's liquidity situation, it is prudent to finance the A&L Financed Policies. Accordingly, approval of the A&L Premium Financing Agreement will be beneficial to Tacora and its stakeholders.

38. Payments due to FIRST Canada under the A&L Premium Finance Agreement are spread out in nine monthly payments. Such payments to be made in the CCAA Proceedings are in compliance with the existing DIP Facility and the Replacement DIP Agreement (approval for which is being sought on the same date as the proposed order).

E. Increase to Transaction Fee Payable to Greenhill

39. Based on the quantum of the Replacement DIP Facility, Greenhill will earn a financing fee of $389,917.50 pursuant to the Greenhill Engagement Letter approved by this Court. To assist

the Company in preserving liquidity, Greenhill has agreed to defer this financing fee for the duration of the CCAA Proceedings and accordingly, Tacora is seeking to increase the Transaction Fee Charge to secure Greenhill's additional fee.

40. For the reasons set out above, I believe that it is in the best interests of Tacora and its stakeholders that the proposed Second Amended and Restated Initial Order and order approving the A&L Premium Finance Agreement be granted.

41. I swear this affidavit in support of the Applicant's motion seeking approval of the proposed orders and for no other or improper purpose.

SWORN remotely via videoconference, by Joe Broking, stated as being located in the City of Grand Rapids, in the State of Minnesota, before me at the City of Toronto, in Province of Ontario, this 11th day of March, 2024, in accordance with O. Reg 431/20, *Administering Oath or Declaration Remotely*. DocuSigned by: 36124C4218DD47C... Commissioner for Taking Affidavits, etc. Philip Yang | LSO #82084O	DocuSigned by: Joe Broking 9EBB0BB7AB464D8... **JOE BROKING**

12

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 JOSEPH ANDREW BROKING II

On Affidavit Sworn March 11, 2024
Held via Arbitration Place Virtual
on Thursday, April 4, 2024, at 9:28 a.m.

CONDENSED TRASNCRIPT WITH INDEX

REVISED TRANSCRIPT

APPEARANCES:

Eliot Kolers RJ Reid	Counsel for the Applicant, Tacora Resources Inc.
Peter Kolla Caroline Descours Brittni Tee	Counsel for Cargill, Incorporated and Cargill International Trading Pte Ltd.
Stephanie Voudouris	Counsel for the Monitor

INDEX

LIST OF UNDERTAKINGS, REFUSALS, AND UNDER ADVISEMENTS

Undertakings (U/T) found at pages: 40

Refusals (REF) found at pages: 23, 52, 54

Under Advisements (U/A) found at pages: 20, 63, 92, 95

LIST OF EXHIBITS

LIST OF EXHIBITS (CONT'D)

Arbitration Place Virtual
--- Upon commencing Thursday, April 4, 2024 at 9:28 a.m.
AFFIRMED: JOSEPH ANDREW BROKING II
CROSS-EXAMINATION BY MR. KOLLA:

1 Q. Good morning, Mr. Broking.
A. Good morning.
2 Q. As you will recall, my name is Peter Kolla. I am a lawyer for Cargill and I have got some questions for you today. Okay?
A. Okay.
3 Q. And your full name for the record is?
A. Joseph Andrew Broking, the second.
4 Q. Thank you. And you swore an affidavit in this proceeding regarding the DIP on March 11th, 2024. Correct?
A. That is correct.
5 Q. And you understand that you are here today to be cross-examined on that affidavit?
A. Yes, I do.

6 Q. Okay. Do you have any corrections to that affidavit before we start today?
A. No.
7 Q. Okay. Thank you. And you understand you are here to be cross-examined pursuant to a Notice of Examination that was dated March 25, 2024?
A. Yes.
8 Q. I will just put that on the screen and maybe you can take a quick look at it and confirm that is the Notice of Examination that you received?
MR. KOLERS: We don't see anything.
MR. KOLLA: Yeah. It is coming momentarily I am sure.
MR. KOLERS: Okay.
MR. KOLLA: Maybe we will try to grab a copy. Just one second. Can we just go off the record for one second.
--- (Off-record discussion)
MR. KOLLA:
9 Q. Maybe just scroll down to see the content.

A. We are a long ways away from that screen today.
10 Q. Mr. Broking, you recognize that as the Notice of Examination?
MR. KOLERS: So we are sitting farther -- we in are a room -- we are in a different room today, Peter, and we are sitting a little farther away from there screen. I can confirm that appears to be the Notice of Examination.
THE WITNESS: Yes, I can confirm.
MR. KOLLA: Perfect. Thank you. We can just mark that as the first exhibit. I don't think it should be confidential. It is a Notice of Examination to Joe Broking dated March 25, 2024, Exhibit 1.

EXHIBIT NO. 1:
Notice of Examination to Joe Broking dated March 25, 2024.

MR. KOLERS: That is fine.
MR. KOLLA:
11 Q. Mr. Broking, if you look at paragraph 1 of that Notice of Examination --

MR. KOLERS: Can you zoom in, please?
MR. KOLLA: For sure.
12 Q. And the first paragraph requests communications with the Ad-Hoc Group of noteholders, Resource Capital and Javelin or its legal advisors in respect of any potential replacement debtor-in-possession financing proposed to be provided by that Ad-Hoc Group consortium including a potential replacement DIP and it asks for the time period October 30th, 2023, to March 18th, 2024. Do you see that?
A. I do.
13 Q. Okay. I reviewed the documents that we received on Tuesday, Tuesday afternoon, April -- I believe it is April 2nd. And I don't see any documents before January 30th, 2024. Can you confirm that?
A. Yeah, that's correct.
14 Q. Okay. And so why didn't -- why were no documents produced for the period October 30th, 2023, through to January 30th, 2024?
MR. KOLERS: As I advised you, Peter, there were none related to this issue.
MR. KOLLA:

Page 10

Q. Sorry, related to any potential replacement DIP financing, there were no documents? That is --

MR. KOLERS: This process started in February, or actually in mid-February. And through our document direction and discussions with people in responding to the Notice of Examination, we identified or learned that the topic was first a glint of a twinkle in somebody's eye I think at the Monitor or Greenhill at around January -- sorry, on January 30th, and that is where we -- that is why that is where the first production is.

MR. KOLLA: Okay.

Q. Well, let's turn then to TRI734. And before we get there, Mr. Broking, if you could -- what your counsel just said, do you understand that's the case, that there was sort of nothing and no discussions prior to January 30th, 2024?

A. Yeah, that's correct.

Q. Okay. Let's turn up TRI734.

MR. KOLERS: We are going to have to ask you to zoom in on that some more.

Page 11

MR. KOLLA: Yeah, for sure.

Q. This is an e-mail from Adam Kelly-Penso at GLC dated January 30th, 2024, to people at Greenhill and FTI, and the subject is T -- I think it is "Tacora DIP replacement." Do you see that e-mail?

A. Yes, I do.

Q. Okay. You're not on this, Mr. Broking, but maybe Eliot can you confirm this is one of the documents that was produced on Tuesday?

MR. KOLERS: Yes, it is.

MR. KOLLA: Okay. I would like to mark that as the next exhibit, Exhibit 2.

MR. KOLERS: Or Exhibit A for identification.

MR. KOLLA: Sorry, you're not agreeing that this is an authentic document that was produced by the -- by Tacora?

MR. KOLERS: I have agreed with that. But this witness isn't involved in it and I am not sure he has ever seen it before.

MR. KOLLA: Right. But you are not disputing its authenticity. Correct?

Page 12

MR. KOLERS: I am not disputing the authenticity.

MR. KOLLA: Okay. And you are not disputing that it was sent and received on the day indicated and was sent by the person indicated and received by the people indicated?

MR. KOLERS: I have no reason to dispute that.

MR. KOLLA: It is one of the documents that Tacora itself produced in response to this Notice of Examination. Correct?

MR. KOLERS: As I have already told you that.

MR. KOLLA: Okay. Well, I disagree that it should be marked for identification when you have identified and confirmed its authenticity, so I think it should be marked as Exhibit 2.

MR. KOLERS: Well, I accept it being marked as Exhibit A for identification because this witness can't address it from a content perspective.

MR. KOLLA: How do you know that? He wasn't asked any questions about it yet.

MR. KOLERS: Why don't you ask

Page 13

him a question before you seek to mark it as an exhibit.

MR. KOLLA: I don't need to. You identified it, so that is why it is marked as an exhibit.

MR. KOLERS: Well, then it should be Exhibit A.

MR. KOLLA: I disagree with that.

EXHIBIT NO. A: E-mail from Adam Kelly-Penso at GLC dated January 30th, 2024, to people at Greenhill and FTI. TRI734. (Marked for Identification).

MR. KOLLA:

Q. Mr. Broking, have you seen this e-mail before?

A. No.

Q. And you weren't prepared in advance of this examination and weren't shown this e-mail?

MR. KOLERS: Those are two completely separate questions.

Page 14

MR. KOLLA:
22 Q. Then answer them both.
A. Can you repeat the question?
23 Q. Sure. Were you prepared in advance of this examination?
A. I prepared in advance of this examination.
24 Q. With counsel?
A. I had conversations with counsel, but I prepared by reviewing my submissions and submissions of Goodmans or Cargill.
25 Q. Okay. Did you receive this document in advance of the -- in advance of this examination?
A. No, I don't believe I have seen this document before.
26 Q. So the documents that were produced in response to your Notice of Examination, you haven't seen this one at least. Correct?
A. Yeah, that's correct.
27 Q. Okay. Do you understand that GLC is the financial advisor to the Ad-Hoc

Page 15

Group consortium? Do you understand that?
A. Yes, I do.
28 Q. And Greenhill is the financial advisor to Tacora. Do you understand that?
A. Yes, I do.
29 Q. You understand that FTI is the financial advisor -- sorry, is the Monitor in this proceeding?
A. Yes.
30 Q. Okay. And you understand -- you recognize the people who are listed on this e-mail as being people who are involved in this Tacora matter. Correct?
A. Yes.
31 Q. This e-mail says:
"Greenhill/FTI teams."
It says:
"Thank you again for all the time over the last few weeks."
Do you see that?
A. Yes.
32 Q. You will agree that GLC had been spending significant time with Greenhill

Page 16

and the Monitor over the last few weeks in advance of January 30th, 2024?
A. Based on that sentence, yes, I agree that there is a thank you happening regarding the last couple of weeks. I don't know what the context or the meaning of that sentence is.
33 Q. Okay. Pulling back from what the e-mail says, you are aware, sir, are you not, that prior to January 30th, 2024, there was a significant amount of collaboration and interaction between GLC and Greenhill and the Monitor. Correct?
A. I am aware that there were conversations happening amongst all the stakeholders prior to January 30th, but I wasn't party to these conversations.
34 Q. Sorry, you were party to no conversations prior to January 30th, 2024, between GLC and the Monitor and Greenhill. Is that your evidence, sir?
A. No. That's not what I am saying. What I am saying is I am aware of conversations regarding the CCAA proceedings prior to January 30th, yes.

Page 17

35 Q. Correct. And those conversations concerned, you are aware of them, just at various point GLC and Greenhill and the Monitor. Correct?
A. Yes.
36 Q. Okay. Thank you. And then the next sentence down in this e-mail says:
"And you move towards the next phase of this case, we are updating the alternative DIP. Be prepared for a near-term replacement."
Do you see that?
A. Yes, I see it.
37 Q. Okay. And so you see the word "updating"?
A. Yes.
38 Q. Okay. That means that it something that is not brand new, that it happened in the past. Correct?
MR. KOLERS: That is -- I mean the document says what it says.
MR. KOLLA: No. I can ask this witness if he has evidence about that. You

Page 18

cannot interfere with that examination, with respect.

MR. KOLERS: Mr. Kolla, you didn't ask the witness that question. You asked him what it means.

MR. KOLLA:

39 Q. You are aware, sir, that when this e-mail was sent there had been prior discussions between the Ad-Hoc Group consortium and the company about a DIP. Correct?

A. Yes.

40 Q. Right. Okay.

A. For context -- for context, if you recall, there was a competing DIP process that happened when the DIP was ultimately -- Cargill was selected as the DIP provider. So, yes, there had been previous DIP conversations with Cargill and with the Ad-Hoc Group before January 30th.

41 Q. Right. And prior to January 30th 2024, when was the last time that the DIP was discussed between anybody from the Tacora side -- so that would include the Monitor and Greenhill -- and anybody from the Ad-Hoc Group consortium side?

Page 19

MR. KOLERS: Obviously to Mr. Broking's knowledge. What is your knowledge of that?

THE WITNESS: Yeah, I mean, to my knowledge, those conversations would have been pretty dated going back to around the time that we were filing and the DIP was ultimately awarded to Cargill there were conversations with the two competing DIP providers at that time. So it would have been going back quite a ways.

MR. KOLLA:

42 Q. Okay. My question is when do you recall the last time that you were aware? Was it any time after that piece in October of 2023?

A. I don't recall.

43 Q. Okay. And so you don't recall, for example, the Ad-Hoc Group consortium providing DIP or alternative DIP proposals as part of its Phase 1 bid as part of the SISP?

A. Yeah, I don't recall.

44 Q. Okay. Eliot, I would like an undertaking to go back and look about when the -- about the correspondence between anybody on the Tacora side and anybody on the Ad-Hoc Group

Page 20

consortium side about a replacement DIP in the period of the SISP.

U/A MR. KOLERS: I am going to take it under advisement.

MR. KOLLA: I will point you to a letter that was sent by the Osler firm on December 22nd. It was marked as an exhibit to Mr. Broking's last examination, which explicitly references the Ad-Hoc Group consortium putting in an alternative DIP as part of their Phase 1 bid.

45 Q. Do you have any -- as part of the production and search for documents that took place in preparation for this, was that at all looked at or noted?

MR. KOLERS: I can't recall.

MR. KOLLA: Okay.

MR. KOLERS: I have given you an advisement.

MR. KOLLA:

46 Q. Okay. I would like production of the documents in respect of that.

U/A MR. KOLERS: That is included in the advisement I gave you.

MR. KOLLA:

47 Q. You will agree with me

Page 21

Mr. Broking, that in the third sentence of this e-mail, which is TRI734, that the line says:

"Could you please provide an updated cash flow forecast to support expected draws under an assumed litigation timeline."

Do you see that?

A. Yes, I do.

48 Q. Okay. So you will agree with that this is GLC that is asking for an updated cash flow forecast regarding a DIP? Do you agree with that?

A. Yes.

49 Q. Thank you. You will agree with me, sir, that in advance of this examination some board minutes were discussed that were produced?

A. Yes.

50 Q. The first set of board minutes that I see in those productions are dated February 20th, 2024. So I want a confirmation, based on your recollection of being a member of the board, that was a DIP discussed at the board,

Page 22

a replacement DIP or the DIP, between January 30th, 2024, and February 20th, 2024?

A. Yeah, I certainly recall from approximately the middle of February up until the time that -- up until we recently increased the amount of the DIP with Cargill that there were conversations happening at the board regarding the replacement DIP and also increasing the existing DIP.

51 Q. Okay. But both replacing the Cargill DIP and increasing it, you said those were all discussed. Correct?

A. Yes.

52 Q. Okay. Thank you.

MR. KOLERS: And to be clear, Mr. Kolla, Mr. Broking's answer didn't specifically address your timeline question. We reviewed the minutes prior to the February 20th and there is no discussion or reference in the minutes other than in the minutes that have been provided to you already. So February 20th was the first time it came up. That is why we started the production there on the minutes.

MR. KOLLA: Right.

53 Q. Can I get drafts of the

Page 23

minutes, please --

REF MR. KOLERS: No.

MR. KOLLA: ...by undertaking.

54 Q. If we can now turn, please, to TRI742, this an e-mail chain. At the very top it is from Jodi Porepa at FTI. You will recognize her as being someone from the Monitor. Correct?

MR. KOLERS: Again, we request every document get zoomed in. We are far -- farther from the screen.

MR. KOLLA: Okay.

THE WITNESS: That is perfect for me.

MR. KOLLA: If you need us to do that, please let us know. We are happy to do that.

55 Q. So you will see that is an e-mail from someone at FTI. That is the Monitor. Correct?

A. Yes.

56 Q. And it is dated February 16th, 2024. Correct?

A. Correct.

57 Q. It is sent to various

Page 24

people at Tacora, including Heng Vuong who is the CFO of Tacora. Correct?

A. Yes. I see Heng Vuong's address in the e-mail distribution.

58 Q. And then other people at Greenhill. It says Charles Geizhals who is a principal at Greenhill. Do you recognize his name?

A. Yes.

59 Q. You recognize Paul Bishop as being the main person at the Monitor. Correct?

A. Yes.

60 Q. And this is the document that was produced on Tuesday in advance of this examination, further to that Notice of Examination. Correct?

A. I can confirm that.

MR. KOLLA: Thank you. Can we mark this as the next exhibit?

MR. KOLERS: Again, I mean you can ask questions about it, but I am going to be strict about this, Mr. Kolla. And if Mr. Broking hasn't seen an e-mail before, and you can ask him if he has, but if he hasn't seen it before I am going to insist they get marked for

Page 25

identification.

MR. KOLLA:

61 Q. You are not -- on this document, again, you are not disputing the authenticity. Correct?

MR. KOLERS: Sir, I am not going to dispute the authenticity of any of the documents we provided to you.

MR. KOLLA:

62 Q. You will agree that it was sort of sent by the person indicated on the date indicated to the people indicated, sent and received. There is no question about that. Correct?

MR. KOLERS: Well, there is no basis to dispute it as far as I am aware.

MR. KOLLA:

63 Q. Again, because you are the one that produced the document. Correct?

MR. KOLERS: As I said.

MR. KOLLA: Thank you. Okay. I guess we are marking this as Exhibit B for identification but I am objecting to that. It should be marked as an exhibit because it has been identified on the record.

Page 26

EXHIBIT NO. B:
Email from Jodi Porepa at FTI dated February 16, 2024. TRI742. (Marked for Identification).

MR. KOLLA:

64 Q. I would like you to turn to the very first e-mail in this document, the very bottom of the chain. I will scroll through the exhibit. So, Mr. Broking, have you seen this e-mail chain or this specific e-mail?

A. Can you zoom in, please?

MR. KOLERS: This appears to be from Jade.

THE WITNESS: Yeah.

MR. KOLERS: February 12th.

THE WITNESS: No, I have not.

MR. KOLLA:

65 Q. And you weren't -- you didn't review it as part of your preparation for today?

A. No, I did not.

66 Q. Okay. Do you know who Jade Martire is?

A. Yes, I do.

Page 27

67 Q. She is a Tacora employee. Correct?

A. That is correct.

68 Q. Right. And sending this e-mail on February 12th, 2024. Do you see that?

A. Yes, I do.

69 Q. And you recognize Sean Wright at someone at Greenhill. Correct?

A. Yes.

70 Q. And he is one of the people who received this e-mail?

A. Sorry, can you repeat the question?

71 Q. Mr. Wright is one of the people who received this e-mail according to what it says. Correct?

A. Yes.

72 Q. Along with Mr. Geizhals at Greenhill who is also a principal at Greenhill. Correct?

A. That is correct.

73 Q. And both of those people have a significant amount of involvement in this Tacora restructuring matter. Correct?

A. Correct.

Page 28

74 Q. And also on this e-mail is Heng Vuong, the CFO of Tacora. Correct?

A. That's correct.

75 Q. Along with Mr. Moen, who is also another Tacora employee. Correct?

A. Yes.

76 Q. Okay. And then the subject of the e-mail is "13 week cash forecast, fifth DIP budget" and it's a dot XLSX. It is in respect of that cash forecast. Do you understand that to be correct?

A. It appears to be.

77 Q. Okay. And you are aware that these cash forecasts are important in respect of the DIP. Correct?

A. Yes.

78 Q. Okay. You see the e-mail. Ms. Martire writes to Charles and Sean at Greenhill. And then she says down here:

"Per Heng's request, I'm sharing the most recent CFF which includes pricing updates as of February 8th."

Do you see that?

Page 29

A. Yes, I do.

79 Q. Do you understand what request Mr. Vuong made in respect of that?

A. Only based on the sentence itself.

80 Q. Okay. So what is that?

A. That based on Heng's request they are sharing the most recent cash flow forecast.

81 Q. Right. And so we had seen that earlier e-mail that on January 30th it was GLC that requested cash flow forecasts. And then do you understand that this is now Tacora working to try to prepare that cash flow forecast?

A. Well, I'm actually not sure about that. I mean, we do a lot of cash flow forecasting, so I am not certain what this is in regards to. This -- we forecast cash every single week.

82 Q. But you will see the subject says "Fifth DIP budget." Correct?

A. Yes.

83 Q. So this is a cash flow forecast about the DIP. Correct?

A. Yeah. It's the -- yes.

Page 30

Based on the subject line, it is about the fifth DIP budget.

84 Q. Okay. If we look down in that e-mail now then, Ms. Martire continues. She says:

"It is my understanding that Greenhill is will use this to support the DIP need when we switch to the Ad-Hoc Group DIP."

Do you see that?

A. I do see that.

85 Q. Okay. And so Ms. Martire here is speaking about a switch to the Ad-Hoc Group DIP on February 12th, 2024. That is correct?

A. That is what the sentence says. I think it would be difficult -- an analyst, which is what Jade Martire is, a fantastic employee of Tacora, very hard working, wouldn't be in a position to know if we are switching to the Ad-Hoc Group DIP or not, but I understand what she drafted in this paragraph.

86 Q. Well, if you don't know this e-mail and you are not sure what it is about,

Page 31

how can you make that statement, sir? And now you're speculating, aren't you?

MR. KOLERS: As you were asking him to do before.

MR. KOLLA: No, that's not true, Eliot.

MR. KOLERS: Yes, it is.

MR. KOLLA:

87 Q. That is correct, Mr. Broking? You are speculating about whether or not Ms. Martire knows about that or not?

A. I am taking into consideration the facts and circumstances based on what the board was evaluating and the board wasn't evaluating this at this time.

88 Q. Right. Exactly. The board hadn't -- you know, on your evidence, the board hadn't started looking at the DIP until February 20th. And here we are on February 12th. We have someone at Tacora speaking about "when we switch" as if it has already been decided. Correct?

A. Again, Jade would not be in a position to know if Tacora, the company, is going to switch DIPs, nor would she have an

Page 32

influence on that. Her job is just to prepare cash flow forecasts.

89 Q. And I take it that you don't see back an e-mail saying that to that effect, do you? If you go up to the -- up the chain above.

MR. KOLERS: Can we just agree that the e-mails say what they say?

MR. KOLLA: The e-mails say what they say. That is very true.

90 Q. And you will agree that the e-mails don't -- this e-mail chain does not say as Mr. Vuong or Mr. Geizhals replying back and saying "Sorry, Jade, we haven't made that decision yet"? The e-mails don't say that either. Correct?

MR. KOLERS: Mr. Kolla, the e-mails say what they say. Mr. Broking is not on the exchange. He hasn't seen this before. There is no point arguing with him about what is there or not there. He has given his evidence on this topic.

MR. KOLLA: Well, I agree the e-mail said exactly what it says.

MR. KOLERS: You said that

Page 33

already but then asked him another question asking him about what it says.

MR. KOLLA:

91 Q. If we can now turn to TRI815, if you can see that, it's an e-mail from someone at the Osler firm on February 24th. Do you see that? Sent to someone at the Stikeman firm along with people at Greenhill and the Monitor. Do you see that?

A. I do, yes. Could you zoom in one more click, please? I apologize. I need to get a cornea transplant.

92 Q. No problem at all. Whenever you need to see the document, just let us know. We will do what we can to accommodate. Mr. Kolers, I would take it you would not dispute this e-mail was sent and received when it is indicated. Correct?

MR. KOLERS: Correct.

MR. KOLLA:

93 Q. And this one, would you be willing to mark this one as an actual exhibit and not just for identification?

MR. KOLERS: You can ask Mr. Broking if he has seen it before.

Page 34

MR. KOLLA: I must say, Mr. Kolers, I do not understand the position you are taking on this, and it is going to make this examination longer. You produced this e-mail two days ago. It is from someone -- it is from your firm. I can't understand how you're going to say that you can't mark this as an exhibit.

MR. KOLERS: Mr. Kolla, this examination is taking place after the parties were in court on -- at the outset of this motion. We responded to your Notice of Examination with document production in a very timely manner and hurry. And -- but the evidence is already in on this. I have not objected to you examining Mr. Broking on this affidavit on this replacement DIP issue.

But it is, frankly, sequentially out of order, out of turn. Factums have already started to be exchanged and have been exchanged on this issue. I am not going to have this examination be an opportunity to fill up the record with a bunch of additional exhibits the witness hasn't seen before. So -- and that is my position.

So you can ask questions on

Page 35

the affidavit. He is here to be cross-examined on the affidavit. It is not a discovery. And he is going to answer questions on the affidavit as it relates to the DIP issue. But if he does not know what the documents are about, this cross-examination is not going to be an opportunity for you to fill the record with a bunch of exhibits.

MR. KOLLA: Well, Mr. Kolers, I am going to disagree. The schedule that we are dealing with right now is entirely of Tacora's own making. You cannot blame the schedule and the timing of how things went when Tacora was completely in control of when it served its materials on the DIP replacement and when it was the one that wanted the schedule that was very compressed.

So I disagree that somehow you can use that compressed schedule, which Tacora was completely in control of, to now say that evidence, which is clear evidence and there can be no question about its authenticity, can't go into the record on this DIP motion which you produced in response to the summons. So I am just going to disagree with that entirely.

Page 36

MR. KOLERS: Well, I understand you are going to disagree. I am just going to say that this affidavit that you are cross-examining on was served on March 11th. You and your firm and your client swore an affidavit fully responsive to this without there being any request or cross-examination, without any Notice of Examination and without any requests for documents. Those things came on March 25th after the first attendance on this motion.

So we are accommodating your request and accommodating the process and the Court's ability to receive evidence allowing this cross-examination to take place. But I completely disagree that there is something that -- anything that we have done to interfere or delay with this process and I am not going to have you mark a bunch of documents you requested on March 25th as exhibits that Mr. Broking has not seen before.

So you can ask him if he has seen it, but that's basically it. If he hasn't seen it, I'm not going to have it marked as a numbered exhibit. You can mark it as a lettered exhibit. I have already told you I'm not going to dispute the authenticity, and you can address it

Page 37

with Her Honour if you wish.

MR. KOLLA:

94 Q. Have you -- I'm just going to say we disagree, Mr. Kolers, but we are going to continue.

If we can -- have you seen this e-mail before, Mr. Broking?

MR. KOLERS: Right now we can only see the date and the --

THE WITNESS: Can you scroll down to the subject and the --

MR. KOLLA: Of course.

THE WITNESS: No, I have not seen this e-mail before.

MR. KOLLA:

95 Q. So if we go to the very bottom of the e-mail chain, this is an e-mail from the Monitor on February 20th, 2024, to people at the Osler firm and GLC, copied to people at the Stikeman firm. Correct?

A. Yes, that's correct.

96 Q. And you will agree that it the subject is "Ad-Hoc Group DIP budget scenario (no OPA)." Correct?

A. Yes, I agree.

Page 38

97 Q. The e-mail says:
"Further to discussions over the last few weeks, please find enclosed a revised and extended draft CCAA cash flow forecast prepared by Tacora showing the Ad-Hoc Group DIP (no OPA) scenario."
Do you see that?
A. Yes, I see it.
98 Q. Okay. And you understood that FTI and Tacora and Greenhill had prepared a cash flow forecast and that was being sent to the Ad-Hoc Group consortium. Correct?
A. Yes, that is correct.
But there was, again, cash flow -- as part of the process, there were cash flow forecasts provided to the Ad-Hoc Group consortium, as well as Cargill.
99 Q. Correct. And -- but you will agree that the subject of this e-mail and what was provided was a cash flow forecast prepared by Tacora regarding an Ad-Hoc Group DIP.

Page 39

Correct?
A. Correct.
100 Q. And at that point, though, there was actually no Ad-Hoc Group DIP. Cargill was still the DIP provider. Correct?
A. That is correct.
101 Q. And so why are you sending to the Ad-Hoc Group consortium a cash flow forecast contemplating an Ad-Hoc Group DIP here on February 20th?
MR. KOLERS: 24th I think, is it not, or is that one dated 20th?
MR. KOLLA: The first e-mail that was sent was February 20.
MR. KOLERS: Right.
THE WITNESS: So due to market conditions at the time, the P62 price of iron ore we were seeing a significant drop in that price over a two-week period. And for that reason, which happened, like I said, very, very quickly, for that reason we were performing cash flow analysis, scenario analysis. And at that point, we needed to come up with scenarios to increase the amount of cash flow into the business either through a replacement DIP or through increasing

Page 40

the Cargill DIP.
MR. KOLLA:
102 Q. One of the scenarios that you understood that Tacora and the Monitor and Greenhill were taking was to seek a replacement DIP from the Ad-Hoc Group. Correct?
A. Correct.
103 Q. Okay.
U/T MR. KOLERS: Mr. Kolla -- sorry to interrupt you, Mr. Kolla, but if it is of assistance, and apropos our earlier discussion about authenticity and such, I believe this e-mail is one of the e-mails referred to in paragraph 11 of Mr. Broking's affidavit. And if you wish, I will undertake to confirm if that is true. And if it is, I do not object to it being marked.
MR. KOLLA: That would be very helpful. Thank you very much. If you can undertake to look into that and then if we could mark this then, that would be helpful.
104 Q. So will you agree, though, sir, this was further to the sequence of events we just saw in the earlier e-mails where GLC reached out on January 30th asking for a cash flow forecast and this is the e-mail on the 20th

Page 41

that provides it, on February 20th that provides it?
A. Yes.
105 Q. Thank you. And if we go up the e-mail chain, it is the second from the top. There is an e-mail from the Stikeman firm on February 21st. Do you see that?
A. Yes, I do.
106 Q. And that is an e-mail back to the people at the Osler firm who are representing the Ad-Hoc Group consortium. Correct?
A. That's correct.
107 Q. And you will agree this e-mail asks -- you are aware this happened. Correct? That then there was a request for DIP proposals to be provided. Correct?
A. That's correct.
108 Q. And then you will see in the third sentence of that request it says:
"Proposal should not be linked in any manner relating to the ongoing litigation related to the successful bid under the

Page 42

SISP and even provide sufficient funding for the company regardless of the outcome of the hearing on April 10-12."

Do you see that?

A. Yes, I do.

109 Q. Okay. It was an important consideration for the company that those proposals not be linked to the litigation or the SISP process. Do you see that?

A. I agree that that is what this paragraph says, yes.

110 Q. Yeah. You agree that was an important factor as part of this DIP. Right? DIP solicitation. Correct?

A. Yes. I agree that as part of this paragraph that is the request that was being made.

111 Q. I am not asking if it was part of the paragraph. Sir, you are on the board. You had a board meeting by this point about seeking replacement DIPs. You agree that's an important point that the company conveyed both to Cargill and to the Ad-Hoc Group consortium, that

Page 43

the DIP proposal should not be linked in any manner with the ongoing litigation. Correct?

A. Yes.

112 Q. Thank you. If we go up to the top e-mail, this is now -- in this chain, it's now an e-mail from Mr. Wasserman at Osler to the Stikeman's firm. And I want to look -- are you aware of this e-mail, sir?

A. No, I am not.

113 Q. Perhaps we will get Mr. Kolers to agree that you referred to it in your affidavit. It is the bottom e-mail. The bottom paragraph, I am sorry, bottom paragraph that starts "Please also advise what measures." I am looking at the middle of this. There is a sentence that starts "In conjunction therewith." Can you see that?

A. No, I can't.

114 Q. It starts in the middle of the -- that paragraph. Do you see that?

A. Yeah.

115 Q. This is again the Osler firm writing to the Stikeman firm:

"In conjunction therewith, we think it is

Page 44

now appropriate to take steps to disclaim some or all of the Cargill documents which dispute can be heard on our current court dates of April 10-12, 2014."

Do you see that?

A. Yes, I see it.

116 Q. Okay. But you will agree that Tacora didn't take any steps to attempt to disclaim any of the Cargill documents. Correct?

A. Yes, correct.

117 Q. Thank you.

MR. KOLLA: So we would like to mark that as the next exhibit. Mr. Kolers, your -- we will mark it now for identification, but I guess we will get your undertaking to see if it is one of the ones referred to. And if so, we will mark for -- we will mark it as an exhibit. Make sense?

MR. KOLERS: I will address the undertaking. For now it is going to be Exhibit C for identification.

EXHIBIT NO. C:

Page 45

E-mail chain dated February 24th, 2024. TRI815. (Marked for Identification).

MR. KOLLA:

118 Q. Can we please turn to exhibit -- document TRI814. This is a series of e-mails, Mr. Broking, that you are on. Do you recall seeing these e-mails? The top one is from Ms. Pacholder of Snowcat dated February 23rd, 2024, and it is, I guess, to people, including yourself. Do you see that?

A. Yes, I do.

119 Q. Do you recognize this e-mail?

A. Can you zoom in? I would like to see the subject line, please.

120 Q. Of course. The subject line is "Project element, AHG consortium DIP, DIP budget discussion."

A. Yes, I recall this e-mail.

121 Q. Okay. So you will agree that at the bottom it is actually a calendar invite for a Teams call with Ad-Hoc Group

Page 46

consortium about Ad-Hoc Group consortium DIP budget. Correct?

A. Yes, that's correct.

122 Q. And at that point, had Tacora received any DIP proposal or term sheet or anything from the Ad-Hoc Group consortium?

A. I don't recall at that time.

123 Q. But it was Greenhill that sent the original e-mail at the bottom of this chain on February 23rd for that call. Correct?

A. Yes, that's correct.

124 Q. And they are the ones that named the subject the "Ad-Hoc Group consortium DIP budget discussion." Do you see that?

A. Yes.

125 Q. Right. At this point, Tacora was actively engaging with the Ad-Hoc Group consortium about them putting in a DIP. Correct?

MR. KOLERS: Well, Mr. Kolla, that's not fair. It's -- as Mr. Broking's evidence indicates, they were actively seeking proposals from both companies, Tacora and from the noteholder group.

Page 47

MR. KOLLA: With respect, I don't think you should be interfering in the examination in that way. I think I can get the witness' evidence, not your characterization, please.

MR. KOLERS: I was taking issue with your characterization.

MR. KOLLA: Well, the witness can then address the answer to the question, not you.

126 Q. Sir, would you agree with me that on this time, February 23rd, 2024, Tacora and its advisors were actively engaging with the Ad-Hoc Group consortium on the Ad-Hoc Group consortium putting in a DIP?

A. Yes. I agree that the subject of this e-mail and what it was in regards to the Ad-Hoc Group consortium putting in a DIP. As I stated earlier, the company was engaged with both the consortium and Cargill on DIP proposals. And that process was -- and we haven't discussed this yet, but that process was being led by the Monitor.

127 Q. Correct. I agree with that. That is very true. But you don't disagree

Page 48

that you were taking part on calls with people from the Ad-Hoc Group consortium, including Ms. Pacholder, around February 23, 2024. Correct?

A. I agree that I was copied on e-mails and meeting invites, but I was not primarily involved in calls or even detailed discussions. As the CEO and board member, I was obviously responsible for evaluating and making sure that I perform my fiduciary duty and do what's in the best interest of the company. I agree with that.

128 Q. Did you participate on this call that you were invited to that that is in respect of this document that we are looking at?

A. I don't recall.

129 Q. You know who Ms. Pacholder is, though. Correct?

A. Yes.

130 Q. You understood her to be very involved in all matters regarding the CCAA, including the DIP matters?

A. I don't know how involved Ms. Pacholder is, but, yes, I understand she was is involved.

131 Q. Thank you.

Page 49

MR. KOLLA: Can we mark this as the next exhibit, exhibit -- we will call it number 2 for now. It is an e-mail from Rebecca Pacholder to people including Mr. Broking on February 23rd, 2024.

EXHIBIT NO. 2:
E-mail from Rebecca Pacholder to people, including Mr. Broking, on February 23rd, 2024.
TRI814.

MR. KOLLA:

132 Q. If we could turn up TRI807, this is an e-mail from FTI, so the Monitor, on February 23rd, 2024, to various people internal at Tacora and Greenhill. Correct?

A. Please zoom in one more.

133 Q. Of course.

A. Thank you. Yes, that is correct.

134 Q. As you said, you understood it was FTI, the Monitor, that was leading this DIP replacement process. Correct?

A. That's correct.

135 Q. Okay. And --

Page 50

A. Sorry, one correction. The Monitor was leading a DIP process to increase the DIP or replace, to increase the existing DIP or to replace the existing DIP.

136 Q. You will agree that this e-mail was in respect of that exact process. Correct?

A. Yes.

137 Q. Okay. Thank you. Do you recognize it? Do you understand this to be the e-mail that was sent and received on that date?

MR. KOLERS: Was Mr. Broking copied on this one?

MR. KOLLA: He does not appear to be copied on this e-mail.

THE WITNESS: I don't recognize this e-mail, no.

MR. KOLLA: Okay.

138 Q. If you look at the very top of the e-mail, the first one from the Monitor, I think is some discussion. It says:

"Sounds good. We can circulate more detailed info on the royalties and lease amounts currently

Page 51

included in the cure cost estimate previously provided to the Ad-Hoc Group."

Do you see that?

A. I do.

139 Q. :

"We can also discuss the HST refund amounts and hedges (EFCs) in terms of cash payments included in the CFF when we reconnect."

Do you see that?

A. I do.

140 Q. And CFF is the cash flow forecast. Correct?

A. Yes.

141 Q. And those were the things that had been previously provided to Cargill and to the Ad-Hoc Group consortium around February 20th. Correct?

A. I don't recall the exact date, but I do recall, yes, the cash flow forecasts were provided. The team reported that

Page 52

to me.

142 Q. There is reference to EFCs. Do you see that?

A. I do.

143 Q. Do you understand that to be eligible financial contracts?

MR. KOLERS: It's not Mr. Broking's e-mail.

MR. KOLLA: Mr. Kolers, you must stop interfering with the examination. I have asked a question of the witness. He can answer. It is not appropriate for you to jump in and try to get him to say something else. If you want to object to the question, go right ahead, but you cannot interfere in the examination in that way.

REF MR. KOLERS: Okay. Well, then I will object to the question. The e-mail says what it says. It is not his e-mail and it doesn't matter what he says about it, what you asked.

MR. KOLLA:

144 Q. Mr. Broking, do you understand that EFC is a reference to eligible financial contracts. Correct?

MR. KOLERS: I've just

Page 53

objected to the same question.

MR. KOLLA: Sorry, you won't even let me have an answer about whether he has a view on that and knows about that, so how can you object to it?

MR. KOLERS: Mr. Kolla, you took issue with me --

MR. KOLLA: I'm not getting in this debate, okay?

145 Q. Mr. Broking, you understood, and you understand right now, that when you see -- or that the term EFC is a reference to eligible financial contract. Just put the e-mail aside. Do you agree that?

MR. KOLERS: Every time those three letters appear together?

MR. KOLLA:

146 Q. Yes. In the context of this CCAA in this Tacora matter, Mr. Broking, do you understand that eligible financial contracts and EFCs, that is what an EFC means, right? An eligible financial contract. Correct?

A. I believe that it's likely that EFC refers to eligible financial contract.

Page 54

147 Q. Correct. You are not aware of any other reference in this Tacora CCAA proceeding to an EFC that is not a reference to an eligible financial contract. Correct?

REF MR. KOLERS: I'm objecting to this, Mr. Kolla. You can argue whatever you want to argue. This is not a proper question for this witness.

MR. KOLLA: I completely disagree. I am taking exception to the way this examination is going. This is a cross-examination. This is not an opportunity for you to engage on the record and try to put whatever you want on it. I want the witness' evidence, not yours, Mr. Kolers.

MR. KOLERS: I would put the same thing to you, Mr. Kolla. This is an examination, a cross-examination on an affidavit related to the DIP replacement issue, not the SISP issue, not the main -- issues in the litigation. You have already cross-examined on those things. I disagree you have wide scope here. And I am allowing him to answer every fair question you are putting to him and I take exception to the suggestion that my keeping this focused is

Page 55

improper.

MR. KOLLA: Well, I disagree with all of that, Mr. Kolers.

MR. KOLERS: We can agree to disagree.

MR. KOLLA: I would like to mark this as the next exhibit.

MR. KOLERS: For identification. It is D I believe.

MR. KOLLA: Exhibit D. Again, I am objecting to that. I disagree.

148 Q. Again, Mr. Kolers, you are not at all saying this e-mail was not sent and received and you are not at all saying it is not authentic. Correct?

MR. KOLERS: I have already answered that.

MR. KOLLA: Thank you. It is an e-mail from the Monitor dated February 23rd, 2024.

EXHIBIT NO. D:
E-mail from the Monitor dated February 23rd, 2024. TRI807. (Marked for Identification).

Page 56

MR. KOLLA: If we can now turn up, please, TRI890.

MR. KOLERS: What is the document number again?

MR. KOLLA:

149 Q. TRI890. It's an e-mail from someone at RCF on March 6th, 2024, to people at Greenhill. Do you see that, sir?

A. Yes, I do.

150 Q. Okay. Do you recognize this e-mail?

A. No, I do not recognize this e-mail.

151 Q. Sir, you are not aware then that -- if you want to go down to the fourth -- the fifth e-mail in the chain, it is an e-mail from that same person on same day -- sorry, on March 4th, where RCF is requesting a document, monthly plant variance report, regarding a DIP forecast. Do you see that?

A. I do see the e-mail.

152 Q. Okay. And then you will see then there is a response back from Greenhill. It says:

"We will ask the company

Page 57

to provide that and revert."

And then there is an e-mail on March 6th from that same person at Greenhill saying:

"These are not provided at reference 20.2.1.34."

That is the -- a reference to the data room. Correct?

A. I believe so, yes.

153 Q. Okay. And then the person at RCF responds back. So are you aware that this is in respect of a request by RCF, so that is the Ad-Hoc Group consortium's financial advisor, for a document in this DIP solicitation process and then it gets provided. Do you understand that?

MR. KOLERS: He can read it as well as you can.

MR. KOLLA:

154 Q. Just so we are clear, sir, you are the one, the only person who swore an affidavit on behalf of Tacora in respect of the DIP replacement motion. Correct?

A. That's correct.

Page 58

155 Q. Okay. But you were unaware when you did that of all the documents that we looked at so far that your counsel is saying will not be marked as an exhibit. Is that right?

A. I agree that I was fully -- I am aware of the fact that there were ongoing conversations, but I was not aware of the detailed conversations or e-mails that I wasn't copied on.

156 Q. You were fully aware that there was engagement before the Ad-Hoc Group consortium and Greenhill on matters regarding the DIP replacement. Correct?

A. Yes, as well as Cargill and Greenhill on increasing the Cargill DIP.

157 Q. Well, I didn't ask you about that, but thank you for putting that on the record.

MR. KOLLA: We can mark this as the next exhibit.

MR. KOLERS: That would be Exhibit E for identification.

EXHIBIT NO. E:
E-mail from RCF on March 6th, 2024, to people at

Page 59

Greenhill. TRI890.
(Marked for Identification).

MR. KOLLA:

158 Q. Can we look now at TRI884. There is an e-mail from the Osler firm on March 5th, 2024, to someone at the Stikeman's firm. Do you see that?

A. I do.

159 Q. And the subject line is "Tacora Ad-Hoc Group DIP budget scenario (no OPA)." Do you see that?

A. Can you scroll down, please?

160 Q. Of course.

A. Yes, I see it.

161 Q. So I'm just trying to get a sense, Mr. Broking, because you seem to know not a lot of details about this. I'm trying to get a sense if you understand the give and take that happened on this set of e-mails.

I read them as being that -- and this is on page 5 -- that the Osler firm on February 28th provided a draft DIP term sheet to your counsel and Greenhill and the Monitor. And

Page 60

on March 1st then there was an e-mail from the Stikeman's firm providing back a revised draft DIP term sheet. And then on March 2nd, the Bennett Jones firm, that's another firm acting for the Ad-Hoc Group. They write back and they provide further edits to the draft DIP term sheet. And then on March 3rd, we have the Stikeman firm providing attached preliminary comments on that draft term sheet.

And then we have on March 4th an e-mail from -- again from Bennett Jones attaching what he says is expected to be the substantially final version of the DIP. And then a response back on March 5th again from the Bennett Jones firm saying "Now attached the executed DIP term sheet."

So did you understand, sir -- you understand there was that back and forth between Tacora and its advisors and the Ad-Hoc Group concerning its advisors about negotiating a DIP term sheet around the times indicated there?

A. Yes, I do.

162 Q. So of that you are aware?

A. Yes.

163 Q. And that -- and the

Page 61

sequence of backing and forthing that is set out in this e-mail chain you agree is what actually happened. Correct?

A. Yeah. I can't speak to the sequence because I wasn't copied on this e-mail, but generally I agree there was back and forth happening at the time that we are looking at in these e-mails.

164 Q. And then one more e-mail on the first page. There is an e-mail now back from the Stikeman firm. And then it says -- that was after the executed DIP term sheet had been sent. Then there is a further request for an amendment from the Stikeman firm. Do you see that?

A. Yes, I do.

165 Q. Okay. And then at the top e-mail, the e-mail from the Osler firm, that writes back:

"Don't want agree piecemeal changes. Are we done if we agree to this? Is the board and the Monitor recommending our DIP? We only want to

Page 62

go back to the group once."
Do you see that?
A. Yes, I see the text.
166 Q. Okay. So in the documents that have been produced on Tuesday, so two days ago, I don't see any response to this e-mail. Do you know if there was a response, sir?
A. No, I do not know.
167 Q. Okay. What was said back then to the Osler firm response to this request of "Are we done"? Do you know?
A. I do not know.
168 Q. You as the board member, when did you -- when do you say you were -- made a decision on the DIP?
A. Well, we made the decision on the DIP on March 7th.
169 Q. Okay. Can you please -- I want an undertaking to confirm whether or not there were any further changes to the DIP proposal that the board considered on March 7th after sort of the e-mail set out in this chain, and especially this last request about whether or not that amendment to paragraph 17 could be made.

Page 63

U/A MR. KOLERS: I will take that under advisement. And just for reference, I can't see it on the screen. Can you just let me see what the date and time of this e-mail is?
MR. KOLLA: Yeah. The very top e-mail is on March 5th, 2024, at 10:56 a.m.
MR. KOLERS: Okay. Thank you.
MR. KOLLA: Mark that as the next exhibit.
MR. KOLERS: That is for advisement. It is F.
EXHIBIT NO. F:
E-mail from Osler on March 5th, 2024, to Stikeman. TRI884.
(Marked for Identification).
MR. KOLLA:
170 Q. And I want an undertaking about what the Ad-Hoc Group was told if there was no further e-mails in response of this, in response to this e-mail from Mr. Wasserman.
U/A MR. KOLERS: I will take that under advisement.
MR. KOLLA:

Page 64

171 Q. Now, turn to the Tacora board minutes and presentation deck dated March 7th, 2024. Now, before getting into the substance of this, Mr. Broking, you reviewed Mr. Lehtinen's affidavit sworn March 14th, 2024?
A. Yes.
172 Q. He wrote that in response to your affidavit on this DIP replacement matter. Correct?
A. Yes.
173 Q. I don't understand if you understand sort of these fact. Like, do you understand the details of sort of when Cargill asked for certain changes and the negotiations between Cargill and Tacora? Do you understand that he sets out that in his affidavit. Correct?
A. Yes.
174 Q. Okay. I guess would you -- the details as set out there as between Tacora and its advisors and the Monitor and its advisors, you don't have any firsthand knowledge of whether that's -- you weren't involved in those or were you?
A. I wasn't involved in the detailed discussions regarding DIP negotiations

Page 65

with the consortium or Cargill.
175 Q. Okay. So whatever Mr. Lehtinen says in his affidavit, you don't know -- you got nothing to say about whether that is correct or not. Right?
A. Yes, that's correct.
176 Q. Okay. Thank you. Now, his affidavit, though, notes that on March 4th there was a request -- there had been a request for Tacora for asking for changes on things like an exit fee. And then in his affidavit Mr. Lehtinen says that Cargill responded on March 4th and reduced their exit fee. Do you understand if that happened? Are you aware of that or not?
A. I'm not aware of the details of the request, so I am not certain, you know, that that happened or not.
177 Q. Okay. So you will leave that to Mr. Lehtinen about that. Okay. And then are you aware that in paragraph 24 of Mr. Lehtinen's affidavit he speaks about there was a further request which Cargill responded to on the morning of March 7th regarding sort of two matters, one concerning a setoff and one concerning how a disclaimer might or might not be

Page 66

an event of default. Were you aware that -- that Cargill had made those, I guess, offers on March 7th?

A. I read that in Mr. Lehtinen's affidavit.

178 Q. Yes.

A. But I'm not aware of the detailed conversations.

179 Q. Okay. Okay. I want to ask you about what you knew about that stuff on March 7th, 2024. So just try to situate that in your mind as we get to these minutes. Okay?

A. Okay.

180 Q. Thank you. You will see on that first page it says "Summary of negotiations." Do you see that?

A. Yes.

181 Q. Okay.

A. I'm going to follow along with a set of minutes in front of me so I can see them easier, if that is okay.

182 Q. Yes, that would be helpful. That would be helpful. Do you agree that these minutes sort of set out the status of the negotiations of those, of the DIP proposals?

Page 67

A. Yes. I agree that there is a summary of negotiations, yes.

183 Q. Because it doesn't have any details of any negotiations with Cargill. It seems to say, for example, the company has requested the consortium consider various items. And then Mr. Bhandari then provided an update on the feedback given by the advisors to the consortium on those items. I don't see any discussion about any negotiation with Cargill. Is that correct that that didn't happen? Or it was not discussed at the board I should say?

A. I agree that the minutes --

MR. KOLERS: Mr. Kolla's question is whether discussions with Cargill were discussed at the board.

THE WITNESS: Yeah. Well, in the final paragraph it does say that:

"In response to the board's inquiry, Mr. Bhandari advised the board that both the consortium and Cargill represented they would be

Page 68

in a position to fund this soon as an order increasing or replacing the current DIP facility is granted."

MR. KOLLA:

184 Q. Right. But my point is this: Is that in the proceeding paragraphs it talks about discussions with the consortium, but not with Cargill. So I think that is my point. My point is the discussions that the board had and was discussing was in respect of, as these minutes say, various -- negotiate with the consortium on the matters regarding the DIP, but not with Cargill. Correct?

MR. KOLERS: He's asking if you recall the discussion at the board.

THE WITNESS: Yeah. I mean, I do recall the discussion at the board, and there was -- there was discussion regarding detailed terms of both the consortium DIP and the Cargill DIP and there were questions asked by the board members regarding the discussions that occurred between the Monitor, Greenhill and my team regarding details of both DIPs.

Page 69

MR. KOLLA:

185 Q. Right. The details of those bids as opposed to the actual negotiations, which according to these minutes only seem to say there was negotiation with the Ad-Hoc Group consortium. Correct?

A. I agree that that is what is reflected in the minutes. But I do believe that there were negotiations that occurred with Cargill, as well.

186 Q. Okay. Not to the same degree as the discussion with respect to what happened with the consortium. Correct?

A. I don't know to what degree the negotiations involved. I just am aware that there were negotiations that occurred with Cargill, as well.

187 Q. Right. But you weren't actually a party to those. Correct?

A. I was not a party to those negotiations. The process was run by the Monitor and our advisors.

188 Q. And I want to go to the top of page 3.

A. Okay.

Page 70

189 Q. There was Mr. Taylor who is a lawyer at Stikeman's. Correct?
A. That is correct.
190 Q. He says:
"He reiterated his opinion that the economics between the two DIP proposals were comparable."
Do you see that?
A. I see that sentence, yes.
191 Q. And is that what was discussed at the board?
A. Yes. This was discussed, amongst other things, yes.
192 Q. And you will agree that later on there Mr. Taylor opined:
"The consortium DIP proposal was superior in part of the proposal in order to advance the company's restructuring efforts."
Do you see that?
A. I do see that sentence,

Page 71

yes.
193 Q. You will agree that -- you will agree that Mr. Taylor there is linking the DIP process with the larger restructuring efforts. Correct?
A. Yes, I agree. We considered -- we considered many factors as a board before taking this decision.
194 Q. Okay. Now, we are going to get to them in a second. You will agree these notes don't mention anywhere that the Cargill DIP was cheaper. Correct?
A. Yeah, that's correct.
195 Q. And these minutes don't mention anywhere that the Cargill DIP was for a lower quantum. Correct?
A. Well, these things were discussed. When we talk about economics of the two proposals and the quantum of the DIP amounts, these were considered, absolutely, as part of taking action.
196 Q. Correct, considered, but not mentioned in the board minutes themselves, that the Cargill DIP was cheaper and that the Cargill DIP was for less money. Correct?

Page 72

A. So the presentation that is attached --
197 Q. I am going to get there, sir. I will get there. We will discuss the slide I think you want to point me to. I just want to make clear that the board minutes don't reflect that. Correct?
A. Yeah, I agree that the minutes don't explain it, but the -- certainly the presentation that supports the minutes does.
198 Q. Right. And you will agree with me, sir, that your affidavit itself dated March 11th, 2024, also doesn't mention that the Cargill DIP was cheaper. Correct?
A. Yeah, that's correct.
199 Q. Right. And it doesn't mention the Cargill DIP was for a lower amount of money. Correct?
A. Those things were considered. Like I said, as part of this board meeting, and as part of that presentation, these factors were considered and they are discussed in writing in that presentation.
200 Q. Right. But my point is not about the presentation. My point is about

Page 73

your affidavit. You say it was discussed, but it was not put into your affidavit and it was not put into the board minutes. Correct?
MR. KOLERS: I think Mr. Broking has had a chance to look at the affidavit again. Do you want to ask the question again?
MR. KOLLA:
201 Q. Sure. You will agree with me that those two points that I mentioned, that the Cargill DIP was cheaper and the Cargill DIP was for a less amount of money, doesn't show up in your affidavit. Correct?
A. Yeah. Based on a cursory review, those two specific points are not -- do not show up in my affidavit.
202 Q. Thank you. If we can go down to the board presentation on the March 7th board minutes, this is the presentation that was presented at the board meeting on March 7th. Correct?
A. Yes, that is correct.
203 Q. Okay.
MR. KOLLA: We should mark this whole exhibit as the next exhibit, please.

Page 74

This is confidential I would assume, Mr. Kolers.
MR. KOLERS: Sorry, you are marking the March 7th board minutes and the presentation together as exhibit --
MR. KOLLA: Yes.
MR. KOLERS: Okay. So, yes. It is confidential Exhibit 3 I believe.
EXHIBIT NO. 3: Tacora board meeting minutes dated March 7th, 2024, and presentation deck. (Marked on a confidential basis).
MR. KOLLA:
204 Q. We can turn to page 2 of that slide deck.
A. Okay. I'm there.
205 Q. Okay. So you will see under the fourth sort of bolded bullet at the bottom.
A. Yes.
206 Q. This shows that the interest expense between the two different DIPs would be, you know, lower under the Cargill DIP. Do you see that?

Page 75

A. Yes, I do see that.
207 Q. Okay. And the next bullet down, the exit fee under the Cargill DIP is lower than under the Ad-Hoc Group DIP. Correct?
A. Yes, I do see that.
208 Q. Okay. Thank you. And those would be like correct features of both of the proposals. Correct?
A. For those two specific elements, yes, that's correct. There are other things that obviously need to be considered as part of taking a decision.
209 Q. Correct.
A. But, yes, I agree these two bullets say exactly that.
210 Q. But you would agree that when you are borrowing money the amount of money -- the loan expense and how much money it takes to get out of it are two pretty important considerations. Right?
A. Yeah, they are. But notice, we consider lots of things from a company perspective. So as it relates to the exit fee, for example, the ability for the company at its option to have the exit fee equitized upon a

Page 76

transaction close is a key consideration as part of what we are thinking about from a board perspective. And that was taking into consideration when we think about the fees in total, not just the absolute dollar amounts by themselves.
211 Q. Right. And equitization of that exit fee, that is what Cargill in its affidavit called the poison pill aspect of the Ad-Hoc Group DIP. Right?
A. I agree that that is what Cargill called this element, yes. I don't agree that it's a poison pill, but I agree that is what Cargill called it.
212 Q. Right. And that equitization only happens if the Ad-Hoc Group bid gets accepted. Correct?
A. That is correct.
213 Q. Okay. Thank you. You will agree with me that is -- you said it was an important feature. It actually now ties in the DIP with the larger litigation fight about the SISP process. Correct?
A. Yes, that's correct. I mean because -- as part of making the

Page 77

consideration, and we lay this out in this presentation. It is laid out by Greenhill. You know, we considered multiple elements including what you just said.
214 Q. Right. We can now turn to page 5 of that presentation. There is a listing of exit fees. Do you see that?
A. I do, yes.
215 Q. Okay. Under the Cargill one, it notes that 3 per cent is on the initial 75 and 2 per cent on the subsequent amount. Correct?
A. That is correct.
216 Q. The 3 per cent fee had already been earned. Right? Like, that was already -- that was based on what was already in place. Correct?
A. Yeah, that's correct.
217 Q. And then Tacora asked and Cargill agreed to lower that to 2 per cent in respect of the subsequent amount that would be provided under the Cargill DIP. Correct?
A. Correct.
218 Q. But the full amount here for the consortium exit fee on the full amount is 3 per cent. Correct?

Page 78

A. Yeah, that's correct, with the option to equitize that upon a deal closing.

219 Q. Correct. Turn now to slide 6. You will agree with me, sir, this was a slide that was presented that sets out the benefits of a Cargill proposed DIP and the benefits of the Ad-Hoc Group consortium proposed DIP. Do you see that?

A. Yes, I do.

220 Q. You will agree that on the Cargill one mentioned here at the bottom is it is -- the second benefit to the Cargill one is the lower quantum of the DIP required. Correct?

A. Yes.

221 Q. And that the other benefit is it is cheaper. Correct?

A. Yes.

222 Q. And now, if you go down under again the Cargill considerations under "Considerations," which I think you guys mean to be either sort of negative aspects of it. Correct?

A. Yeah. These are other considerations. That is correct.

Page 79

223 Q. Right. And so the third one is one that has been blacked out so we can't see it. There is one about the 2.6 per cent cash exit fee. It is actually 3 per cent and it's actually 2 per cent. Correct? That's what's on the previous slide?

A. Yeah. This would be a blended average.

224 Q. Right. And then the next one down says:

"No flexibility to disclaim or terminate the offtake prior to closing of a replacement DIP."

Do you see that?

A. I do.

225 Q. Do you recall we discussed Mr. Lehtinen's affidavit where he had set out on March 7th Cargill had actually provided a concession in respect of this point, which is not reflected in this point. So I want to know was the board told on March 7th about that concession by Cargill about whether or not a disclaimer of the offtake could happen with respect to a replacement of the DIP?

Page 80

MR. KOLERS: Sorry, Mr. Kolla, can you just -- I have Mr. Lehtinen's affidavit in front of me. Can you just tell me again where that is in Mr. Lehtinen's affidavit so I can show Mr. Broking?

MR. KOLLA: Of course. Why don't we look to paragraph 24 of his affidavit.

MR. KOLERS: Twenty-four of Lehtinen's affidavit, yeah.

MR. KOLLA: Yeah.

226 Q. You will see that it says:

"Cargill worked expeditiously to review the revised proposal from Tacora and responded the next morning on Thursday March 7th at 10:00 a.m."

You will agree that 10:00 was before the board meeting that happened on March 7th by the board that started at 4:00 p.m. Correct, sir?

A. That's correct.

227 Q. So Mr. Lehtinen's affidavit says that sort of two concessions were

Page 81

given by Cargill, one regarding setoff. Do you see that?

A. Yes, I do see it in his affidavit.

228 Q. Okay. And then the second one, if you go over to paragraph 24(b), Mr. Lehtinen says:

"In regard to Tacora's request for full availability to cease any and all compliance under the offtake and the OPA (not Tacora's request to Cargill under the same agreement to increase limits under the OPA) Cargill agreed that a disclaimer, termination suspension, default or breach of the Offtake Agreement would not result in a breach or an event of default under the Cargill DIP agreement to the extent the

Page 82

disclaimer, termination, suspension, breach or default was completed pursuant to a court-appointed disclaimer."

Do you see that?

A. Yes, I do.

229 Q. That is not reflected in this bullet point you see here. On the board slide that says:

"No flexibility to disclaim or terminate the offtake prior to closing without replacing the DIP."

That is what slide 6 on the board deck says. So I want to know was the board advised of the concession that Cargill made on the morning of March 7th?

A. I don't recall if we were advised during the board meeting relative to this particular point.

230 Q. Okay. Thank you. And then if we can go now to the Ad-Hoc Group

Page 83

consortium on slide 6 here, the benefits, it talks about them?

A. Okay.

231 Q. Okay. So you see the first one says:

"Significant investment in the business of new money, including from RCF and Javelin."

Do you see that?

A. Yes, I do.

232 Q. You will agree with me that significant investment only stays in the business if the Ad-Hoc Group consortium's RVO transaction is successful?

A. Yes, I agree.

233 Q. Do you see the next point:

"Greater flexibility with transition to offtake."

Do you see that?

A. Yes, I do.

234 Q. That is a reference to transitioning away from the Cargill offtake to the Javelin offtake. Correct?

Page 84

A. That's correct.

235 Q. Okay. You see the next one down is "Potential for hedging activity." Do you see that?

A. Yes, I do.

236 Q. You will agree with me that the Cargill DIP and the Cargill Offtake Agreement allowed Tacora at this time, March 7th, to pursue hedging activity. Correct?

A. Yes, I agree, that there is the opportunity to hedge.

237 Q. Right. But in this time period in 2024, Tacora was not using that opportunity. Correct?

A. Yeah, that is correct.

238 Q. Okay. And the next one down, the fourth one, is:

"Potential to avoid paying cash exit fee if the Ad-Hoc Group transaction closes."

Do you see that?

A. Yes, I do.

239 Q. You will agree that one is also linked to the RVO transaction with the

Page 85

Ad-Hoc Group being successfully approved by Tacora. Correct?

A. Correct.

240 Q. Okay. And then the fifth one, it says:

"Path forward with consortium to close transaction."

That's the same point essentially. You are linking the DIP to the Ad-Hoc Group consortium's RVO transaction. Correct?

A. That's correct.

241 Q. It is the same for the second-to-last one:

"Working with party that emerges as the winning bidder."

Correct?

A. Yes, that's correct.

242 Q. The same point again repeated at the bottom:

"Helpful for working relationship with the successful bidder."

Page 86

Correct?
A. Correct.
243 Q. And then you see there is a listing at the bottom of considerations which have little red checkmarks beside them. I guess that is negative aspects of the Ad-Hoc Group consortium's bid. Correct?
A. Yeah. These were other factors that were not considered benefits above.
244 Q. Correct. Yeah. They were in fact detriments to the Ad-Hoc Group consortium's bid. Correct?
A. Yeah. The slide lays out the negative considerations for both the Ad-Hoc Group consortium DIP, as well as the Cargill DIP.
245 Q. Right. There is five negative considerations with the Ad-Hoc Group consortium's bid. Correct?
A. Yes.
246 Q. And you will agree that none of those show up in your affidavit sworn March 11th, 2024, none of those five negative considerations about the Ad-Hoc Group consortium's bid. Correct?
A. Just a second, please. I

Page 87

think the fourth point "More expensive if consortium transaction does not close," from memory, without re-reading it, I think that is discussed, but the other four are not.
247 Q. Okay. Thank you. You can put that exhibit away now. We can turn now to TRI896.
MR. KOLERS: Peter, you have been going for an hour and a half. Do you know how much longer you have and should we be taking a break?
MR. KOLLA: I think I'm going to be maybe like 10 more minutes. So I think I am content just to try to roll through. Unless the witness wants a break or the court reporter does, I am happy to take a break, but I'm almost done.
THE WITNESS: No. I am good to go.
MR. KOLLA: Okay.
248 Q. So looking at TRI896, and this is an e-mail from someone at the Stikeman firm on Saturday March 9th to yourself, Mr. Broking, and the other members of the board, the board of Tacora. Correct?
A. Yeah, that's correct.

Page 88

Can you please zoom one more? I am sorry.
249 Q. Of course. Don't apologize.
A. The more I stare at that screen, the worse it gets.
250 Q. I think we are probably all in that same boat, Mr. Broking. You recognize that as an e-mail you received on March 9th, 2024?
A. Yes.
251 Q. Okay. Thank you.
MR. KOLLA: We will mark this as the next exhibit, Exhibit 4.
EXHIBIT NO. 4:
E-mail from Stikeman firm dated Saturday March 9th to Mr. Broking and Tacora Board of Directors.
TRI896.
MR. KOLLA:
252 Q. So you will agree with me, sir, this is an e-mail where the Stikeman firm, that is your lawyers at Tacora, are e-mailing to you a revised DIP term sheet for the Ad-Hoc Group. Do you see that?
A. Can you scroll down,

Page 89

please?
253 Q. Of course.
A. Yes.
254 Q. And it is in regard to an amendment of the Ad-Hoc Group consortium's exit fee down from 3 per cent to 1.5 per cent. Correct?
A. Yeah, that's correct. I can't see it all, the paragraph on the screen, but that's correct.
255 Q. You can scroll down. Just to situate ourselves here, on that March 7th board meeting, the board resolved to go ahead with the Ad-Hoc Group consortium's bid, not the -- sorry, replacement DIP, not the Cargill DIP. Correct?
A. That's correct.
256 Q. Okay. So this is two days later and now there has been I guess some discussion between the Ad-Hoc Group consortium and the -- and Tacora and its advisors after that March 7th board meeting. Correct?
A. That is correct.
257 Q. In order to negotiate a lower exit fee for the Ad-Hoc Group consortium.

Page 90

Correct?
A. That's correct.
258 Q. Okay. And you are not aware of any negotiation between Tacora and its advisors and Cargill to try to get any better terms from its DIP. Correct? In that same period, that March 7th to March 9th period?
A. Yeah, that's correct.
259 Q. Okay. And if we can now turn to TRI937, and you are not on this e-mail, Mr. Broking, and on this one I am content just to mark it as -- to try to move this ahead as the next exhibit for identification, Exhibit G for identification.
EXHIBIT NO. G:
E-mail from Osler firm to FTI and Stikeman firm dated March 11th, 2024. TRI937. (Marked for Identification).
MR. KOLLA:
260 Q. I want to get your sense --
MR. KOLERS: Sorry. We can't see it. Can we zoom in, please?

Page 91

MR. KOLLA: Of course. Of course.
261 Q. It is an e-mail from the Osler firm to the FTI and the Stikeman firm on March 11th, 2024. This is the last correspondence that I see in the documents between those parties. I don't see anything further. But I understand from looking at the board minutes on March 17th, 2024, that ultimately the consortium agreed to waive all their fees under the DIP. Do you understand that happened, sir?
A. Yes, I do.
262 Q. And so sometime between March 9th when we looked at that last e-mail about the consortium lowering their exit fee from 3 per cent to 1.5 per cent, somewhere between that date, March 9th and March 17th, the Ad-Hoc Group agreed to waive all their fees under the DIP. Is that correct?
A. Yeah. I am aware of the fact that the -- ultimately the Ad-Hoc Group consortium agreed to waive their fees.
263 Q. Okay. And that was as a result of negotiations between the consortium and the -- and Tacora and its advisors. Correct?

Page 92

A. I can't speak to that. I don't know if there was negotiations.
264 Q. As a member of the board of directors, you don't know how it came about that the consortium agreed to waive all of its fees? You think it just happened organically?
A. I'm not saying that. I'm just saying I am not aware of those negotiations. I am aware of the fact that they ultimately did agree to wave their fees.
265 Q. Well, I am just as in as much of the dark as you are about this topic because no documents were produced about that. I just find it surprising that not a single e-mail, not a single document was produced about that or generated about that. Mr. Kolers, can you look and produce any documents about that?
U/A MR. KOLERS: I will take that under advisement, Mr. Kolla.
MR. KOLLA:
266 Q. Will you agree with me, sir, that there was no negotiation or engagement with Cargill about its DIP between the March 9th and March 17th period?
A. I'm not aware of any

Page 93

negotiation with Cargill.
267 Q. Okay. And I take it you are not aware of any negotiation either with the Ad-Hoc Group in that period. Is that what you are saying?
A. Yeah. That's correct. I mean, I'm not aware of any negotiation that occurred with Cargill after the board made its decision. And after March 9th, I'm not aware of detailed negotiations that occurred with the consortium. I am aware that the consortium agreed to waive their fees, exit fees to be specific.
268 Q. And, again, we can just turn to the board minutes on March 17th, 2024. Perhaps you can just confirm for me those are the board minutes from March 17th, 2024, from the Tacora board meeting?
A. Okay. I have them in front of me.
269 Q. Okay. So do you agree that those are the board minutes?
A. Yes, I do.
270 Q. Okay.
MR. KOLLA: Can we mark that as the next exhibit? I don't know, Mr. Kolers, if

Page 94

that is confidential or not.
MR. KOLERS: Let's mark it confidential for now.
MR. KOLLA: It is Exhibit 5, confidential Tacora March 17th board minutes.
EXHIBIT NO. 5: March 17th, 2024, Tacora Board of Directors board meeting minutes. (Marked on a confidential basis).
MR. KOLLA:
271 Q. If we go to page 2 on this document, sir, under the heading "CCAA," before the first redaction it says:
"Mr. Taylor was advising an update and the consortium's willingness to waive all fees under their DIP."
Do you see that?
A. Yes, I do.
272 Q. Do you know when they made that agreement to waive all their fees?
A. I don't know specifically when, no. I know it was obviously prior to this

Page 95

board meeting.
273 Q. Right. Exactly. If you can undertake to tell me the date when that happened?
U/A MR. KOLERS: I will take that under advisement.
MR. KOLLA: Thank you.
274 Q. So, sir, you got no knowledge how that came about, who proposed that. Is that correct?
A. Yeah. I don't know what the genesis of this was. That is correct.
275 Q. And you didn't ask during the March 17th board meeting. Correct?
A. No, I didn't ask.
MR. KOLLA: Thank you. Can we take just a five-minute break? I am just going to confirm. I think I'm done, but I will just want to confirm.
MR. KOLERS: Sure. Why don't we take 10, Peter?
MR. KOLLA: Sure.
MR. KOLERS: And I will consider any re-examination at the same time.
MR. KOLLA: Thank you.

Page 96

--- Recess taken at 11:11 a.m..
--- Upon resuming at 11:21 a.m..
MR. KOLLA: I have no further questions for this witness.
MR. KOLERS: Thank you, Mr. Kolla. I have one or two questions in re-examination.
RE-EXAMINATION BY MR. KOLERS:
276 Q. I will try to do this without bringing a document up. But if you need the document reference, just let me know. You will recall that Mr. Kolla showed you a couple of e-mails about scenarios being -- DIP scenarios being provided to the AHG that referred to a no OPA -- its said "no OPA" in parenthesis. Do you remember seeing that?
A. Yes, I do.
277 Q. Do you know what the "no OPA" is a reference to or what that stands for?
A. It stands for Onshore Purchase Agreement.
278 Q. And what is that?
A. It is effectively a working capital mechanism whereby Cargill purchases our concentrate when it is delivered to

Page 97

the port at SFPPN on a weekly basis.
279 Q. Is that the same thing that has been referred to in this matter as the Stockpile Agreement?
A. It can be. Although, I think things get confused from time to time, but, yes, typically it would be referred to as the Stockpile Agreement.
280 Q. Okay. Why -- do you know why the scenario that the noteholder group was being asked to provide its DIP proposal in was a no OPA scenario?
A. Yeah. Because once -- if there was a replacement DIP, the OPA would effectively terminate and Tacora would lose that working capital facility effectively.
281 Q. Sorry, I didn't ask, but who is the OPA with that it would terminate?
A. The OPA is an agreement with Cargill, between Tacora Resources Incorporated and Cargill.
282 Q. Okay.
MR. KOLERS: Thank you. Those are my questions.
--- Whereupon the proceeding concluded at 11:23 a.m.

13

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

(Applicant)

FACTUM OF THE APPLICANT
(RE: MFC DISPUTE)

April 8, 2024

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

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

Alex Rose (LSO #49415P)
Tel: 416-869-5261
Email: arose@stikeman.com

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

Natasha Rambaran (LSO #80200N)
Tel: 416-869-5504
Email: nrambaran@stikeman.com

RJ Reid (LSO #82084O)
Tel: 416-869-5614
Email: rreid@stikeman.com

Counsel for the Applicant

TO: THE SERVICE LIST

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

(Applicant)

PART I - OVERVIEW

1. Tacora Resources Inc. ("**Tacora**") has brought a motion seeking approval of a sale transaction through a reverse vesting order ("**RVO**") that will be heard on April 10, 2024. If granted, that order will give effect to a transaction that is the culmination of the Court-approved solicitation process and facilitate the emergence of Tacora from these *CCAA* Proceedings. Tacora's motion seeking approval of the transaction is vehemently opposed by Cargill, Incorporated and Cargill International Trading PTE Ltd. (together, "**Cargill**").

2. If the order is granted over Cargill's objection and the transaction proceeds, then Tacora will pay approved cure costs to certain parties for various pre-filing liabilities, representing significant recovery for Tacora's trade suppliers and other contractual counterparties. 1128349 B.C. Ltd. ("**112 Ltd.**"), which is an affiliate of the lessor under the Scully Mine Lease, 0778539 B.C. Ltd. ("**077 Ltd.**", together with 112 Ltd., "**MFC**"), has sought payment not only of its approved cure costs provided for under the transaction but over $7.2 million in additional alleged royalty underpayments dating back to Q1 2020.

3. On this motion, Tacora seeks a determination by the Court that no such amounts are payable to MFC. Specifically, it asks the Court to confirm the validity of the interpretation of the royalty provisions of the Scully Mine Lease that the parties have used since inception.

4. The royalty is calculated based on Tacora's "Net Revenues" derived from the sale of "Iron Ore Products" from the Scully Mine. The manner of calculating Net Revenues depends in part on whether Tacora sells the Iron Ore Products under an "arm's length, *bona fide* contract of

sale". Tacora sells 100% of its Iron Ore Products to Cargill pursuant to an Offtake Agreement whereby Cargill markets and sells the product to third party buyers in exchange for a portion of the profits.

5. Tacora has been properly calculating MFC's royalty since production at the Scully Mine resumed in 2019. Two audit reports commissioned by MFC confirm this. MFC, however, demands more.

6. To make its claim, MFC is trying something new. Six years into the life of the Scully Mine Lease – and only after Tacora missed a royalty payment date due to liquidity constraints – MFC has alleged for the first time that Tacora has never sold its Iron Ore Products through an arm's length, *bona fide*, contract of sale. MFC now takes the position that Tacora and Cargill have been non-arm's length since April 2017 when the Offtake Agreement was first entered into. MFC demands not only its approved cure costs but a full re-calculation of the royalty back to the beginning of 2020.

7. As is obvious from the course of these *CCAA* Proceedings, Tacora and Cargill are arm's length entities that act independently of one another. They have always been at arm's length, and they have never acted with a common mind, in concert, or by one exercising *de facto* control over the other. At the point that Tacora entered into the Offtake Agreement with Cargill, there was no meaningful connection between them whatsoever. The Offtake Agreement was heavily negotiated over the course of months. Any suggestion to the contrary is completely unfounded – and MFC admits that it has no direct knowledge of any material link between Tacora and Cargill at the time. MFC and their affiant were wholly uninvolved in the process of negotiating the Offtake Agreement.

8. There are many legitimate reasons to enter into an offtake agreement, and there is nothing in the form of agreement that was reached between Tacora and Cargill that indicates that it is non-arm's length. With hindsight, it is now known that Tacora struck a bad deal – and one that has become worse as Tacora's financial situation has deteriorated. Tacora has never bargained from a position of strength. At the time that Cargill and Tacora entered into the

Offtake Agreement in April 2017, the owner of the Scully Mine was in *CCAA* protection, operations were on care and maintenance, and the mine required capital investment to restart operations. Tacora acknowledges that the Offtake Agreement is now off-market, uneconomic, prohibitive and inferior to potential alternatives, including the marketing agreement with Javelin under the proposed sale transaction. That does not mean that it is not an arm's length, *bona fide* contract of sale. Many contracts negotiated at arm's length turn out to be bad deals in hindsight, as MFC's own expert concedes. MFC's claim is nothing more than a brazen attempt to extract money from Tacora and its stakeholders in these *CCAA* Proceedings.

9. There are two issues on this motion: first, are there amounts owed to MFC under the Scully Mine Lease beyond those provided for as cure costs in the proposed transaction? Second, if there are additional amounts owing, is Tacora required to pay those in connection with the proposed transaction? In that respect, Tacora seeks the following declarations:

(a) The only amounts owed by Tacora to MFC with respect to the MFC Royalty (as defined below) are the Q2, Q3, and pre-filing Q4 2023 royalty payments based on the arm's length calculation method in the Scully Mine Lease;

(b) In the alternative, if the MFC Royalty should be calculated pursuant to the alternative calculation method set out in the Scully Mine Lease – which is denied by Tacora – there are no additional or incremental amounts owed to MFC; and

(c) In the further alternative, even if there are incremental amounts are owed to MFC, the Court should not require those to be paid in connection with the proposed transaction.

PART II - FACTS

10. A timeline of the relevant events is attached to this factum as Appendix "A".

A. The Scully Mine Lease

11. Tacora, as lessee, and 077 Ltd., as lessor, are parties to an amendment and restatement of consolidation of mining leases dated November 17, 2017 (the "**Scully Mine Lease**"). Pursuant to the Scully Mine Lease, Tacora is required to pay "Earned Royalties" of 7% of its "Net Revenues" (less certain expenses and taking into account certain credits) derived from the sale of "Iron Ore Products" from the Scully Mine and paid on a quarterly basis (the "**MFC Royalty**").[1] Payments of the MFC Royalty are to be made to 112 Ltd.[2]

12. The Scully Mine Lease sets out two methods for determining the "amount per Metric Tonne" to be used in the calculation of Net Revenues:[3]

> (j) "Net Revenues" shall mean:
>
> (i) in the event that the Lessee sells Iron Ore Products under an arm's length, bona fide contract of sale, the amount per Metric Tonne (weight determined by vessel draft survey) actually received by or otherwise payable or credited to the account of the Lessee and its affiliates calculated f.o.b. Pointe Noire, Québec or such other applicable port on the St. Lawrence seaway from which such Iron Ore Products is shipped to the Lessee's customers (the "**Port**"), or in the case of sales ex-mine gate or ex-rail, calculated at the point of actual sale, including, without limitation, all payments, incentives, bonuses, allowances, profit sharing or other consideration received by, credited or payable to the Lessee and/or its affiliates in respect thereof, less: (A) the Deductible Expenses; and (B) any royalties or overriding royalties measured by production of Iron Ore Products that are imposed on the Lessee under applicable laws by the Province of Newfoundland …; and
>
> (ii) in the event that the Lessee otherwise sells Iron Ore Products, including, without limitation, in a non-arm's length transaction, the amount per Metric Tonne by reference to a standard industry publication or service containing prices or quotations of the prices at which Iron Ore Products of equivalent types and qualities are being sold or purchased at a specific point of delivery (an "**Industry Service**") or, if such Industry Service is unavailable, then by such other means, in accordance with mining industry practice, as may establish such prices or quotations of the prices at which Iron Ore Products or equivalent types are being sold and purchased, calculated at f.o.b. the Port. [Emphasis added]

13. The first method is to be used when Tacora sells the Iron Ore Products under an "arm's length, *bona fide* contract of sale". Tacora has always used the "arm's length method" to

[1] Affidavit of Joe Broking sworn March 21, 2024 ("**Broking Affidavit**"), Exhibit "A", Amendment and Restatement of Consolidation of Mining Leases – 2017 ("**Scully Mine Lease**"), s. A. 1.
[2] Scully Mine Lease, s. A. 11.
[3] Scully Mine Lease, definition (j).

calculate the MFC Royalty as it has always sold its product under an arm's length, *bona fide* contract of sale.[4]

B. The Offtake Agreement

14. Tacora sells 100% of the iron ore concentrate produced at the Scully Mine to Cargill pursuant to an offtake agreement dated April 5, 2017 (as restated on November 9, 2018, and amended from time to time, the "**Offtake Agreement**"), between Tacora, as seller, and Cargill, as buyer.[5] Cargill markets the Iron Ore Products globally, selling them to third party buyers. As described further below, Cargill receives a portion of the profits of sale for its services and pays the balance to Tacora. Effectively, Cargill serves as an intermediary akin to a sales and marketing agent.[6] MFC concedes that it has no reason to believe that Cargill hasn't been selling Tacora's products to third parties at the highest possible price.[7]

15. Offtake agreements are a standard feature of the mining market that allow producers to focus on mining instead of sales, provide them with security of demand, and help them tap into new markets.[8] In this case, Tacora entered into the Offtake Agreement in April 2017, two months before being selected as the winning bidder of the Scully Mine in the prior *CCAA* sales process.[9] Tacora entered into the Offtake Agreement prior to acquiring the Scully Mine in order to demonstrate a viable business plan to the market and the Court.[10]

16. Only a few companies offer the offtake services that would be needed for the technical marketing, distribution, and sale of the iron ore concentrate of the Scully Mine.[11] In preparing its

[4] Broking Affidavit at para 7.
[5] Broking Affidavit at para 9.
[6] Transcript of the Cross-Examination of Joe Broking held on April 4, 2024 ("**Broking Transcript**"), Q. 179, p. 71.
[7] Transcript of the Cross-Examination of Samuel Morrow held on April 5, 2024 ("**Morrow Transcript**"), Q. 286, p. 83.
[8] Transcript of the Cross-Examination of David Persampieri ("**Persampieri Transcript**"), Qs. 260-261, pp. 74-75; **see also** Broking Affidavit at para 12.
[9] Broking Affidavit at paras 19 and 29.
[10] Broking Affidavit at paras 19 and 21.
[11] Broking Affidavit at para 21.

bid for the Scully Mine, Tacora reached out to two such companies. One company was not interested in pursuing a deal. The other company was Cargill.[12]

17. Tacora and Cargill were unaffiliated and independent entities that negotiated the Offtake Agreement at arm's length. Ultimately, the parties reached an agreement that the amount Tacora would receive from Cargill for its iron ore concentrate would be determined by the market commodity price (as determined by a market index), less freight costs, and plus a share of the profits derived from Cargill's sale of the iron ore concentrate to third parties above the market index (the "**Purchase Price**"). While such profit-sharing arrangements may be rare in sea-borne long-term iron ore contracts, they do feature in offtake agreements – and Cargill has included them in other iron ore offtake agreements with arm's length third parties.[13]

18. The Offtake Agreement has remained in place since April 2017. While Cargill and Tacora restated the agreement in 2018 and have amended it from time to time, none of the subsequent changes have had a material impact on the Purchase Price to be paid to Tacora.[14]

C. Royalty Calculation Dispute

19. When Tacora acquired the Scully Mine in July 2017, it was assigned (as lessee) the consolidated leases for the mine.[15] In November of 2017, the parties agreed on an amendment and restatement of the leases and executed the Scully Mine Lease.[16] Tacora disclosed the offtake arrangement with Cargill to MFC during the restatement negotiations and the Scully Mine Lease references the Offtake Agreement in relation to the calculation of Net Revenues.[17]

20. Up until 2023, MFC accepted that revenue received through the Offtake Agreement was arm's length revenue for the purpose of calculating the MFC Royalty.[18] In late 2021 and early 2022, MFC twice exercised its audit rights under the Scully Mine Lease and completed forensic

[12] Broking Affidavit at para 21; **see also** Broking Transcript at Q. 133, p. 53.
[13] Persampieri Transcript at Q. 110, p. 33.
[14] Broking Affidavit at para 30.
[15] Morrow Transcript, Exhibit "A", Scully Royalty Ltd. Form 20-F for fiscal year ended December 31, 2021, p. 19.
[16] Broking Affidavit at para 42.
[17] Broking Affidavit at para 44.
[18] Broking Affidavit at para 8.

audits of Tacora's royalty records.[19] MFC initially refused to provide these audit results to Tacora in relation to this motion. It was not until today (April 8, 2024) that MFC's counsel produced copies of audit reports dated December 17, 2021 and February 4, 2022, which confirmed Tacora's calculations.[20] MFC has continued to withhold relevant correspondence related to each of these reports and refused to allow cross-examination in relation to them. Still, it is abundantly clear that the auditor confirmed – in both instances – that Tacora has properly calculated the MFC Royalty amounts.

21. At the end of April 2023, Tacora advised MFC of its intention to defer payment of the Q1 2023 MFC Royalty payment (as permitted by the terms of the Scully Mine Lease) due to certain liquidity challenges the company was experiencing.[21] To apply pressure, MFC demanded – for the very first time – that the MFC Royalty payments dating back to 2019 ought to be re-calculated in accordance with the definition of "Net Revenues" in subparagraph (j)(ii) of the Scully Mine Lease, on the basis that the Offtake Agreement was not an "arm's length, *bona fide* contract of sale".[22]

22. Tacora subsequently paid the Q1 2023 MFC Royalty payment but again relied on the contractual grace period for the Q2 2023 payment. On August 22, 2023, MFC commenced arbitration proceedings alleging that the MFC Royalty was underpaid. At the time Tacora commenced the *CCAA* Proceedings, the Q2 and Q3 2023 MFC Royalty payments remained outstanding. The MFC Royalty payment for the stub period of Q4 2023 prior to the *CCAA* filing also remains outstanding.[23] Tacora does not dispute these amounts, to the extent calculated under the "arm's length, *bona fide* contract of sale" method and consistent with past practice.

23. As the Court is aware, Tacora and a consortium of the ad hoc group of noteholders and certain other investors (the together, the "**Investors**") entered into a subscription agreement on

[19] Broking Affidavit at para 47.
[20] Due to the date of disclosure by MFC's counsel the audit reports are not in evidence. However, Exhibit "C" to the Morrow Transcript is a public filing of MFC's parent company that states that preliminary audit findings appear to confirm Tacora's calculations (p. 4).
[21] Broking Affidavit at para 8.
[22] Broking Affidavit at para 9.
[23] Broking Affidavit at para 9.

January 29, 2024 (the "**Subscription Agreement**").[24] The Subscription Agreement contemplates the payment in full of the MFC Royalty payments to MFC for the Q2 2023, Q3 2023 and the stub Q4 2023 period, calculated on the basis that the Offtake Agreement is an arm's length *bona fide* contract of sale.

24. All other pre-filing claims of MFC, including those related to the alleged underpaid MFC Royalty, constitute "Excluded Liabilities" under the Subscription Agreement.[25]

PART III - ISSUES

25. This factum addresses the following issues that need to be decided by the Court:

(a) Is the Offtake Agreement an arm's length, *bona fide* contract of sale within the meaning of the Scully Mine Lease?

(b) If the Offtake Agreement is not an arm's length, *bona fide contract* of sale, what is the proper method for calculating the MFC Royalty?

(c) In the alternative, if amounts are owing to MFC, are those amounts required to be paid in connection with the proposed transaction?

PART IV - LAW AND ANALYSIS

A. The Offtake Agreement is an arm's length, *bona fide* contract of sale

(i) The factual matrix supports Tacora's position

26. The object of contractual interpretation is to ascertain the objective intentions and reasonable expectations of the parties with respect to the meaning of a contractual provision.[26] The text of an agreement must be read as a whole, in conjunction with the surrounding

[24] Broking Affidavit at para 49.
[25] Broking Affidavit at para 50.
[26] *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 ("***Sattva***") at para 55; **see also** *Ledcor Construction Ltd v Northbridge Indemnity Insurance Co*, 2016 SCC 37 at para 65.

circumstances and factual matrix, and in a manner that achieves commercial efficacy.[27] To interpret the Scully Mine Lease in the context of this motion, it is critical to understand that Tacora had disclosed the Offtake Agreement to MFC during the negotiations of the lease.[28]

27. MFC and Tacora negotiated the Scully Mine Lease on the understanding that Cargill would be handling the marketing of Tacora's iron ore concentrate in exchange for a share of the profits, and that these profits would not form part of Tacora's Net Revenues.[29] This arrangement made sense at the time. MFC's own expert, David Persampieri, opines that offtake arrangements can help smaller producers market their products and access foreign markets.[30] In this case, Tacora had no in-house marketing or sales capability; its product was new and untested. As Mr. Broking stated on cross-examination:

> … Tacora at the time [April 2017] 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 the 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.[31]

28. It is clear from the terms of the Scully Mine Lease that the parties intended for the Offtake Agreement to be considered an "arm's length, *bona fide* contract of sale" under j(i) of the Scully Mine Lease. The parties made reference in section A.(h) of the Scully Mine Lease to the timing and provisional payment mechanics under the Offtake Agreement (and the need for retroactive payment determination) – none of which could have any application if the "amount per Metric tonne" were simply calculated by reference to a standard industry publication under j(ii) of the lease dealing with non-arm's length contracts.

29. While MFC now takes the position that Tacora intentionally and in bad faith withheld the nature of its relationship with Cargill from MFC in negotiating the Scully Mine Lease, there is no evidence that supports this position.

[27] *Sattva*, *supra* at para 55.
[28] Broking Affidavit at para 44.
[29] Affidavit of Joe Broking sworn March 28, 2024 ("**Broking Affidavit #2**") at para 28.
[30] Affidavit of David Persampieri sworn March 18, 2024, Exhibit "A", Opinion of David Persampieri dated January 4, 2024 at Q. 265, pp. 75-76.
[31] Broking Transcript, Q. 209, pp. 81-84.

(ii) There are accepted interpretations of "arm's length" and "bona fide"

30. If the Court does not accept that the parties to the Scully Mine Lease intended the Offtake Agreement to be treated as an "arm's length, *bona fide* contract of sale", then it is necessary to consider the meaning of those terms. The terms "arm's length" and "*bona fide*" are not defined in the Scully Mine but have fairly well-accepted definitions in other contexts.

31. The leading case on the concept of whether parties are at arm's length is the Supreme Court of Canada's decision in *Canada v McLarty*.[32] While the Supreme Court in *McLarty* was interpreting and applying provisions of the *Income Tax Act* (Canada),[33] the same principles have been applied to non-tax contexts and should guide the interpretation of the Scully Mine Lease.[34] In *McLarty*, the Supreme Court noted the importance of considering "all the relevant circumstances" and articulated the following criteria for determining whether an agreement was entered into on a "non-arm's length" basis:

(a) Was there a common mind which directs the bargaining for both parties to the transaction? In other words, is the person directing the bargaining for one party to the transaction is the same person directing the bargaining for the other?[35]

(b) Were the parties to the transaction acting in concert without separate interests? Were the parties are acting for their individual benefits, or for the benefit of someone else?[36]

(c) Was there *de facto* control?[37]

32. The last of these criteria, the exercise of *de facto* control by one party over the other, is the most nuanced, as there are no specific factors to consider in assessing whether *de facto* control exists. Rather, the facts must demonstrate that the decision-making power over one

[32] *Canada v McLarty*, 2008 SCC 26 at para 62.
[33] *Income Tax Act Income Tax Act*, RSC 1985, c 1 (5th Supp), s. 251(1).
[34] See, for example, *Piikani Energy Corporation (Re)*, 2013 ABCA 293; **see also** *1085372 Ontario Limited v. Kulawick,* 2019 ONSC 2344 at para 48;
[35] *Damis Properties Inc v The Queen*, 2021 TCC 24 at para 164.
[36] *Poulin c R*, 2016 TCC 154 at para 66.
[37] *McLarty*, *supra* at para 62.

party does not lie with those who have *de jure* control over said party, being those who have the majority control of a party's board of directors (most often the majority shareholder).[38]

33. Ultimately, in determining whether parties are at arm's length, the Court should consider the following overarching question: does one party to a transaction exercise influence over the other party that precludes the other party's free participation in the transaction in an independent manner?[39]

34. In respect of the phrase "*bona fide*", it has been interpreted to mean "honestly", "genuinely" or "in good faith".[40] In *Bank of Montreal v. Wheeler*[41], referencing an earlier decision in *The City of North Bay*,[42] the Court accepted the following interpretation of *bona fide*:

> Bona fide is the key word. Reputable dictionaries, whether general (such as Oxford and Webster) or legal (such as Black), regularly define the expression in one or several of the following terms, vis. honesty, in good faith, sincere, without fraud or deceit, unfaned, without simulation or pretence, genuine. These terms connote motive and a subjective standard, thus a person may honestly believe that something is proper or right even though objectively, his belief may be quite unfounded and unreasonable... Although it is essential that a limitation be enacted or imposed honestly or with sincere intentions, it must in addition be supported in fact and reason based on the practical reality of the workaday world and of life.

35. In *Ludmer c. Ministre du Revenu national*, the Supreme Court of Canada held that the term "*bona fide*" would assist a court in determining "whether the transaction at issue was a mere sham or window dressing."[43]

36. The inclusion of the terms "arm's length" and "*bona fide*" protects MFC from the possibility that Tacora could enter into sham transactions in bad faith to avoid paying royalties that would otherwise be due to MFC – or that there could be a structural change pursuant to which Tacora is wholly acquired by a steel mill and begins selling at *de minimus* transfer prices for the benefit of the mill. Given that Tacora has paid MFC $121 million in royalties since Q1 2020 (and that the alleged underpayment is only approximately 5% of that amount), that is clearly not the case here.

[38] *Transport ML Couture Inc v R*, 2004 FCA 23 at para 24.
[39] *Gestion Yvan Drouin Inc c R*, 2000 CanLII 407 at para 74.
[40] *Extendicare Health Services Inc v Canada (Minister of National Health & Welfare)*, 1987 CanLII 8977 (FC).
[41] *Bank of Montreal v Wheeler*, 1980 CarswellNat 654.
[42] *Re Ontario Human Rights Commission and City of North Bay*, 1977 CanLII 1253 (ON CA).
[43] *Ludco Enterprises Ltd v Canada*, 2001 SCC 62.

37. The structure of the Net Revenues definition does not ensure that Tacora will receive the price for its iron ore that maximizes the amount of royalty payable, or even that it receives the same amount as a market index for similar ore. It only requires that Tacora deal in good faith and at arm's length for the sale of iron ore in a manner not intentionally designed to defeat MFC's royalty.

(iii) The Offtake Agreement was entered into at arm's length (April 2017)

38. MFC's own expert concedes there is nothing in the pricing terms of the Offtake Agreement that demonstrates it is a non-arm's length agreement.[44] Such a determination requires an understanding of the facts and circumstances as they existed at the time. In this case, the negotiation of the Offtake Agreement in the months leading up to April 2017 is an unremarkable case of unrelated parties seeking to enter into a commercial transaction in order to advance their respective business interests.

39. During the negotiation of the Offtake Agreement, Cargill and Tacora were unaffiliated and had separate management.[45] Tacora's sole shareholder was MagGlobal LLC and that company's CEO (who was a founding director of Tacora) had ultimate decision-making authority over whether Tacora would enter into an offtake arrangement with Cargill.[46] MagGlobal LLC is a privately-held corporation, unaffiliated with Cargill.[47] Cargill had no means to exercise *de facto* control over Tacora, nor is there any evidence it even attempted to do so.

40. Accordingly, Tacora approached negotiations seeking to advance its own objective: to secure an offtake arrangement with an established offtake provider who would be able to promote and sell a fledgling brand of iron ore concentrate.[48] Among other things,

(a) Cargill and Tacora each conducted due diligence review of the other;[49]

[44] Persampieri Transcript at Q. 113-115, p. 34.
[45] Broking Affidavit at para 19.
[46] Broking Affidavit at paras 24 and 29.
[47] Broking Affidavit at para 19.
[48] Broking Affidavit at para 22.
[49] Broking Affidavit at para 22.

(b) Cargill and Tacora performed their own analyses of transaction economics;[50]

(c) Cargill and Tacora were advised by separate counsel and advisory teams in the process;[51] and

(d) Cargill and Tacora exchanged offers and counters for a proposed offtake arrangement and profit share structure.[52]

41. In his affidavit of March 21, 2024, Mr. Broking has attached as exhibits several draft term sheets and agreements that were exchanged between the parties in the course of negotiating the offtake arrangement.[53] These draft transaction documents and the negotiations they evidence are fundamentally at odds with any allegation that the parties were acting in concert and without separate interests.

42. In the absence of any direct connection between Tacora and Cargill, MFC has put forward a theory that Tacora could have been controlled by Cargill through the involvement of a private equity fund manager named Proterra Investment Partners ("**Proterra Investment**"). At the time that the Offtake Agreement was entered into in April 2017, Tacora had obtained a commitment from Proterra Investment that it would make an investment through funds under its management. That equity funding wasn't received until July 2017, months after the Offtake Agreement was executed.[54] The only evidence of Proterra Investment's involvement with Tacora at this time is that, in anticipation of making an investment, it provided limited support to Tacora in negotiating against Cargill, reviewing a draft agreement and helping extract better pricing terms from Cargill. [55]

43. There is simply no evidence of a meaningful link between Cargill and Proterra Investment. While MFC's affiant, Samuel Morrow, alleges in his affidavit that in 2017, Cargill

[50] Broking Affidavit at para 22.
[51] Broking Affidavit at para 22.
[52] See Broking Affidavit at paras 23-24 for a detailed description of the arm's length negotiations between Tacora and Cargill.
[53] Broking Affidavit at para 23; **see also** Broking Affidavit, Exhibits "D", "E", "G" to "J".
[54] Broking Affidavit at paras 26 and 29.
[55] Broking Affidavit at para 28.

held a "substantial ownership interest in Proterra Investment",[56] he conceded on cross-examination that he has no factual basis for that statement, and he actually has no knowledge whatsoever of the relationship between Proterra Investment and Cargill.[57] Mr. Morrow ultimately admitted on cross-examination that, to his knowledge, Cargill had no ownership interest in Proterra Investment in 2017.[58] As Proterra Investment was 100% "employee owned" in April 2017, it does not appear that Cargill had any ownership interest in or control over it whatsoever.[59]

44. Proterra Investment was founded in or around January 2016. It was created to manage certain private equity investment funds that were spun out of an independently managed Cargill subsidiary (Black River Asset Management).[60] It appears that Cargill retained a passive, minority investment in certain of the funds that were spun-out.[61] Mr. Morrow admitted that "the extent of the relationship between Cargill and Proterra in 2017 was that Cargill was an investor in some funds managed by Proterra".[62] However, Mr. Morrow admitted that he had no personal knowledge of, or details about, this investment; did not know the amount of the investment; and did not know whether the funds in which Cargill had an investment had anything to do with Tacora or mining and metals.[63]

45. Accordingly, at the time that the Offtake Agreement was entered into, the only connection between Cargill and Tacora was that Proterra Investment had committed to make an investment in Tacora – and Cargill still had passive investments in funds managed by Proterra Investment.

46. It was not until July 2017 – after the Offtake Agreement was entered into – that Proterra Investment's financing came through. Certain funds managed by Proterra Investment were

[56] Affidavit of Samuel Morrow sworn March 26, 2024 ("**Morrow Affidavit**") at para 30.
[57] Morrow Transcript, Qs. 138, 175; pp. 41, 55.
[58] Morrow Transcript, Q. 179 et seq., p. 57.
[59] Morrow Transcript Q.162 - Q170, Q175, pp. 51-53, 55.
[60] Broking Affidavit at para 27.
[61] Broking Transcript, Exhibit 2.
[62] Morrow Transcript, Q. 196, p. 61.
[63] Morrow Transcript, Qs. 197-200, pp. 61-62; **see also** Broking Transcript, Qs. 69-70, p. 71, where Mr. Broking similarly states that he has no knowledge of such relationship.

ultimately invested in a company ("**Proterra Cooperatif**") that held shares in another company ("**Proterra Holdings**") that became the majority shareholder of Tacora at that time. MagGlobal LLC retained a minority interest. While MFC's witness, Mr. Morrow, swore in his affidavit that "Cargill maintains management and advisory connections with respect to those funds", he conceded on cross-examination that he doesn't actually have any such knowledge of that relationship.[64]

(iv) Amendments to the Offtake Were Negotiated at Arm's Length and Are Not Material to this Dispute (November 2018 and March 2020)

47. Since being executed on April 5, 2017, the Offtake Agreement has been restated once and amended from time to time. Two amendments are of note.

48. The first amendment was in November 2018. It extended the term of the Offtake Agreement from 2023 to 2033 but made no substantive change to the Purchase Price structure.[65] At the time it was approved by Tacora's Board of Directors in October of 2018, Cargill had no interest in Tacora. No one from Cargill sat on Tacora's Board.[66] There is no evidence that Cargill was involved in any way with Tacora's decision making.

49. In conjunction with the extension of the term of the Offtake Agreement, Tacora received US$20 million in equity financing from a Cargill entity and Cargill acquired an indirect interest in Tacora.[67] Specifically, Cargill acquired a membership interest in Proterra Cooperatif, which gave it an approximately 10% interest in Tacora on a look-through basis.[68] November 2018 was the first time that Cargill acquired a direct or indirect interest in Tacora.

50. Cargill did not, and does not, exercise control of Tacora through this 2018 interest in the Proterra holding companies. Beyond the fact that its interest has always fallen substantially short of a majority interest, it is also not allowed to participate in Proterra offtake discussions. The member and contribution agreement of Proterra Cooperatif states as follows:

[64] Morrow Transcript, Q. 221, p. 68.
[65] Broking Affidavit at para 31(c).
[66] Broking Affidavit at paras 38 and 39.
[67] Broking Affidavit at para 36.
[68] Broking Affidavit at para 37.

> Cargill agrees that, for so long as Cargill or an Affiliate (as defined below) of Cargill is negotiating an off-take or similar agreement with Tacora or such an agreement is binding as between Cargill (or an Affiliate of Cargill) and Tacora, its nominee on the board of managing directors of [Proterra Cooperatif] and the board of managing directors of [Proterra Holding] must recuse himself or herself from, and will not be entitled to vote or otherwise participate in any board meetings of [Proterra Cooperatif] or [Proterra Holdings] in respect of (i) off-take, sales or marketing of Tacora products …[69] [Emphasis added]

In other words, when Tacora's majority shareholder deliberates about Tacora's Offtake Agreement, Cargill is not allowed to participate in the discussion.

51. The second notable amendment to the Offtake Agreement was in March 2020. This amendment extended the term of the agreement from 2033 to "life of mine".[70] At the time that Tacora elected to proceed with the second amendment, its ownership remained as described above. A Cargill employee, Phil Mulvihill, was on Tacora's Board as one of Proterra Holding's representatives at the time. However, he abstained from voting on offtake-related matters.[71] At the time the 2020 amendment was approved, Mr. Mulvihill was only one director of seven.[72]

52. In the case of both amendments to the Offtake Agreement, they were negotiated at arm's length. Tacora and Cargill engaged in back-and-forth regarding the length of the prospective term extension, Cargill's consideration, and other key terms.[73] In both cases, the amendment was brought to Tacora's Board for review and approval.[74] Again, there is no evidence that the Board was controlled by Cargill.

53. The substantive impact of the amendments was an extension of the Offtake Agreement's term. However, the extensions had no impact on the pre-filing amounts now in dispute between the parties.[75] Neither of the two amendments made materials changes to the Purchase Price and did not affect the amount of royalties ultimately received by MFC.[76]

54. Mr. Broking's evidence is that the extension of the Offtake Agreement is the principal reason that Tacora now considers the Offtake Agreement to be an off-market agreement that

[69] Morrow Affidavit, Exhibit "XX", s. 1.7.
[70] Broking Affidavit at para 32.
[71] Broking Affidavit at para 38.
[72] Broking Transcript, Exhibit 9.
[73] Broking Affidavit at para 33.
[74] Broking Affidavit at para 33.
[75] Broking Affidavit, Exhibit "K", s. 35.
[76] Broking Affidavit at para 30.

inhibits the company's ability to raise capital.[77] Tacora had originally hoped to renegotiate the terms of the Offtake Agreement at the end of its term. However, the financial situation of the company was hurt by delays in resuming mine production and ramp-up, so the 2018 and 2020 amendments were entered into for a valid commercial purpose of obtaining working capital and equity financing.[78] Tacora negotiated the amendments in its own self-interest.

55. MFC's own expert states that he is aware of numerous cases where a valid offtake arrangement became unfavourable over time:

> 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.
>
> 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 […].[79]

56. An uneconomic deal is not sufficient to prove a non-arm's length transaction, and the fact that years later a company views a prior deal as off-market and uneconomic is of little, if any, value in assessing whether the agreement was *bona fide* and entered into at arm's length.

(v) Cargill and Tacora are arm's length parties

57. In an attempt to bolster its claim, MFC and its affiant, Mr. Morrow, reference certain financing and other arrangements that Tacora and Cargill have entered into in the time since the Offtake Agreement was entered into. Control over an entity cannot be retroactively prescribed and these later arrangements are wholly irrelevant to whether the Offtake Agreement was an "arm's length, *bona fide* contract of sale" when it was executed. The question this Court must answer is whether the Offtake Agreement is an arm's length, *bona fide* agreement and not whether Tacora and Cargill have ever been not at arm's length.

58. Regardless, Tacora and Cargill have always been at arm's length. None of the later arrangements have resulted in Cargill exercising control over, or acting in concert with, Tacora.

[77] Broking Transcript, Qs. 209-210, pp. 81-84.
[78] Broking Affidavit at paras 32 and 36; **see also** Broking Transcript at Q. 209, p. 83.
[79] Persampieri Transcript at Qs. 267-268, p. 76.

These arrangements have included Cargill acquiring non-voting preferred shares and warrants and becoming a creditor of Tacora.[80] Beginning in 2023, Cargill also provided two employees to Tacora to help with operational matters and capital expenditure planning.[81] That said, Cargill's actual influence over governance and management has always been constrained:

(a) Cargill has never directly held outstanding common shares in Tacora and has never converted its preferred shares nor exercised its warrants.[82].

(b) Cargill's indirect ownership of Tacora on a look-through basis has never exceeded around 11%.[83]

(c) Cargill has never had more than one representative on the Tacora Board of Directors and has never exercised control over the board.[84]

(d) Cargill has never held the majority of Tacora's debt.[85]

59. The only first-hand knowledge of the circumstances in which the Offtake Agreement and any other agreements or arrangements with Cargill comes from Mr. Broking, who stated in his cross-examination that these agreements were all negotiated at arm's length with separate counsel advising Cargill and Tacora during the negotiations.[86]

60. The fact that Tacora and Cargill do not act with common mind or in concert is most obviously evidenced by the fact that the two entities are presently adverse in interest in Tacora's *CCAA* Proceedings.

B. MFC Claimed Amount is Overstated under the "Non-Arm's Length" Method

61. In the alternative, to the extent that it is determined that the non-arm's length calculation method of Net Revenues should be used, which is denied by Tacora, the amounts claimed by MFC are overstated.

[80] Broking Affidavit at paras 40-41.
[81] Broking Transcript at Q. 240, pp. 95-96.
[82] Broking Affidavit at para 34.
[83] Broking Affidavit at para 37.
[84] Broking Affidavit at paras 34 and 38-39.
[85] Broking Affidavit at para 34.
[86] Broking Transcript at Qs. 356-360, pp. 150-151.

(i) MFC's failure to credit the Knoll Lake Royalty

62. Section 1(d) of the Scully Mine Lease states that Tacora shall have credit for any royalty payments made under the "Nalco Lease" when it pays the MFC Royalty.[87] These royalty payments are referred as the "Knoll Lake Royalty" and Tacora pays this royalty every quarter.[88]

63. MFC's expert admitted in cross-examination that Tacora's payments of the Knoll Lake Royalty should have been deducted from his calculation.[89] He further admitted that he believed Tacora's calculation of this deduction to be correct.[90] Accordingly, Tacora and MFC's expert agree that Tacora must receive credit for the Knoll Lake Royalty and that the amount allegedly owed by Tacora ($7,295,293.54) should be reduced by $2,596,150.

(ii) MFC's failure to deduct Deductible Expenses

64. Net Revenues are generally defined as gross sales less associated costs. In defining "Net Revenues" in subparagraph (j), the Scully Mine Lease therefore makes reference to "Deductible Expenses". Deductible Expenses is defined as the reasonable *bona fide* vessel loading and dock handling costs up to an adjusted cap of $2.50 per gross ton.[91] These are amounts paid to third parties as costs of sales.[92]

65. Subparagraph j(ii) of the Net Revenues definition, which sets out the adjustment for a non-arm's length contract of sale, does not mention Deductible Expenses. This is because both subparagraphs of the "Net Revenues" definition must be read together for the proper meaning to be conveyed.

66. Read cohesively, subparagraph j(i) of the "Net Revenues" definition establishes the principal method for calculating Net Revenues: "amount per Metric Tonne" less Deductible Expenses less government-imposed royalties. Subparagraph j(ii) of the definition then specifies that when the transaction is not an arm's length *bona fide* contract of sale the "amount per

[87] Scully Mine Lease, s. A(1)(d).
[88] Broking Affidavit #2 at para 13.
[89] Persampieri Transcript, Q. 159, pp. 46-47.
[90] Persampieri Transcript, Q. 160, p. 47.
[91] Scully Mine Lease, definition (c).
[92] Persampieri Transcript, Qs. 235- 239, pp. 67-68.

Metric Tonne" will be replaced by a substitute metric determined with reference to market index Subparagraph j(ii) does not operate on its own and the deductions in subparagraph j(i) are to still be applied. The following factors support a cohesive reading of paragraph (j):

(a) Paragraph j(i) and j(ii) are separated by an "and" instead of an "or", requiring the two to be read together;

(b) If j(ii) is used in isolation then no deduction is being made at all under its calculation method, yet the defined term "Net Revenues" (and not "Gross Revenues") implies that certain costs are to be deducted; and

(c) Tacora would incur port-related costs and government-imposed royalties regardless of whether the sale of its iron ore concentrate was arm's length or not.

67. A contract must be read as a whole, and it is not sensible or appropriate to look at a sub-paragraph of a definition in isolation.[93] The sub-paragraphs of the Net Revenues definition operate together, and Deductible Expenses are to be deducted regardless of whether or not the contract was entered into at arm's length. The deduction of the Deductible Expenses decreases the amount allegedly owed by Tacora by $2,397,189.85.[94]

(iii) MFC's Expert Makes Insufficient Adjustments to Index Rates

68. The non-arm's length calculation method set out at subparagraph j(ii) is open-ended. It requires the parties to calculate the value of the Iron Ore Products "by reference to a standard industry publication" on an "f.o.b. the Port basis" but is otherwise silent on the details of the calculation. The subsection therefore requires two different variables to be determined: 1) the market price of the iron ore and 2) the costs of freight (f.o.b. the Port). However, the inclusion of the words "by reference" gives the parties considerable latitude to tailor the standard industry publication to the facts in order to best approximate the market value of Tacora's products.

[93] *Sattva*, *supra* at para 47.
[94] Broking Affidavit #2 at para 16.

69. The parties agree that Platts 65% is an appropriate index to reference for market price and that standard published indices (Platts or Baltic Exchange) are appropriate indices to reference for freight cost. The parties further agree that adjustments need to be made to these index values in order to take into account the circumstances in which Tacora is selling.

70. For instance, MFC's expert adjusts the price of the Platts 65% up with a Fe adjustment to account for the fact that Tacora offers a high-grade iron ore product. Tacora does not disagree with this adjustment. However, if the index price is adjusted upward for the strengths of Tacora's products, it must also be adjusted downward for its deficiencies. While Tacora offers a premium product, it has deficiencies that harm its sales price. For instance, the particle size distribution of Tacora's iron ore concentrate is finer than proper sinter feed but courser than pellet feed or filter cake, which makes it less attractive to some purchasers.[95]

71. More broadly, Tacora has only been selling its iron ore concentrate since 2019 and does not have the same trusted brand recognition of other products.[96] As MFC's expert explains, the Platts 65% index primarily uses the sales price of Vale contracts to determine the market price.[97] Vale is one of the largest producers of iron ore in the world and its bargaining power would be entirely different from that of Tacora, even with Cargill's marketing assistance.

72. Tacora can precisely quantify the impact of negative marketing attributes as it knows the price at which Cargill has sold the product to third party buyers. There is no allegation that Cargill is doing anything other than trying to maximize the sales price to third parties. Yet, the price that Cargill has been able to obtain from the sale of Tacora's iron ore concentrate is typically below the Platts 65% index price, [redacted].[98]

73. Accordingly, if the only adjustment applied to the Platts 65% index is an upward adjustment for Fe content then that the resulting market price proxy does not actually match the

[95] Broking Affidavit #2 at para 19(b).
[96] Broking Affidavit #2 at para 19(c).
[97] Persampieri Transcript at Q. 217, pp. 86-87.
[98] Broking Affidavit #2 at para 20.

known market price. The proxy fails at its sole purpose. This is not the fault of MFC's expert, Mr. Persampieri – who was not provided with access to the historic sales data needed to complete such an analysis[99] – but it needs to be corrected for a proper subparagraph j(ii) calculation. Adjustments to the index price to match Tacora's circumstances (which again both parties have done in their analysis) are consistent with the language of subparagraph j(ii), which requires the price to be determined "by reference" to an index but does not require the exact index figure be used.

74. The objective of subparagraph j(ii) is to arrive at an accurate estimate of the market price. Mr. Broking, who has reviewed the sales data and understands the strengths and limitations of Tacora's product, states that the most appropriate discount to apply is [redacted] and the Court should require such a discount be made.[100]

75. Likewise, an additional deduction needs to be made to MFC's expert's freight cost calculations. Mr. Persampieri arrived at the freight cost by using an index rate for the cost of shipping between Brazil and China and then adding a 24% premium to account for the Quebec to Brazil portion. He borrows the 24% premium from Tacora, after Tacora's Chief Accounting Officer – in the context of a preliminary exercise to compare the two different calculation methods – informed MFC that 24% was an appropriate estimate of Quebec to Brazil costs.[101]

76. Tacora agrees that, for most of the year, 24% is an appropriate estimate. However, it does not account for extra costs incurred in the winter months due the dangers and costs associated with maritime shipping in the North Atlantic in temperatures below freezing.[102] This "Winter Ice Class Premium" is a freight cost and should be incorporated into the subparagraph j(ii) estimate to arrive at a more accurate proxy of the true freight cost rates. Here again, Mr. Persampieri was not provided with the data needed to arrive at a more accurate estimate.[103]

[99] Persampieri Transcript at Qs. 191-192, pp. 56-57.
[100] Broking Affidavit #2 at para 20.
[101] Morrow Affidavit, Exhibit "II".
[102] Broking Affidavit #2 at para 23.
[103] Persampieri Transcript at Qs. 184-187, pp. 54-55.

77. Mr. Broking in his affidavit states that an accurate estimate is [redacted] [redacted][104] This Court should require such an adjustment be made.

(iv) Marketing Costs Should be Deducted

78. As MFC's expert explains, the typical case where a non-arm's length provision is employed is when the steel mill purchasing the iron ore owns the mine and can use below-market transfer pricing.[105] In those circumstances, there would be no marketing costs: the related steel mill would receive the iron ore without need to identify prospective buyers, promote the product brand, and arrange sales. Historically (pre-Tacora), this was the exact structure of the Scully Mine operations.[106] That is no longer the case.

79. As it stands, Tacora cannot sell its products without the use of an intermediary, as it has no internal capacity to sell its products.[107] By definition, that intermediary will buy the product from Tacora for less than it expects to be able to sell into the market. Accordingly, the only proceeds that Tacora can expect to realize for its products will be less than the market index. In determining the price per Metric Tonne under j(ii) of the Scully Mine Lease "by reference to a standard industry publication", the parties must take into account the fact that the only price that Tacora can realize is at a discount to the market index. Yet, here again, MFC did not provide its expert with the data comparing the index price to the realized sales prices since Q1 2020.

80. MFC and Tacora specifically constructed the MFC Royalty knowing that Cargill would be the offtaker and would be handling the marketing of Tacora's iron ore concentrate in exchange for a share of the profits. MFC was aware that an offtaker or marketing agent was necessary to the process of generating any revenue and that Cargill's portion of the profits would not be included in the revenue received by Tacora.[108] MFC did not object to this arrangement for years.

[104] Broking Affidavit #2 at para 24.
[105] Persampieri Transcript at Qs. 250 and 253, pp. 71-73.
[106] Persampieri Transcript at Q. 256, pp. 73-74.
[107] Broking Affidavit at para 12.
[108] Broking Affidavit #2 at para 28.

81. By now demanding that the non-arm's length calculation method be used and refusing to appropriately adjust the index price, MFC is asking that this Court mandate a calculation method that was not intended to be used in the context of a non-arm's length offtaker or marketing agent. MFC is asking the Court to use a price per Metric Tonne that Tacora could possibly realize in any arm's length sale.

82. The appropriate response in calculating a price per Metric Tonne is to reflect the difference between the market index and what Tacora could expect to realize based upon sales through an intermediary. In this case, this amount is effectively equivalent to the difference between the price at which Tacora sells to Cargill and the price at which Cargill sells to third parties.

83. In the alternative, Tacora proposes that the marketing deduction be based off the cost structure of the offtake arrangement with Javelin, its proposed new marketing agent.

C. Any Incremental Amounts Owed to MFC are not Required to be Paid

84. In the alternative, even if amounts are owed to MFC, such amounts do not need to be paid in connection the contemplated transaction with the Investors, and this Court should authorize Tacora and the Investors to close the transactions without payment of any additional amounts. Cure costs are being paid in connection with the proposed transaction to provide creditors with similar treatment as they would receive in an asset sale. However, the Scully Mine Lease is not being assigned, and, accordingly, the Court is not required to engage with section 11.3 of the CCAA which provides that an agreement may only be assigned if all "monetary defaults" (commonly referred to as "cure costs") in relation to the agreement are satisfied.[109] Cure costs amounts are not necessarily payable under a RVO transaction.

85. In *Acerus*, the Court approved an RVO transaction by which a subscription agreement did not contemplate the payment of cure costs for pre-filing arrears under the retained contracts. The Court noted that the transaction permitted various stakeholders to continue to supply the

[109] *CCAA*, s. 11.3(1).

debtor post-closing and that none of the applicants' creditors would be "materially disadvantaged" relative to any other viable alternative.[110] Similarly, in *Just Energy*, the Court granted an RVO transaction by which a Transaction Agreement did not require the payment of cure costs to parties with Retained Contracts.[111]

86. MFC is receiving fair and equitable treatment under the proposed transaction even if the retroactive amounts dating back Q1 2020 are not paid. MFC will receive (a) their pre-filing arrears as calculated in accordance with arm's length method consistent with past practice, (b) payment of their royalty on a go-forward basis, and (c) a well-capitalized Tacora positioned to expand production which would significantly increase the royalty amounts payable to MFC in the future. There is no viable alternative where MFC receives the retroactive amounts they claim to be owing. There also is no viable alternative where MFC receives the benefits that accrue to them as result of the proposed transaction. Therefore, MFC will not be "materially disadvantaged" by not receiving the incremental amounts. Like most of Tacora's stakeholders, the proposed transaction provides enormous benefits to MFC. Accordingly, regardless of any additional amounts owed to MFC, the Court should authorize the parties to complete the transactions without payments to MFC beyond the agreed pre-filing arrears calculated in accordance with the arm's length method consistent with past practice.

PART V - ORDER SOUGHT

87. Tacora respectfully requests that this Court grant the declaratory relief sought and costs against MFC on a substantial indemnity basis.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of April, 2024.

/s Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP
Counsel for the Applicant

[110] *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314 ("***Acerus***") at para 31.
[111] *Just Energy (Re)*, Approval and Vesting Order dated November 3, 2022 (ON SC); **see also** Affidavit of Emily Peplowski sworn September 15, 2022, Exhibit "A", Transaction Agreement dated August 4, 2022.

SCHEDULE "A"
LIST OF AUTHORITIES

1. *1085372 Ontario Limited v Kulawick*, 2019 ONSC 2344.
2. *9044 2807 Québec Inc v Canada*, 2004 FCA 23.
3. *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314
4. *Bank of Montreal v Wheeler*, 1980 CarswellNat 654.
5. *Canada v McLarty*, 2008 SCC 26.
6. *Canada v Remai*, 2009 FCA 340.
7. *Damis Properties Inc v The Queen*, 2021 TCC 24.
8. *Extendicare Health Services Inc v Canada (Minister of National Health & Welfare)*, 1987 CanLII 8977 (FC).
9. *Gestion Yvan Drouin Inc c R*, 2000 CanLII 407 (TCC).
10. *Ledcor Construction Ltd v Northbridge Indemnity Insurance Co*, 2016 SCC 37.
11. *Ludco Enterprises Ltd v Canada*, 2001 SCC 62.
12. *Peter Cundill & Associates Ltd v Canada*, 1991 CanLII 14262 (FCA).
13. *Piikani Energy Corporation (Re)*, 2013 ABCA 293.
14. *Poulin c R*, 2016 TCC 154.
15. *Re Ontario Human Rights Commission and City of North Bay*, 1977 CanLII 1253 (ON CA).

Court Materials

16. *Just Energy (Re)*, Approval and Vesting Order dated November 3, 2022 (ON SC)
17. *Just Energy (Re),* Affidavit of Emily Paplawski sworn September 15, 2022, Exhibit "A", Transaction Agreement dated August 4, 2022

SCHEDULE "B"
RELEVANT STATUTES

***Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36**

Meaning of related and dealing at arm's length

2(2) For the purpose of this Act, section 4 of the *Bankruptcy and Insolvency Act* applies for the purpose of determining whether a person is related to or dealing at arm's length with a debtor company.

Assignment of agreements

11.3(1) On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.

***Bankruptcy and Insolvency Act*, RSC 1985, c B-3**

Question of fact

4(4) It is a question of fact whether persons not related to one another were at a particular time dealing with each other at arm's length.

***Income Tax Act*, RSC 1985, c 1 (5th Supp)**

251(1) For the purposes of this Act,

> **(a)** related persons shall be deemed not to deal with each other at arm's length;
>
> **(b)** a taxpayer and a personal trust (other than a trust described in any of paragraphs (a) to (e.1) of the definition **trust** in subsection 108(1)) are deemed not to deal with each other at arm's length if the taxpayer, or any person not dealing at arm's length with the taxpayer, would be beneficially interested in the trust if subsection 248(25) were read without reference to subclauses 248(25)(b)(iii)(A)(II) to (IV); and
>
> **(c)** in any other case, it is a question of fact whether persons not related to each other are, at a particular time, dealing with each other at arm's length.

Appendix "A": Timeline of Relevant Events

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

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

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

(Applicant)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE APPLICANT
(RE: MFC DISPUTE)

STIKEMAN ELLIOTT LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

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

Alex Rose (LSO #49415P)
Tel: 416-869-5261
Email: arose@stikeman.com

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

Natasha Rambaran (LSO #80200N)
Tel: 416-869-5504
Email: nrambaran@stikeman.com

RJ Reid (LSO #82084O)
Tel: 416-869-5614
Email: rreid@stikeman.com

Counsel for the Applicant

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.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

MOTION RECORD OF CARGILL, INCORPORATED AND CARGILL INTERNATIONAL TRADING PTE LTD.
(Motion to Set Aside Disclaimer)
(Motion Returnable June 26, 2024)

Goodmans LLP
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Robert J. Chadwick (LSO No. 35165K)
rchadwick@goodmans.ca

Caroline Descours (LSO No. 58251A)
cdescours@goodmans.ca

Peter Kolla (LSO No. 54608K)
pkolla@goodmans.ca

Sarah Stothart (LSO No. 73068O)
sstothart@goodmans.ca

Lawyers for Cargill, Incorporated and Cargill International Trading Pte Ltd.