

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION

Plaintiffs

and

WEST FACE CAPITAL INC., GREGORY BOLAND, M5V ADVISORS INC. c.o.b. ANSON GROUP CANADA, ADMIRALTY ADVISORS LLC, FRIGATE VENTURES LP, ANSON INVESTMENTS LP, ANSON CAPITAL LP, ANSON INVESTMENTS MASTER FUND LP, AIMF GP, ANSON CATALYST MASTER FUND LP, ACF GP, MOEZ KASSAM, ADAM SPEARS, SUNNY PURI, CLARITYSPRING INC., NATHAN ANDERSON, BRUCE LANGSTAFF, ROB COPELAND, KEVIN BAUMANN, JEFFREY MCFARLANE, DARRYL LEVITT, RICHARD MOLYNEUX, GERALD DUHAMEL, GEORGE WESLEY VOORHEIS, BRUCE LIVESEY AND JOHN DOES #4-10

Defendants

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

and

THE CATALYST CAPITAL GROUP INC., CALLIDUS CAPITAL CORPORATION, NEWTON GLASSMAN, GABRIEL DE ALBA, JAMES RILEY, VIRGINIA JAMIESON, EMMANUEL ROSEN, B.C. STRATEGY LTD. D/B/A BLACK CUBE, B.C. STRATEGY UK LTD. D/B/A BLACK CUBE and INVOP LTD. D/B/A PSY GROUP

Defendants to the Counterclaim

Court File No. CV-17-587463-00CL

B E T W E E N:

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION

Plaintiffs

and

DOW JONES AND COMPANY, ROB COPELAND, JACQUIE MCNISH and JEFFREY MCFARLANE

Defendants

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**MOTION RECORD**  
**(Refusals Motion – Returnable January 18, 2021)**

**VOL. II OF II**

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Date: January 13, 2021

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TO: **SERVICE LIST**

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# Catalyst v West Face et al.

Jim Riley  
on Tuesday, January 5, 2021



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Toronto, Ontario M5K 1A1

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1 Court File No. CV-17-587463-00CL

2 ONTARIO  
3 SUPERIOR COURT OF JUSTICE  
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5 B E T W E E N:

6 THE CATALYST CAPITAL GROUP INC. and CALLIDUS  
7 CAPITAL CORPORATION  
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9 - and -

10 WEST FACE CAPITAL INC., GREGORY BOLAND,  
11 M5V ADVISORS INC. c.o.b. ANSON GROUP CANADA,  
12 ADMIRALTY ADVISORS LLC, FRIGATE VENTURES LP,  
13 ANSON INVESTMENTS LP, ANSON CAPITAL LP,  
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20 VOORHEIS, BRUCE LIVESEY and JOHN DOES #4-10  
21 Defendants

22 A N D B E T W E E N:

23 WEST FACE CAPITAL INC. and GREGORY BOLAND  
24 Plaintiffs by Counterclaim

25 - and -

THE CATALYST CAPITAL GROUP INC., CALLIDUS CAPITAL  
CORPORATION, NEWTON GLASSMAN, GABRIEL DE ALBA,  
JAMES RILEY, VIRGINIA JAMIESON, EMMANUEL  
ROSEN, B.C. STRATEGY LTD. d/b/a BLACK CUBE,  
B.C. STRATEGY UK LTD. d/b/a BLACK CUBE  
and INVOP LTD. d/b/a PSY GROUP  
Defendants to the Counterclaim

-----  
--- This is Cross-Examination of JAMES RILEY, on  
his affidavit sworn December 28, 2020, taken via  
Zoom Videoconferencing with all participants  
attending remotely, on the 5th day of January,  
2021.  
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1           A P P E A R A N C E S:  
2           DAVID C. MOORE, Esq.,           for the Plaintiffs,  
3           & MARCO ROMEO, Esq.,           (Defendants to the  
4           & MATTHEW KARABUS, Esq.,       Counterclaim), The  
5    Catalyst Capital Group  
6    Inc. and Callidus  
7    Capital Corporation  
8    and the Defendants to  
9    the Counterclaim,  
10    Gariel De Alba, James  
11    Riley and Newton  
12    Glassman

13  
14           MATTHEW MILNE-SMITH, Esq.,   for the Defendants  
15           & ANDREW CARLSON, Esq.,       (Plaintiffs by  
16           & MAURA O'SULLIVAN, Esq.,   Counterclaim), West  
17    Face Capital Inc. and  
18    Gregory Boland

19  
20           LUCAS E. LUNG, Esq.,           for the Defendants,  
21    ClaritySpring Inc. and  
22    Nathan Anderson

23  
24           DARRYL LEVITT                   Self-Represented  
25

1 KEVIN BAUMANN Self-Represented

2

3

4 Also Present: Greg Boland, CEO, West Face Capital  
5 Philip Panet, General Counsel, West  
6 Face Capital

7

8 REPORTED BY: Deana Santedicola, RPR, CRR, CSR

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I N D E X

WITNESS: JAMES RILEY

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\*\*The following list of undertakings, advisements  
and refusals is meant as a guide only for the  
assistance of counsel and no other purpose\*\*

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and appear on the following pages: 10:22, 52:17,  
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2:	OSC Staff Notice 15-703, Guidelines For Staff Disclosure of Investigations.....	92:6

1 -- Upon commencing at 10:30 a.m.

2

3 JAMES RILEY; AFFIRMED.

4 CROSS-EXAMINATION BY MR. MILNE-SMITH:

5 1 Q. So, Mr. Riley, we don't have to  
6 spend a lot of time on background, but just to  
7 refresh everyone, you are a Managing Director and  
8 the former Chief Operating Officer of Catalyst  
9 Capital; correct?

10 A. That is correct.

11 2 Q. And you gave up the COO position  
12 when you semi-retired in July of 2019; correct?

13 A. That is correct.

14 3 Q. All right. And you are also  
15 formerly a director and officer of Callidus  
16 Capital, and again, you gave up those positions  
17 when your status changed in July 2019?

18 A. No, I believe I was off the board  
19 as an officer of Callidus at the time it went  
20 private.

21 4 Q. Okay. You currently hold no  
22 position in Callidus?

23 A. I do not.

24 5 Q. And do you hold a position in  
25 FrontWell Capital Partners?

1 A. I do not.

2 6 Q. Okay. Other than, as I understand  
3 it, a small shareholder?

4 A. That is correct.

5 7 Q. Okay. I would like to first talk  
6 about the Vincent --

7 A. Sorry, just before we go into  
8 that, should I give these corrections now?

9 MR. MOORE: Yeah. Actually, Matthew  
10 had sent those to us.

11 THE DEPONENT: Okay. Thank you.

12 MR. MOORE: He noted those corrections,  
13 paragraph 50 and 52, so we have made a note of  
14 those, Matthew. Thank you.

15 THE DEPONENT: Okay. In paragraph 50  
16 and 52 of my affidavit, it is a reference to  
17 "Catalyst was never sanctioned...", it should be  
18 Callidus. And similarly --

19 [Court Reporter intervenes for  
20 clarification.]

21 At page 17 of my affidavit, paragraph  
22 50, the reference -- the reference at the start of  
23 paragraph 50, instead of Catalyst, it should be  
24 Callidus.

25 Similarly, in paragraph 52, the

1 reference in the first line should be to Callidus,  
2 not to Catalyst.

3 BY MR. MILNE-SMITH:

4 8 Q. Okay. So it was, in paragraph 52,  
5 "Callidus was assisted by counsel at the Fasken law  
6 firm"?

7 A. Correct.

8 9 Q. Okay. Are those the only  
9 corrections, Mr. Riley?

10 A. As far as I am aware, yes.

11 10 Q. Glad to see that even officers and  
12 directors of Catalyst and Callidus can get it  
13 confused sometimes.

14 A. Yes.

15 11 Q. So in your affidavit, you discuss  
16 what I will call Vincent Hanna Communications; do  
17 you recall that?

18 A. Yes.

19 12 Q. And in paragraph 20 of your  
20 affidavit, you describe Mr. Glassman receiving an  
21 unsolicited email from a person calling themselves  
22 Vincent Hanna; do you recall that?

23 A. Yes.

24 13 Q. And I take it you have your  
25 affidavit in front of you. I am happy to pull it

1 up, but it looks like you have it there in front of  
2 you.

3 A. I have it in front of me, but if  
4 you want to pull it up, you can also do so.

5 14 Q. So this August 11th email that is  
6 referred to in paragraph 20 was the first time that  
7 Catalyst learned that Callidus was the target of a  
8 short-and-distort campaign, as you allege; is that  
9 correct?

10 A. Yes, although we also had the  
11 article, so we were unsure who had solicited that  
12 article.

13 15 Q. Okay. Now, in paragraph 22 of  
14 your affidavit, you describe your various different  
15 counsel having numerous emails and meetings with  
16 Danny Guy, John Kingman Phillips, and Derek Snowdy,  
17 who you have referred to in your affidavit, and I  
18 will refer to here as the "Guy parties"; correct?

19 A. Yes.

20 16 Q. Now, is it fair to say that none  
21 of the Lax O'Sullivan, Fasken Martineau, or  
22 Greenspan Humphrey firms had a solicitor-client  
23 relationship with any of the Guy parties?

24 A. No.

25 17 Q. And neither did you or

1 Mr. DiPucchio, of course?

2 A. Correct.

3 18 Q. You were gathering factual  
4 information from the Guy parties?

5 A. We were gathering information -- I  
6 suppose it is correct to say factually, yes.

7 19 Q. You obviously weren't seeking  
8 legal advice from any of the Guy parties?

9 A. We subsequently retained  
10 Mr. Philips on a separate matter.

11 20 Q. When was that retainer?

12 A. I would have to go back and check  
13 as to when we retained him. It was in connection  
14 with an IIROC application that we were making.

15 21 Q. So an unrelated matter?

16 A. No, related to trying to get --  
17 secure information on certain trades in connection  
18 with Callidus.

19 22 Q. Okay. Then I would like to know  
20 when the retainer of Mr. Kingman Phillips was made?

21 A. Okay.

22 U/T MR. MOORE: All right.

23 BY MR. MILNE-SMITH:

24 23 Q. Just so hopefully we don't have to  
25 have a re-attendance, can you give me any rough

1 sense? I mean, forget about what the exact date  
2 was. Was the retainer of Mr. Phillips in this sort  
3 of August/September of 2017 range, or did it come  
4 later?

5 A. If I were to go from my best  
6 memory at this time, it would be October/November.

7 24 Q. Okay. So safe to assume, unless  
8 you correct me subsequently -- and I appreciate  
9 that this is three years later, and I don't expect  
10 perfect memory, but safe for us to proceed in this  
11 examination that in August and September of 2017  
12 the Catalyst parties did not have a  
13 solicitor-client relationship with Mr. Phillips?

14 A. That is correct.

15 25 Q. Okay. And they didn't provide you  
16 with legal advice, the Guy parties?

17 A. Not at that time. John Phillips  
18 gave us subsequent advice.

19 26 Q. Right, but in August and September  
20 of 2017, neither Mr. Phillips, nor any of the other  
21 Guy parties because they are not lawyers, none of  
22 them gave legal advice to the Catalyst parties;  
23 correct?

24 A. That is correct.

25 27 Q. Okay. Do you have your

1 supplemental Schedule B? And if not, I will pull  
2 it up.

3 A. I do not have that at hand. Do we  
4 have that, Marco?

5 28 Q. Can you see that now?

6 A. Not yet. I can see that. Can you  
7 make it a little bit larger, please?

8 29 Q. Let's see if we can make it larger  
9 here. How is that? The problem is now I'll have  
10 to -- you won't be able to see the entire screen,  
11 but I am trying to show here at least the author,  
12 recipient, and date information. Can you see all  
13 of that?

14 A. And these are emails primarily  
15 or --

16 30 Q. Yeah, this is your supplemental  
17 Schedule B that was delivered, I think, in the  
18 latter part of last year, and I am just going to  
19 the time frame for August and September of 2017  
20 where the emails with the Guy parties appear.

21 So, for example, you see that in row  
22 number 154 on August the 15th, 2017, there is an  
23 email from Vincent Hanna to Newton Glassman; do you  
24 see that?

25 A. I do see that.

1 31 Q. Okay. And you will see also, at  
2 rows 180 to 182, you have got three more emails  
3 from Vincent Hanna to Newton Glassman?

4 A. Yes.

5 32 Q. And in between those emails of  
6 August 15 and August 21 and in fact going back to  
7 the first email which was disclosed and therefore  
8 doesn't appear on Schedule B of August the 11th, I  
9 don't see any other communications between the Guy  
10 parties and any of the Catalyst parties.

11 So I'm happy to just sort of slowly  
12 scroll through this, and you can confirm what I am  
13 seeing, but I would just like your confirmation  
14 that between August the 11th and August 21st, the  
15 only communications between the Guy parties and the  
16 Catalyst parties were between Vincent Hanna and  
17 Newton Glassman.

18 MR. MOORE: Well, that is the only  
19 written documentation. Whether there were verbal  
20 communications, it obviously wouldn't be listed  
21 here. That is a different question. I'm not  
22 saying there were or weren't. I just don't know  
23 off the top of my head.

24 THE DEPONENT: David, at some point I  
25 would have had phone calls with John Phillips, but

1 what the precise dates were, I don't know.

2 BY MR. MILNE-SMITH:

3 33 Q. So what I would like to know then  
4 is if there were any oral communications with any  
5 of the Guy parties by August the 21st, and the  
6 reason I suspect there wasn't is because he is  
7 still communicating by the pseudonym of Vincent  
8 Hanna as of August 21st, and we see subsequently  
9 the use of his real name Danny Guy, along with  
10 Derek Snowdy, and John Phillips and so forth?

11 A. Yes.

12 U/A MR. MOORE: We'll take that under  
13 advisement.

14 BY MR. MILNE-SMITH:

15 34 Q. So then on August the 23rd, the  
16 next communication I see is from Mr. Glassman to  
17 Mr. Hanna, and obviously none of the communications  
18 that we have seen to date between August the 11th  
19 and August the 23rd involve counsel of any kind;  
20 correct?

21 A. I can't -- I don't know who was  
22 copied on those emails.

23 35 Q. Okay. Well, according to --  
24 you'll see that column H is the cc column?

25 A. Yes.

1 36 Q. So I just highlighted that there,  
2 and I don't see any reference to any counsel that I  
3 recognize in that column. But again, I suppose by  
4 way of -- you can take under advisement, Mr. Moore,  
5 or give me an undertaking to advise if there are  
6 any mistakes to the Schedule B in that counsel were  
7 in fact copied on any of these?

8 U/A MR. MOORE: Yes, we'll take that under  
9 advisement, and again, whether counsel were copied  
10 or not, whether counsel were involved at that time  
11 in relation to the subject matter is another  
12 matter, but whether they were copied to counsel  
13 specifically, I'll take that under advisement.

14 BY MR. MILNE-SMITH:

15 37 Q. Okay. And when you say "to  
16 counsel", I would like to make sure that that is  
17 just clear that it is any counsel. I have taken  
18 the witness through the communication set out on  
19 Schedule B involving Vincent Hanna or any of the  
20 Guy parties between August the 11th and August the  
21 23rd.

22 If any counsel for either of the Guy  
23 parties or the Catalyst parties were involved in  
24 those email communications, they were copied on  
25 them and that is not disclosed on this Schedule B,

1 I would like to know that.

2 U/A MR. MOORE: All right. All I was  
3 saying a moment ago is that it is a different  
4 question to say counsel was involved on one hand as  
5 to whether they were specifically copied. Counsel  
6 may well have been involved in the subject matter  
7 at that time. I don't have an instantaneous  
8 recollection of the exact timing of when counsel  
9 was involved, but to your question, I'll take it  
10 under advisement whether any of these specific  
11 emails were copied to counsel.

12 BY MR. MILNE-SMITH:

13 38 Q. Yeah, and I want to take it one by  
14 one, so we are going to come to that, Mr. Riley.  
15 And let me make this as simple for you as possible.  
16 I am going to assume that unless you advise me  
17 otherwise that counsel were not copied or blind  
18 copied on any of these communications between  
19 Mr. Hanna or Mr. Glassman. I suppose you wouldn't  
20 know for the ones for Vincent Hanna. You can't  
21 know if anyone was blind copied.

22 But if you have any evidence that  
23 counsel were copied or blind copied on any of these  
24 communications we have looked at between August the  
25 11th and August 23rd -- my assumption is they were

1 not, but you'll let me know if I'm wrong in that;  
2 fair?

3 U/A MR. MOORE: I'll take that under  
4 advisement.

5 BY MR. MILNE-SMITH:

6 39 Q. Okay. Then in terms of oral  
7 communications, I don't want to know about what  
8 advice Mr. Glassman might have sought from his  
9 counsel. What I would like to know is if there  
10 were any communications, oral or otherwise, between  
11 August 11th and August 23rd between counsel for the  
12 Catalyst parties and any one of the Guy parties?

13 A. There may have been communications  
14 by me with John Kingman Philips. There may have  
15 been. I would have to go back and look at the  
16 notes with the various meetings we have had, so I  
17 think that is under advisement.

18 U/A MR. MOORE: I'll take that under  
19 advisement as well.

20 BY MR. MILNE-SMITH:

21 40 Q. Okay. I would like to know  
22 obviously when that first contact occurred, and I  
23 would like to know how you knew to reach out to  
24 Mr. Philips. You understand my difficulty is that  
25 all I see is communication with Vincent Hanna, and

1 I need to know how you got from Vincent Hanna to  
2 Danny Guy.

3 U/A MR. MOORE: I understand the question.  
4 It will be part of the advisement.

5 BY MR. MILNE-SMITH:

6 41 Q. Okay. So again, just going  
7 through this Schedule B, it is only on August the  
8 31st that I can at least see the communications  
9 involving lawyers and using real names for the  
10 first time in row 211. Do you see that?

11 A. I see that.

12 42 Q. Okay. And I think this falls  
13 under the previous advisement, Mr. Moore, but if  
14 there was any involvement by counsel, whether it is  
15 external counsel, Mr. DiPucchio, or Mr. Riley,  
16 before this email of August 31st -- and when I say  
17 "involvement", I mean communications with the Guy  
18 parties -- then I would like to know that.

19 MR. MOORE: Are you limiting it to  
20 communications with the Guy parties, or are you  
21 including communications with Catalyst personnel,  
22 or how broad are you intending that to be?

23 MR. MILNE-SMITH: I am not interested  
24 in Catalyst's parties seeking advice from their  
25 counsel, so I don't need to know about Mr. Glassman

1 speaking to you or to Mr. Riley about the Vincent  
2 Hanna emails. What I am interested in is when  
3 communication began between the Guy parties and  
4 counsel to the Catalyst parties. The first  
5 evidence we have of it is August 31st, and so I  
6 would like to know if it happened before then.

7 U/A MR. MOORE: All right. I hear you.  
8 We'll take that under advisement. It is just that,  
9 one of your earlier questions, some of them were  
10 phrased as was there any involvement of counsel.  
11 If there was communications internally with  
12 counsel, you know, one might interpret that as  
13 being involvement, but you have stated your  
14 position in terms of the undertakings you have  
15 asked for, and we'll take it under advisement.

16 MR. MILNE-SMITH: Yeah, I have tried to  
17 clarify that, but let me be as clear as I can.  
18 Involvement or communications that I am interested  
19 in involving counsel means communications with the  
20 Guy parties. I am not here trying to get at  
21 communications between Catalyst and its own  
22 counsel, and that is not what this Schedule B  
23 shows, and that is not what I am looking for. Is  
24 that clear?

25 MR. MOORE: I understand. If there is

1 a distinction between what is the timing of a  
2 certain communication as opposed to a question  
3 intended to elicit the substance of the  
4 communication, that is all, but I hear you. Let's  
5 keep going.

6 MR. MILNE-SMITH: Well, I understand  
7 that I am not going to get the substance of the  
8 communication because that is the subject of the  
9 motion, so I am just trying to find out whatever I  
10 can.

11 MR. MOORE: All right. Fine.

12 BY MR. MILNE-SMITH:

13 43 Q. Okay. Now, in paragraph 22 of  
14 your affidavit, Mr. Riley, you describe the  
15 purposes of the emails and meetings that you  
16 describe between the Guy parties and the Catalyst  
17 parties; do you recall that?

18 A. I'm reading paragraph 22 again.

19 [Witness reviews document.]

20 44 Q. Okay.

21 A. Yes.

22 45 Q. So what I take from this paragraph  
23 is that there were three purposes of these  
24 communications, and I would like to take you  
25 through them one by one.

1                   The first is -- and I am quoting here  
2                   from around the middle of the paragraph --  
3                   "investigating the allegations that Callidus was  
4                   subject to a short-and-distort attack"; do you see  
5                   that?

6                   A.     I do.

7                   46            Q.     So this would have involved  
8                   communications between Callidus and/or its counsel  
9                   with the Guy parties; correct?

10                  A.     Yes.

11                  47            Q.     And the communications would have  
12                  been concerning the facts of what happened, at  
13                  least as the Guy parties understand it or allege  
14                  it; correct?

15                  A.     Correct.

16                  48            Q.     And it would have been about, for  
17                  example, what evidence the Guy parties had to  
18                  support the allegations in the August 11th Vincent  
19                  Hanna email?

20                  A.     Yes, but also more generally about  
21                  short-and-distort in the marketplace.

22                  49            Q.     Okay.  And was any documentary  
23                  evidence provided to you or to any of the Catalyst  
24                  parties by the Guy parties?

25                  U/A           MR. MOORE:  We'll take that under

1 advisement.

2 BY MR. MILNE-SMITH:

3 50 Q. If any of the productions in this  
4 case that have been made by the Catalyst parties  
5 originated from the Guy parties, I would like to be  
6 advised of that.

7 MR. MOORE: Sorry, say that again?

8 BY MR. MILNE-SMITH:

9 51 Q. If any of the productions in this  
10 case that have been made by the Catalyst parties  
11 were originally provided by the Guy parties, I  
12 would like to be advised of that.

13 U/A MR. MOORE: We'll take that under  
14 advisement.

15 BY MR. MILNE-SMITH:

16 52 Q. And of course, if there is any  
17 documentary or other evidence that was provided by  
18 the Guy parties to the Catalyst parties and has not  
19 been disclosed in this Schedule B, I would like to  
20 be advised of it.

21 MR. MOORE: Well, if there was  
22 documentary material that was or is subject to  
23 Schedule B, that would be listed in Schedule B, but  
24 if there is other evidence, verbal evidence or  
25 non-documentary evidence, I wouldn't expect to see

1 it in Schedule B.

2 BY MR. MILNE-SMITH:

3 53 Q. Okay. Let me put it differently.

4 To the extent that there was any relevant  
5 information relevant to this case that was provided  
6 by the Guy parties to the Catalyst parties, can you  
7 confirm -- and I am talking here about producible  
8 evidence in any form, you know, emails, notes,  
9 memorandums, documents as broadly as you want to  
10 construe it. To the extent that anything of that  
11 nature was provided by the Guy parties to the  
12 Catalyst parties, and it is relevant to this  
13 litigation, I trust that it has been disclosed in  
14 Schedule B.

15 MR. MOORE: Well, the difficulty with  
16 that is that there were a number of meetings.  
17 There were notes of counsel. Notes of counsel  
18 would reflect information given. I am talking  
19 generically now.

20 So I take it your question is, Look, if  
21 on day 'x' Mr. Guy provided a copy of a document  
22 that is germane to the allegations in the August  
23 11th email, let me know what that document is.

24 MR. MILNE-SMITH: Yes.

25 MR. MOORE: I'm paraphrasing, but I

1 want to make sure I understand what you are looking  
2 for.

3 MR. MILNE-SMITH: Yes. I am not  
4 looking for a situation where John Phillips says  
5 something, and you write down and take a note of  
6 it. That is not what I am interested in.

7 MR. MOORE: All right. Okay.

8 BY MR. MILNE-SMITH:

9 54 Q. I am interested in John Phillips  
10 or Danny Guy or Derek Snowdy hands you something  
11 physically or emails you something or uses  
12 electronic file transfer or some other means of  
13 transmitting to you a document construed broadly, I  
14 want to make sure that I can find that, to the  
15 extent it is relevant to this litigation, in either  
16 Schedule A or Schedule B, and I would like to be  
17 pointed to it, to the extent it is in Schedule A.

18 U/A MR. MOORE: All right. I'll take that  
19 under advisement. Thank you. I understand.

20 BY MR. MILNE-SMITH:

21 55 Q. So I am going back to paragraph 22  
22 of your affidavit, Mr. Riley. I said that there  
23 were three purposes of the communications with the  
24 Guy parties as I understood it, and the second one  
25 was obtaining legal advice about the best ways to

1 protect the Callidus parties; do you see that?

2 A. Yes.

3 56 Q. Now, obviously, you wouldn't have  
4 communicated with the Guy parties about the best  
5 ways to protect the Catalyst parties; fair?

6 [Court Reporter intervenes for  
7 clarification.]

8 Let me just re-state. You wouldn't  
9 have communicated with the Guy parties about the  
10 best ways to protect the Catalyst parties?

11 A. We did at the outset of our  
12 meetings with John Kingman Philips discuss common  
13 interest privilege or agreed to a common interest  
14 privilege at his urging. He originated it.

15 MR. MOORE: I mean, I don't want to get  
16 into the substance of the communications, if that  
17 is the issue to which the privilege debate or  
18 dispute exists, but also, I will say  
19 hypothetically, you know, in such discussions  
20 whether people would seek to draw upon the  
21 experiences of Mr. Guy or Mr. Phillips in terms of  
22 difficulties that they had encountered and whether  
23 those might provide any lessons or suggestions  
24 about how Catalyst might protect itself -- again, I  
25 am not articulating that in a specific way. I'm

1 talking in hypothetical terms because I don't want  
2 to get into the substance of the communications  
3 over which privilege is sought.

4 But I just raise that or make that  
5 observation in response to the suggestion of your  
6 question.

7 BY MR. MILNE-SMITH:

8 57 Q. Let me just make sure we are on  
9 some common ground here. The Guy parties to your  
10 knowledge, Mr. Riley, had no interest in bringing  
11 litigation against West Face or Mr. Boland in  
12 relation to short-selling of Callidus?

13 A. In relation to Callidus, no.

14 58 Q. And to your knowledge, the Guy  
15 parties have never commenced litigation against  
16 West Face or Mr. Boland for any reason?

17 A. I do not know one way or the  
18 other.

19 59 Q. You are not aware of them  
20 commencing litigation against West Face or  
21 Mr. Boland?

22 A. I am not aware of that.

23 60 Q. And the Guy parties, Mr. Guy was  
24 the principal of Harrington Global; is that  
25 correct?

1 A. Yes.

2 61 Q. And Harrington Global is a private  
3 company; correct? It is not a publicly traded  
4 company?

5 A. That is correct.

6 62 Q. So obviously Harrington Global had  
7 no interest and Mr. Guy in respect of Harrington  
8 Global had no interest in short-selling by West  
9 Face because you can't short sell a private  
10 company?

11 A. No, but as I recall, Mr. Guy had  
12 an interest in a publicly traded company that was  
13 the subject of a short attack.

14 63 Q. And that was Concordia?

15 A. Concordia, yes. Thank you.

16 64 Q. So you agree with me with respect  
17 to Harrington, but you are saying that his interest  
18 concerned Concordia?

19 A. Yes.

20 65 Q. Okay.

21 A. And that short attack.

22 66 Q. Okay.

23 A. And some other companies that he  
24 had that I don't recall the names of.

25 67 Q. And did he make allegations that

1 West Face had been involved in shorting Concordia?

2 R/F MR. MOORE: Well, I think we are  
3 starting to get into the substance of the  
4 discussions over which the privilege issue exists,  
5 and so it is one thing to ask, you know, did they  
6 ever commence litigation, which would be a public  
7 matter one way or the other. I think you are now  
8 getting into the substance of the discussions, so I  
9 object to that.

10 BY MR. MILNE-SMITH:

11 68 Q. Okay. The third purpose set out  
12 in paragraph 22 is considering potential litigation  
13 against the persons who the Catalyst parties  
14 believed to be part of a wrongful conspiracy  
15 against them; do you see that?

16 A. Yes.

17 69 Q. Now, the Guy parties had no  
18 interest in such a lawsuit; correct?

19 A. They did not.

20 70 Q. And without saying what the  
21 substance of those discussions was, did you discuss  
22 potential litigation -- just as a general subject  
23 matter, did you discuss potential litigation  
24 against West Face or Mr. Boland with the Guy  
25 parties?

1 U/A MR. MOORE: Well, let me take that  
2 under advisement.

3 BY MR. MILNE-SMITH:

4 71 Q. And did they discuss potential  
5 litigation by any of the Guy parties or, I guess,  
6 Concordia against West Face or Mr. Boland?

7 U/A MR. MOORE: Well, I'll take that under  
8 advisement as well because, again, I think it is  
9 getting into the substance of the discussions. So  
10 I'll take that under advisement at this point.

11 BY MR. MILNE-SMITH:

12 72 Q. At paragraph 25 of your affidavit,  
13 Mr. Riley, it states that you had several  
14 conversations with Derek Snowdy?

15 A. Yes.

16 73 Q. Do you recall that?

17 A. Yes.

18 74 Q. And did you know that Mr. Snowdy  
19 has also acted as an investigator for Marc Cohodes?

20 A. I know he has a connection with  
21 Mr. Cohodes, but I don't know what the nature of  
22 that is.

23 75 Q. Were you aware of that at the time  
24 of these communications in August and September of  
25 2017?

1 A. No, I would have discussed the  
2 name Cohodes with Mr. Snowdy because he was the  
3 origin of the so-called Cohodes email between  
4 Cohodes and --

5 76 Q. Levitt.

6 A. Levitt. Thank you. Yes.

7 U/A MR. MOORE: The specific question is  
8 whether, I guess, as of August and September of  
9 2017, Mr. Riley was aware that Snowdy had been an  
10 investigator or acted as an investigator for  
11 Mr. Cohodes. Now, whether we are aware of the  
12 underlying premise ever, I am not sure, but let me  
13 take that question under advisement, and I'll  
14 follow up with Mr. Riley and consider our position.

15 BY MR. MILNE-SMITH:

16 77 Q. You obviously knew as of August  
17 11th or you were informed by the Vincent Hanna  
18 email as of August the 11th that Mr. Cohodes was  
19 supposedly one of the members of the alleged Wolf  
20 Pack?

21 A. I believe his name is mentioned in  
22 that email.

23 78 Q. Okay. So, I mean, this may be  
24 encompassed within the advisement you just gave,  
25 Mr. Moore, but I would like to know at what time

1 the Catalyst parties learned that Mr. Snowdy had a  
2 relationship with Mr. Cohodes.

3 U/A MR. MOORE: Okay. I am not sure what  
4 the relevance of that is, but I'll take that under  
5 advisement.

6 MR. MILNE-SMITH: Well, the relevance  
7 is that it undermines a claim of privilege if an  
8 individual that you are asserting privilege over  
9 communications with is in fact a privy of a clearly  
10 adverse party.

11 MR. MOORE: I hear you. I'm not sure I  
12 agree with that, but I hear you. We'll take that  
13 under advisement.

14 BY MR. MILNE-SMITH:

15 79 Q. Okay. Did Mr. Snowdy provide you  
16 with any information about West Face or Mr. Boland?

17 R/F MR. MOORE: Again, that is getting into  
18 the substance of the discussions, so I object to  
19 that.

20 BY MR. MILNE-SMITH:

21 80 Q. Okay. Just to be clear, I would  
22 like to know -- I mean, I guess this is encompassed  
23 within my previous question about the Guy parties.  
24 To the extent that any information was provided by  
25 Mr. Snowdy that is relevant to this litigation and

1 that is disclosed in Schedule A or listed in  
2 Schedule B, I would like to know about it.

3 U/A MR. MOORE: Okay. I take that was  
4 previously asked and taken under advisement.

5 BY MR. MILNE-SMITH:

6 81 Q. And just to be clear, specifically  
7 when it comes to Mr. Snowdy, I would like to know  
8 if he provided any information about Justice  
9 Newbould and, to the extent he did, whether it  
10 appears in Schedule A or Schedule B.

11 U/A MR. MOORE: The same position.

12 BY MR. MILNE-SMITH:

13 82 Q. I am advised by one of my  
14 colleagues that an earlier question just needs to  
15 be cleared up, and I think this is just a matter of  
16 clarifying the transcript, Mr. Riley. I asked you  
17 earlier whether it was fair to say that none of Lax  
18 O'Sullivan, Greenspan Humphrey, or Fasken Martineau  
19 had a solicitor-client relationship with the Guy  
20 parties, and your answer was no. I take it in  
21 saying "no", you were confirming that I was in fact  
22 correct that there was no solicitor-client  
23 relationship between the Guy parties and any of  
24 those law firms?

25 A. Yes. I'll say yes. I'm agreeing

1 with you.

2 83 Q. Okay.

3 A. Sorry. Was it a double-negative  
4 problem?

5 84 Q. No, it was a problem with my  
6 phrasing of the question because I asked you if it  
7 was fair to say that, and you said "no", so  
8 technically that could be interpreted to say that  
9 my question was unfair and therefore incorrect, but  
10 I think we have now established that you were  
11 agreeing with my proposition, which I don't think  
12 was controversial, but I apologize for my poor  
13 phrasing.

14 MR. MOORE: That is fine. Thank you.

15 BY MR. MILNE-SMITH:

16 85 Q. Okay. Mr. Gagnier. I understand  
17 that Mr. Gagnier provided advice to the Catalyst  
18 parties on communications issues; correct?

19 A. Yes.

20 86 Q. And I am sure we are not on  
21 controversial ground here. Mr. Gagnier is not a  
22 lawyer and was not providing legal advice?

23 A. He did not provide legal advice,  
24 and to my knowledge, he is not a lawyer.

25 87 Q. Okay. Mr. Gagnier would have had

1 communications with the Catalyst parties for the  
2 purposes of getting facts for the press releases  
3 that he prepares; is that correct?

4 A. Yes, and also understanding any  
5 legal issue that might be implicit in that.

6 88 Q. I understand that there might be  
7 legal issues as well, but I am trying to just  
8 confirm that there were also obviously factual --  
9 there was factual information that was conveyed to  
10 Mr. Gagnier for the purposes of his press releases?

11 A. Yes.

12 MR. MOORE: Mr. Milne-Smith, there is  
13 kind of a general scope or involvement of  
14 Mr. Gagnier from time to time -- and I am  
15 paraphrasing now -- which is alluded to in the  
16 affidavit and then there are specific time periods  
17 or matters which are in issue in this litigation  
18 where -- and this is in the affidavit, where  
19 Mr. Gagnier was privy to communications to, from,  
20 with, et cetera, counsel.

21 So there is a danger in kind of having  
22 a general question apply for all purposes and in  
23 all ways to different aspects of Mr. Gagnier's  
24 role.

25 MR. MILNE-SMITH: I understand, and I

1 appreciate that there may well be aspects of  
2 Mr. Gagnier's communications which are privileged.  
3 So, for example, if Mr. Gagnier drafted a press  
4 release and sent it to Catalyst saying, you know,  
5 please run this by the lawyers, I want to make sure  
6 it is not defamatory, I accept that that is  
7 privileged.

8 MR. MOORE: Right.

9 MR. MILNE-SMITH: Similarly, if an  
10 email was sent to Mr. Gagnier saying you can't say  
11 that, the lawyers have told us 'x', 'y' or 'z', I  
12 accept that that's privileged.

13 MR. MOORE: All right.

14 BY MR. MILNE-SMITH:

15 89 Q. But, Mr. Riley, you know, in your  
16 affidavit you say that you discussed commercial and  
17 legal issues with Mr. Gagnier; is that a fair  
18 characterization?

19 A. Could you lead me to where I said  
20 that in my affidavit?

21 90 Q. Paragraph 33.

22 A. Yes, I see we discussed sensitive,  
23 commercial and legal issues with him freely.

24 91 Q. Yes. So obviously, given that he  
25 is a communications professional, legal issues

1 weren't the only issues that were discussed with  
2 Mr. Gagnier. There were also sensitive commercial  
3 issues which are not legal; correct?

4 A. That is correct.

5 92 Q. Okay. And the principal purpose  
6 of communicating with Mr. Gagnier was for  
7 communications, not for legal advice. The legal  
8 issues would be ancillary to the communications  
9 advice he was providing. That was his purpose;  
10 fair?

11 MR. MOORE: Well, what I was trying to  
12 say earlier is that you can't generalize like that.  
13 You have to look at, you know, specific time frames  
14 and specific issues.

15 So for a given time frame, the focus  
16 and primary purpose may well be and was in  
17 connection with legal issues in which counsel were  
18 involved, et cetera. I am not going to get into  
19 details because that is part of the issue between  
20 us.

21 So for particular time frames and  
22 particular contexts, the legal issues and advice  
23 and involvement of the counsel and to be privy to  
24 confidential solicitor-client communications could  
25 be the principal focus.

1                   For other time frames and other aspects  
2                   of Mr. Gagnier's role, that would not necessarily  
3                   be the case.

4                   BY MR. MILNE-SMITH:

5                   93                   Q.     So let's talk about specifics  
6                   then. I would like to have produced to us any  
7                   communications advice that Mr. Gagnier provided  
8                   about these four publications, and they are the  
9                   subject of your anti-SLAPP motion, so that is the  
10                  post-judgment comments of August 19, 2016. That is  
11                  number one.

12                  Number two, the press release of  
13                  October 13, 2016, following the costs award.

14                  Number three, the first investor letter  
15                  of August 14, 2017.

16                  And number four, the March investor  
17                  letter of March 19, 2018.

18                  MR. MOORE: All right. Well, those are  
19                  specific instances where we say that whatever  
20                  communications or contacts occurred with  
21                  Mr. Gagnier, they were part of and in connection  
22                  and involved legal counsel, legal advice, and that  
23                  was the primary purpose, not that Mr. Gagnier was a  
24                  lawyer, but that he was involved in that whole  
25                  internal discussion, the giving of legal advice,

1 et cetera.

2 R/F So we are not going to produce the  
3 communications with respect to those specific  
4 topics for that reason.

5 BY MR. MILNE-SMITH:

6 94 Q. Okay. So just so my position is  
7 clear, while accepting hypothetically -- I  
8 obviously can't know because I haven't seen the  
9 documents. Accepting hypothetically that there  
10 could have been legal advice enmeshed in these  
11 issues, the purpose of Gagnier being involved is  
12 communications, and so to the extent that we can  
13 redact or provide partial disclosure or remove the  
14 privileged advice, I think I'm entitled to see  
15 Mr. Gagnier's communications advice, if any, that  
16 he provided in respect of these four publications.

17 MR. MOORE: Well, I disagree with that  
18 because Mr. Gagnier -- again, I'm talking  
19 hypothetically now because this is the substantive  
20 issue... [inaudible]

21 [Court Reporter intervenes for  
22 clarification.]

23 We are talking hypothetically. I am  
24 not getting into specific quotes or details of  
25 documents because that is the privilege issue that

1 exists and that is in dispute, but Mr. Gagnier's  
2 involvement, I'll say hypothetically, would or was  
3 to assist the lawyers and essential to the lawyers  
4 being able to give advice in respect of those  
5 issues.

6 So you can't hive off Mr. Gagnier and  
7 say, Well, he is dealing with communications over  
8 here and that is not part of or necessary to the  
9 legal discussion, advice, interaction that was  
10 taking place. It was.

11 MR. MILNE-SMITH: So just so I  
12 understand it then, are you saying that the sole  
13 purpose of the four communications that I have  
14 identified from the Catalyst parties' perspective  
15 was legal?

16 MR. MOORE: I am not sure I really  
17 understand the question. There are four  
18 communications or periods of communications that  
19 you have identified, and indeed they are alluded to  
20 in Mr. Riley's affidavit.

21 What we are saying is that to the  
22 extent that Mr. Gagnier is involved with respect to  
23 those matters or time frames, his involvement was  
24 integral to, unavoidably directly linked to, and  
25 important to the legal advice that was being sought

1 and received. You can't separate the two.

2 BY MR. MILNE-SMITH:

3 95 Q. Okay. Mr. Riley, would you agree  
4 with me that there were business or commercial  
5 purposes to those four communications?

6 U/A MR. MOORE: We'll take that under  
7 advisement.

8 BY MR. MILNE-SMITH:

9 96 Q. And to the extent that there were  
10 business or commercial purposes for those four  
11 communications, Mr. Gagnier would have been giving  
12 you advice with respect to communication issues  
13 germane to those business or commercial issues;  
14 correct?

15 R/F MR. MOORE: No, I disagree with that.  
16 We can agree to disagree. Okay? You are kind of  
17 assuming you can hive off one sentence from one  
18 communication from the whole context of what is  
19 happening with respect to those communications on  
20 those time periods, and you can't.

21 BY MR. MILNE-SMITH:

22 97 Q. I have your position. Haystack  
23 Needle, we may well be on common ground here, and I  
24 just want to make sure I understand it. I didn't  
25 have an opportunity to ask any questions, and we

1 were provided with no information in October about  
2 this company.

3 So let me just make sure I understand  
4 the evidence from your affidavit. Do I understand  
5 correctly that Haystack Needle never created or  
6 directed any Twitter accounts on behalf of the  
7 Catalyst parties?

8 A. They did not.

9 98 Q. And when I say "created or  
10 directed" --

11 A. Pardon me?

12 99 Q. When I say "created or directed",  
13 I mean to encompass here directly, indirectly, they  
14 weren't working through third parties or  
15 intermediaries, nobody under their direction, and  
16 they were not responsible or involved in any way  
17 whatsoever with the creation of Twitter accounts  
18 for the Catalyst parties; correct?

19 A. To my knowledge, Catalyst has no  
20 Twitter accounts. I have one that I don't know how  
21 to use.

22 MR. MOORE: To your question --

23 THE DEPONENT: But Haystack did not set  
24 up any Twitter accounts.

25 MR. MOORE: Your question,

1 Mr. Milne-Smith, yes.

2 MR. MILNE-SMITH: I am correct in my  
3 proposition?

4 MR. MOORE: Yes, the premise of your  
5 question is correct.

6 BY MR. MILNE-SMITH:

7 100 Q. Okay. And am I also correct that  
8 Haystack Needle never created or directed, in the  
9 broadest possible sense that I have just described,  
10 any communications of any kind about West Face or  
11 Mr. Boland?

12 A. That is correct.

13 101 Q. Okay. So Haystack Needle was not  
14 behind the online accounts known as Samantha Beth  
15 or Alex Walker, which commissioned -- according to  
16 West Face's investigations, commissioned some of  
17 the defamatory internet postings about West Face  
18 and Boland; is that correct, to the best of your  
19 knowledge?

20 A. To the best of my knowledge, I  
21 don't even know who those people are.

22 102 Q. Okay.

23 MR. MOORE: You are referring to  
24 examples of some of the anonymous blogs that are  
25 detailed in your counterclaim?

1 MR. MILNE-SMITH: That's right.

2 MR. MOORE: All right.

3 BY MR. MILNE-SMITH:

4 103 Q. And --

5 MR. MOORE: To the best of his  
6 knowledge of this, the premise of your question is  
7 correct.

8 BY MR. MILNE-SMITH:

9 104 Q. Okay. So the exclusive mandate of  
10 Haystack was to analyze social media coverage of  
11 the Catalyst parties and discover the identity of  
12 anonymous Twitter accounts?

13 A. Yes.

14 105 Q. So to characterize it in a  
15 colloquial way, they were playing defence, not  
16 offence; fair?

17 A. They were playing defence.

18 106 Q. Okay. Haystack never retained any  
19 third party to do further work on their behalf, to  
20 your knowledge?

21 A. To the best of my knowledge, no.

22 107 Q. Okay. And is it fair to say that  
23 Haystack Needle -- well, let me put this  
24 differently. Has any of the evidence or  
25 information turned up by Haystack Needle been

1 produced in this litigation?

2 A. To the best of my knowledge, no.

3 108 Q. Okay.

4 MR. MOORE: Well, let me just pause  
5 there and reflect on that. I am not saying yes or  
6 no one way or the other, but is it possible that  
7 Haystack may have uncovered Twitter postings or  
8 social media attacks on Catalyst or Callidus  
9 supplemental to the ones that the companies knew  
10 about? They may have been retained later on in  
11 connection -- or proximate to the motion to strike  
12 before Justice Wilton-Siegel to search for  
13 additional Twitter postings, but if you are asking  
14 about, you know, postings or the creation of  
15 postings, et cetera, relating to the anonymous  
16 blogs, which I think is the purport of your  
17 question, the answer is no.

18 BY MR. MILNE-SMITH:

19 109 Q. So let me narrow this down for  
20 you. Am I correct that Haystack never found any  
21 evidence that West Face or Mr. Boland were  
22 responsible for Twitter accounts critical of the  
23 Catalyst parties?

24 U/A MR. MOORE: I'll take that under  
25 advisement.

1 BY MR. MILNE-SMITH:

2 110 Q. And related to that, Haystack  
3 never found any evidence that West Face was  
4 responsible for any defamatory content on the  
5 internet or social media about the Catalyst  
6 parties?

7 U/A MR. MOORE: The same position.

8 BY MR. MILNE-SMITH:

9 111 Q. Okay. And to the extent that  
10 Haystack Needle did find any information or  
11 evidence indicating that Catalyst -- sorry, that  
12 West Face or Mr. Boland were responsible for any  
13 Twitter accounts, social media, online content  
14 defamatory of the Catalyst parties, I would either  
15 like to be pointed to that in the productions or I  
16 would like to have it produced.

17 U/A MR. MOORE: All right, I'll take that  
18 under advisement, and part of the reason I'm taking  
19 it under advisement is these facts have a certain  
20 analysis. So whether or not in there there was an  
21 analysis of a combination of social media  
22 communications, Twitter postings, or whatever that  
23 they go through and postulate certain theories or  
24 possibilities for the assistance of counsel to  
25 provide suggestions or leads or ideas, you know,

1 does that constitute evidence? On one view no, but  
2 that may be a matter of interpretation.

3 So I want to take those questions under  
4 advisement, and we'll let you know our position.

5 MR. MILNE-SMITH: Okay. That is fine.  
6 I mean, my understanding based on Mr. Riley's  
7 affidavit is that at least with respect to West  
8 Face and Boland it was a dry well, which, you know,  
9 alleviates my concerns about a privilege claim, but  
10 if you are saying there was something relevant  
11 turned up, then I think I'm entitled to it and that  
12 there can't be any claim of privilege over it, so  
13 that is why I'm asking.

14 MR. MOORE: So let me put it this way,  
15 Mr. Milne-Smith. If Haystack uncovered a document  
16 and said, Aha, here is a document, a piece of  
17 evidence in the traditional sense that links your  
18 client to defamatory Twitter posting 'x', that is a  
19 document that is evidence in the traditional sense  
20 that I agree would be producible.

21 MR. MILNE-SMITH: Yes.

22 MR. MOORE: So to that extent, we are  
23 on the same page.

24 MR. MILNE-SMITH: Okay. Well, let's  
25 see if there is any such evidence, and we'll go

1 from there. You have taken that under advisement.

2 MR. MOORE: All right.

3 BY MR. MILNE-SMITH:

4 112 Q. Okay. Due Diligence Consulting,  
5 as I understand it from your affidavit -- and if  
6 you want to look, it is at paragraph 43 -- you  
7 state that they were retained to investigate the  
8 suspected conspiracy against the Catalyst parties.

9 Really, the same questions that I had  
10 for Haystack Needle. Did they discover any  
11 evidence with respect to West Face, and if they  
12 did, I would like to know what it is.

13 U/A MR. MOORE: The same position.

14 BY MR. MILNE-SMITH:

15 113 Q. Okay. And am I correct that due  
16 diligence consulting never contacted West Face's  
17 current or former employees?

18 U/A MR. MOORE: I'll take that under  
19 advisement.

20 THE DEPONENT: I can't say for sure. I  
21 don't think they did.

22 BY MR. MILNE-SMITH:

23 114 Q. Okay. And am I correct that they  
24 never published anything about West Face or  
25 Mr. Boland?

1                   A.    To my knowledge, no.  Their  
2                   communications were with us.

3   115               Q.    And can you also confirm, just so  
4                   we don't have to worry about it, that they never  
5                   retained any third party to do further work?

6                   A.    So you -- they may have.

7   U/A               MR. MOORE:  They may have, you know,  
8                   but -- let me take that under advisement.  Again,  
9                   what we would interpret or intend to focus on in  
10                  dealing with these advisements and your questions  
11                  is -- you know, again, I don't want to put words in  
12                  your mouth, but I take it you want to know did DDC  
13                  go out and retain XYZ Limited that you never heard  
14                  of and XYZ did something in relation to the  
15                  anonymous blogs or something of that nature.  If  
16                  that is the purport of the question, I think I can  
17                  say, to the best of our knowledge, no, and if the  
18                  answer is if there is anything further or a  
19                  correction needed, we'll let you know.

20                               MR. MILNE-SMITH:

21   116               Q.    Okay.  And just to be clear, it is  
22                   not just about producing anonymous blogs, which is  
23                   the subject of the counterclaim.  I would also like  
24                   to know if DDC or anyone acting for them turned up  
25                   any relevant -- anything relevant to Catalyst and

1 Callidus's claim in the main action against the  
2 West Face parties.

3 U/A MR. MOORE: I understand that question,  
4 and I think I have taken that under advisement.

5 MR. MILNE-SMITH: Okay. You understand  
6 why I ask about third parties, because we know  
7 that, you know, Yossi Tanuri acted as an  
8 intermediary. I just want to make sure that I am  
9 not missing anything, okay?

10 MR. MOORE: I understand. If there is  
11 some entity out there you have never heard of that  
12 was retained by Haystack that went out and did 'x',  
13 'y', 'z' and et cetera, but to the best of our  
14 knowledge, no, but we hear you and have taken that  
15 under advisement.

16 BY MR. MILNE-SMITH:

17 117 Q. Okay. Let's turn then to the  
18 Dalton report.

19 I understand that Mr. Dalton prepared a  
20 Strategic Review and Remediation Plan which was  
21 presented to the Callidus Board at a meeting on  
22 February 28th, 2019; is that correct?

23 A. Yes.

24 118 Q. Okay. And that meeting was also  
25 attended by Mr. DiPucchio on behalf of Catalyst and

1 Mr. Levin of the Fasken firm on behalf of Callidus;  
2 is that right?

3 A. Yes.

4 119 Q. And am I correct that at this time  
5 on February 28th, 2019, Mr. DiPucchio was an  
6 employee of Catalyst, not external counsel?

7 A. Yes, he was internal counsel,  
8 among other roles.

9 120 Q. Right. As I understand it, his  
10 formal title, much as yours was before your  
11 semi-retirement, was Managing Director and COO?

12 A. At this stage -- I'm sorry, I get  
13 confused over my time frame. I stepped down in  
14 2019, July of 2019, I believe.

15 121 Q. Yes.

16 A. No, spring of 2019, although  
17 effective July. So we were both playing lawyer at  
18 the time, although in connection with the going  
19 private, I tried to stay out of that because I was  
20 also a director, so I didn't want to -- I couldn't  
21 play that role, in my view. So Mr. DiPucchio was  
22 counsel to Catalyst, internal counsel.

23 122 Q. I just want to make sure I  
24 understand it. If you can -- this doesn't have to  
25 be a memory test. If you can confirm as of

1 February 28, 2019, what was Mr. DiPucchio's title?  
2 Was he just a Managing Director, or was he also...  
3 [inaudible]

4 [Court Reporter intervenes for  
5 clarification.]

6 123 Q. Let's go slowly through this,  
7 Mr. Riley, so we get it right. As of February 28,  
8 2019, Mr. DiPucchio was a Managing Director,  
9 correct?

10 A. Yes.

11 124 Q. But to the best of your knowledge,  
12 he was not the Chief Operating Officer at that  
13 time?

14 MR. MOORE: Are you talking by title or  
15 by function? Your question was to confirm his  
16 title, which we can do, I think, fairly easily,  
17 rather than make it a memory contest.

18 THE DEPONENT: And during that time  
19 period, regardless of what his title was, he was  
20 also functioning as internal counsel.

21 BY MR. MILNE-SMITH:

22 125 Q. Okay. Fair to say that  
23 Mr. DiPucchio's role at all times at Catalyst has  
24 encompassed both a legal and a non-legal role?

25 A. Yes.

1 126 Q. And that was the same with you?  
2 As a Managing Director and Chief Operating Officer,  
3 you have served legal roles but also business  
4 roles; correct?

5 A. That is correct.

6 127 Q. And at this Callidus Board  
7 meeting, Mr. DiPucchio was the only representative  
8 of Callidus; is that right?

9 A. Of Catalyst, or do you mean --

10 128 Q. Sorry, of --

11 A. I'm sorry, I just -- you are  
12 allowed.

13 129 Q. Let me try that again. At the  
14 Board meeting where the Dalton report was presented  
15 on February 28th, 2019, Mr. DiPucchio was the only  
16 representative of Catalyst?

17 U/T MR. MOORE: Mr. Milne-Smith, my  
18 understanding is that you have got a redacted copy.  
19 I may be wrong on this, but I think you may have a  
20 redacted copy of the minutes of that Board meeting?  
21 It is not a memory contest. The reason I -- so I  
22 don't want to get behind -- assuming you do have a  
23 redacted copy, I don't want to depart from that or  
24 expand on that or go beyond that, but I will  
25 undertake to let you know what additional

1 representatives of Catalyst were present at the  
2 meeting.

3 BY MR. MILNE-SMITH:

4 130 Q. And you have anticipated one of my  
5 questions, Mr. Moore. I just wanted to confirm  
6 that we have in fact received copies of any  
7 relevant Board materials relating to that meeting  
8 redacted for privilege as may be appropriate.

9 U/A MR. MOORE: All right. I'll take that  
10 under advisement. I don't have a verbatim  
11 recollection of exactly what documents you have,  
12 but I'll take that under advisement and let you  
13 know.

14 BY MR. MILNE-SMITH:

15 131 Q. Mr. Riley, you are aware that  
16 Callidus in its management discussion and analysis  
17 for 2018 -- or sorry, for 2019, disclosed the  
18 retainer of Mr. Dalton?

19 A. Can you put it up on screen? Do  
20 you have that document? Can you put it up on the  
21 screen so I can see what it says?

22 132 Q. Yeah, I'll bring that up for you.

23 MR. MOORE: I don't think there is any  
24 doubt there probably was disclosure of that.

25 Exactly what it said --

1 THE DEPONENT: Yeah, exactly. And to  
2 the extent that you are telling me there was  
3 disclosure of it, I will agree with that because it  
4 would seem to be material.

5 [Court Reporter intervenes for  
6 clarification.]

7 BY MR. MILNE-SMITH:

8 133 Q. So, Mr. Riley, I'm bringing up  
9 here Exhibit 2 to Mr. Boland's affidavit of  
10 December 31st, which is the Callidus MD&A, for the  
11 year ended December 31, 2018; do you see that?

12 A. I do.

13 134 Q. And if I go to page 8, so we have  
14 included here an excerpt. Do you see the  
15 highlighted portion here?

16 A. Could you please blow it up?

17 135 Q. Yes. How is that? Can you read  
18 that? So I am just going to read this into the  
19 record:

20 "In November 2018, Patrick  
21 Dalton joined as a consultant and as  
22 Interim Chief Executive Officer.  
23 Subsequent to the year-end, in March  
24 2019, after completing his initial  
25 assessment, Mr. Dalton resigned from

1 the Company as a consultant and as  
2 Interim Chief Executive Officer.  
3 Patrick greatly assisted the Company  
4 by completing and delivering to the  
5 Board a Strategic Review and  
6 Remediation Plan. That Plan will  
7 help the Company in setting its  
8 future direction and the Board  
9 wishes to thank Patrick for his  
10 contribution."

11 Do you see that?

12 A. I do.

13 136 Q. And --

14 A. Can you please scroll up for me so  
15 I can see the heading of this section to the MD&A?  
16 [Witness reviews document.]

17 137 Q. We only include that page, so I  
18 don't have the heading for it.

19 A. This seems to recite a number of  
20 facts, that's all, so I --

21 138 Q. Yes. But you would agree with me  
22 that the statement by Callidus in its MD&A that I  
23 just read to you is factual and accurate?

24 A. Yes.

25 139 Q. The Dalton report, if I can call

1           it that -- and when I say "that", I'm referring to  
2           the Strategic Review and Remediation Plan, okay?

3                       A.    Yes.

4    140               Q.    Am I correct that the Dalton  
5           report does not contain legal advice?

6                       MR. MOORE:  Mr. Dalton was not a  
7           lawyer.

8                       THE DEPONENT:  He was not a lawyer.

9                       BY MR. MILNE-SMITH:

10   141               Q.    Right, and Mr. Dalton did not  
11           retain counsel to assist him in preparing it, so it  
12           doesn't contain legal advice; correct?

13                       A.    It was prepared for the purpose of  
14           obtaining legal advice or one of --

15                       MR. MOORE:  Your question is whether  
16           Mr. Dalton retained his own personal counsel to  
17           assist him in preparing the report?

18                       BY MR. MILNE-SMITH:

19   142               Q.    Or any kind of counsel to assist  
20           him in preparing the report.  I just want to  
21           confirm that the Dalton report, it doesn't contain  
22           legal advice.  The answer you gave was Mr. Dalton  
23           isn't a lawyer, so I want to confirm that  
24           regardless of who he may have spoken to, the Dalton  
25           report doesn't contain legal advice?

1                   A.    Well, but it was prepared for the  
2                   purpose of obtaining legal advice and --

3    143               Q.    That is a different question.

4                   A.    Okay.  But he also would have  
5                   had -- there would have been some involvement with  
6                   Blake, Cassels & Graydon, who were independent  
7                   counsel to the independent board -- Independent  
8                   Committee of Directors.

9    144               Q.    Okay.  In his affidavit -- and I  
10                   suppose I can ask him about it.  In his affidavit,  
11                   Mr. Dalton did not refer to obtaining any advice  
12                   from Blakes.  You are speculating here.  You are  
13                   not aware of him obtaining advice in preparing this  
14                   report from Blakes; is that correct?

15                   A.    I do not have knowledge of that.

16    145               Q.    Okay.  Again, I understand the  
17                   position of you and the Catalyst parties that the  
18                   Dalton report was used to obtain legal advice, but,  
19                   Mr. Riley, for many years you were a banking and  
20                   restructuring lawyer at a number of prominent law  
21                   firms; correct?

22                   A.    Yes.

23    146               Q.    And in that capacity, you would  
24                   have routinely received information from a company  
25                   that you used to formulate that advice; correct?

1 A. Yes.

2 147 Q. And not all factual information  
3 that you received for the purposes of giving your  
4 advice would be privileged, right? This is basic  
5 stuff.

6 MR. MOORE: Well, that is a pretty  
7 broad question spanning many generations of years.  
8 So that may be -- that may or may not be accurate,  
9 but it is of little consequence to this particular  
10 situation.

11 THE DEPONENT: And I am not sure I know  
12 how to answer the question because -- can I work  
13 with an example? Most of my practice was on behalf  
14 of banks, so my view was everything that they told  
15 me factual or otherwise was part of going into my  
16 advice to them as to what they should do in  
17 connection with a restructuring. So to me, that  
18 was privileged.

19 BY MR. MILNE-SMITH:

20 148 Q. So let's -- we have to make a  
21 distinction here between the lawyer's brief, the --  
22 not a litigator in this case, the lawyer's brief  
23 and the factual information provided to the lawyer.  
24 You are a lawyer. You understand the way this  
25 works.

1 A. Yes.

2 149 Q. A client can't make facts  
3 privileged by telling them to a lawyer; you agree  
4 with that?

5 A. The facts are not privileged, but  
6 the advice given on those facts is privileged. Is  
7 that the distinction you are trying to draw?

8 150 Q. Correct, and you agree with that  
9 distinction?

10 A. I agree with that.

11 151 Q. Okay. So Mr. Dalton wasn't  
12 providing advice. He was providing facts which the  
13 lawyers would then use to give advice; correct?

14 MR. MOORE: Well, I am not going to get  
15 into the content of the Dalton report, but it is a  
16 little simplistic to say that it is simply, you  
17 know, fact A, B, C, a combination of them, and  
18 again, I'm saying this hypothetically. I'm not  
19 waiving any of the privilege that is in issue here,  
20 but it is not just here is facts A, B, C. There is  
21 analysis. There is recommendation. There is  
22 hypotheses. There is options. There is this,  
23 there is that. So you can't -- it is not as if,  
24 okay, here is a document that has, you now, 11  
25 facts and that is all it has.

1 BY MR. MILNE-SMITH:

2 152 Q. So let's talk about -- without  
3 getting into the content, which I understand is the  
4 subject of this motion, let's talk about the  
5 subject matter of the Dalton report.

6 Broadly speaking, it was an analysis of  
7 Callidus's business; correct?

8 A. Sorry --

9 MR. MOORE: Say that again. I'm sorry?

10 THE DEPONENT: Could you say that  
11 again? Someone was rattling some papers at our  
12 end.

13 BY MR. MILNE-SMITH:

14 153 Q. Broadly speaking, the purpose of  
15 the Dalton report was an analysis of Callidus's  
16 business; correct?

17 A. Both past and future.

18 154 Q. Yes. And from a business or  
19 commercial perspective, which is what Mr. Dalton  
20 brought to the table?

21 A. Yes.

22 155 Q. So looking at strengths and  
23 weaknesses of the business; correct?

24 A. Yes.

25 156 Q. And looking at the causes for its

1 condition at that point in time; correct?

2 MR. MOORE: Well, we are not going to  
3 get into the -- sort of kind of dissect it by 16  
4 different categories because to do so is going to  
5 be indirectly getting into the substance of the  
6 content of the report.

7 BY MR. MILNE-SMITH:

8 157 Q. I have got a copy here of the  
9 minutes of the February 28, 2019, Board meeting.  
10 It indicates that one of the individuals who was  
11 present by invitation was Rob Fedrock for the  
12 Catalyst Capital Group. Who is he?

13 A. Rob was, I think, a -- I think his  
14 title was Vice President. He was one of the people  
15 that -- he was involved actually with Callidus when  
16 it went public and then subsequently hired by  
17 Catalyst.

18 158 Q. Okay. And he was obviously on the  
19 business side. He didn't have a legal role?

20 A. He has no legal role.

21 159 Q. Okay. Last subject, and then  
22 we'll take a break and just confirm that we are  
23 done. The OSC and SEC communications. Now,  
24 Mr. Lung may have some questions for you on this,  
25 but I want to be clear about what the narrow scope

1 of my questions are.

2 In your affidavit, you describe  
3 communications with the OSC and SEC in respect of  
4 Callidus's continuing disclosure obligations; do  
5 you recall that?

6 A. It would be with respect to the  
7 OSC where I had those obligations. I did not have  
8 obligations to the SEC.

9 160 Q. I just want to be clear that what  
10 I am interested in is something different. I am  
11 not interested in your continuing disclosure  
12 obligations with the OSC. What I am interested in  
13 are communications with the OSC about the West Face  
14 parties.

15 So with that as a preamble or  
16 clarification, what I would like to know is whether  
17 the Catalyst parties ever had any communications  
18 with any of the relevant authorities, which I am  
19 going to include as OSC, the SEC, JSOT, IMET, the  
20 Integrated Market Enforcement Team, the Metro  
21 Police, or any other authorities, TSX, any  
22 authorities that I have listed or that you can  
23 think of that I haven't listed, if the Catalyst  
24 parties had any communications with any of those  
25 authorities about the West Face parties, being West

1 Face and Mr. Boland, I would like to know about it.  
2 U/A MR. MOORE: I understand. We object to  
3 that. I guess we'll take that under advisement,  
4 with your articulation of the scope, but we hear  
5 you, and at this point, our position remains the  
6 same. But we are taking that under advisement.

7 MR. MILNE-SMITH: Okay. So I take it  
8 that given that you won't disclose whether those  
9 communications occurred, you also are refusing to  
10 disclose the nature of any such communications?

11 U/A MR. MOORE: Well, that is subsumed  
12 within the position.

13 MR. MILNE-SMITH: Okay. So I am ready  
14 to take a break, check my notes, confer with my  
15 colleagues and see if we are done, but before I do  
16 that, I wasn't sure if Mr. Lung wanted to step in  
17 at this point?

18 MR. LUNG: Why don't -- I think  
19 probably it is best if I wait until you are done  
20 and then I can do my examination. It is going to  
21 take probably not that long. I suspect I'll be  
22 about a half an hour.

23 MR. MILNE-SMITH: So why don't we take  
24 the morning break now, break for 10 minutes or  
25 whatever, and then come back.

1 (DISCUSSION OFF THE RECORD.)

2 -- RECESSED AT 11:45 A.M.

3 -- RESUMED AT 12:01 P.M.

4 BY MR. MILNE-SMITH:

5 161 Q. So I have on my screen here, which  
6 you should be able to see, the Callidus redacted  
7 Board meetings that were referred to earlier. For  
8 the sake of the record, this is Catalyst D00000645  
9 in the productions in this case, and the minutes  
10 relating to the February 28, 2019, meeting start at  
11 page 7 and go to page 11.

12 So I don't want to waste everyone's  
13 time on the record here. Let me, first of all,  
14 just mark that as the, I believe, only exhibit on  
15 this examination because the other documents I have  
16 referred to are already in the record.

17 MR. MOORE: That is fine.

18 MR. MILNE-SMITH: And, Deana, Andrew or  
19 Maura can provide you with a copy of this.

20 EXHIBIT NO. 1: Callidus Board  
21 meeting minutes, Catalyst production  
22 D00000645.

23 BY MR. MILNE-SMITH:

24 162 Q. All I want to ask you to do,  
25 Mr. Riley, as someone who was in attendance at this

1 meeting, is to confirm that the minutes which  
2 apparently were taken by Mr. Levin as secretary are  
3 in fact an accurate account of the meeting. Can  
4 you do that by way of undertaking?

5 A. Yes.

6 U/T MR. MOORE: Yes.

7 BY MR. MILNE-SMITH:

8 163 Q. Okay. Then I just have two small  
9 questions of clarification. You referred to an  
10 Independent Committee of Callidus, and I understand  
11 that Patrick Dalton was retained by the Board of  
12 Callidus, but can you confirm for me whether he was  
13 retained by the full Board or by the independent  
14 directors or Independent Committee of the Board or  
15 any other subcommittee of the Board?

16 U/T MR. MOORE: We'll let you know.

17 BY MR. MILNE-SMITH:

18 164 Q. Okay. And if there were any  
19 written terms of Mr. Dalton's employment agreement,  
20 can those please be produced?

21 U/A MR. MOORE: We'll take that under  
22 advisement.

23 BY MR. MILNE-SMITH:

24 165 Q. And finally, Mr. Riley, I  
25 understand that Mr. Dalton started as a consultant

1 and then was subsequently made into the Interim  
2 CEO; is that correct?

3 A. I think that may have occurred  
4 contemporaneously with his engagement as a  
5 consultant.

6 166 Q. Okay. But --

7 A. But as to the precise sequence, I  
8 would have to go back and check.

9 167 Q. Okay.

10 MR. MOORE: We'll undertake to make  
11 inquiries and let you know.

12 MR. MILNE-SMITH: Okay. I'll ask  
13 Mr. Dalton as well obviously. I just wanted to get  
14 our recollection --

15 U/T MR. MOORE: He may not know the exact  
16 sequence either, so we'll undertake to advise  
17 whether there is a title or at what stage. We'll  
18 make the inquiries and let you know.

19 BY MR. MILNE-SMITH:

20 168 Q. And, you know, I asked about terms  
21 of his employment. Obviously, if it changed over  
22 time, if there were different written retainers of  
23 any kind, I would like to see them as they changed  
24 over time.

25 U/A MR. MOORE: I understand. That will be

1 subsumed in the advisement.

2 MR. MILNE-SMITH: Okay. Those are all  
3 of my questions for Mr. Riley. Thank you,  
4 Mr. Riley. I'll turn it over to Mr. Lung.

5 CROSS-EXAMINATION BY MR. LUNG:

6 169 Q. Mr. Riley, I am going to take you  
7 to your affidavit sworn December 28th, and I am  
8 just going to bring it up on the screen, and I am  
9 going to take you to paragraph 5(5), and what you  
10 have written here is:

11 "I have reviewed and considered  
12 the Catalyst Parties' communications  
13 with the OSC and the SEC and have  
14 consulted with the Catalyst Parties'  
15 U.S. legal counsel regarding the SEC  
16 issues [...]"

17 And do you see that?

18 A. Yes.

19 170 Q. Now, with respect to the  
20 communications with the SEC, those communications  
21 were between Catalyst and the SEC; is that right?

22 A. Yes.

23 171 Q. And I believe you said that there  
24 was no communication between the SEC and Callidus?

25 A. No.

1 172 Q. And the written communications you  
2 reviewed between Catalyst and the SEC, that  
3 communication -- those communications included  
4 communications that raised issues that are raised  
5 in the action; is that right?

6 MR. MOORE: Well, again, I want to be  
7 careful about not getting into questions that are  
8 going to, you know, in effect, directly or  
9 indirectly start into the substance and content of  
10 the communications of privilege that's in issue.  
11 But as a general matter, that is a very broad  
12 question you have asked.

13 THE DEPONENT: Yeah, if you could  
14 repeat the question as well.

15 BY MR. LUNG:

16 173 Q. Well, let me put it this way. You  
17 reviewed communications between the SEC and  
18 Catalyst that deal with issues that are relevant to  
19 the issues raised in this action; is that fair?

20 R/F MR. MOORE: It is not for this witness  
21 to discern what is relevant or not relevant.

22 BY MR. LUNG:

23 174 Q. Well, were any of the issues  
24 raised in the action raised in the correspondence  
25 that you reviewed between Catalyst and the SEC?

1 U/A MR. MOORE: I'll take that under  
2 advisement. Again, it is such a broad question.

3 MR. LUNG: Mr. Moore, my concern is --  
4 we went through this back in October where you just  
5 refused to answer any questions at all, and, I  
6 mean, it is ridiculous if we are going to have to  
7 have a refusals motion for a refusals motion. All  
8 I am trying to do is establish --

9 MR. MOORE: When we came in November,  
10 the purpose was to cross-examine on the SLAPP  
11 affidavits, not to have a preview or a debate or a  
12 fight over privileged communications which  
13 everybody knew were going to be the subject of  
14 motions.

15 That is why I objected at that time.

16 What I am saying now is I want to be  
17 careful about not having questions that indirectly  
18 get into the substance of the communications that  
19 are in issue.

20 BY MR. LUNG:

21 175 Q. But I am entitled to know whether  
22 there is communication that is relevant to the  
23 issues raised in the action, and in fact, that is  
24 the entire purpose of Schedule B, is that you  
25 disclose matters that are relevant even though you

1 assert privilege.

2 So the question that I have here is  
3 that in your review, Mr. Riley, of the  
4 communications referred to in paragraph 5(5), did  
5 you review communications between Catalyst and the  
6 SEC that touch on issues that have been raised in  
7 this action?

8 MR. MOORE: Just a minute. To my  
9 recollection -- I am not going to debate the rules  
10 with you, but my recollection is that there are  
11 some rules that suggest that inclusion of a  
12 document in Schedule B, if it were to be included,  
13 does not necessarily connote relevance.

14 U/A And so that is a very broad question.  
15 Does anything in any aspect of any communication  
16 with the SEC touch upon any potential issue in this  
17 action? I'll take that under advisement, and I  
18 will let you know our position.

19 But our answer, if we do give an  
20 answer, is going to being a very general answer.

21 MR. LUNG: What is a general answer? I  
22 mean, what do you mean you are going to give a  
23 general answer?

24 MR. MOORE: Well, it will be about as  
25 general as your question. What I am not going to

1 do is have that question and any answer be the  
2 springboard for, well, now let's have 76 different  
3 sub-questions to, in substance, get into the  
4 content of the communications themselves. That is  
5 the road -- I'm not going down that road.

6 BY MR. LUNG:

7 176 Q. All right. Can you tell me about  
8 the time frame of the communications you reviewed  
9 with the SEC? What is the time frame of those  
10 communications?

11 A. I'll have to get back to you on  
12 those dates.

13 U/T MR. MOORE: We'll let you know the time  
14 frame.

15 BY MR. LUNG:

16 177 Q. And I do want to know whether the  
17 written communications to the SEC touched on any of  
18 the issues that are relevant -- that are raised in  
19 the Anderson whistleblower report. Will you let --

20 MR. CARLSON: Lucas, I can see  
21 something on my screen that I don't think you guys  
22 are trying to share.

23 MR. LUNG: Oh, sorry. Yes. Thank you,  
24 Andrew.

25 THE DEPONENT: It looked a little

1           disparaging to me.

2                       MR. MOORE: I didn't even read it, so  
3           don't worry.

4                       BY MR. LUNG:

5   178                Q.   Well, it is internal. It is  
6           between me and my colleagues.

7                       Can you confirm whether the written  
8           communications with the SEC touched on any of the  
9           issues raised in the Anderson whistleblower report?

10   U/A               MR. MOORE: We'll take that under  
11           advisement.

12                      And again, I don't want to answer that  
13           question spontaneously. I want to consider to what  
14           extent it is appropriate to answer, if we do answer  
15           in a limited manner, that doesn't get us into a  
16           springboard of getting into the whole content of  
17           the communications which privilege is an issue. So  
18           we'll take that under advisement, and we'll let you  
19           know.

20                      MR. LUNG: My intention, Mr. Moore, is  
21           to try to determine whether there is relevant  
22           communication -- or whether there is relevant  
23           documentation that arises from the communications  
24           with the SEC, and I am entitled to know that.

25                      And you are refusing to provide even

1 that basic information, and I don't think that  
2 that's appropriate.

3 MR. MOORE: What I have said, if you  
4 would just be more precise, is I will take that  
5 question under advisement. If we elect to answer  
6 it, I will ensure that we do so in a way that deals  
7 with your question, but not in a manner that in  
8 effect leads into a substantive discussion,  
9 cross-examination, of all of the underlying details  
10 of the communications.

11 So leave that with me, and we'll get  
12 back to you.

13 MR. LUNG: The problem is, Mr. Moore,  
14 you are not even letting me take that first step to  
15 determine whether there is relevant documentation.  
16 That is the problem here, is that I am not even --  
17 you are not even letting me take that first step.

18 MR. MOORE: Well, you have asked the  
19 question, and I have said I have taken it under  
20 advisement. I expect I will answer it but in a  
21 limited way so as to address the general -- the  
22 exceedingly general nature of your question.

23 MR. LUNG: Well, the question wasn't  
24 general. I was just asking --

25 MR. MOORE: Hold it. As soon as you

1 say that is the first step, what I am concerned is  
2 about the 50 next steps which you are going to or  
3 may -- I don't know, but if you are going to take  
4 50 more steps and substantively try to get into the  
5 detail of the communications whose privilege is an  
6 issue. That is why I want to be careful in what  
7 answer is given to that very, very general  
8 question, and I will get back to you later today in  
9 writing and let you know.

10 BY MR. LUNG:

11 179 Q. Mr. Riley, if you can go to  
12 paragraph 56 of your affidavit.

13 A. I am there.

14 180 Q. And in that paragraph you refer to  
15 the fact that Catalyst was the subject of an  
16 examination by the SEC?

17 A. Yes.

18 181 Q. When you say "examination", is  
19 that an examination only encompassing the delivery  
20 of documents and information, or was there also an  
21 interview or some kind of in-person meeting?

22 A. There were on-site meetings.

23 182 Q. So there were on-site meetings in  
24 addition to the delivery of documents and  
25 information?

1 A. Yes.

2 183 Q. And what time frame did those  
3 meetings occur?

4 U/T MR. MOORE: We'll let you know.

5 THE DEPONENT: Again, over the course  
6 of several days, but the precise dates I cannot  
7 recall.

8 MR. MOORE: My recollection is late  
9 2017, but rather than --

10 THE DEPONENT: No --

11 MR. MOORE: We'll check, and we'll let  
12 you know the time frame.

13 BY MR. LUNG:

14 184 Q. Was the delivery of documents in  
15 response to specific inquiries by the SEC?

16 A. Yes.

17 185 Q. And did those inquiries include  
18 issues that -- the issues that are raised in this  
19 action?

20 MR. MOORE: That is the same question  
21 you asked a minute ago, and the same position is  
22 taken.

23 MR. LUNG: That you are refusing to  
24 answer whether any of these communications with the  
25 SEC has relevance at all to the action?

1 U/A MR. MOORE: No, I am saying I am not  
2 going to go down a road which you in your own  
3 questions admit it is the first step to who knows  
4 how many more steps, and I am going to ensure that  
5 our response to that question is focussed to your  
6 general answer in such a way as does not, you know,  
7 vitiate the underlying privilege that we say  
8 applies. That is what I am saying. You'll have  
9 the answer from me later today.

10 BY MR. LUNG:

11 186 Q. Mr. Riley, did you attend the  
12 meetings with the SEC?

13 A. Some of them.

14 187 Q. And who else attended those  
15 meetings?

16 A. David Reese, and Newton and  
17 Gabriel would have met with them separately on a  
18 separate issue. Steve Rostowsky was also involved.

19 188 Q. And who was that? Is that the  
20 CFO?

21 A. The CFO.

22 189 Q. And did anybody else attend those  
23 meetings with the SEC that you can recall?

24 A. Our counsel, I believe.

25 MR. MOORE: Counsel.

1 THE DEPONENT: Yeah, counsel.

2 BY MR. LUNG:

3 190 Q. And who was counsel who attended?

4 A. Marlon Paz.

5 MR. MOORE: And you were --

6 THE DEPONENT: Well, but I was being  
7 interviewed, so I'm not sure I can say I was as  
8 counsel, but I was interviewed by the SEC  
9 examination team.

10 BY MR. LUNG:

11 191 Q. If you can go to paragraph 59, and  
12 in that paragraph you make a number of statements  
13 about the Freedom of Information Act, I guess, in  
14 the United States?

15 A. Yes.

16 192 Q. Is it fair to say that the Freedom  
17 of Information Act deals with circumstances where a  
18 member of the public is attempting to access  
19 records that are being held by a public agency?

20 R/F MR. MOORE: Don't answer the question.  
21 He is not going to give an opinion about the  
22 Freedom of Information Act.

23 MR. LUNG: Well, he has given an  
24 opinion, Mr. Moore, at paragraph 59.

25 MR. MOORE: What?

1 MR. LUNG: He has given an opinion at  
2 paragraph 59.

3 THE DEPONENT: Based on the advice of  
4 counsel. 59 is based on the advice of counsel.

5 BY MR. LUNG:

6 193 Q. I don't see that here but -- well,  
7 Mr. Riley, can you tell me what the purpose of the  
8 Freedom of Information Act is?

9 A. In the U.S.? I don't know.

10 194 Q. Is it fair to say that the Freedom  
11 of Information Act does not address the scope of  
12 disclosure in a lawsuit between private parties?

13 R/F MR. MOORE: No, that is not fair to  
14 say. No, don't answer the question. He is not  
15 going to get into a legal interpretation of what it  
16 applies to or doesn't apply to, et cetera.

17 BY MR. LUNG:

18 195 Q. Mr. Riley, is it fair to say that  
19 you are not qualified to make statements about the  
20 provisions of the Freedom of Information Act?

21 A. As it is based on information from  
22 our U.S. counsel, I believe I can say so.

23 196 Q. But you yourself are not  
24 qualified, and that is why --

25 A. I am not qualified. I am not

1 qualified under the U.S. rules.

2 197 Q. And that is why you are not in a  
3 position to answer other questions I have about  
4 that Act?

5 A. That is correct.

6 198 Q. If you can go to paragraph 60 of  
7 your affidavit, and in that paragraph, you say:

8 "I am advised by the Catalyst  
9 Parties' United States counsel and  
10 verily believe that [...]"  
11 And then under, I guess "i", Roman "i"  
12 you say...

13 [Court Reporter intervenes for  
14 clarification.]

15 So, Mr. Riley, you say here that there  
16 is extensive case law -- you say:

17 "Extensive case law has  
18 developed and commentaries have been  
19 published in the United States which  
20 relate to and reflect the  
21 following:"

22 And Roman "i", you say:

23 "A developing privilege  
24 attaching to communications with or  
25 relating to SEC Regulatory

1 inquiries."

2 A. Yes.

3 199 Q. Will you agree with me that  
4 currently no such privilege exists?

5 R/F MR. MOORE: No, he is not expressing an  
6 opinion about that.

7 MR. LUNG: So, sorry, is that refused?

8 MR. MOORE: Yes. He doesn't purport to  
9 express an opinion in this affidavit. He is  
10 identifying areas of jurisprudence, and Mr. Campos  
11 has delivered a declaration, which you were going  
12 to cross-examine on and decided not to, but this  
13 witness is not an expert or this affidavit is not  
14 purporting to describe all of the case law, so --

15 BY MR. LUNG:

16 200 Q. So, Mr. Riley, you are not  
17 qualified to express an opinion on the matters  
18 described in paragraph 60; is that correct?

19 A. That is correct.

20 201 Q. I am going to bring up Exhibit J  
21 to the affidavit of Josie Violin in my motion  
22 record, and that is the supplemental Schedule B of  
23 the Plaintiffs. Do you see that on your screen,  
24 sir?

25 A. This is -- which document is this,

1 please?

2 202 Q. This is the Plaintiff's  
3 supplemental Schedule B, which was delivered  
4 October 13, 2020.

5 A. Okay. Thank you.

6 203 Q. And it is Exhibit J to the  
7 affidavit of Josie Violin in Anderson's motion  
8 record. There are a number of items on this  
9 schedule that appear to be communications with the  
10 OSC, and it is marked as being privileged,  
11 "case-by-case privilege (OSC)"; do you see that  
12 those items?

13 A. Yes.

14 204 Q. I just wanted to clarify, you will  
15 see that there is a number of different people  
16 under the "from" column and the "to" column and the  
17 "cc" column?

18 A. Yes.

19 205 Q. And to the extent that you can, I  
20 would like to confirm who some of these people are,  
21 if you are aware of who they are.

22 A. Where are you starting? With  
23 Jessie D'Souza?

24 206 Q. Yes.

25 MR. MOORE: Is it possible to -- I

1 don't know whether this document has row numbers,  
2 as it did -- as the document that Mr. Milne-Smith  
3 brought up, but if it does, if you can just shift  
4 it a little bit, if it has a row number to the  
5 left, it will be easier for us to look at specific  
6 entries.

7 MR. LUNG: So, Mr. Moore, it does. I  
8 am not going to go through each row. What I will  
9 do is go through some names, if that is possible.

10 MR. MOORE: All right. That is fine.

11 BY MR. LUNG:

12 207 Q. All right. So the first person I  
13 would ask is Dan Nohdomi.

14 A. CFO of Callidus at the time.

15 208 Q. And John Ho?

16 A. I believe he was treasurer at that  
17 time. He certainly was with Callidus. I think his  
18 title was treasurer or vice president. I can't  
19 recall what his title was at the time.

20 209 Q. And he was a finance person?

21 A. Yes, he was.

22 210 Q. Jon Levin, he is at Faskens,  
23 right?

24 A. Yes.

25 211 Q. And who did he act for? Did he

1 act for Callidus?

2 A. Callidus.

3 212 Q. And there is a number of people,  
4 and I believe they are people who are associated  
5 with the OSC. Jody Hancock? Is that a person  
6 from --

7 A. Yes.

8 213 Q. That is a person at the OSC?

9 A. Yes.

10 214 Q. Shelley Mogan?

11 A. I don't recall that name.

12 215 Q. Michael Tang?

13 A. Michael Tang is with the OSC.

14 216 Q. Michael Balter?

15 A. Michael?

16 217 Q. Balter.

17 A. I don't recall that name. Does it  
18 appear -- can you show me where it shows up in  
19 the --

20 218 Q. It does. There's a lot of names  
21 that show up.

22 A. Where does that name -- particular  
23 name show up?

24 MR. MOORE: Mr. Lung, if you want to  
25 send us, you know, a highlighted copy rather than

1 hunt for the name in this schedule, if you want to  
2 show -- you know, send me a highlighted copy where  
3 these names are, we can let you know if we can  
4 identify it with the benefit of that assistance.

5 MR. LUNG: Okay. Why don't I go  
6 through a few more names and then --

7 MR. MOORE: That is fine. It is just  
8 if we can't find one quickly, we can do it that  
9 way.

10 BY MR. LUNG:

11 219 Q. Mark Pinch, do you recognize that  
12 name?

13 A. Mark?

14 220 Q. Pinch.

15 A. I don't recall that name.

16 221 Q. Alex Fisher?

17 A. I don't recall that name.

18 222 Q. Jessie D'Souza?

19 A. I don't recall that name.

20 223 Q. If you can go back to your  
21 affidavit and go to paragraph 49.

22 A. Paragraph?

23 224 Q. 49. I just brought it up on the  
24 screen, and if I could paraphrase, in this  
25 paragraph you talk about how there were

1           communications between the Catalyst parties. I  
2           think you mean Callidus, is that right, in this  
3           context?

4                   A.    Is that one of the ones we  
5           corrected?

6                   MR. MOORE: No, it wasn't. I think  
7           that that should be corrected too, but I'll verify  
8           that.

9                   BY MR. LUNG:

10    225            Q.    I mean, it is not wrong. I mean,  
11           you know, Callidus would be one of the Catalyst  
12           parties.

13                   A.    Yes, Callidus is one of the  
14           Catalyst parties.

15                   MR. MOORE: That's right.

16                   BY MR. LUNG:

17    226            Q.    But the discussions here are  
18           between Callidus and the OSC involving Callidus's  
19           continuous disclosure; is that right?

20                   A.    Yes.

21    227            Q.    And when I read this, and I go to  
22           the end, you say -- and there was some back and  
23           forth, I guess, between Callidus and the OSC, and  
24           then you say:

25                                "As a result of extensive

1 discussions and correspondence with  
2 the OSC, Callidus agreed to  
3 discontinue such references in its  
4 MD&A disclosure."

5 And "such references" is referring to  
6 unrecognized yield enhancements, right?

7 A. Correct.

8 228 Q. So can you tell me when that issue  
9 was resolved?

10 A. Do you have my affidavit of  
11 November?

12 U/T MR. MOORE: I am not sure we have that  
13 handy. We'll let you know as best we can. We'll  
14 undertake to advise you.

15 BY MR. LUNG:

16 229 Q. It was resolved some time ago,  
17 isn't that fair, Mr. Riley?

18 A. Yes.

19 230 Q. And it is not an ongoing issue?

20 A. It is not an ongoing issue.

21 231 Q. And in fact, Callidus is not a  
22 public company at this point?

23 A. That is correct.

24 232 Q. There is no longer any ongoing  
25 communications with the OSC about routine

1 disclosure obligations?

2 A. It has no disclosure obligations.

3 233 Q. Exactly. So there is nothing  
4 ongoing that's of the nature described in paragraph  
5 49; is that fair?

6 A. That is correct.

7 234 Q. I am going to take you to  
8 paragraph 54, and in this paragraph, you say:

9 "The Moving Parties have also  
10 attempted to inquire as to whether  
11 Callidus was ever the subject of an  
12 Investigation Order under section 11  
13 of the Act." And you say:

14 "I understand that it is an  
15 offence to acknowledge whether or  
16 not a section 11 investigation ever  
17 existed or was ever conducted."

18 What is the basis of that  
19 understanding, Mr. Riley?

20 MR. MOORE: We'll send you the section  
21 of The Securities Act.

22 MR. LUNG: I am just asking Mr. Riley  
23 what his understanding is.

24 U/T MR. MOORE: Well, I'm giving the  
25 answer. It is a legal question. We'll send you

1 the section of The Securities Act.

2 BY MR. LUNG:

3 235 Q. All right. Mr. Riley, shortly  
4 before this cross-examination, I sent a document  
5 over to your counsel that is an OSC notice. Did  
6 you get a chance to look at that?

7 MR. MOORE: I am not sure what document  
8 you are referring to.

9 MR. LUNG: Oh, I sent you an email,  
10 David.

11 MR. MOORE: I am not saying you didn't,  
12 but it has been fairly --

13 MR. LUNG: No, and I appreciate that.

14 MR. MOORE: So just, you know -- I  
15 don't know that the witness has specifically looked  
16 at that particular document you sent me, and I  
17 don't remember off the top of my head exactly what  
18 it was. So if you have it handy, you can pull it  
19 up if you have questions about it.

20 MR. LUNG: I do. So this is an OSC  
21 Staff Notice. It is OSC Staff Notice 15-703, and  
22 it is Guidelines for Staff Disclosure of  
23 Investigations.

24 MR. MOORE: Yes.

25 MR. LUNG: And I wonder whether it

1 would make sense for -- it is not very long. It is  
2 actually quite short, if it would make sense for  
3 Mr. Riley to just take a minute or two to review  
4 it.

5 MR. MOORE: Well, that is fine. But if  
6 you intend to ask him questions about the  
7 interpretation or application of this notice and  
8 how it gets applied and what it means, I am going  
9 to be objecting to those questions. They are legal  
10 issues, as far as I am concerned.

11 BY MR. LUNG:

12 236 Q. I am just asking in the context of  
13 the statement that he made in paragraph 49, that's  
14 all -- or sorry, paragraph 54.

15 A. 54?

16 237 Q. Of his affidavit. So in the  
17 context of that, is it possible for -- I mean, I  
18 can give you an opportunity to read it on the  
19 screen, or if it is possible for you to read it, if  
20 you can get a copy in the room. Mr. Moore, how do  
21 you want to proceed?

22 MR. MOORE: Well, he is not going to  
23 answer questions about the interpretation or  
24 application of this document. I haven't read the  
25 whole thing. I don't have the whole thing scrolled

1 down in front of me, but, you know, this document  
2 does not refer to a section 11 investigation. The  
3 OSC conducts investigations in many different ways  
4 and means, depending on what you mean by an  
5 investigation. Corporate finance could make  
6 inquiries and some would say that is an  
7 investigation.

8 For that matter, enforcement can  
9 conduct an investigation, but it is not necessarily  
10 the subject of a section 11. Enforcement has the  
11 power, confirmed in a case I will send you, to  
12 conduct informal investigations which are not  
13 subject to the strictures of section 11 or 13 of  
14 The Securities Act.

15 So I am not sure this is of any great  
16 relevance to the paragraph you are alluding to.

17 BY MR. LUNG:

18 238 Q. I just want Mr. Riley to have an  
19 opportunity to review it and for me to be able to  
20 ask him questions about the document in the context  
21 of his statements in paragraph 54.

22 A. Could you scroll down, please?

23 MR. MOORE: You can scroll down, but I  
24 am just telling you in advance that if you are  
25 going to be asking Mr. Riley for in effect a legal

1 interpretation of this document and how it applies,  
2 I'll be objecting. So if you want to have him read  
3 it -- I am just trying to save some time, but if  
4 you want to have him read it and then put some  
5 questions on the record, you can.

6 THE DEPONENT: Could somebody scroll  
7 down, please?

8 BY MR. LUNG:

9 239 Q. Yes, I can.

10 A. [Witness reviews document.]

11 240 Q. Let me know when you want me to  
12 scroll up to the right side of the --

13 A. I was going to say, could you  
14 scroll up now, please.

15 [Witness reviews document.]

16 Okay. Is that the end of it? I assume  
17 that is the end of it.

18 241 Q. That is the end of it.

19 A. Okay.

20 242 Q. So having read this notice from  
21 the OSC, does that change your understanding of  
22 whether it is permitted to disclose the existence  
23 of a section 11 order?

24 MR. MOORE: No, it does not. It  
25 doesn't change our understanding, nor does it

1 change our position.

2 MR. LUNG: All right. Well, I would  
3 like to mark this document as an exhibit, if I  
4 could.

5 MR. MOORE: That is fine.

6 MR. LUNG: So Exhibit 2.

7 EXHIBIT NO. 2: OSC Staff Notice  
8 15-703, Guidelines For Staff  
9 Disclosure of Investigations.

10 MR. LUNG: Those are the questions that  
11 I have. Thank you.

12 MR. MILNE-SMITH: David, do you have  
13 any questions in re-examination?

14 MR. MOORE: No, I don't.

15  
16 -- Adjourned at 12:38 p.m.

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REPORTER'S CERTIFICATE

I, DEANA SANTEDICOLA, RPR, CRR,  
CSR, Certified Shorthand Reporter, certify:

That the foregoing proceedings were  
taken before me at the time and place therein set  
forth, at which time the witness was put under oath  
by me;

That the testimony of the witness  
and all objections made at the time of the  
examination were recorded stenographically by me  
and were thereafter transcribed;

That the foregoing is a true and  
correct transcript of my shorthand notes so taken.

Dated this 5th day of January, 2021.



---

NEESONS, A VERITEXT COMPANY

PER: DEANA SANTEDICOLA, RPR, CRR, CSR

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## **Board of Directors Meeting**

of Callidus Capital Corporation (the "Corporation") at the offices of The Catalyst Capital Group

Tuesday, 3/19/2019

1:00 - 3:00 PM ET

- 1. Appointment of Chairperson and Secretary of the meeting**
- 2. Review and approval of the minutes of the Board of Directors meetings held on November 7, 2018, January 10, 2019 and February 28, 2019**
  - Board Minutes (November 7, 2018) - Page 2*
  - Board Minutes (January 10, 2019) - Page 5*
  - Board Minutes (February 28, 2019) - Page 7*
- 3. Recommendation from the Audit and Risk Committee re: the 2018 F/S, MD&A, AIF and press release**
- 4. Approval of 2018 F/S, MD&A, AIF and press release**
- 5. CEO's report to the Board of Directors**
- 6. Such other business that may properly come before the meeting**
- 7. An in-camera meeting of the independent members of the Board**
- 8. Motion to terminate the meeting**

## CALLIDUS CAPITAL CORPORATION

**MINUTES** of a meeting of the Board of Directors of **CALLIDUS CAPITAL CORPORATION** (the “**Corporation**”) held at the offices of The Catalyst Capital Group Inc. on November 7, 2018.

### PRESENT:

Brad Ashley  
Tibor Donath  
Jim Riley  
David Sutin

Being a quorum of the Directors

### PRESENT BY INVITATION

Patrick Dalton  
John Ho  
Jon Levin (Fasken Martineau DuMoulin LLP)  
Dan Nohdomi  
David Reese

### CONSTITUTION OF MEETING

With the consent of the meeting, David Sutin acted as Chairman of the meeting and Jon Levin acted as Secretary.

The Chairman stated that notice of the meeting had been provided to each of the directors in accordance with the by-laws of the Corporation but that it was his understanding that Mr. Glassman would not be joining the meeting for health reasons. The Chairman therefore declared the meeting to be regularly constituted for the transaction of business.

### APPROVAL OF MINUTES OF PRIOR MEETING

The Board reviewed the draft minutes of the meeting of the Board of Directors held on August 9, 2018. Following review, and UPON MOTION duly made, seconded and carried unanimously, IT WAS RESOLVED that the minutes be approved.

### RECOMMENDATION FROM THE AUDIT AND RISK COMMITTEE

Tibor Donath advised that the draft Q3 financial statements and management’s discussion and analysis had been reviewed by the Audit Committee but that the Audit Committee determined to defer its recommendation pending review of certain changes being made to the documents as discussed in the Audit Committee meeting.

Mr. Nohdomi reviewed the draft Q3 financial statements and MD&A discussion with the Board and described certain of the changes that were being made to such documents in light of the discussion at the Audit Committee.

The Directors determined to defer the approval of the Q3 financial statements and the MD&A until such time as they have received the recommendation from the Audit Committee and had reviewed the revised versions of the Q3 financial statements and the MD&A.

#### ADJOURNMENT

The meeting was then adjourned until November 12, 2018 at 2:00 p.m.

#### RESUMPTION OF MEETING

The meeting resumed on November 12, 2018 at 2:00 p.m. with the following attendees:

#### PRESENT:

Brad Ashley  
Tibor Donath  
Jim Riley  
David Sutin

Being a quorum of the Directors

#### PRESENT BY INVITATION

Patrick Dalton  
John Ho  
Jon Levin (Fasken Martineau DuMoulin LLP)  
Dan Nohdomi  
David Reese

#### RECOMMENDATION FOR APPROVAL OF INTERIM FINANCIAL STATEMENTS AND MANAGEMENT DISCUSSION & ANALYSIS

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Mr. Donath on behalf of the Audit Committee advised that the Audit Committee had reviewed the Q3 financial statements and management discussion and analysis, as revised, including having regard to loan loss provisions, the loan book generally and other relevant matters and were prepared to recommend to the Board approval of the Q3 financial statements and MD&A subject to prior approval of the Q3 press release.

#### APPROVAL OF FINANCIAL STATEMENTS AND MANAGEMENT DISCUSSION & ANALYSIS

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UPON MOTION duly made, seconded and carried unanimously IT WAS RESOLVED to approve the Q3 financial statements and MD&A, subject to prior approval by the Board of the

contents of the press release proposed to be issued by the Corporation in relation to such financial statements and MD&A, with such approval to be given by e-mail.

Mr. Reese advised that the form of press release was being worked on and a draft would be circulated by November 13, 2018.

#### BUSINESS UPDATE

Mr. Reese provided the Board with an update regarding the status of the proposed sale of certain assets pertaining to the commodity division of C&C Resources Inc. (“C&C”). He advised that it was anticipated that an agreement of purchase and sale would be finalized and signed during the following week and that closing thereunder would likely not occur until late in the 4<sup>th</sup> quarter of 2018 or early in 2019. He advised that he expected that the only significant conditions precedent to closing would be regulatory approval and the absence of any material adverse change, but he did note that other conditions were likely to be included in the agreement of purchase and sale.

#### TERMINATION

There being no further business, the meeting terminated.

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Chairman

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Secretary

**MINUTES** of a meeting of the board of directors of **CALLIDUS CAPITAL CORPORATION** (the “**Corporation**”) held by teleconference on January 10, 2019

PRESENT:

Brad Ashley  
Tibor Donath  
Jim Riley  
David Sutin

ABSENT

Newton Glassman

CONSTITUTION OF MEETING

With the consent of the meeting, Tibor Donath acted as chairman of the meeting and David Sutin acted as Secretary. The chairman of the meeting advised the directors that Mr. Glassman was unable to attend for health reasons and had advised the chairman that he would have abstained from voting on the subject matter of the resolution in any event due to his interest therein.

The chairman of the meeting stated that notice of the meeting had been provided to each of the directors in accordance with the by-laws of the Corporation. The chairman therefore declared the meeting to be regularly constituted for the transaction of business.

SPECIAL COMMITTEE FEES

Mr. Donath advised the directors that the purpose of the meeting was to consider a resolution relating to the fees payable to the Special Committee of the Board of Directors (the “**Special Committee**”). Mr. Riley declares his interest in the subject matter of the meeting and withdrew from the meeting.

Following review, and upon motion duly made, seconded and carried unanimously, the following resolution was unanimously approved:

WHEREAS effective December 2016, the Special Committee of the Board of Directors and related fees for the members of the Special Committee were established;

AND WHEREAS having regard to: the receipt of the acquisition proposal of Braslyn Inc. by letter dated November 28, 2018; the extent of time and availability required of the members of the Special Committee to consider the proposal, instruct advisers, coordinate with management and the Board of Directors of the Corporation, respond to Braslyn Inc. and negotiate the proposed acquisition; and the extent of the implications to the Corporation and its shareholders and the related risk assumed by the members of the Committee, it is considered appropriate to increase the fees of the Special Committee;

AND WHEREAS Newton Glassman and Jim Riley, as members of management of Catalyst Capital Group Inc. (“CCGI”), have declared their conflict as a result of CCGI’s determination to support of the acquisition proposal of Braslyn Inc. as a result of which the common shares of the Corporation held by the funds under its management will be retained;

**NOW THEREFORE IT BE RESOLVED THAT**, upon motion duly made by David Sutin and seconded by Bradley Ashley, and unanimously approved (with Mr. Riley abstaining and Mr. Glassman not present):

1. The fees of the members of the Special Committee be increased from \$15,000 per month to \$25,000 per month for each member of the Special Committee and to \$37,500 per month for the Chair of the Special Committee, effective for the period commencing December 1, 2018.
2. Any officer of the Corporation or director shall be and is hereby authorized and directed, for and on behalf of the Corporation, to take all such further action and to prepare, execute, acknowledge, file, deliver, and record all such further documents and instruments by and on behalf of the Corporation, and in its name, or otherwise, as in the judgment of any such officer or director shall be necessary, appropriate, or advisable in order to fully carry out the intent and to accomplish the execution of the purposes of the foregoing resolutions.

Following approval of the resolution, Mr. Riley rejoined the meeting.

#### TERMINATION

There being no further business, the meeting terminated.

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Chairman

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Secretary

**CALLIDUS CAPITAL CORPORATION****BOARD OF DIRECTORS MEETING**

**MINUTES** of a Meeting of the Board of Directors of **CALLIDUS CAPITAL CORPORATION** (the “**Corporation**”) held at the offices of The Catalyst Capital Group Inc., Suite 4700, 181 Bay Street, Toronto, Ontario M5J 2T3 at 8:30 a.m. on February 28, 2019.

**PRESENT:**

Brad Ashley  
Tibor Donath  
Jim Riley  
David Sutin

Being quorum of the members of the Board of Directors.

**PRESENT BY INVITATION:**

Patrick Dalton, Interim Chief Executive Officer of Callidus Capital Corporation  
Rocco DiPucchio, The Catalyst Capital Group Inc.  
Rob Fedrock, The Catalyst Capital Group Inc.  
Jon Levin, Fasken Martineau DuMoulin LLP  
David Reese, President, Callidus Capital Corporation

**Constitution of the Meeting**

With the consent of the meeting, Tibor Donath, the Lead Director, acted as Chairman of the meeting and Jon Levin acted as Secretary.

The Chairman stated that notice of the meeting had been provided to each of the directors in accordance with the by-laws of the Corporation and that a quorum of the directors was present and consenting to the transaction of business. Accordingly, the Chairman declared the meeting to be regularly constituted for the transaction of business.

The Chairman indicated that he had hoped that Mr. Glassman would be able to attend the meeting and he requested Mr. DiPucchio to reach out to Mr. Glassman and see if he would be available to call into the meeting. Mr. DiPucchio did so and reported that he was unable to receive any response from Mr. Glassman.

**PRESENTATION BY INTERIM CHIEF EXECUTIVE OFFICER**

Mr. Dalton directed the meeting’s attention to a strategic review and remediation plan previously distributed by him together with a supplement to that plan, also previously distributed by him. Mr. Dalton proceeded to review those documents. Mr. Dalton noted the Corporation had suffered through three difficult years and that his objective was to develop and implement a remediation plan that would stabilize the Corporation’s platform and monetize non-core assets. He advised that it was his view that the Corporation was fortunate to have the benefit of a good

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team of employees who, in his view, were capable of implementing the remediation plan and improving the Corporation's performance.

Mr. Dalton stated that it was desirable for the Corporation to simplify its business and return to its original business model of being an asset based lender rather than making loans where a significant portion of the collateral was the enterprise value of the borrower.

Mr. Dalton proceeded to review the cash position of the Corporation. He advised that the Corporation required a \$20 million working capital float at all times and that, based on anticipated cash inflows and outflows, he anticipated that the balance of the Corporation's cash would be spent by the end of March 2019. He also advised that he anticipated that, unless a remediation plan is implemented along the lines that he was proposing, the book value per share would decline to a negative amount by the end of the second quarter of fiscal 2019.

A director raised the question of whether it would be possible to convert the existing Catalyst bridge loan to equity in the capital of the Corporation. Mr. Riley responded that such a conversion would be difficult to achieve given the concentration rules applicable to the various Catalyst investment funds.

Mr. Dalton and the board proceeded to review and discuss the remediation plan and supplemental information in detail. Mr. Dalton noted that, while the Corporation had signed term sheets for \$280 million of new asset-based loans, it lacked the requisite financial resources to be able to fund those loans. He commented that, but for the recent sale of assets by C&C, the Corporation would have exhausted all of its cash resources.

A director noted that C&C produced positive EBITDA and that the Corporation no longer had the benefit of that EBITDA given the recent sale. It was also noted that the consolidated results of the Corporation would reflect that loss of EBITDA.

Mr. Dalton responded agreed and stated that, unless the Corporation could show a portfolio of performing loans, it would be impossible for the Corporation to raise third party funding. He expressed the view that it would take approximately two years for the Corporation to be able to fix its loan portfolio and move itself into a position where it would be able to access third party funding.

Mr. Reese commented that a number of lenders, who had previously expressed an interest in financing the Corporation, had walked away, at least in part due to the extensive negative publicity which the Corporation had suffered in the media. He stated that the "noise" around the Corporation's name was frightening to lenders.

Mr. Dalton reported that, based upon his discussions with representatives of KPMG LLP, that firm would not be prepared to sign an audit opinion regarding the Corporation's financial statements for 2018 without a going concern note unless the Corporation could demonstrate to the satisfaction of KPMG, among other things, a viable business plan, the requisite shareholder support, a recapitalization of the balance sheet possibly including the equitization of shareholder loans or their repayment, and ongoing financial viability including appropriate cash resources.

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Mr. Dalton proceeded to discuss what he considered to be the qualities of a successful credit manager as well as a preliminary remediation plan for the Corporation and his recommendations in that regard. He noted that completing the privatization of the Corporation and recapitalizing its balance sheet were fundamental steps in any remediation plan.

Mr. Reese commented that the Corporation's auditors would need to see demonstrated liquidity for the Corporation and that a viable and plausible business plan would have to show how the Corporation would be able to turn itself around and repay its obligations.

Discussion ensued as to the extent to which a commitment from Braslyn to privatization together with a business plan that demonstrates sufficient cash resources would be sufficient to meet KPMG LLP's requirements. Mr. Reese commented that, if the business plan reflects a transaction with Braslyn that is viable and plausible and if it is possible to demonstrate the required liquidity, it was his view that KPMG LLP would be satisfied.

In a response to a question from a director as to whether, absent a Braslyn privatization, there was any plan to secure a short-term funding in order to maintain operations, Mr. Dalton stated that there was no such plan and that, if any funding could be obtained, it would be highly dilutive to earnings.

Mr. Reese indicated that an immediate priority for the Corporation was to pay the participation funds that the Corporation was holding on behalf of Catalyst Fund V to that Fund. He advised that one means by which such payment might be achieved would be to effect a drawdown under the Catalyst guarantee of the maximum amount available as well as a drawdown from Fund V under the participation agreement of the maximum amount available. He expressed the view that the Corporation would likely then have sufficient funds on hand to repay the participation funds owed to Fund V, which he estimated to be in the amount of \$41 million. He advised that thereupon, he estimated that the Corporation would still retain approximately \$20 million in cash.

Mr. Dalton discussed what the potential value of the Corporation might be if it was able to establish a \$1 billion performing loan portfolio that was yielding a return in a range of 10% per annum and with a debt/equity ratio in the range of 50/50. In such circumstances, he estimated that the Corporation would have a value of \$125 million. He commented that he thought such performance could be achieved within two years with the requisite recapitalization and shareholder support

### **CREDIT COMMITTEE**

Mr. Dalton reported that KPMG LLP had advised that its ability to provide a clean audit opinion would, in part, depend upon addressing a governance issue, namely the requirement that all decisions made by the Credit Committee must be unanimous.

It was noted that the Credit Committee was currently composed of Newton Glassman, Jim Riley, Jay Rogers, and David Reese while Jim Hall and Rob Fedrock attend his observers. Mr. Dalton stated that he had understood that he was to be appointed to that Committee, although he also understood that no formal appointment had as yet been made in that regard. Mr. Dalton recommended that the Credit Committee should be composed of Mr. Glassman, Mr. Riley, Mr.

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Reese and himself and that the charter of the Credit Committee should be amended to provide the decisions would be made by majority.

The question was raised as to whether the powers of the Credit Committee should be vested in the Board in lieu of changing the amenity requirement. However, a director responded that the Board lacked the requisite knowledge to be able to assume the role of the Credit Committee.

There was general consensus that the Credit Committee should be constituted to consist of Newton Glassman, Patrick Dalton, David Reese, Jim Hall and Jim Riley, that Mr. Fedrock should have the right to attend Credit Committee meetings as an observer so long as The Catalyst Capital Group Inc. wished him to do so and that decisions on the Credit Committee should henceforth be made by majority vote. However, the Board determined not to make any formal decision in that regard pending receipt of a detailed and formal governance proposal from management.

### **BONUS FOR BLUBERI MANAGEMENT AND 2019 BLUBERI BUSINESS PLAN**

Mr. Dalton advised me that there was a significant risk that key members of the Bluberi Management team would resign. He advised that the reason why their resignations were under consideration was that they had earned a 2018 Performance Bonus which had yet to be paid to them notwithstanding that, other than for a small portion of the 2018 Bonus in the order of \$45,000, the bonus was clearly earned. As well, Mr. Dalton said that the Bluberi management team was troubled by the failure of the Board to approve the 2019 Bluberi business plan which had previously been distributed to the Board. AS regards that business plan, Mr. Dalton noted that it supported a \$135 million valuation for Bluberi.

Mr. Dalton commented that, unlike a discretionary bonus, there was a contractual entitlement to the funds in question other than \$45,000. However, he commented, that, as regards to that latter amount, the reason why that amount was not earned, likely related to the Corporation not co-operating in the pursuit of licencing rather than non-performance by the management team.

Mr. Dalton commented that, aside from contractual entitlements, in the absence of any real reason not to pay the bonus and in the absence of approval of the Bluberi business plan, the potential loss of key employees for Bluberi would cause significant harm to that company. It was also noted that Bluberi employees who depended upon their bonuses to pay registered retirement savings plan contributions in respect of 2018 would shortly be out of time to do so. Mr. Dalton advised that it was his recommendation, that of Mr. Reese and that of Mr. Hall that the full amount of the bonus should be paid and that the business plan be approved. Mr. Riley and Mr. Fedrock confirmed that they shared that view. It was noted that substantial goodwill could be treated by paying the bonus in full even if the last \$45,000 of it had not actually been earned. Considerable discussion then ensued.

UPON MOTION duly made seconded and carried unanimously IT WAS RESOLVED that:

1. the full amount of the bonuses payable to the Bluberi management team inclusive of the \$45,000 unearned portion of those bonuses be paid to them immediately; and

- 5 -

2. the Bluberi 2019 business plan be approved in the form previously distributed to the Board.

Mr. Dalton and Reese then withdrew from the meeting.

### **FINANCIAL DISCUSSION**

The Board then continued to discuss at length the financial position of the Corporation, the potential of a Braslyn led privatization, liquidity issues effecting the Corporation, the potential that Braslyn might be a source of liquidity for the Corporation and the desirability that all independent directors receive indemnities from the Catalyst Capital Group Inc. [REDACTED]

### **TERMINATION**

There being no further business, the meeting then terminated.

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**Chairman**

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**Secretary**

**1.1.3 OSC Staff Notice 15-703, Guidelines for Staff Disclosure of Investigations****ONTARIO SECURITIES COMMISSION STAFF NOTICE  
15-703****GUIDELINES FOR STAFF DISCLOSURE  
OF INVESTIGATIONS****1. Purpose**

The purpose of this Staff Notice is to inform the public of the guidelines used to determine whether investigations ought to be disclosed by OSC Staff.

**2. Background**

In the ordinary course, OSC Staff do not publicly disclose the existence of an investigation or details regarding an investigation. Some investigations may be compromised if disclosure is made before the Enforcement Branch has an opportunity to carry out its work. Confidentiality of the investigation minimizes this risk. In addition, confidentiality minimizes potential harm to the reputations of those to whom the investigation relates if no proceedings are taken.

However, public confirmation of the existence or nature of an investigation will provide investors with information that may be useful in assessing the risks of certain investments. Such confirmation may also serve to foster confidence in the capital markets by affirming that enforcement action is being taken in relation to potential breaches of the *Securities Act* or conduct contrary to the public interest. Therefore, there are cases where the value in disclosing the existence of an investigation will outweigh any risks associated with disclosure.

**3. Definitions**

Among the various branches at the OSC, a variety of reviews and investigations take place. For example, reviews are conducted from a compliance perspective and from a continuous disclosure perspective. This Guideline does not apply to such reviews.

For the purpose of this Guideline, "investigations" to be disclosed shall refer to investigations conducted by the Enforcement Branch. When Enforcement Staff are consulted or participate in reviews by other branches, this Guideline shall not apply until such time as the matter has reached a stage where Enforcement Staff have primary carriage of the matter. All matters in Enforcement, including those which start at the Case Assessment or Surveillance units, are considered to be investigations, whether or not a section 11 Investigation Order has been made.

#### 4. Disclosure Obligations

Nothing in this Guideline should be construed to restrict or minimize an issuer's obligation to disclose information in accordance with securities law or relevant exchange requirements.

#### 5. General Rule

In most circumstances, there will be no public disclosure by OSC Staff of information about an on-going or a closed investigation. This approach is based primarily on the following factors:

- Potential prejudice to the investigation;
- Potential prejudice to those who are under investigation;
- Confidentiality restrictions imposed by section 16 of the Securities Act.

#### 6. Exceptions

In certain circumstances, OSC Staff may notify the market participant that the existence and nature of an investigation by the OSC ought to be disclosed. Subject to exceptional circumstances as referenced in paragraph 7, the market participant will be given an opportunity to disclose the existence and nature of the investigation, failing which OSC Staff may choose to do so. The circumstances include:

- (i) Investor protection outweighs factors favouring non-disclosure. This may occur where there appears to be credible evidence, for example, of fraudulent behaviour such as an ongoing scam, and where non-disclosure would result in losses to investors. Investor protection may also be engaged where information gathered about a market participant during an investigation reaches a level where lack of disclosure of the investigation may be prejudicial to investors.
- (ii) Where criminal law authorities are investigating a market participant for possible criminal misconduct at the same time as a related OSC investigation, disclosure of the OSC investigation may be appropriate to assist investors in making informed investment decisions.
- (iii) The investigation relates to conduct or issues which are substantially in the public domain and there are credible allegations which engage the enforcement jurisdiction of the OSC. Confidence in the capital markets may be

harmful by failure to confirm that the matter is under regulatory consideration.

- (iv) Where it has been disclosed that another regulator or law enforcement agency has an investigation related to the market participant, then an OSC investigation on the same or similar issues may also be disclosed.
- (v) In addition to the above, where a market participant has disclosed an OSC investigation, OSC Staff may confirm the investigation. Secondly, where a market participant has disclosed the fact and/or nature of an investigation by the OSC and what has been disclosed is misleading or inaccurate, OSC Staff may disclose accurate information about the investigation. Similarly, if the market participant has publicly denied the existence of an investigation, disclosure by OSC Staff may be appropriate to correct the public record.

#### 7. Opportunity for the Market Participant to Disclose

Absent exceptional circumstances, the market participant will be given an opportunity to make an announcement about the investigation before OSC Staff take any steps to disclose the investigation.

#### 8. Application of s. 16 of the Act

Disclosure must not be made which will contravene the provisions of section 16 of the Act. Section 16 provides as follows:

##### Non-disclosure

16. (1) Except in accordance with section 17, no person or company shall disclose at any time, except to his, her or its counsel,
  - (a) the nature or content of an order under section 11 or 12; or
  - (b) the name of any person examined or sought to be examined under section 13, any testimony given under section 13, any information obtained under section 13, the nature or content of any questions asked under section 13, the nature or content of any demands for the production of any document or other thing under section 13, or the fact that any document or other thing was produced under section 13. 1994, c. 11, s. 358.

In most circumstances, the fact of an order under section 11 or 12 does not prohibit an issuer or OSC Staff from disclosing the existence of an investigation.

**9. Notice if No Proceedings Are Taken**

At the completion of an investigation which has been publicly disclosed, if no proceedings are to be taken, OSC Staff will notify the market participant and other relevant parties of this fact.

# Catalyst v West Face et al.

Patrick Dalton  
on Tuesday, January 5, 2021



77 King Street West, Suite 2020  
Toronto, Ontario M5K 1A1

[neesonsreporting.com](http://neesonsreporting.com) | 416.413.7755

1 Court File No. CV-17-587463-00CL

2 ONTARIO  
3 SUPERIOR COURT OF JUSTICE  
4 COMMERCIAL LIST

5 B E T W E E N:

6 THE CATALYST CAPITAL GROUP INC. and CALLIDUS  
7 CAPITAL CORPORATION  
8 Plaintiff

9 - and -

10 WEST FACE CAPITAL INC., GREGORY BOLAND,  
11 M5V ADVISORS INC. c.o.b. ANSON GROUP CANADA,  
12 ADMIRALTY ADVISORS LLC, FRIGATE VENTURES LP,  
13 ANSON INVESTMENTS LP, ANSON CAPITAL LP,  
14 ANSON INVESTMENTS MASTER FUND LP, AIMF GP,  
15 ANSON CATALYST MASTER FUND LP, ACF GP, MOEZ KASSAM,  
16 ADAM SPEARS, SUNNY PURI, CLARITYSPRING INC.,  
17 NATHAN ANDERSON, BRUCE LANGSTAFF, ROB COPELAND,  
18 KEVIN BAUMANN, JEFFREY MCFARLANE, DARRYL LEVITT,  
19 RICHARD MOLYNEUX, GERALD DUHAMEL, GEORGE WESLEY  
20 VOORHEIS, BRUCE LIVESEY and JOHN DOES #4-10  
21 Defendants

22 A N D B E T W E E N:

23 WEST FACE CAPITAL INC. and GREGORY BOLAND  
24 Plaintiffs by Counterclaim

25 - and -

THE CATALYST CAPITAL GROUP INC., CALLIDUS CAPITAL  
CORPORATION, NEWTON GLASSMAN, GABRIEL DE ALBA,  
JAMES RILEY, VIRGINIA JAMIESON, EMMANUEL  
ROSEN, B.C. STRATEGY LTD. d/b/a BLACK CUBE,  
B.C. STRATEGY UK LTD. d/b/a BLACK CUBE  
and INVOP LTD. d/b/a PSY GROUP  
Defendants to the Counterclaim

-----  
--- This is Cross-Examination of PATRICK DALTON,  
on his affidavit sworn January 4, 2020, taken via  
Zoom Videoconferencing with all participants  
attending remotely, on the 5th day of January,  
2021.  
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1           A P P E A R A N C E S:  
2           DAVID C. MOORE, Esq.,           for the Plaintiffs,  
3           & MARCO ROMEO, Esq.,           (Defendants to the  
4           & MATTHEW KARABUS, Esq.,       Counterclaim), The  
5    Catalyst Capital Group  
6    Inc. and Callidus  
7    Capital Corporation  
8    and the Defendants to  
9    the Counterclaim,  
10    Gariel De Alba, James  
11    Riley and Newton  
12    Glassman

13  
14           MATTHEW MILNE-SMITH, Esq.,   for the Defendants  
15           & ANDREW CARLSON, Esq.,       (Plaintiffs by  
16           & MAURA O'SULLIVAN, Esq.,   Counterclaim), West  
17    Face Capital Inc. and  
18    Gregory Boland

19  
20           LUCAS E. LUNG, Esq.,           for the Defendants,  
21    ClaritySpring Inc. and  
22    Nathan Anderson

23  
24           DARRYL LEVITT                   Self-Represented  
25

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KEVIN BAUMANN Self-Represented

Also Present: Greg Boland, CEO, West Face Capital  
Philip Panet, General Counsel, West  
Face Capital

REPORTED BY: Deana Santedicola, RPR, CRR, CSR

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I N D E X

WITNESS: PATRICK DALTON

PAGES

CROSS-EXAMINATION BY MR. MILNE-SMITH..... 6 - 37

\*\*The following list of undertakings, advisements  
and refusals is meant as a guide only for the  
assistance of counsel and no other purpose\*\*

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by U/T  
and appear on the following pages: 29:22

INDEX OF ADVISEMENTS

The questions/requests taken under advisement are  
noted by U/A and appear on the following pages:  
13:7, 21:24, 27:13

INDEX OF REFUSALS

The questions/requests refused are noted by R/F and  
appear on the following pages: None

INDEX OF EXHIBITS

1  
2  
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NO.	DESCRIPTION	PAGE/LINE NO.
1:	Callidus Board meeting minutes,	
	Catalyst production D00000645.....	29:9

1 -- Upon commencing at 1:00 p.m.

2

3 PATRICK DALTON: AFFIRMED.

4 CROSS-EXAMINATION BY MR. MILNE-SMITH:

5 1 Q. So, Mr. Dalton, thank you for  
6 joining us this afternoon. You are here in  
7 connection with an affidavit that you swore in this  
8 proceeding which was dated January the 4th;  
9 correct?

10 A. Yes.

11 2 Q. And the reporter briefly mentioned  
12 this to you, but there are certain challenges  
13 associated with doing this by way of Zoom, so I  
14 will do my very best to wait until you have  
15 completed your answers and try not to interrupt you  
16 and would obviously ask that you do the same with  
17 my questions for the purposes of the reporter  
18 keeping an accurate transcript.

19 I recognize that at some point through  
20 inadvertence one or more of us will infringe on  
21 that guideline, but we'll all do our best.

22 If at any point you don't understand a  
23 question that I am asking, please do clarify it,  
24 okay?

25 A. Yes.

1           3           Q.    And if you answer, I am going to  
2           presume that means that you understood the  
3           question; is that fair?

4           A.    That is fair.

5           4           Q.    Okay.  Mr. Dalton, you are the  
6           Chief Executive Officer of FrontWell Capital  
7           Partners; is that right?

8           A.    That's correct.

9           5           Q.    And you have served in that role  
10          from March of 2020 to present; is that right?

11          A.    Yes, because -- yeah, I think that  
12          is when we founded FrontWell, yes.

13          6           Q.    Okay.  And with that, you have  
14          anticipated my next question, so thank you.  Just  
15          so we have the basics straight, there has been some  
16          controversy about this in prior proceedings, and I  
17          want to understand it fully, am I correct in  
18          understanding that FrontWell is owned by the same  
19          entities that owned Callidus Capital following the  
20          going-private transaction by way of Plan of  
21          Arrangement in the fall of 2019?

22          A.    Yeah, they are the same  
23          shareholders.

24          7           Q.    Okay.  So that would be Braslyn  
25          Limited, B-r-a-s-l-y-n, certain Catalyst Funds,

1 Mr. Riley, and FigCorp., a holding company owned by  
2 Newton Glassman; is that right?

3 A. I believe that is correct, yes.

4 8 Q. And does Catalyst still exist as a  
5 separate entity?

6 A. Yes, it does.

7 9 Q. And does Callidus still carry on  
8 business?

9 A. Only in the monetization and to  
10 maximize value for the legacy investment positions.

11 10 Q. Okay. So did FrontWell  
12 essentially take over the business of Callidus  
13 effectively?

14 A. No. No.

15 11 Q. So where did the assets and  
16 liabilities of Callidus go?

17 A. They are still at Callidus.  
18 Callidus still remains a company. It is not doing  
19 new loans, but it is still a company that is  
20 monetizing and maximizing value for the remaining  
21 assets of Callidus.

22 12 Q. Okay. So when you talk about  
23 monetizing, so for example, if I look at Callidus's  
24 MD&A for the year ended December 31, 2018, I see  
25 reference to certain companies that Callidus had

1           acquired as a result of enforcing on loans,  
2           including Bluberi, Altair, Wabash, which is an  
3           aluminum castings manufacturer, an injection  
4           moldings company called Otto, Midwest Asphalt, and  
5           C&C Lumber Products.

6                        So all of those companies, to the  
7           extent they haven't already been monetized, would  
8           still be in Callidus; is that right?

9                        A.    Yes, there have been a number that  
10          have been monetized and wound down, but they all  
11          remain back with Callidus and nothing in FrontWell.

12        13                Q.    Okay.  So FrontWell generated --  
13          its loan book would consist of new loans it  
14          originated starting in March 2020, nothing it  
15          acquired from Callidus?

16                      A.    That is correct.  We have yet to  
17          book our first loan, but we are -- you know, we  
18          were launched publicly formally on September 21st  
19          through a marketing launch, and we are actively  
20          pursuing new loans.

21        14                Q.    Okay.  Okay.  I understand.  
22          Sorry, that hadn't been clear to me in the past, so  
23          I'm glad you were able to clear that up for us.

24                      A.    Great.

25        15                Q.    Is your involvement in Callidus --

1 and sorry, to be clear, you have no present role  
2 with Callidus; is that right?

3 A. No, I do. I'm still the CEO of  
4 Callidus as well as the CEO of FrontWell.

5 16 Q. Okay.

6 A. And my role there is I have a  
7 number of consultants that I have hired to help me  
8 wind down those portfolio companies and get the  
9 best monetization and maximize value. So I have  
10 some consultants working with me on that. I'm  
11 spending 90 percent of my time on FrontWell and  
12 overseeing the work that some senior executives are  
13 doing for me -- senior consultants.

14 17 Q. So Callidus is being run  
15 effectively by consultants who are managing the  
16 legacy business?

17 A. No, it is being run by me, but I  
18 have consultants who are working on each of those  
19 individual files.

20 18 Q. Okay.

21 A. To maximize recovery and value.

22 19 Q. Okay. And do I understand  
23 correctly that you historically have a relationship  
24 with the principal of Braslyn, Joe Lewis, which is  
25 why you are involved in both companies?

1 A. Not at all, no.

2 20 Q. Okay. Mr. Dalton, you have an MBA  
3 from Columbia University, is that right?

4 A. That's correct.

5 21 Q. And you don't have a law degree,  
6 and you are not a lawyer, right?

7 A. That is correct too also.

8 22 Q. Okay. Your experience is in  
9 finance and alternative credit, fair?

10 A. Yes.

11 23 Q. Okay. And you have specific...  
12 [inaudible]

13 [Court Reporter intervenes for  
14 clarification.]

15 I understand from your LinkedIn profile  
16 that you have experience as an independent senior  
17 advisor to private credit firms going through  
18 transitions or ownership changes?

19 A. Correct.

20 24 Q. And that includes positions at  
21 Alcentra Capital?

22 A. I was advising the independent  
23 directors of Alcentra Capital Corp.

24 25 Q. Okay. And that is  
25 A-l-c-e-n-t-r-a?

1 A. Correct.

2 26 Q. At Fifth Street Finance  
3 Corporation, you were recruited by an activist  
4 shareholder to do a strategic review and business  
5 plan; correct?

6 A. That is correct.

7 27 Q. Okay. And that was done for the  
8 Board of Fifth Street, not for counsel?

9 A. That was done for -- was requested  
10 by the Board and counsel was present.

11 28 Q. Okay. But you understand the  
12 distinction between being retained by counsel and  
13 being retained by the Board who also have counsel  
14 advising them? You understand that distinction?

15 A. I do. And I know that I was  
16 retained by the compliance officer for Fifth  
17 Street.

18 29 Q. Okay. And at Alcentra, you were  
19 retained, as I understand it, by the independent  
20 directors of the Board?

21 A. That's correct.

22 30 Q. And at Callidus, were you retained  
23 by the independent directors, by the Board as a  
24 whole, or by some other subcommittee of the Board?

25 A. I believe it was the Board as a

1 whole.

2 31 Q. Okay. And I asked this during the  
3 examination of Mr. Riley, and I will just put the  
4 same question on the record which Mr. Moore will  
5 handle. Mr. Moore, I would like to see the terms  
6 of any engagement of Mr. Dalton.

7 U/A MR. MOORE: I think we took that under  
8 advisement, so the same will apply.

9 BY MR. MILNE-SMITH:

10 32 Q. Yes. Now, Mr. Dalton, I don't  
11 want you to tell me about the discussions I'm about  
12 to refer to.

13 A. Uhm-hmm.

14 33 Q. But I take it that in preparing  
15 for this examination you obviously would have  
16 spoken to Mr. Moore or some other of Callidus's  
17 outside counsel; correct?

18 A. Correct.

19 34 Q. And can I also take it that you  
20 did not have any conversations in preparation for  
21 this examination with Mr. Riley or Mr. Sutin, David  
22 Sutin?

23 A. That is correct, I did not.

24 35 Q. Okay. Mr. Dalton, I referred  
25 earlier to your LinkedIn profile, and I would just

1           like to call that up. This is Exhibit 1 to the  
2           affidavit of Greg Boland that has been sworn in  
3           this matter, and I am just going to share my screen  
4           with you here.

5                           A.    Okay.

6       36                   Q.    So just let me know when that has  
7           come up.

8                           A.    I see a screen, but it is a Maura  
9           O'Sullivan signature.

10      37                   Q.    Okay. Well, hopefully it will  
11           come up in a moment. Right now it says I am screen  
12           sharing, and it should --

13                           A.    The screen sharing -- oh, okay.  
14           There it is. Yes.

15      38                   Q.    You have got the LinkedIn profile?

16                           A.    I do.

17      39                   Q.    So you are obviously familiar with  
18           this. You prepared this yourself. It wasn't  
19           somebody else who did it for you?

20                           A.    I did it, and I had our press --  
21           our public relations firm review it.

22      40                   Q.    Okay. But you are familiar with  
23           it?

24                           A.    Yes.

25      41                   Q.    Okay. So I am just going to

1 scroll through this quickly, and you can confirm  
2 for me that this is an accurate statement of your  
3 relevant experience. There is an "About" section  
4 here. You will see I have highlighted where it  
5 talks about you being independent senior advisor?

6 A. Yes.

7 42 Q. And we have got your experience at  
8 FrontWell, at Callidus, Alcentra, Fifth Street, all  
9 on the next page, page 3 of the profile, and then  
10 some other historical things on page 4, and it has  
11 got your education there. So you have seen all  
12 that, and it has refreshed your recollection about  
13 your LinkedIn profile?

14 A. Yeah, yes.

15 43 Q. Okay. So having done that, you  
16 can confirm that this is an accurate statement of  
17 your experience?

18 A. I believe so.

19 44 Q. Okay. To the best of your  
20 knowledge?

21 A. To the best of my knowledge, yes.

22 45 Q. And with respect to Callidus, can  
23 you confirm, because I wasn't clear on this, it  
24 describes you as being a consultant and interim  
25 CEO. Did you hold both of those positions...

1 [inaudible]

2 A. I lost you, Matthew.

3 46 Q. I'm sorry. I'll try again.

4 MR. MOORE: We can't hear you, Matthew.  
5 Maybe we can hear you now.

6 MR. MILNE-SMITH: Can you hear me now?

7 THE DEPONENT: I can hear you.

8 MR. MILNE-SMITH: Okay. And Patrick is  
9 saying yes. David, can you hear me?

10 MR. MOORE: Yes.

11 BY MR. MILNE-SMITH:

12 47 Q. So for Callidus Capital, it refers  
13 to you being "Consultant and Interim CEO". Did you  
14 hold both those positions as a consultant and as  
15 interim CEO for the six-month --

16 A. I -- yes, I did.

17 48 Q. Okay.

18 [Court Reporter intervenes for  
19 clarification.]

20 Yes. There is a six-month period  
21 referred to from October 2018 to March 2019, and  
22 you held both titles throughout that period;  
23 correct?

24 A. Correct.

25 49 Q. And you left after completing your

1 consulting mandate and delivering a Strategic  
2 Review and Remediation Plan to the company's Board  
3 of Directors; correct?

4 A. That's correct.

5 50 Q. All right. And was your  
6 consulting mandate the strategic review, or was  
7 there something else to your consulting mandate?

8 A. Well, I was, in the absence of  
9 Newton, as interim CEO, you know, overseeing the  
10 day-to-day operations of the company.

11 51 Q. Okay. So you were running the  
12 company as well as preparing the Strategic Review  
13 and Remediation Plan?

14 A. Yeah, for those six months.

15 52 Q. Okay. And so I don't have to use  
16 that mouthful all the time, we can refer to the  
17 Strategic Review and Remediation Plan as your  
18 report?

19 A. Sure.

20 53 Q. Okay. So you prepared your report  
21 at the direction of Callidus's Board?

22 A. It was the direction of Callidus's  
23 Board and counsel.

24 54 Q. Okay. And just to be clear, it  
25 was Callidus that you were working for, not

1 Catalyst?

2 A. I was -- yeah, I was working for  
3 Callidus, yes. Obviously on the Board, the  
4 representation there is a Catalyst Board member on  
5 the Board as well, but I worked for Callidus.

6 55 Q. Okay. I understand. And in  
7 preparing your strategic review, you didn't report  
8 to or take instructions from Brian Greenspan?

9 A. I don't know who that is.

10 56 Q. Okay. And you didn't take  
11 instructions or receive direction from Mr. Moore or  
12 from John Callaghan or from anyone else in the  
13 Gowlings firm?

14 A. I did not.

15 57 Q. Okay. So when you say you were  
16 taking instructions from counsel, you were  
17 referring to Mr. DiPucchio?

18 A. Yes. And I think I talked to Jim  
19 Riley. Jim Riley was there early on as well, and I  
20 think there was a transition to Rocco, but yeah,  
21 towards the end it was Rocco.

22 58 Q. Okay. And your report was based  
23 on your analysis of the company; correct?

24 A. Correct.

25 59 Q. And it was grounded in the facts

1 as you found them?

2 A. Correct.

3 60 Q. And certainly your report did not  
4 contain legal advice of any kind?

5 A. Correct.

6 61 Q. And without going into the  
7 specific content, because I understand the content  
8 is the subject of the motion that we are arguing,  
9 is it fair to say that the purpose of the report  
10 was analyzing Callidus's business?

11 A. Analyzing Callidus's business?  
12 Could you clarify, please?

13 62 Q. So the title of it was a  
14 "Strategic Review and Remediation Plan", so let's  
15 start with the strategic review component. As I  
16 understand it, a strategic review means looking at  
17 the business, understanding where it is, and  
18 understanding how it got there. Is that an  
19 accurate description of at least that component of  
20 your report?

21 A. Yeah, that is part of it.

22 63 Q. Okay. And the remediation plan is  
23 what to do moving forward; correct?

24 A. Correct, a recommendation.

25 64 Q. Okay. And you said -- when I was

1 describing the strategic review, you said that is  
2 part of it. What other part of it was there?

3 A. Yeah, it was that last part you  
4 just mentioned.

5 65 Q. Okay.

6 A. Not only -- okay. So what is the  
7 plan, recommended plan.

8 66 Q. Okay. So in terms of looking at  
9 where the company is and how it got there, I assume  
10 that you would have analyzed the company's loan  
11 book as that is its principal line of business?

12 A. Correct.

13 67 Q. Okay. So that means you would  
14 have looked at historically its loan generation  
15 activities?

16 MR. MOORE: Well, I mean, you are  
17 probably getting into too much detail, granular  
18 detail, about different components of it.

19 MR. MILNE-SMITH: Well, I am trying to  
20 stay at a very high level here.

21 MR. MOORE: Well, let's see how far it  
22 goes. Keep going.

23 BY MR. MILNE-SMITH:

24 68 Q. Okay. So when I talk about the  
25 loan book of Callidus's business, I am going to

1 break that into four components for you,  
2 Mr. Dalton, and why don't you just, once I have  
3 described it, give a pause and let your counsel or  
4 Mr. Moore object if he chooses to do so.

5 A. Okay.

6 69 Q. So my understanding of what  
7 analyzing Callidus's business would involve would  
8 mean looking at historical loan generation; it  
9 would be ongoing management of outstanding loans;  
10 it would be the operation of portfolio companies  
11 acquired as a result of enforcing on loans; and it  
12 would involve the ongoing loan pipeline or  
13 generation of new business and source of funds for  
14 new loans. So is that --

15 MR. MOORE: We'll take that under  
16 advisement. I'm sorry. Put your question. Go  
17 ahead.

18 BY MR. MILNE-SMITH:

19 70 Q. I just want to understand if that  
20 is a fair description of what the strategic review  
21 would have involved, and if there is anything I  
22 have gotten wrong or anything I'm missing, to let  
23 me know.

24 U/A MR. MOORE: We'll take that under  
25 advisement, Matthew.

1 BY MR. MILNE-SMITH:

2 71 Q. Okay. And then the remediation  
3 plan would have been presumably based on reviewing  
4 the current state of the business, making  
5 recommendations on how to move forward; correct?

6 A. David, is that okay to answer?

7 MR. MOORE: Go ahead. Go ahead.

8 THE DEPONENT: Yes.

9 BY MR. MILNE-SMITH:

10 72 Q. And while I understand that there  
11 can be legal components to a remediation plan, such  
12 as if the company were to consider CCAA or things  
13 like that -- and don't tell me if they were -- you  
14 would also agree with me that a remediation plan  
15 would also involve business aspects, and it was the  
16 business aspects that you would have been focussed  
17 on because you are a business person and not a  
18 lawyer; is that fair?

19 MR. MOORE: Well, you have read what  
20 his affidavit says. I mean, if your question is  
21 can you divide up the business recommendation and  
22 divorce them from legal issues and legal  
23 considerations and the review of that by Catalyst,  
24 then that is -- I guess I disagree with the premise  
25 of that question.

1 BY MR. MILNE-SMITH:

2 73 Q. I am asking factual questions  
3 about what the purpose of Mr. Dalton's report was.  
4 I just want to confirm that the advice you were  
5 giving was business -- your advice in terms of a  
6 remediation plan was business advice and not legal  
7 advice?

8 MR. MOORE: Go ahead.

9 THE DEPONENT: My recommendations were  
10 business in nature, but I know there is connections  
11 of what I would like to be able to do versus what  
12 the lawyers would be able to advise the company and  
13 shareholders that they could do.

14 BY MR. MILNE-SMITH:

15 74 Q. Right. So you gave your business  
16 advice, and then the company would take legal  
17 advice, and it would come up with an overall  
18 decision on how to proceed; correct?

19 A. Yes.

20 MR. MOORE: Go ahead.

21 THE DEPONENT: Yes. Sorry, I can't see  
22 you, David, so it is hard to -- I don't know. I'm  
23 happy to answer if you say it is okay.

24 MR. MILNE-SMITH: Just go off the  
25 record for a second, Deana.

1 (DISCUSSION OFF THE RECORD.)

2 BY MR. MILNE-SMITH:

3 75 Q. Am I correct, Mr. Dalton, that in  
4 your strategic review, in your report, you didn't  
5 address any of Callidus's ongoing litigation with  
6 West Face?

7 A. I believe that that's correct.  
8 That was not part of my mandate, and I had no  
9 oversight into that.

10 76 Q. Now, you delivered your report to  
11 the entire Board; correct?

12 A. And Callidus counsel and to Rocco  
13 DiPucchio --

14 77 Q. Okay.

15 A. -- as Catalyst's counsel.

16 78 Q. And, Mr. Moore, we may have  
17 covered this before, but just so I am sure, we have  
18 got the minutes from the Board meeting at which  
19 Mr. Dalton's report were delivered, we have looked  
20 at that before, and I am going to bring it up  
21 shortly.

22 Are there any other Board materials, if  
23 I can use that phrase as broadly as possible,  
24 associated with Mr. Dalton's report?

25 MR. MOORE: I am not sure I picked up

1 that entire question, but are you asking for  
2 additional minutes or any other communications of  
3 the Board or -- I didn't hear that properly. I'm  
4 sorry.

5 BY MR. MILNE-SMITH:

6 79 Q. My question was for any other  
7 Board materials construed as broadly as possible.  
8 It may just be that there is the report and there  
9 is the minutes, which is what I expect, but I just  
10 want to ask if there is anything else, to have that  
11 disclosed and, you know, produced if you'll agree  
12 to it, but at least I want to have it disclosed.

13 MR. MOORE: All right. So I'll just  
14 give you an example with reference to Mr. Dalton's  
15 affidavit. Paragraph 4 of the affidavit refers to  
16 certain steps in connection with a draft of the  
17 report.

18 MR. MILNE-SMITH: Yes.

19 MR. MOORE: And that additional  
20 information had been requested and ultimately it  
21 became part of the report. So that was in advance  
22 of the meeting, and the communications about that  
23 were copied to Mr. DiPucchio but also to other  
24 Board members of -- not to other Board members but  
25 to Board members of Callidus.

1 MR. MILNE-SMITH: Okay.

2 MR. MOORE: So broadly speaking, you  
3 know, that could fall within the purview of your  
4 question.

5 Now, we haven't gone back, and I don't  
6 know how realistic it is to go back, okay, you  
7 know, from day 'x' to day 'z', you know, here is  
8 every communication leading up to the Board of  
9 Directors' meeting. We haven't attempted to do  
10 that. I am not sure how feasible it would be to do  
11 that. So I just cite that as an example of  
12 something that could fall within the scope of your  
13 question, you know, are there any other Board  
14 materials that relate to this topic.

15 BY MR. MILNE-SMITH:

16 80 Q. So let me try and narrow this  
17 down. So do I understand correctly that the advice  
18 that you describe in paragraph 4 of your affidavit  
19 that you received from Mr. DiPucchio was legal  
20 advice, Mr. Dalton, or was it business advice that  
21 Mr. DiPucchio was giving you?

22 A. I believe it was legal advice he  
23 was giving me.

24 81 Q. All right. I am not asking for  
25 Mr. DiPucchio's legal advice.

1 A. All right.

2 82 Q. Nor am I asking for drafts, you  
3 know, revisions to drafts that are made based on  
4 legal advice. What I am asking for is if there was  
5 a memorandum prepared by someone at the Board based  
6 on your report and was distributed to the Board. I  
7 would be interested in something like that.

8 So when I talk about Board materials, I  
9 am talking about materials for the Board prepared  
10 by someone other than counsel, even if it may have  
11 been vetted by counsel, but I am interested in  
12 something for the final use of the Board.

13 U/A MR. MOORE: We'll take that under  
14 advisement.

15 BY MR. MILNE-SMITH:

16 83 Q. Okay. And we are going to come to  
17 the minutes in a moment, but the minutes refer to a  
18 supplement to your report, Mr. Dalton. Do you  
19 recall preparing any supplement to your report?

20 A. That is what David was talking  
21 about. My original report went out, and then Rocco  
22 had asked for additional information, which I  
23 included in a supplemental report by the time we  
24 had our meeting.

25 84 Q. So, Mr. Moore, just so it is clear

1 on the motion, what we are seeking is the complete  
2 package of whatever went to the Board, so that will  
3 be the subject including the supplement, okay?

4 MR. MOORE: I understand, and again,  
5 without waiving any privilege or going beyond where  
6 we should be going, the supplemental information,  
7 material, call it what you will, just structurally  
8 the report is not divided into report and  
9 supplement. The report had 'x' pages and then 'z'  
10 pages were added. So it is a self-contained  
11 report.

12 BY MR. MILNE-SMITH:

13 85 Q. Okay. Understood. Thank you.

14 To your knowledge, Mr. Dalton, the  
15 people who attended the February 28th, 2019, Board  
16 meeting -- and we can look at that if you want to  
17 refresh your recollection as to who that was, but  
18 to your knowledge, was your report given to anyone  
19 else such as investors, borrowers, and regulators,  
20 anybody else?

21 A. Yeah, not that I am aware of.

22 86 Q. Okay. Now, you refer -- so let's  
23 just go to the minutes of the meeting now, just so  
24 we have that, and I will share my screen again so  
25 you can see it. Just let me know when you can see

1 the minutes on your screen, Mr. Dalton.

2 A. I can see them.

3 87 Q. Okay. So these are the minutes of  
4 the meeting of the Board of Directors of Callidus.  
5 We'll make this Exhibit 1 on this examination,  
6 Madam Reporter, and for the record, this is  
7 Catalyst production. It is their Schedule D,  
8 document 00000645.

9 EXHIBIT NO. 1: Callidus Board meeting  
10 minutes, Catalyst production  
11 D00000645.

12 BY MR. MILNE-SMITH:

13 88 Q. Now, Mr. Dalton, I don't want to  
14 have you go through this line by line, so instead,  
15 I will do what we did with Mr. Riley this morning,  
16 which is ask by way of undertaking that you take  
17 the time on your own to review these minutes of the  
18 meeting and confirm that, to the best of your  
19 recollection, they are an accurate summary of the  
20 minutes -- sorry, of the meeting that are contained  
21 in these minutes.

22 U/T MR. MOORE: We'll undertake to do that.

23 BY MR. MILNE-SMITH:

24 89 Q. Okay. Thank you.

25 A. Could I just make a -- sorry, I

1           only saw the minutes yesterday because I was not  
2           there at the company when the minutes were  
3           produced, so this would be the first review.

4           90                   Q.    Okay.  So you said you saw the  
5           minutes yesterday?

6                           A.    I got the minutes from David, I  
7           think, yesterday, David, or --

8                           MR. MOORE:  Or the day before.  Over  
9           the weekend.

10                          THE DEPONENT:  Yes, the day before --  
11           over the weekend.

12                          BY MR. MILNE-SMITH:

13           91                   Q.    And you had an opportunity then to  
14           review these minutes prior to this examination?

15                          A.    Briefly.

16           92                   Q.    Okay.  And you didn't see anything  
17           in there that looked inaccurate on your brief  
18           review at least?

19                          A.    Without looking at the detail, I  
20           can take another look at it and get back to you on  
21           that.

22           93                   Q.    Okay.  But just in your brief  
23           review in preparation for this examination -- and I  
24           am not saying -- I am not holding you to this.  I  
25           just want to -- I want to know if there is anything

1           you saw that looked inaccurate so that we can talk  
2           about it now.

3                       A.    Okay.  David, that is okay to  
4           answer?

5                       MR. MOORE:  That is fine.  What counsel  
6           is asking you, did anything jump out at you when  
7           you saw the minutes and, if so, he would like to  
8           know what that was so he can ask questions about it  
9           while you are here.  So --

10                      THE DEPONENT:  Yeah, nothing jumped  
11           out.  I'm pretty much a stickler, so I would like  
12           to look at every word, but nothing jumped out at me  
13           as being inaccurate.

14                      BY MR. MILNE-SMITH:

15    94                Q.    Okay.  Good.  I certainly would  
16           expect that minutes prepared by the esteemed Jon  
17           Levin of Fasken Martineau would be accurate.

18                      A.    I would expect that as well.

19    95                Q.    Okay.  Good.  Now, Mr. Dalton, I  
20           understand from your affidavit that you do recall  
21           speaking to Greg Boland, receiving a call from him,  
22           after your departure from Callidus, but you can't  
23           necessarily recall all of the details that  
24           Mr. Boland recounts; is that accurate?

25                      A.    That's correct.

1           96                   Q.    Did you speak to anyone else  
2                            outside Callidus about your report, such as  
3                            investors, other parties to this litigation,  
4                            journalists, regulators, anyone else?

5                            A.    I am sure I have because, you  
6                            know, it was important to me to -- people to  
7                            understand why I was there and why I left briefly  
8                            after, and that was the plan going in. So I wanted  
9                            to make sure that there was closure, and in the  
10                           business community, you know, people asked me, you  
11                           know, what were you doing there, why are you still  
12                           there, why were you only there six months, and so I  
13                           clarified that my duties there were to do a  
14                           short-term interim CEO and a strategic review.

15           97                   Q.    Okay. And so you resigned after  
16                            you completed your report and your review; correct?

17                            A.    Yeah, I completed my report and  
18                            review, and I gave the company -- you know, I said  
19                            a week to answer any residual questions, and then I  
20                            resigned a week later.

21           98                   Q.    Okay. And let's just see. You  
22                            said you didn't necessarily recall all the details  
23                            of what Mr. Boland recounted, but let's see what  
24                            you do recall.

25                            Do you recall discussing with

1 Mr. Boland the financial condition of the company?

2 A. I don't know the details  
3 specifically if I did or did not.

4 99 Q. Just without getting into the  
5 details, do you recall as a subject matter of  
6 discussion that you discussed the financial  
7 condition of the company?

8 A. I think publicly available data  
9 would show you that the company had -- you know,  
10 had a -- was in a difficult time.

11 100 Q. Okay.

12 A. So I'm sure we discussed the  
13 nature of what was publicly available.

14 101 Q. And would you have told him that,  
15 again, even if it is just based on publicly  
16 available information, that the financial condition  
17 of the company was worse than you had expected when  
18 you started your engagement?

19 A. I do not recall using those words.

20 102 Q. Or any words to that effect?

21 A. Or any words to that effect. It  
22 is never a surprise when you -- I have done several  
23 of these turnaround situations. It is never a  
24 surprise that you would often find things either  
25 much better or much worse, so that might have come

1 up in a conversation, but I don't think so.

2 103 Q. Do you recall telling Mr. Boland  
3 that there was internal correspondence at Callidus  
4 that gave you concern?

5 A. I do not.

6 104 Q. Do you recall sitting here today  
7 that there were internal emails at Callidus that  
8 caused you concern?

9 A. Nothing at the level of concern  
10 that would require me to, you know, have a  
11 conversation with a Board member or raise my hand  
12 internally.

13 105 Q. So you never gave instructions or  
14 advice to Callidus executives about the nature of  
15 their internal communications?

16 A. As the CEO of a company, I have a  
17 very high standard of internal communications and  
18 reinforcing that message is generally what you do  
19 at any company. I have run a few public companies,  
20 and making sure people appreciate the  
21 correspondence can -- you know, is important to be  
22 done professionally.

23 106 Q. Okay. And you did deliver that  
24 kind of message at Callidus?

25 A. I don't know if I did it through a

1 formal process, but it is kind of a common  
2 discussion item. I think I probably said that to  
3 every company I have come into, that there is a  
4 level of standard of excellence and integrity that  
5 we need to enforce.

6 107 Q. Okay. And it was not being met  
7 when you joined the company at Callidus?

8 A. I did not have access to previous  
9 emails.

10 108 Q. But in terms of what you were  
11 seeing when you were there, it did not live up to  
12 your standards?

13 A. No, I wouldn't say that. I would  
14 just say I reinforced the message that it is  
15 important that we understand, you know, using email  
16 and other correspondences, we have to be very  
17 compliant.

18 109 Q. And the conclusion of your report  
19 was that Callidus's equity had limited remaining  
20 value?

21 A. David, is that --

22 MR. MOORE: Well, I don't think you  
23 should be, you know -- I don't think you should be  
24 getting into the contents of the report. I would  
25 have thought it was a matter of widely known public

1 record at the time, as the witness has said, that  
2 Callidus was facing significant financial  
3 challenges by the spring of 2019. I don't think  
4 there was any secret about that or any great  
5 mystery about that that was unveiled by the report.

6 BY MR. MILNE-SMITH:

7 110 Q. We'll just rely on the minutes  
8 then until we can have this motion resolved and see  
9 whether we can get access to the report.

10 Am I correct, Mr. Dalton, that as CEO  
11 of the company, you never signed any financial  
12 statements, and you never made any form 52-109  
13 certification of annual filings?

14 A. That's correct.

15 111 Q. Were you asked to sign any such  
16 statements?

17 A. No, I was not. I was not there  
18 for the year-end. I left before the year-end audit  
19 was completed.

20 MR. MILNE-SMITH: Can we take a short  
21 break, use our breakout room, and be back in five  
22 minutes?

23 MR. MOORE: Sure.

24 -- RECESSED AT 1:36 P.M.

25 -- RESUMED AT 1:43 P.M.

1 MR. MILNE-SMITH: So, Mr. Moore, we  
2 have no further questions, and I don't believe  
3 Mr. Lung has any questions either, so if anybody  
4 else on the call has any questions, speak up, but  
5 subject to that or your re-examination, Mr. Moore,  
6 I think, Mr. Dalton, you are done for the day.  
7 Thank you.

8 THE DEPONENT: Thank you very much.

9 MR. MOORE: Thank you. I have no  
10 re-examination. Thank you, Mr. Dalton. I think  
11 you are done.

12  
13 -- Adjourned at 1:43 p.m.

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REPORTER'S CERTIFICATE

I, DEANA SANTEDICOLA, RPR, CRR,  
CSR, Certified Shorthand Reporter, certify:

That the foregoing proceedings were  
taken before me at the time and place therein set  
forth, at which time the witness was put under oath  
by me;

That the testimony of the witness  
and all objections made at the time of the  
examination were recorded stenographically by me  
and were thereafter transcribed;

That the foregoing is a true and  
correct transcript of my shorthand notes so taken.

Dated this 5th day of January, 2021.



---

NEESONS, A VERITEXT COMPANY

PER: DEANA SANTEDICOLA, RPR, CRR, CSR

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**Board of Directors Meeting**  
of Callidus Capital Corporation (the "Corporation") at the offices of The Catalyst Capital Group  
Tuesday, 3/19/2019  
1:00 - 3:00 PM ET

1. **Appointment of Chairperson and Secretary of the meeting**
2. **Review and approval of the minutes of the Board of Directors meetings held on November 7, 2018, January 10, 2019 and February 28, 2019**  
*Board Minutes (November 7, 2018) - Page 2*  
*Board Minutes (January 10, 2019) - Page 5*  
*Board Minutes (February 28, 2019) - Page 7*
3. **Recommendation from the Audit and Risk Committee re: the 2018 F/S, MD&A, AIF and press release**
4. **Approval of 2018 F/S, MD&A, AIF and press release**
5. **CEO's report to the Board of Directors**
6. **Such other business that may properly come before the meeting**
7. **An in-camera meeting of the independent members of the Board**
8. **Motion to terminate the meeting**

## CALLIDUS CAPITAL CORPORATION

**MINUTES** of a meeting of the Board of Directors of **CALLIDUS CAPITAL CORPORATION** (the “**Corporation**”) held at the offices of The Catalyst Capital Group Inc. on November 7, 2018.

### PRESENT:

Brad Ashley  
Tibor Donath  
Jim Riley  
David Sutin

Being a quorum of the Directors

### PRESENT BY INVITATION

Patrick Dalton  
John Ho  
Jon Levin (Fasken Martineau DuMoulin LLP)  
Dan Nohdomi  
David Reese

### CONSTITUTION OF MEETING

With the consent of the meeting, David Sutin acted as Chairman of the meeting and Jon Levin acted as Secretary.

The Chairman stated that notice of the meeting had been provided to each of the directors in accordance with the by-laws of the Corporation but that it was his understanding that Mr. Glassman would not be joining the meeting for health reasons. The Chairman therefore declared the meeting to be regularly constituted for the transaction of business.

### APPROVAL OF MINUTES OF PRIOR MEETING

The Board reviewed the draft minutes of the meeting of the Board of Directors held on August 9, 2018. Following review, and UPON MOTION duly made, seconded and carried unanimously, IT WAS RESOLVED that the minutes be approved.

### RECOMMENDATION FROM THE AUDIT AND RISK COMMITTEE

Tibor Donath advised that the draft Q3 financial statements and management’s discussion and analysis had been reviewed by the Audit Committee but that the Audit Committee determined to defer its recommendation pending review of certain changes being made to the documents as discussed in the Audit Committee meeting.

Mr. Nohdomi reviewed the draft Q3 financial statements and MD&A discussion with the Board and described certain of the changes that were being made to such documents in light of the discussion at the Audit Committee.

The Directors determined to defer the approval of the Q3 financial statements and the MD&A until such time as they have received the recommendation from the Audit Committee and had reviewed the revised versions of the Q3 financial statements and the MD&A.

#### ADJOURNMENT

The meeting was then adjourned until November 12, 2018 at 2:00 p.m.

#### RESUMPTION OF MEETING

The meeting resumed on November 12, 2018 at 2:00 p.m. with the following attendees:

#### PRESENT:

Brad Ashley  
Tibor Donath  
Jim Riley  
David Sutin

Being a quorum of the Directors

#### PRESENT BY INVITATION

Patrick Dalton  
John Ho  
Jon Levin (Fasken Martineau DuMoulin LLP)  
Dan Nohdomi  
David Reese

#### RECOMMENDATION FOR APPROVAL OF INTERIM FINANCIAL STATEMENTS AND MANAGEMENT DISCUSSION & ANALYSIS

---

Mr. Donath on behalf of the Audit Committee advised that the Audit Committee had reviewed the Q3 financial statements and management discussion and analysis, as revised, including having regard to loan loss provisions, the loan book generally and other relevant matters and were prepared to recommend to the Board approval of the Q3 financial statements and MD&A subject to prior approval of the Q3 press release.

#### APPROVAL OF FINANCIAL STATEMENTS AND MANAGEMENT DISCUSSION & ANALYSIS

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UPON MOTION duly made, seconded and carried unanimously IT WAS RESOLVED to approve the Q3 financial statements and MD&A, subject to prior approval by the Board of the

contents of the press release proposed to be issued by the Corporation in relation to such financial statements and MD&A, with such approval to be given by e-mail.

Mr. Reese advised that the form of press release was being worked on and a draft would be circulated by November 13, 2018.

#### BUSINESS UPDATE

Mr. Reese provided the Board with an update regarding the status of the proposed sale of certain assets pertaining to the commodity division of C&C Resources Inc. (“C&C”). He advised that it was anticipated that an agreement of purchase and sale would be finalized and signed during the following week and that closing thereunder would likely not occur until late in the 4<sup>th</sup> quarter of 2018 or early in 2019. He advised that he expected that the only significant conditions precedent to closing would be regulatory approval and the absence of any material adverse change, but he did note that other conditions were likely to be included in the agreement of purchase and sale.

#### TERMINATION

There being no further business, the meeting terminated.

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Chairman

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Secretary

**MINUTES** of a meeting of the board of directors of **CALLIDUS CAPITAL CORPORATION** (the “**Corporation**”) held by teleconference on January 10, 2019

PRESENT:

Brad Ashley  
Tibor Donath  
Jim Riley  
David Sutin

ABSENT

Newton Glassman

CONSTITUTION OF MEETING

With the consent of the meeting, Tibor Donath acted as chairman of the meeting and David Sutin acted as Secretary. The chairman of the meeting advised the directors that Mr. Glassman was unable to attend for health reasons and had advised the chairman that he would have abstained from voting on the subject matter of the resolution in any event due to his interest therein.

The chairman of the meeting stated that notice of the meeting had been provided to each of the directors in accordance with the by-laws of the Corporation. The chairman therefore declared the meeting to be regularly constituted for the transaction of business.

SPECIAL COMMITTEE FEES

Mr. Donath advised the directors that the purpose of the meeting was to consider a resolution relating to the fees payable to the Special Committee of the Board of Directors (the “**Special Committee**”). Mr. Riley declares his interest in the subject matter of the meeting and withdrew from the meeting.

Following review, and upon motion duly made, seconded and carried unanimously, the following resolution was unanimously approved:

WHEREAS effective December 2016, the Special Committee of the Board of Directors and related fees for the members of the Special Committee were established;

AND WHEREAS having regard to: the receipt of the acquisition proposal of Braslyn Inc. by letter dated November 28, 2018; the extent of time and availability required of the members of the Special Committee to consider the proposal, instruct advisers, coordinate with management and the Board of Directors of the Corporation, respond to Braslyn Inc. and negotiate the proposed acquisition; and the extent of the implications to the Corporation and its shareholders and the related risk assumed by the members of the Committee, it is considered appropriate to increase the fees of the Special Committee;

AND WHEREAS Newton Glassman and Jim Riley, as members of management of Catalyst Capital Group Inc. (“CCGI”), have declared their conflict as a result of CCGI’s determination to support of the acquisition proposal of Braslyn Inc. as a result of which the common shares of the Corporation held by the funds under its management will be retained;

**NOW THEREFORE IT BE RESOLVED THAT**, upon motion duly made by David Sutin and seconded by Bradley Ashley, and unanimously approved (with Mr. Riley abstaining and Mr. Glassman not present):

1. The fees of the members of the Special Committee be increased from \$15,000 per month to \$25,000 per month for each member of the Special Committee and to \$37,500 per month for the Chair of the Special Committee, effective for the period commencing December 1, 2018.
2. Any officer of the Corporation or director shall be and is hereby authorized and directed, for and on behalf of the Corporation, to take all such further action and to prepare, execute, acknowledge, file, deliver, and record all such further documents and instruments by and on behalf of the Corporation, and in its name, or otherwise, as in the judgment of any such officer or director shall be necessary, appropriate, or advisable in order to fully carry out the intent and to accomplish the execution of the purposes of the foregoing resolutions.

Following approval of the resolution, Mr. Riley rejoined the meeting.

#### TERMINATION

There being no further business, the meeting terminated.

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Chairman

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Secretary

**CALLIDUS CAPITAL CORPORATION****BOARD OF DIRECTORS MEETING**

**MINUTES** of a Meeting of the Board of Directors of **CALLIDUS CAPITAL CORPORATION** (the “**Corporation**”) held at the offices of The Catalyst Capital Group Inc., Suite 4700, 181 Bay Street, Toronto, Ontario M5J 2T3 at 8:30 a.m. on February 28, 2019.

**PRESENT:**

Brad Ashley  
Tibor Donath  
Jim Riley  
David Sutin

Being quorum of the members of the Board of Directors.

**PRESENT BY INVITATION:**

Patrick Dalton, Interim Chief Executive Officer of Callidus Capital Corporation  
Rocco DiPucchio, The Catalyst Capital Group Inc.  
Rob Fedrock, The Catalyst Capital Group Inc.  
Jon Levin, Fasken Martineau DuMoulin LLP  
David Reese, President, Callidus Capital Corporation

**Constitution of the Meeting**

With the consent of the meeting, Tibor Donath, the Lead Director, acted as Chairman of the meeting and Jon Levin acted as Secretary.

The Chairman stated that notice of the meeting had been provided to each of the directors in accordance with the by-laws of the Corporation and that a quorum of the directors was present and consenting to the transaction of business. Accordingly, the Chairman declared the meeting to be regularly constituted for the transaction of business.

The Chairman indicated that he had hoped that Mr. Glassman would be able to attend the meeting and he requested Mr. DiPucchio to reach out to Mr. Glassman and see if he would be available to call into the meeting. Mr. DiPucchio did so and reported that he was unable to receive any response from Mr. Glassman.

**PRESENTATION BY INTERIM CHIEF EXECUTIVE OFFICER**

Mr. Dalton directed the meeting’s attention to a strategic review and remediation plan previously distributed by him together with a supplement to that plan, also previously distributed by him. Mr. Dalton proceeded to review those documents. Mr. Dalton noted the Corporation had suffered through three difficult years and that his objective was to develop and implement a remediation plan that would stabilize the Corporation’s platform and monetize non-core assets. He advised that it was his view that the Corporation was fortunate to have the benefit of a good

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team of employees who, in his view, were capable of implementing the remediation plan and improving the Corporation's performance.

Mr. Dalton stated that it was desirable for the Corporation to simplify its business and return to its original business model of being an asset based lender rather than making loans where a significant portion of the collateral was the enterprise value of the borrower.

Mr. Dalton proceeded to review the cash position of the Corporation. He advised that the Corporation required a \$20 million working capital float at all times and that, based on anticipated cash inflows and outflows, he anticipated that the balance of the Corporation's cash would be spent by the end of March 2019. He also advised that he anticipated that, unless a remediation plan is implemented along the lines that he was proposing, the book value per share would decline to a negative amount by the end of the second quarter of fiscal 2019.

A director raised the question of whether it would be possible to convert the existing Catalyst bridge loan to equity in the capital of the Corporation. Mr. Riley responded that such a conversion would be difficult to achieve given the concentration rules applicable to the various Catalyst investment funds.

Mr. Dalton and the board proceeded to review and discuss the remediation plan and supplemental information in detail. Mr. Dalton noted that, while the Corporation had signed term sheets for \$280 million of new asset-based loans, it lacked the requisite financial resources to be able to fund those loans. He commented that, but for the recent sale of assets by C&C, the Corporation would have exhausted all of its cash resources.

A director noted that C&C produced positive EBITDA and that the Corporation no longer had the benefit of that EBITDA given the recent sale. It was also noted that the consolidated results of the Corporation would reflect that loss of EBITDA.

Mr. Dalton responded agreed and stated that, unless the Corporation could show a portfolio of performing loans, it would be impossible for the Corporation to raise third party funding. He expressed the view that it would take approximately two years for the Corporation to be able to fix its loan portfolio and move itself into a position where it would be able to access third party funding.

Mr. Reese commented that a number of lenders, who had previously expressed an interest in financing the Corporation, had walked away, at least in part due to the extensive negative publicity which the Corporation had suffered in the media. He stated that the "noise" around the Corporation's name was frightening to lenders.

Mr. Dalton reported that, based upon his discussions with representatives of KPMG LLP, that firm would not be prepared to sign an audit opinion regarding the Corporation's financial statements for 2018 without a going concern note unless the Corporation could demonstrate to the satisfaction of KPMG, among other things, a viable business plan, the requisite shareholder support, a recapitalization of the balance sheet possibly including the equitization of shareholder loans or their repayment, and ongoing financial viability including appropriate cash resources.

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Mr. Dalton proceeded to discuss what he considered to be the qualities of a successful credit manager as well as a preliminary remediation plan for the Corporation and his recommendations in that regard. He noted that completing the privatization of the Corporation and recapitalizing its balance sheet were fundamental steps in any remediation plan.

Mr. Reese commented that the Corporation's auditors would need to see demonstrated liquidity for the Corporation and that a viable and plausible business plan would have to show how the Corporation would be able to turn itself around and repay its obligations.

Discussion ensued as to the extent to which a commitment from Braslyn to privatization together with a business plan that demonstrates sufficient cash resources would be sufficient to meet KPMG LLP's requirements. Mr. Reese commented that, if the business plan reflects a transaction with Braslyn that is viable and plausible and if it is possible to demonstrate the required liquidity, it was his view that KPMG LLP would be satisfied.

In a response to a question from a director as to whether, absent a Braslyn privatization, there was any plan to secure a short-term funding in order to maintain operations, Mr. Dalton stated that there was no such plan and that, if any funding could be obtained, it would be highly dilutive to earnings.

Mr. Reese indicated that an immediate priority for the Corporation was to pay the participation funds that the Corporation was holding on behalf of Catalyst Fund V to that Fund. He advised that one means by which such payment might be achieved would be to effect a drawdown under the Catalyst guarantee of the maximum amount available as well as a drawdown from Fund V under the participation agreement of the maximum amount available. He expressed the view that the Corporation would likely then have sufficient funds on hand to repay the participation funds owed to Fund V, which he estimated to be in the amount of \$41 million. He advised that thereupon, he estimated that the Corporation would still retain approximately \$20 million in cash.

Mr. Dalton discussed what the potential value of the Corporation might be if it was able to establish a \$1 billion performing loan portfolio that was yielding a return in a range of 10% per annum and with a debt/equity ratio in the range of 50/50. In such circumstances, he estimated that the Corporation would have a value of \$125 million. He commented that he thought such performance could be achieved within two years with the requisite recapitalization and shareholder support

### **CREDIT COMMITTEE**

Mr. Dalton reported that KPMG LLP had advised that its ability to provide a clean audit opinion would, in part, depend upon addressing a governance issue, namely the requirement that all decisions made by the Credit Committee must be unanimous.

It was noted that the Credit Committee was currently composed of Newton Glassman, Jim Riley, Jay Rogers, and David Reese while Jim Hall and Rob Fedrock attend his observers. Mr. Dalton stated that he had understood that he was to be appointed to that Committee, although he also understood that no formal appointment had as yet been made in that regard. Mr. Dalton recommended that the Credit Committee should be composed of Mr. Glassman, Mr. Riley, Mr.

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Reese and himself and that the charter of the Credit Committee should be amended to provide the decisions would be made by majority.

The question was raised as to whether the powers of the Credit Committee should be vested in the Board in lieu of changing the amenity requirement. However, a director responded that the Board lacked the requisite knowledge to be able to assume the role of the Credit Committee.

There was general consensus that the Credit Committee should be constituted to consist of Newton Glassman, Patrick Dalton, David Reese, Jim Hall and Jim Riley, that Mr. Fedrock should have the right to attend Credit Committee meetings as an observer so long as The Catalyst Capital Group Inc. wished him to do so and that decisions on the Credit Committee should henceforth be made by majority vote. However, the Board determined not to make any formal decision in that regard pending receipt of a detailed and formal governance proposal from management.

### **BONUS FOR BLUBERI MANAGEMENT AND 2019 BLUBERI BUSINESS PLAN**

Mr. Dalton advised me that there was a significant risk that key members of the Bluberi Management team would resign. He advised that the reason why their resignations were under consideration was that they had earned a 2018 Performance Bonus which had yet to be paid to them notwithstanding that, other than for a small portion of the 2018 Bonus in the order of \$45,000, the bonus was clearly earned. As well, Mr. Dalton said that the Bluberi management team was troubled by the failure of the Board to approve the 2019 Bluberi business plan which had previously been distributed to the Board. AS regards that business plan, Mr. Dalton noted that it supported a \$135 million valuation for Bluberi.

Mr. Dalton commented that, unlike a discretionary bonus, there was a contractual entitlement to the funds in question other than \$45,000. However, he commented, that, as regards to that latter amount, the reason why that amount was not earned, likely related to the Corporation not co-operating in the pursuit of licencing rather than non-performance by the management team.

Mr. Dalton commented that, aside from contractual entitlements, in the absence of any real reason not to pay the bonus and in the absence of approval of the Bluberi business plan, the potential loss of key employees for Bluberi would cause significant harm to that company. It was also noted that Bluberi employees who depended upon their bonuses to pay registered retirement savings plan contributions in respect of 2018 would shortly be out of time to do so. Mr. Dalton advised that it was his recommendation, that of Mr. Reese and that of Mr. Hall that the full amount of the bonus should be paid and that the business plan be approved. Mr. Riley and Mr. Fedrock confirmed that they shared that view. It was noted that substantial goodwill could be treated by paying the bonus in full even if the last \$45,000 of it had not actually been earned. Considerable discussion then ensued.

UPON MOTION duly made seconded and carried unanimously IT WAS RESOLVED that:

1. the full amount of the bonuses payable to the Bluberi management team inclusive of the \$45,000 unearned portion of those bonuses be paid to them immediately; and

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2. the Bluberi 2019 business plan be approved in the form previously distributed to the Board.

Mr. Dalton and Reese then withdrew from the meeting.

### **FINANCIAL DISCUSSION**

The Board then continued to discuss at length the financial position of the Corporation, the potential of a Braslyn led privatization, liquidity issues effecting the Corporation, the potential that Braslyn might be a source of liquidity for the Corporation and the desirability that all independent directors receive indemnities from the Catalyst Capital Group Inc. [REDACTED]

### **TERMINATION**

There being no further business, the meeting then terminated.

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**Chairman**

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**Secretary**

**UNDERTAKINGS**

Item	Reference	Question / Advisement	Response
<b><u>Jim Riley, cross examination, January 5, 2021 (affidavit sworn December 28, 2020)</u></b>			
1	Page 10, line 22	To advise of the date of the retainer of John Phillips.	The Plaintiffs are not aware of any different information than indicated on January 5, 2021. Review of privileged emails from the September – November 2017 time period is continuing and may provide a more specific date. If so, that date will be disclosed.
2	Page 52, line 17	Advise which additional representatives of Catalyst were present at the February 28, 2019 Callidus Board meeting.	As disclosed in the redacted Minutes, already provided.
3	Page 65, line 5	Confirm accuracy of Minutes of February 28, 2019 Callidus Board meeting.	The Plaintiffs are unaware of any errors.
4	Page 65, line 15	Advise whether Patrick Dalton was retained by the full Board of Directors of Callidus, the Independent Directors of Callidus, or some other sub-committee.	The engagement was by Callidus and, through Callidus, Catalyst. See answer to Item 27 of the Advisements.
5	Page 66, line 14	Advise whether Patrick Dalton was engaged initially as a consultant, and subsequently as Interim CEO, or whether both engagements occurred at the same time.	Both engagements occurred at the same time.

[2]

Item	Reference	Question / Advisement	Response
6	Page 71, line 12	Advise of the time frame of the SEC communications.	September 20, 2017 to June 28, 2019.
7	Page 75, line 3	Advise over what period of time on-site in person meetings occurred in the SEC examination process.	The SEC process began with on-site meetings which occurred from November 7 – 9, 2017.
8	Page 86, line 11	Advise when the “yield enhancement” issue was resolved between the OSC and Callidus.	August 2018
9	Page 87, line 23	Provide a copy of the operative section of the <i>Securities Act</i> prohibition re s. 11 disclosure.	See copy attached.
<b><u>Patrick Dalton, cross examination, January 5, 2021 (affidavit sworn January 4, 2021)</u></b>			
10	Page 29, line 22	Confirm accuracy of February 28 Board Minutes.	See Item 3 above.

**ADVISEMENTS**  
**(January 5, 2021)**

Item	Reference	Question / Advisement	Response
<b><u>Jim Riley, cross examination, January 5, 2021</u></b> <b><u>Matthew Milne-Smith</u></b>			
1	Page 14, line 12	Were there any oral communications with any Guy parties by August 21, 2017?	No, prior to August 21, the communications were by email. See Appendix A, sub-paragraph 3(6).
2	Page 15, line 8	Are there any mistakes in Schedule B re copies of documents not shown as being copied to counsel (re August 13 - 21 time frame – Guy)?	See Appendix A, paras 3(1) and 3(2).
3	Page 15, line 2	Advise whether copies of any of the emails referred to (Guy; August 13 - 21, 2017) were copied to counsel.	See answer to item 2.
4	Page 17, line 3	Advise if assumption re no cc's of August 13 - 21 emails to counsel is mistaken.	See answer to item 2.
5	Page 17, line 18	Were there any communications between August 11 – 23 between counsel for the Guy parties and counsel for the Catalyst Parties (written or oral)?	Yes, see Appendix A, para 3(3); there was an in person meeting with counsel of August 21, 2017.

[2]

Item	Reference	Question / Advisement	Response
6	Page 18, line 3	How did you know how to reach out to Mr. Phillips in connection with the Hanna/Guy issues?	Without prejudice to and without waiving any privilege, on August 21, 2017, "Vincent Hanna" suggested a meeting with John Phillips of Waddell Phillips that day at 4 PM and provided Mr. Phillips' address.
7	Page 19, line 7	Did communications between the Guy parties and counsel to the Hanna parties begin before August 31, 2017?	Yes, see above and Appendix A.
8	Page 21, line 25	Was any documentary evidence provided to Riley or any of the Catalyst parties by the Guy parties (re the Vincent Hanna August 11 email or short and distort)?	To the best of the Plaintiffs' knowledge, any relevant documents have been included in the Plaintiffs' Schedule A listing.
9	Page 22, line 13	Do any of the Catalyst productions originate from the Guy parties?	See answer to Item 8.
10	Page 24, line 18	Did Phillips/Guy/Snowdy provide any document listed in the Plaintiff's Schedule A?	See answer to Item 8.
11	Page 29, line 1	Was potential litigation against West Face or Boland discussed with the Guy parties?	Without prejudice to the privileges being asserted, and without intending to waive any such privilege, the answer is yes.
12	Page 29, line 7	Did they (see #11 above) discuss potential litigation by any of the Guy parties or Canaccord against West Face or Boland?	See answer to Item 11.

[3]

Item	Reference	Question / Advisement	Response
13	Page 30, line 7	Was Riley aware as of August/September 2017 that Snowdy had been/was an investigator for Cohodes?	The assumption underlying this question is erroneous. See Riley's answer to Q 74, at page 30 of the January 5, 2012 transcript.
14	Page 31, line 3	When did the Catalyst parties learn there was a relationship between Cohodes and Snowdy?	The answer to Item 13 applies.
15	Page 31, line 9	Did Snowdy ever provide Riley with any information about West face or Boland?	Any "information" provided by Snowdy to the Plaintiffs is subject to privilege, subject to the duty to disclose material <u>facts</u> on discovery.
16	Page 32, line 3	Did Snowdy ever provide any information relevant to the litigation to Catalyst?	See Item 15 above.
17	Page 32, Q 81	Did Snowdy ever provide any information to Catalyst about Justice Newbould, and if so, is it in Catalyst's Schedule A or B?	The answer to Item 15 is applicable to Justice Newbould.
18	Page 40, Q 95	Does Riley agree there were business or commercial purposes to the four communications (alluded to in Riley's December 28, 2020 Affidavit)?	There were certain business/commercial purposes to the communications, particularly the communication to the Funds' Limited Partners, but this does not change the fact that the communications and processes followed prior to the finalization of these communications were privileged in that they included and reflected extensive discussion, advice and communications with and to legal counsel, which was reviewed and considered by the Plaintiffs.
19	Page 44, Q 109	Is it correct that Haystack never found any evidence that West Face or Boland were	Haystack's reports were prepared for the use of internal (Riley) and external counsel and included review and analysis relating to certain Twitter postings which the Plaintiffs gave

[4]

Item	Reference	Question / Advisement	Response
		responsible for Twitter accounts critical of the Catalyst parties?	to Haystack, as well as additional Twitter postings that Haystack identified as part of its retainer. All of these Twitter postings have been produced. To the extent that any part of Haystack's analysis would be relied upon at trial, such will be the subject of an expert report delivered in accordance with the usual Rules.
20	Page 45, Q 110	Is it correct that Haystack never found any evidence that West Face was responsible for any defamatory content on the social media or internet about the Catalyst parties?	The answer to Item 19 applies to this question.
21	Pages 44-45, Q 111	Same as #20 above with respect to DDC.	Without prejudice to the privileges claimed, DDC was not asked and did not answer this question in its reports.
22	Page 47, Q 112	Same question as #19 above with respect to DDC.	The answer to Item 21 applies.
23	Page 47, Q 113	Is it correct that DDC never contacted West Face's current or former employees (confirm answer)?	Correct, to the best of the Plaintiffs' knowledge.
24	Page 49, Q 116	Did DDC ever turn up anything relevant to the Plaintiffs' claims in the main action?	There were several DDC Reports provided for the information and use of counsel. The contents reflect "open source" (public) information. Nonetheless the contents are privileged.
25	Page 53, Q 130	Has West Face received copies of all relevant Board materials relating to the February 28, 20, 2019 meeting, redacted if necessary?	See answer to Item 35 which applies to this question.

[5]

Item	Reference	Question / Advisement	Response
26	Pages 622-63, Q 160	Did Catalyst ever have any communications with the OSC, SEC, JSOT, IMET, Metro Police [Toronto Police Service], TSX, etc. about the West Face parties? If so, disclose same.	This is a very broad question requiring substantial further inquiry, including with respect to privileged and confidential meetings/attendances/notes with, made by or involving legal counsel. We understand these issues are not being pursued at this time. Our position is unchanged.
27	Page 65, Q 164	If there were any written terms of Dalton's employment agreement, produce same.	Provided the recipients agree that the implied undertaking rule applies, and that the disclosure of this document does not constitute a waiver, the Plaintiffs will provide a copy of the agreement in question.
28	Pages 65-66, Q 165	Provide sequence re Dalton's engagement as consultant and interim CEO.	The Plaintiffs believe that his engagement/appointment in both capacities occurred at the same time, that is, on or about October 29, 2018. The execution of his written agreement (see answer to Item 27 above) was preceded by a short period (the Plaintiffs estimate 2-3 weeks) during which discussions took place, and draft agreements were prepared, revised, and finalized with input and advice from legal counsel.
<b><u>Jim Riley, cross examination, January 5, 2021</u></b>			
<b><u>Lucas Lung</u></b>			
29	Page 68, Q 174	Were any of the issues raised in the action raised in the correspondence Riley received/reviewed between Catalyst and the SEC?	Without prejudice to the privileges asserted, the answer requires some context. The examination process was pursuant to section 204 of the <i>Investment Advisor Act</i> of 1940 ("Advisor Act"). At the outset of the SEC process (see Undertaking Answer Item 6), Catalyst was provided with

[6]

Item	Reference	Question / Advisement	Response
			<p>certain publicly posted SEC policies, copies of which are attached.</p> <p>At the outset of the SEC process, the SEC advised Catalyst that the purpose of the examination was to assess compliance with the Advisor Act and the rules thereunder. The material provided by the SEC also indicated:</p> <p style="padding-left: 40px;">“the purpose of SEC examinations is to protect investors. Thus, during examinations, the SEC staff will seek to determine whether the firm is: conducting its activities in accordance with the federal securities laws and rules adopted under these laws (including, where applicable, the rules of self-regulatory organizations subject to the SEC’s oversight); adhering to the disclosures it has made to investors; and implementing supervisory systems and/or compliance policies and procedures that are reasonably designed to ensure that the firm’s operations are in compliance with the law. “</p> <p>None of the SEC communications ever referred to the Anderson complaint (or any other whistleblower complaints). As is obvious from the public record, no enforcement proceedings were ever commenced.</p> <p>The gist of the <u>Anderson whistleblower complaint</u> was expansive, namely that:</p> <p style="padding-left: 40px;">“Whistleblowers submit that regulators must closely examine the business activities of Glassman, Catalyst, Callidus and all other</p>

[7]

Item	Reference	Question / Advisement	Response
			<p>Glassman-controlled entities to limit losses from what appears to be a massive and ongoing fraud.”</p> <p>The question which is the subject of this Advisement Item, the purposes of the SEC process, and the thrust of the Anderson whistleblower complaint, were all exceedingly broad. Some form of overlap was inevitable. That does not mean that one was or is “relevant” to the other, especially when none of the Anderson pleadings raises any such issue. <i>A fortiori</i>, any such overlap has no impact upon the validity of the privileges asserted with respect to the SEC communications or on the expectations of confidentiality associated therewith.</p>
30	Pages 69-70, Q 175	Same as above.	See answer to Item 29 above.
31	Page 72, Q 178	Did any of the written communications with the SEC touch upon any of the issues raised in the Anderson whistleblower report (see transcript pages 72-73)?	See answer to Item 29 above.
32	Page 75, Q 185	Did delivery of documents in response to specific inquiries by SEC include issues raised in this action? (See Item 29 above.)	Catalyst does not contend that privilege attaches to relevant pre-existing documents provided to the SEC. Catalyst has already produced a lengthy Schedule A identifying over 170,000 historical documents. As part of the discovery process, Catalyst has an obligation to update/correct this listing if any additional, relevant and non-privileged historical documents come to its attention.

[8]

Item	Reference	Question / Advisement	Response
<p><b><u>Patrick Dalton, cross examination, January 5, 2021</u></b>  <b><u>Matthew Milne-Smith</u></b></p>			
33	Page 13, Q 31	Produce terms of engagement of Patrick Dalton	See answer to Item 27 above.
34	Page 21, Q 69-70	Confirm general description of the strategic review analysis.	<p>The Callidus Board Minutes for February 28, 2019, which have been produced in redacted form, contain an appropriate general description of the strategic review analysis.</p> <p>However, this summary should provide additional context, including the fact that:</p> <ul style="list-style-type: none"> <li>(i) a key purpose of such a restructuring was to assist with a privatization of Callidus' minority shareholding interest;</li> <li>(ii) to complete such a privatization, it was necessary that a shareholders' agreement be entered into between Catalyst and any buyer, and,</li> <li>(iii) Callidus was indebted to and financially dependent upon Catalyst.</li> </ul> <p>These facts are contained, <i>inter alia</i>, in Callidus' continuous disclosure with respect to the privatization.</p> <p>The Dalton Report has been reviewed for the purpose of answering this question. As a result of this review, it is appropriate to advise (without waiving or intending to waive any privilege) that the last page of the Dalton Report</p>

[9]

Item	Reference	Question / Advisement	Response
			<p>contains a Disclaimer which includes the following provisions:</p> <p style="padding-left: 40px;">“<u>Nothing contained herein</u> (including Mr. Dalton’s view, opinions, or recommendations) <u>constitutes</u> investment, <u>legal</u>, tax or <u>other advice</u> nor is it to be relied on in making any decision.</p> <p style="text-align: center;">...</p> <p style="padding-left: 40px;">“The information contained in the document is intended for the Board of Directors of Callidus Capital <u>and their respective Counsel</u>. Circulation or reproduction of this document outside Callidus Capital Corporation or its <u>Affiliates</u> is not permitted. The information contained in this document is <u>proprietary and confidential</u>.”</p> <p style="padding-left: 40px;">(Underlining added.)</p>
35	Page 27, Q 82	Were there other materials prepared for the Callidus Board (other than counsel) for final use by the Board?	<p>In addition to the documents listed in Schedule B, the review undertaken in providing these answers has identified a further privileged email from Dalton to Callidus Board members and Mr. DiPucchio dated February 27, 2019, attaching the final version of the Dalton Report. This document and the attachments are privileged and confidential and will be added to the Plaintiffs’ detailed Schedule B.</p>

**Appendix A  
(Advisements)**

1. Several of the Questions summarized in Items 1 – 14 of this Advisements Chart are based on the Questioner's review of Catalyst's Supplemental (detailed) Schedule B. Many reflect an erroneous assumption that the first involvement of Catalyst/Callidus' counsel was on or after August 31, 2017.
2. This assumption was and is erroneous. Catalyst's Supplemental Schedule B did not list the client contacts with Catalyst/Callidus' counsel during this period, pursuant to the following exchange of emails on May 13, 2020.

**From:** David Moore  
**Sent:** May 13, 2020 5:02 PM  
**To:** Milne-Smith, Matthew <MMilne-Smith@dwpv.com>  
**Subject:** RE: Catalyst v. WestFace et al (CV-17-587463-00CL): Teleconference with Justice Hailey Catalyst 2020-05-13, 10:00 AM

As briefly discussed, if a complete particularized Schedule B is construed as meaning a listing of all communications to/from (for example) Davies (or counsel for Catalyst) regarding the issues in a given piece of existing or prospective litigation including all client communications back and forth, that is not what you mean...and that is far from what your clients' Schedule B is comprised of.

But, as I understand it, you are not suggesting the above, and it appears likely that we are on the same page about what a detailed Schedule B is meant to include.

**From:** Milne-Smith, Matthew <MMilne-Smith@dwpv.com>  
**Sent:** Wednesday, May 13, 2020 5:09 PM  
**To:** David Moore <david@moorebarristers.ca>  
**Subject:** Re: Catalyst v. WestFace et al (CV-17-587463-00CL): Teleconference with Justice Hailey Catalyst 2020-05-13, 10:00 AM

**That's correct.** ...

3. Without prejudice to any of its claims of privilege, Catalyst advises that:
  - (1) Catalyst and Callidus consulted inside (Mr. Riley) and external legal counsel immediately upon receipt of the Vincent Hanna email (i.e., on August 11, 2017) and sought and received advice from legal counsel about that email and the appropriate follow up regarding same;

[11]

- (2) the external legal counsel included Mr. Greenspan, Mr. DiPucchio and Mr. Levin;
- (3) The emails referred to during the cross-examination of Mr. Riley were sent to some or all of these counsel contemporaneously with their receipt or sending;
- (4) “Vincent Hanna” suggested a meeting with Catalyst/Callidus on August 13, 2017;
- (5) Newton Glassman, who had received legal advice from the above sources, agreed in principle and indicated that confidentiality would be accorded to any communications;
- (6) the above communications were by email;
- (7) on August 21, 2017 as a result of an email invitation by “Vincent Hanna,” earlier that day (see answer to Advisements Item 6) the proposed meeting occurred, with legal counsel (Ms. Lutes) in attendance, at the office of John Phillips at 4 PM, and,
- (8) the topics of discussion at the August 21, 2017 meeting started with the confirmation of a common interest agreement for the purpose of all of the prior and future communications with the Guy parties.

THE CATALYST CAPITAL GROUP et al.  
Plaintiffs

- and - DOW JONES et al.

Court File No. CV-18-593156-00CL

Defendants

THE CATALYST CAPITAL GROUP et al  
Plaintiffs/Defendants by Counterclaim

- and - WEST FACE CAPITAL INC et al

Court File No. CV-17-587463-00CL

Defendants/Plaintiffs by Counterclaim

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**MOTION RECORD**

(Refusals Motion – Returnable January 18, 2021)

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