

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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

**BRIEF OF TRANSCRIPTS AND ANSWERS TO UNDERTAKINGS
OF THE DEFENDANTS / MOVING PARTIES,
NATHAN ANDERSON AND CLARITYSPRING INC.
(Motion Pursuant to s. 137(1) of The *Courts of Justice Act*)**

May 5, 2021

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TAB 1

Catalyst v West Face et al.

Nathan Anderson
on Friday, November 20, 2020



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

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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 -

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

33 -----

34 --- This is the transcript of the
35 Cross-Examination of NATHAN ANDERSON, on his
affidavits sworn November 8, 2019 and August 20,
2020 respectively, taken via Zoom Videoconferencing
with all participants attending remotely, on the
20th day of November, 2020.

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I N D E X

WITNESS: NATHAN ANDERSON

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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: 45:22

INDEX OF ADVISEMENTS

The questions/requests taken under advisement are
noted by U/A and appear on the following pages:
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INDEX OF REFUSALS

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INDEX OF EXHIBITS

NO.	DESCRIPTION	PAGE/LINE NO.
5	Electronic binder of documents referred to during the course of the cross-examination of Mr. Anderson.....	8/244

1 -- Upon commencing at 10:00 a.m.

2

3 NATHAN ANDERSON; AFFIRMED.

4 CROSS-EXAMINATION BY MR. DEARDEN:

5 1 Q. Good morning, Mr. Anderson.

6 A. Good morning.

7 2 Q. So, sir, you swore an affidavit on
8 November 8, 2019, in support of your anti-SLAPP
9 motion in this proceeding?

10 MR. LUNG: Yes.

11 BY MR. DEARDEN:

12 3 Q. And you swore a reply affidavit on
13 August 20, 2020, in support of your anti-SLAPP
14 motion?

15 A. Yes.

16 MR. LUNG: We think those dates are
17 right.

18 BY MR. DEARDEN:

19 4 Q. And you swore an affidavit of
20 documents on December 30, 2019?

21 A. I believe that is correct, yes.

22 5 Q. Okay. So what we are going to do,
23 Mr. Anderson, is the parties have been entering as
24 an electronic exhibit, so yours is going to be
25 electronic Exhibit No. 5, and then within that,

1 there is documents that we are going to put up on
2 the screen for you, and at the end of the day
3 whatever documents I have referred to you will
4 become part of Exhibit 5, okay?

5 A. Sounds good.

6 MR. LUNG: That is fine.

7 EXHIBIT NO. 5: Electronic binder of
8 documents referred to during the course
9 of the cross-examination of Mr.
10 Anderson.

11 BY MR. DEARDEN:

12 6 Q. So document number 4, page 30,
13 Marco. Marco, by the way, is the one who is
14 putting up the documents on the screen. He is one
15 of my colleagues.

16 So in the middle of this page 30 of the
17 texts that you have exchanged with Mr. Copeland,
18 Rob Copeland of the Wall Street Journal, you go:

19 "Lololol.

20 I'd trade WB reports for full
21 copies of all their internal
22 documentation supporting their
23 valuations."

24 Mr. Copeland says:

25 "I'd trade them for 5m

1 Canadian.

2 Apiece.

3 We can split it."

4 And you say:

5 "Net of however much it takes

6 to defend against herr shithead's

7 inevitable frivolous lawsuit."

8 Do you see that?

9 A. I do.

10 7 Q. Who is "herr shithead"?

11 A. Well, I believe it would be in
12 that instance collectively anyone filing frivolous
13 litigation, so I suppose the Catalyst Plaintiffs
14 would be the "herr shithead" in this text, which
15 for context were us kind of joking and having a
16 little fun as we performed our research.

17 8 Q. So you are referring to Newton
18 Glassman, aren't you, sir?

19 A. Offhand, probably.

20 9 Q. Can we go to document 28, which
21 should be an email from Jeff McFarlane to Wes
22 Voorheis, December 19, 2016, at 8:49 p.m., cc'd to
23 you, Mr. Anderson.

24 A. Yes.

25 10 Q. Okay. So the email that is cc'd

1 to you says:

2 "Wes, let's jump on the phone
3 with Nathan as I just got back from
4 meeting him in Toronto.

5 Nathan, meet Wes. We discussed
6 Wes briefly on Thursday and his
7 shared interest in seeing this
8 individual face justice."

9 And who is the individual who is to
10 face justice, Mr. Anderson?

11 A. One second. Let me read the
12 email.

13 MR. LUNG: This is -- just to clarify,
14 this is an email from Mr. McFarlane to
15 Mr. Voorheis, so it is not a reference by
16 Mr. Anderson to any particular individual. So are
17 you asking him to comment on what he believes
18 Mr. McFarlane -- who Mr. McFarlane was referring
19 to?

20 BY MR. DEARDEN:

21 11 Q. It says:

22 "Nathan, meet Wes. We
23 discussed Wes briefly on Thursday
24 and his shared interest in seeing
25 this individual face justice."

1 So my question to Mr. Anderson is who
2 is the individual who is going to face justice?

3 A. Well, those are Jeff's words, as
4 noted, but my interest and my role is to perform
5 fraud research. So as a general matter, I look for
6 improprieties, signs of illegal activity, and
7 prepare reports and submit them.

8 So to the extent that Jeff is referring
9 to anyone -- and you would obviously have to
10 confirm, but if he is referring to Newton Glassman
11 or any of the Catalyst principals, you know, that
12 would be in relation to his views on that, and I
13 would be kind of focussing on the fraud research.

14 12 Q. Did you or did you not, sir, have
15 a shared interest in seeing that individual face
16 justice?

17 A. I shared an interest. I think we
18 had individual interests that we were pursuing. I
19 was focussed on the whistleblower reports and the
20 research, and Jeff had his own individual interest.

21 13 Q. Mr. Anderson, the reference there
22 is to Newton Glassman, isn't it?

23 A. You would have to check with Jeff
24 to be sure, but I presume it probably is.

25 14 Q. Go back to document 4, page 32,

1 please. So sort of in the middle of the page, July
2 28, 2017, at 2:00 p.m., you say:

3 "Donkey just emailed me w[ith]
4 it and cc'ed you."

5 Do you see that?

6 A. I do.

7 15 Q. Who is "donkey"?

8 A. I'm not a hundred -- oh, is that
9 in relation to the previous email? Actually, I'm
10 not a hundred percent sure who "donkey" is offhand.

11 16 Q. Okay. Well, let's go to the text
12 just before that.

13 A. Yeah.

14 17 Q. July 28, 2017, at 1:50 p.m., you
15 write:

16 "Jeff McFarlane just won his
17 appeal.

18 Put the doc in the folder.

19 Some good stuff in there."

20 Rob Copeland says:

21 "Ya I got it."

22 And then your next text is:

23 "Donkey just emailed me w[ith]
24 it and cc'ed you."

25 "Donkey" is Jeff McFarlane,

1 Mr. Anderson?

2 A. In that case, "donkey" would
3 probably be Jeff McFarlane, but I would have to see
4 the email to be a hundred percent sure.

5 18 Q. Well, actually, I would like to
6 see the email, so if you could produce that email
7 you are referring to on July 28th, 2017, at 2:00
8 p.m. --

9 MR. LUNG: We have produced any emails
10 that we have that are relevant to the issues in the
11 action, so if it is in our productions, then it is
12 in there already.

13 BY MR. DEARDEN:

14 19 Q. Well, what I would like the
15 witness to do on a day other than today, let me
16 know what the production number is, Mr. Lung?

17 MR. LUNG: Well, I am sure somebody in
18 your enormous legal team could dig that up.
19 Everything is listed by date. It wouldn't be that
20 difficult to find that, I am sure.

21 BY MR. DEARDEN:

22 20 Q. Okay. Well, how about we do it
23 this way, Mr. Lung. If we don't find an email on
24 July 28th, 2017, around 2:00 p.m. where Jeff
25 McFarlane emailed the -- I am presuming it is the

1 Ontario Court of Appeal decision on his guarantee,
2 then will you undertake to find that email for me?

3 MR. LUNG: Well, we have already
4 produced anything that is in his possession. If
5 that email is not in the affidavit of documents,
6 then it is not in his possession, for whatever
7 reason.

8 BY MR. DEARDEN:

9 21 Q. Okay. Page 9 of this text message
10 compilation. So at the bottom, Mr. Anderson, July
11 17th, 2017 -- what did I say? Did I say
12 Mr. Anderson? Sorry, there was internal chatter
13 here. I'll go back.

14 This text on page 9, July 17th, 2017,
15 at 3:11 p.m., which we just lost. Now it is back.
16 Can you see it, Mr. Anderson?

17 A. Yes.

18 22 Q. "Definitely not Darryl. The only
19 person out of the borrowers who is
20 idiotically loose lipped is Kevin
21 Baumann."

22 So why did you say Kevin Baumann was
23 "idiotically loose lipped"? What did he say, to
24 whom, why are you saying this?

25 A. Well, what I believe I was

1 conveying in this message is the need for
2 discretion as you pursue researching a case. But
3 in relation to Kevin Baumann, Kevin -- the
4 impression I get is that Kevin is pretty
5 free-wheeling with his opinions on things and is
6 pretty free-wheeling in who he tells them to and
7 how he says it.

8 So the impression I got is that in a
9 matter that needs discretion, Kevin Baumann might
10 not fully appreciate that.

11 23 Q. Page 3 of these texts. So this
12 string of text exchanges occurred on July 13, 2017,
13 and I am looking at the one at the bottom,
14 Mr. Anderson, where you are talking to Mr. Copeland
15 who just told you that Jacquie McNish is working on
16 the story with him, and you say to Mr. Copeland:

17 "I'm in the car with one of
18 Callidus's underwriters and he said
19 she's a firecracker."

20 So who is the Catalyst underwriter who
21 you were with on July 13, 2017?

22 A. Just to clarify, Catalyst, I
23 believe, doesn't have underwriters because it is a
24 private equity firm, but Callidus had underwriters
25 in its initial IPO.

1 So the Callidus underwriter, I believe
2 that would have been Bruce Langstaff, who had
3 worked previously at Canaccord, which was one of
4 Callidus's original underwriters years prior to
5 these messages.

6 24 Q. And what city were you in when you
7 sent that text message to Mr. Copeland?

8 A. Toronto.

9 25 Q. Where did you reside at the time
10 on July 13, 2017?

11 A. New York.

12 26 Q. Anybody else with you in the car
13 that day or when you made that -- when you texted
14 that?

15 A. I'm not sure offhand.

16 27 Q. Where were you going with Bruce
17 Langstaff?

18 A. I think that was the day, if --
19 again, I'm going off memory, but I think that was
20 the day of the barbecue at Adam Spears' house. So
21 I think the only time I have been in a car with
22 Bruce Langstaff was then because he gave me a ride
23 to the barbecue. I wasn't sure where that was.

24 28 Q. So you have just cleared yourself
25 of not texting and driving at the same time because

1 Mr. Langstaff was driving.

2 A. Yeah, I try and stay within the
3 lines on those things.

4 29 Q. That is good, sir. Page 10 of the
5 texts. This should be a July 17, 2017, text on
6 page 10 of the compilation, and I am looking in the
7 middle of the page. Rob Copeland says:

8 "The emails are tout.

9 Tough.

10 They confirm the Toronto
11 invest.

12 Sorry, Toronto police.

13 The osc and rcmp are pretty
14 tight in their written responses."

15 And then you reply:

16 "I've only seen a handful of
17 them.

18 Meet[ing] confirmations
19 materials etc."

20 So what emails are the two of you
21 discussing there, sir?

22 A. I am not sure offhand which email,
23 but, you know, any emails that have reference to
24 Toronto Police or RCMP.

25 30 Q. Now, I know your counsel keeps

1 reminding me that you have produced everything that
2 is in your possession. Is it possible that those
3 emails that reference the Toronto Police, the OSC,
4 and the RCMP, that not all of them were produced
5 because you no longer had possession of them when
6 you swore your affidavit of documents?

7 A. We have produced all of our
8 documents. If anything, if there were emails where
9 my attorney or counsel was on them, I would presume
10 that those would be considered privileged.

11 31 Q. Well, at this point in time, July
12 17, 2017, who would your attorney be that you would
13 have claimed privileged on RCMP and Toronto Police
14 documents?

15 A. So I had -- and I don't know the
16 full rules of privilege, so I don't know if -- I
17 certainly don't want to waive privilege. The
18 attorney that I had worked with at that time was an
19 attorney that specialized in working with
20 whistleblowers and preparing whistleblower
21 documentation and communicating with regulators,
22 vetting whistleblower reports, and acting as kind
23 of an independent layer of analysis and vetting for
24 the research I was performing.

25 32 Q. And that is Bryan Wood of the

1 Berman firm in Boston; correct?

2 A. Bryan Wood is the partner and the
3 Leader of the whistleblower practice for Berman
4 Tabacco, so he is the main attorney point of
5 contact, but he had a team of, I believe, three at
6 the time.

7 33 Q. So getting back to what is on this
8 page 10 of the texts, you are not recollecting what
9 those emails were about, apart from what we see on
10 that page?

11 A. I don't think I got too much
12 information on the dealings of -- or the kind of
13 interaction between the police and others. The
14 reports that some of the other individuals had
15 filed with the police were before my time, so I
16 came after those were filed, I believe, so I don't
17 have as much detail as probably some of the other
18 people that had actually filed them.

19 34 Q. So you don't recall why
20 Mr. Copeland was saying the emails are tough?

21 A. Not offhand.

22 35 Q. Page 4 of the text messages, there
23 should be a July 14, 2017, text at 11:10 a.m.

24 In the middle of the page, you say:

25 "Came across another potential

1 opportunity on Catalyst/Callidus
2 that might be helpful to you when
3 you have a sec."
4 So what was that potential opportunity,
5 sir?

6 A. I don't know offhand. This was
7 quite some time ago.

8 36 Q. Would it have been something to do
9 with Darryl Levitt whose cell phone you provide to
10 Mr. Copeland in the next text? Do you see at the
11 bottom of the page?

12 MR. LUNG: Rick, do you want to go to
13 the next page and maybe that will help jog his
14 memory? That might help? Is there another -- do
15 the text messages continue?

16 BY MR. DEARDEN:

17 37 Q. Let's see what is there. Yeah, I
18 don't know if that jogs your memory, sir.

19 MR. LUNG: And can you go up -- Rick,
20 can you just go up just to see what the
21 time-stamping is? Is it all concurrent? So that
22 is 12:09. Before that, pretty close. Okay. So
23 keep going.

24 MR. DEARDEN: We are running them
25 concurrently from latest to the -- or oldest text

1 starting on July 13th through to August 10th.

2 MR. LUNG: No, I get that. I was more
3 wondering whether it was proximate in time, so
4 maybe you can scroll up and just let Mr. Anderson
5 take a look at the few texts afterwards.

6 BY MR. DEARDEN:

7 38 Q. Was the other opportunity -- well,
8 okay, first, do you want to see the page 3?

9 MR. LUNG: Oh, no, sorry, I meant going
10 down. Sorry, the later text messages after the
11 reference to Darryl and then --

12 BY MR. DEARDEN:

13 39 Q. Okay. Page 5.

14 Does that jog your memory about what
15 the potential opportunity would be when
16 Mr. Copeland says:

17 "Sweet.

18 This will be the lede to the
19 long story: 'Newt Glassman often
20 tells colleagues he is a
21 billionaire. He is not.'

22 A. I'm not sure offhand what the
23 other potential lead or opportunity was. You know,
24 I think I had introduced Darryl, but I don't know
25 if the two were related at the time.

1 40 Q. Okay. Well, my colleague, Mr. Na,
2 who will be examining you this afternoon, will have
3 some questions about the barbecue and some of these
4 text messages as well, but that is for the
5 conspiracy action.

6 Page 16 of the texts --

7 MR. LUNG: Sorry, Rick, just to
8 clarify, this is all for both actions, or are
9 you -- are we splitting --

10 MR. DEARDEN: Yes, but I would -- yes,
11 you are right, Lucas, but I was just saying to
12 Mr. Anderson for his benefit that he'll be examined
13 by Mr. Na, and so if I'm not following up on the
14 barbecue, for instance, because I really don't know
15 much about the barbecue, it will be Mr. Na who will
16 be asking him questions about that, for instance.
17 That is all I meant.

18 MR. LUNG: But just to clarify, the
19 transcript for the whole day here, whether you are
20 asking questions or whether Mr. Na is asking
21 questions, will be evidence on the motions in both
22 actions; that is my understanding of our agreement.

23 MR. DEARDEN: Yes, correct.

24 MR. LUNG: Yeah. Okay.

25 BY MR. DEARDEN:

1 41 Q. So, Mr. Anderson, at the bottom of
2 page 16 there is a photo of Newton Glassman; do you
3 see that?

4 A. I do.

5 42 Q. And we'll show you. So there you
6 have the full photo with page 16 and 17. Where did
7 you obtain that photo? Or do you know where that
8 photo came from?

9 A. I believe it was floating around
10 on Twitter, but I am not sure if that is where I
11 had gotten it.

12 43 Q. You don't recall getting it from
13 an individual as opposed to off of Twitter?

14 A. Not offhand. I don't know if it
15 was sent or if it was just pulled off of Twitter.

16 44 Q. Okay. And document 26 is going to
17 be a Reuters article published March 23, 2018,
18 which according to my eyes is the same photo. It
19 is the same photo according to your eyesight?

20 A. It looks like it, with some
21 graphics overlaid on top of it and such.

22 45 Q. Right. And did you provide that
23 photo to anybody at Reuters?

24 A. I don't think so.

25 46 Q. Okay. Page 19 of the texts. It

1 should be a July 21st, 2017, text at 3:23 p.m., and
2 you inform Mr. Copeland that you had:

3 "Been a bit distracted beating
4 up on \$EROS today.

5 Sent out a couple tweets about
6 their accounting fraud and the thing
7 ripped down 20% and has been nutty
8 all day."

9 And you tell Mr. Copeland you:

10 "Just added it to the Dropbox
11 going to reread it myself."

12 And he replies:

13 "EROS feels below you."

14 And you say:

15 "Nah it's a nice NYSE-listed
16 800m co with a bunch of options
17 [...]"

18 Let me just stop at the one where you
19 say -- the first one:

20 "Sent out a couple tweets about
21 their accounting fraud and the thing
22 ripped down 20% and has been nutty
23 all day."

24 By that, you mean the EROS shares
25 decreased in value by 20 percent after your tweets

1 about their accounting fraud?

2 A. I believe so, yes.

3 47 Q. And so at the bottom:

4 "EROS feels below you."

5 "Nah it's a nice NYSE-listed

6 800m co with a bunch of options

7 [...]"

8 And can we go to page 20, and I'm not

9 sure if there is a line missing there,

10 Mr. Anderson, but the next line I see is:

11 "Terminal zero. Good for brand

12 Nate ultimately.

13 Helps keep the lights on in the

14 interim. When you going to

15 introduce me to this Jacqui?"

16 So the part of that text to

17 Mr. Copeland that I am looking at is:

18 "Good for brand Nate

19 ultimately.

20 Helps keep the lights on [...]"

21 So why is a 20 percent share price

22 decrease caused by your tweets good for brand Nate?

23 A. Well, my business is identifying

24 and exposing fraud, so the two components to that

25 business model are whistleblower reports and

1 betting against stocks that I believe are engaging
2 in fraud.

3 So identifying major undisclosed issues
4 at a New York Stock Exchange-listed company and
5 having an impact on that stock is something that is
6 supportive of the brand of exposing fraud, and I
7 believe in that specific instance that was in
8 reference to a series of undisclosed related party
9 transactions that EROS had engaged in with an
10 entity called EROS Television that was sharing
11 ownership through a key member of the management
12 team of the company. There were loans and
13 financials that had crossed over between the two,
14 and none of it had been disclosed at that time.

15 After those tweets and after a series
16 of articles on the subject, the company actually
17 disclosed for the first time the existence of that
18 previously undisclosed related party transaction,
19 and that type of exposure of accounting
20 irregularities and evidence of fraud is good for
21 the business and the brand of what we do.

22 48 Q. And, sir, so in July 2017, your
23 business had two components. One was whistleblower
24 complaints, and two, you kind of faded out there,
25 but I think you said shorting in stocks of the

1 company that you are researching?

2 A. Correct. At that time, the focus
3 was primarily on whistleblower reports, but we were
4 beginning to also short as a component of the
5 business model as well, and EROS was one early
6 example of that.

7 49 Q. And you did short EROS, which
8 helped keep the lights on?

9 A. Yes.

10 50 Q. As I take it. And page 32, which
11 would be a July 28, 2017, 2:00 p.m. text. Are we
12 looking at page 32? Yes. The bottom there, you
13 say:

14 "Speaking of which I crushed
15 that stupid Eros company [...]"

16 Is that what you felt you did?

17 A. I think that was a kind of
18 light-hearted colloquial manner of saying that we
19 had exposed what we believed to be fraudulent
20 practices at EROS and had done so effectively.

21 51 Q. And you just happened to crush
22 that stupid company too, right?

23 A. I think we did a good job exposing
24 the major undisclosed issues at that company, and I
25 expressed that in a series of pretty colloquial

1 texts.

2 52 Q. Okay. Can we go to paragraph 31
3 of your November 8th, 2017, affidavit, which we'll
4 put up on the screen, Mr. Anderson. Paragraph 31.
5 So:

6 "In or around January or
7 February 2017, while I was
8 conducting my investigation into
9 Catalyst and Callidus, I contacted
10 Rob Copeland, a reporter at the Wall
11 Street Journal, to inform him about
12 the information I had uncovered, as
13 I thought the Wall Street Journal
14 may have an interest in reporting on
15 that information. I later provided
16 copies of the Whistleblower
17 Submissions, as well as some
18 supporting documents, to Copeland."

19 And you attached your Exhibit O there,
20 which is a July 2017 Broken Bridge report, which
21 I'll get to in a moment.

22 So trust me on this, in paragraph 15 of
23 your August 2020 affidavit, you said you initially
24 approached Mr. Copeland in approximately February
25 of 2017. So what is your best recollection, sir,

1 as to your first contact? Was it the month of
2 February 2017 that you first contacted Rob
3 Copeland?

4 A. I mean, it was around January or
5 February, but in that time frame. I am not a
6 hundred percent sure which date precisely.

7 53 Q. Okay. And let's assume then it
8 was January 2017 that you first contacted him. Did
9 you text --

10 MR. LUNG: Well, no. Sorry. I mean,
11 he said that it was in or around that time frame,
12 so in that January or February time frame. So that
13 was his answer. So I don't know how you go from
14 that to assuming that it happened in January.

15 MR. DEARDEN: But in his August 20,
16 2020, affidavit, he doesn't say January or
17 February. He just says approximately February, and
18 I was just trying to see if it was -- really
19 February is the month.

20 MR. LUNG: I thought you said assuming
21 it is January, and all I'm saying is that his
22 response is that it was in that time frame. He
23 can't remember the exact date.

24 BY MR. DEARDEN:

25 54 Q. So, Mr. Anderson, although your

1 August 2020 affidavit just refers to February, your
2 evidence now is it might have been January of 2017
3 that you first contacted Mr. Copeland?

4 MR. LUNG: Well, can we hold on a
5 second? Can we take a look at what it says?

6 MR. DEARDEN: Sure. It says
7 "approximately February 2017", paragraph 15.

8 MR. LUNG: So I just wanted to make
9 sure that it said "approximately February 2017" and
10 it doesn't say --

11 MR. DEARDEN: It does.

12 MR. LUNG: -- in February 2017, because
13 there is obviously a difference between the two.

14 MR. DEARDEN: And that is what I said,
15 "approximately".

16 MR. LUNG: Okay. Yes.

17 BY MR. DEARDEN:

18 55 Q. So, Mr. Anderson, I didn't mean to
19 spend so much time on this. It might have been
20 January 2017; you just don't recall?

21 A. If I had the precise date, I would
22 certainly provide that. I am not sure a hundred
23 percent which day it was. I just know around which
24 time it was.

25 56 Q. Okay. So it was certainly early

1 in 2017 you first contacted Rob Copeland, and did
2 you text him between, say, January 2017 and July
3 13, 2017? Did you text him in that time period?

4 A. I am not sure which form the
5 initial communication took. I spoke with him on
6 the phone fairly regularly, so it may have been a
7 phone call to discuss.

8 57 Q. Yes, and while you have mentioned
9 that, I'm asking you to produce your phone records
10 with Mr. Copeland from the date you first made
11 contact with him, which looks like it was January
12 2017 and February of 2017, right through to August
13 the 10th, 2017, when the print article of the Wall
14 Street Journal was published.

15 U/A MR. LUNG: We'll take that under
16 advisement. And just to be clear, what you want is
17 you just want his own telephone records and any
18 record of a call with Mr. Copeland? That is what
19 you are looking for, right?

20 MR. DEARDEN: Correct.

21 MR. LUNG: Because that is what I
22 understand as what you mean by phone records.

23 MR. DEARDEN: Or, I mean,
24 ClaritySpring, whatever phone number -- whatever
25 company phone number he might have used, his own

1 cell phone, whatever -- whatever device he used and
2 phone number he used to communicate with
3 Mr. Copeland January 2017 until August 10th, 2017,
4 that is what I am looking for, Mr. Lung.

5 MR. LUNG: Sorry, you are looking for
6 whatever phone number he used?

7 MR. DEARDEN: Whatever device he used,
8 I'm looking for the phone records.

9 MR. LUNG: Right. But what you are
10 looking for are records of telephone calls from the
11 phone -- from his phone records or from whatever
12 phone he uses that would indicate communication
13 between him and Mr. Copeland during that time
14 frame; that is what you are looking for?

15 MR. DEARDEN: Yes.

16 MR. LUNG: Okay. I just wanted to
17 confirm. Okay.

18 BY MR. DEARDEN:

19 58 Q. And what I am asking about now,
20 Mr. Anderson, is -- these text messages we have
21 been looking at, they start July 13 of 2017 on page
22 1, they end on page 65 on August 10, 2017, so I am
23 looking to know if you text Mr. Copeland January
24 2017 to July 13, 2017.

25 MR. LUNG: So you asked for -- you

1 know, Mr. Dearden, you had sent us a request, and
2 we had confirmed that we produced anything that --
3 any text messages that were in his possession, and
4 he doesn't have text messages any longer in his
5 possession.

6 MR. DEARDEN: And I am coming to that
7 in a micro second.

8 MR. LUNG: Okay.

9 BY MR. DEARDEN:

10 59 Q. I just want to deal with pre-July
11 13, 2017. Do you recall texting Mr. Copeland in
12 that period January 2017 to July 2017?

13 A. Do I recall texting him between
14 that time period?

15 60 Q. In that time period.

16 A. I am not sure if we had texted.
17 We had had some communication over the phone. We
18 had some communication over email, I believe, to
19 the extent that there are any documents there. I
20 am not sure offhand.

21 61 Q. Did you text him after the last
22 text message we have on August the 10th, 2017? Did
23 you text Mr. Copeland after that?

24 A. After August?

25 62 Q. Yeah, and if we can put page 65

1 up. After August 10th because that is the last
2 text message I have.

3 A. I know that we produced all the
4 relevant text messages.

5 63 Q. No, I hear you, sir. I'm asking
6 if you texted him, not whether you have them.

7 A. Oh, texting. I don't think so
8 offhand, but I am not a hundred percent sure.

9 64 Q. Okay, because we see in the middle
10 of that page 65 is an August 10 3:22 p.m. text. So
11 all your text messages stopped after August 10; is
12 that your evidence?

13 MR. LUNG: I think his evidence was he
14 doesn't recall.

15 THE DEPONENT: Yeah, and those are
16 Signal messages, I believe, if that is --

17 BY MR. DEARDEN:

18 65 Q. You are correct. You are correct.
19 So let's go to Mr. Lung's letter to me
20 of May 28, 2020, which is document 11. So your
21 counsel is writing in response to my letters dated
22 February 5, 2020, and February 14, 2020, which are
23 documents 12 and 13 of Exhibit 5, and I am informed
24 by your counsel, Mr. Anderson:

25 "In reviewing your document

1 request, it occurred to us that
2 documents in respect of two of your
3 listed categories are no longer in
4 Mr. Anderson's possession, his
5 Confide chat log with Mr. Copeland,
6 and his direct messages to the
7 'Stopthescandal' Twitter account.
8 We will deliver a supplementary
9 affidavit of documents from Mr.
10 Anderson listing these documents in
11 Schedule C."

12 And is there -- with respect to saying
13 the confide chat log, those documents are no longer
14 in your possession, first of all, it is not
15 Confide, is it? It is Signal chat log?

16 A. I have Confide as well, but that
17 may be referring to Signal.

18 66 Q. Well, it is referring to Signal,
19 right, because the texts that we have been looking
20 at, it is not Confide; it is Signal? Do you agree
21 with that?

22 A. Yes.

23 67 Q. And is the reason they are no
24 longer in your possession is because you cleared
25 your whole chat log? You cleared it?

1 A. What is that? Can you please
2 repeat?

3 68 Q. Is the reason the text messages
4 that you exchanged with Mr. Copeland in 2017 are no
5 longer in your possession is because you cleared
6 the whole chat log? You cleared them?

7 A. No, I believe it is because I had
8 either upgraded the app or upgraded my phone and
9 those had just cleared with the passage of time.

10 69 Q. Okay. Well, let's look at page 31
11 of the texts. So in the middle of the page, July
12 27, 2017, at 6:47 p.m., Mr. Copeland says:

13 "Story should be out Tuesday.

14 Don't tell the conspiracy of
15 short sellers!"

16 You say:

17 "Lol knock on wood.

18 Cohodes will be pleased [...]"

19 And then Mr. Copeland says:

20 "When this is read aloud in
21 court please your honor know that
22 was sarcasm."

23 And you say:

24 "Yes it was thankfully.

25 Also I'm clearing this whole

1 chat log."

2 I put it to you, sir, that is why these
3 text messages are no longer in your possession
4 because you cleared them like you said you were
5 going to do?

6 A. That series of text messages was
7 clearly us joking around, as was indicated in the
8 text messages themselves.

9 70 Q. I see no joke, sir, in you saying
10 that you are going to clear the whole chat log
11 after there is a reference to the court.

12 A. The entire exchange is
13 lighthearted, I think, in reference to -- this was
14 following, I believe, Copeland asking some
15 questions and getting stonewalled and then
16 relaying, rather than have answers to questions, a
17 conspiracy theory that Catalyst had put to him that
18 Marc Cohodes may have been involved in the asking
19 of questions and that there was a mysterious
20 conspiracy of short sellers behind the issues being
21 raised.

22 So this text message was a lighthearted
23 exchange in kind of -- as we carried on with the
24 research process.

25 So, no, there were no text messages

1 cleared following this exchange.

2 71 Q. Well, let's go to the next page,
3 after you say:

4 "Also I'm clearing this whole
5 chat log."

6 You say:

7 "Regular course."

8 What does that mean?

9 A. I am not sure offhand. Perhaps
10 referring to this is all just in the typical form
11 of business that we are in, in that when we
12 identify issues of fraud and raise these issues,
13 often times the subject of those issues refuses to
14 answer and simply stonewalls and throws out
15 alternative conspiracies as to why questions are
16 being asked rather than simply answering them.

17 72 Q. Come on, Mr. Anderson. Really.
18 You aren't talking about what you just said there.
19 You are telling Mr. Copeland that you are going to
20 clear your chat log as part of the regular course.
21 What you just said has absolutely nothing to do
22 with what you have in this text. You cleared them,
23 didn't you?

24 MR. LUNG: He answered that question.
25 He said no. It has already been asked and

1 answered.

2 MR. DEARDEN: No, this is pretty
3 crucial, Mr. Lung, and you shouldn't have
4 interrupted.

5 MR. LUNG: Well, he answered that
6 question. You asked him and he answered.

7 BY MR. DEARDEN:

8 73 Q. You shouldn't have interrupted,
9 sir.

10 So does that complete your answer on
11 why you told Mr. Copeland that you were clearing
12 your chat log as a regular course, Mr. Anderson?
13 Does that complete your answer, what you just said?

14 MR. LUNG: No, he didn't say that he --
15 he didn't -- sorry, you are putting words into his
16 mouth. He explained why he wrote "regular course".

17 BY MR. DEARDEN:

18 74 Q. Well, Mr. Lung, please. I am
19 looking at the exact wording of the text messages
20 on pages 31 and 32, and Mr. Anderson writes:

21 "Also I'm clearing this whole
22 chat log.

23 Regular course."

24 And all I'm asking him is does that
25 complete his answer? I'm giving him one last

1 opportunity to answer my question on whether he
2 cleared the chat log. If that is his answer, I'm
3 moving on.

4 A. My answer was that we were joking,
5 having a lighthearted exchange about kind of the
6 day-to-day dealings we have in the business of
7 researching and identifying issues of fraud.

8 75 Q. So can we have document 30, which
9 is Mr. Anderson's Statement of Defence, paragraph
10 14. So, Mr. Anderson, this is your Statement of
11 Defence, and it says:

12 "In 2016, Anderson discovered a
13 Twitter account called
14 'StopTheScandal', which was posting
15 about problems in the Catalyst
16 Capital Group Inc. and/or Callidus
17 Capital Corporation, both of which
18 are managed by the same individual,
19 Newton Glassman. The Twitter
20 postings included a level of detail
21 that suggested that the allegations
22 merited further investigation."

23 Paragraph 15 says:

24 "Anderson contacted the person
25 behind the 'StopTheScandal' account,

1 whose identity is unknown to
2 Anderson, seeking additional
3 details."

4 And then that person told you to
5 contact certain borrowers.

6 So you communicated with StopTheScandal
7 through your Twitter account; correct?

8 A. I believe it was the ClaritySpring
9 Twitter account at the time.

10 76 Q. Okay. And can we have the May
11 28th letter back up, please, which is document 11,
12 the May 28, 2020, letter from Mr. Lung to me. So
13 this letter informed me that your direct messages
14 to StopTheScandal Twitter account also are no
15 longer in your possession.

16 So, sir, can I take it that you cleared
17 your ClaritySpring's Twitter account, and that is
18 why those tweets that you sent to StopTheScandal no
19 longer exist?

20 A. No, I am not sure exactly what
21 happened with the messages in Twitter. I know at
22 one point we had changed our Twitter handle, so I
23 changed it from ClaritySpring to ClarityToast, and
24 they may have not ported over, but I am not a
25 hundred percent sure.

1 77 Q. Sorry, Mr. Anderson, I can hardly
2 hear you actually, so I missed the last few
3 sentences of your answer, so could I ask you to try
4 to repeat that for me, please.

5 A. Sure. No, I am not a hundred
6 percent sure what happened with the old messages
7 from the ClaritySpring account.

8 78 Q. But you are sure that whatever
9 tweets that you sent to StopTheScandal, they don't
10 exist as we sit here today?

11 A. My guess is that Twitter has them.
12 I don't have them in my old message logs.

13 79 Q. Okay. Now, sir, switching topics,
14 your education, you have a Bachelor of Business
15 Administration from the University of Connecticut?

16 A. Yes.

17 80 Q. And what year did you get that
18 degree?

19 A. I believe it was 2006.

20 81 Q. And my understanding is that is
21 your -- do you have any other degrees? Like if you
22 want to fill out more on your educational
23 background, feel free to do so, but if that is what
24 I should know, then that is good.

25 A. As far as college degrees, that is

1 my college degree. I would probably add several
2 professional credentials, such as Chartered
3 Financial Analyst and Chartered Alternatives
4 Investment Analyst.

5 82 Q. All right. And your work history,
6 sir, I understand -- after you graduated, what
7 company did you work for?

8 A. I worked for a company called
9 Factset Research Systems after graduation.

10 83 Q. So would that be 2006, about?

11 A. I think it was 2006, 2007.

12 84 Q. And then you went to Tangent
13 Capital?

14 A. Yes. So after Factset, I had
15 worked for a firm called Blue Heron Capital, which
16 essentially merged with Tangent Capital later, and
17 then worked at Tangent Capital. So Blue Heron
18 Capital was based in Washington, DC. It was a
19 broker/dealer that also allocated its own capital
20 and worked with multiple family office investors to
21 help allocate their capital as well as pitch hedge
22 fund and private equity products, and Tangent
23 Capital was substantially -- there was propriety
24 capital invested. We had worked with multiple
25 family offices and different institutional

1 investors on their allocations to alternative
2 investments, like hedge funds, private equity
3 funds, in some cases public securities and other
4 venture capital funds.

5 And --

6 85 Q. So what time period would --
7 Blue Heron through to when you left Tangent
8 Capital, what time period would that be?

9 A. I believe Blue Heron started
10 around 2010, and on my resumé's, for simplicity, I
11 have essentially merged the two in some cases
12 because Blue Heron ultimately became Tangent -- or
13 the part of Blue Heron that we were working at.

14 86 Q. Right.

15 A. And that took me right up to the
16 time when I started ClaritySpring, so I'm not sure
17 of the exact date where I formally left Tangent
18 offhand.

19 87 Q. Well, what year did you create
20 ClaritySpring Inc.?

21 A. I don't know exactly offhand which
22 precise year, so I wouldn't want to misquote, but
23 it is available on my LinkedIn, I believe.

24 88 Q. So at any rate, when you left
25 Tangent Capital, you created your own company

1 ClaritySpring Inc.; have I got that right?

2 A. To clarify, I think I had formed
3 ClaritySpring while at Tangent and had done some
4 kind of light initial work on it while at Tangent
5 and then full-time committed myself to
6 ClaritySpring after leaving Tangent.

7 89 Q. And that was about what year,
8 approximately?

9 A. I'm not a hundred percent sure
10 which year precisely. I could take a guess, but it
11 is available on my LinkedIn, I think, pretty
12 readily accessible.

13 90 Q. Well, how about you readily let me
14 know what the years of your work history are in
15 writing?

16 MR. LUNG: Mr. Dearden, if I can help,
17 Mr. Anderson's first affidavit indicates -- at
18 paragraph 9, it indicates that he left Tangent
19 Capital in March 2015.

20 MR. DEARDEN: Okay. Thank you,
21 Mr. Lung.

22 U/T MR. LUNG: So I'll let you know if we
23 need to correct that, all right?

24 BY MR. DEARDEN:

25 91 Q. Okay. And, Mr. Anderson, Broken

1 Bridge Research, was this another company along
2 with ClaritySpring Inc., or was it a name that you
3 used as part of ClaritySpring Inc. for certain
4 research reports you did?

5 A. It actually -- Broken Bridge
6 Research was a moniker that we had contemplated
7 using as kind of a name to publish research, but we
8 never ended up publishing under that. So these
9 were -- this was kind of early on the part of
10 ClaritySpring where we had contemplated both the
11 kind of whistleblower business model as well as the
12 short-selling business model and were deciding in
13 what manner to publish short research should we
14 have chosen to do so.

15 But we never ended up publishing
16 anything under Broken Bridge Research.

17 92 Q. And so you used Hindenburg
18 Research as your moniker?

19 A. Hindenburg was the moniker that I
20 published under ultimately and later incorporated
21 that into a business that focussed largely on the
22 short-selling side.

23 93 Q. And is that a separate company, or
24 is that just the name you use for the research
25 reports?

1 A. No, that is a separate company.

2 94 Q. And when in 2017 did you create
3 Hindenburg Research Company?

4 A. I am not sure of the date offhand.

5 95 Q. Well, if Mr. Lung knows that --

6 MR. LUNG: So just, again, at paragraph
7 11 of his first affidavit, Mr. Anderson deposed
8 that Hindenburg Research was founded in 2018.

9 THE DEPONENT: Yes. So it had been
10 used as a moniker for a period of time prior to
11 that and then had been incorporated -- I believe it
12 was late 2018 -- as a Delaware entity.

13 BY MR. DEARDEN:

14 96 Q. Okay. And, sir, you have never
15 been employed in Canada?

16 A. No.

17 97 Q. And you never resided in Canada?

18 A. No.

19 98 Q. Okay. Can I take you to a
20 recently published Wall Street Journal article,
21 which is document 14. It is a September 23, 2020,
22 article headlined "How Nikola Stock Got Torched By
23 a Short Seller". You are familiar with this
24 article, sir, I take it?

25 A. Yes. I was interviewed for it.

1 99 Q. Right. So --

2 MR. LUNG: Nate, have you read this
3 article? Have you had a chance to read this
4 article?

5 THE DEPONENT: Yes.

6 MR. LUNG: Okay.

7 BY MR. DEARDEN:

8 100 Q. So the first paragraph,
9 Mr. Anderson, says:

10 "Nathan Anderson started
11 publishing skeptical articles about
12 companies in 2017. Within months,
13 he was sued, ran out of money and
14 couldn't pay his bills. Fielding
15 eviction notices, Mr. Anderson says
16 that he and his pregnant fiance were
17 told to vacate their cramped,
18 two-bedroom apartment in upper
19 Manhattan. 'I was broke, and it was
20 bad', he recalls."

21 Are you accurately quoted in the second
22 paragraph of this article, sir?

23 A. I think the quote is accurate, but
24 the context of that would probably be helpful. So
25 at the time I think I was in a situation that many

1 entrepreneurs face where I was somewhat equity rich
2 and cash poor, in that in lieu of taking on
3 personal cash resources, I had poured my resources
4 into the business I was building.

5 So the cash in the portfolio of
6 whistleblower cases and the equity of the business
7 was my primary focus, and certainly that was to the
8 detriment of my own personal financials at the
9 time.

10 101 Q. If you are broke, and it is bad,
11 you are broke. So was that not a correct statement
12 that you gave to the Wall Street Journal reporter
13 there, that you were broke, and it was bad?

14 A. I think it was correct that my
15 personal cash in my bank account was low, and that
16 my personal financial situation, I was at the time
17 struggling as I built up ClaritySpring and focussed
18 my resources and efforts on the business itself.

19 102 Q. On the second page -- Marco, the
20 second page -- I am looking at the paragraph:

21 "Starting around 2014, he
22 developed a network of like-minded
23 individuals eager to uncover
24 questionable investment firms. He
25 submitted whistleblower complaints

1 to the government, hoping to score
2 rewards that sometimes accrue to
3 those who identify wrongdoing.
4 Harry Markopolos, the fraud
5 investigator who tried to warn
6 authorities about Bernard Madoff's
7 Ponzi scheme and more recently has
8 profited from whistleblower
9 complaints related to alleged bank
10 misdeeds, became Mr. Anderson's
11 model, he says."

12 So is that paragraph accurate?

13 A. Yes.

14 103 Q. And the next paragraph:

15 "That strategy can involve a
16 long and often fraught process. It
17 can take years for whistleblowers to
18 be paid by the government, if they
19 ever are compensated."

20 Is that paragraph accurate?

21 A. Yes.

22 104 Q. And the next paragraph, you are
23 quoted as saying that you were living in a rundown
24 place in Inwood. "I wasn't doing a great job
25 paying my bills." Is that accurate?

1 A. Yes.

2 105 Q. And:

3 "At the time, Mr. Anderson
4 believed investment firms, rather
5 than publicly traded companies, were
6 more likely to yield frauds and
7 other issues. 'I thought these
8 incredibly smart people were vetting
9 companies,' he says."

10 Is that accurate?

11 A. That is, and to clarify that in
12 relation to investment firms, that is specifically
13 relating to private investment firms, whether it be
14 hedge funds, private equity firms or other private
15 investment firms, as distinct from publicly traded
16 companies.

17 106 Q. Okay. And the next paragraph in
18 this article on page 2:

19 "After seeing a public company
20 tumble as part of one of his fraud
21 investigations, he switched gears.
22 Mr. Anderson launched Hindenburg in
23 2017, searching for companies he
24 believed were behaving in a
25 fraudulent or illegal manner."

1 And that is accurate?

2 A. Yes, and that is relating to the
3 launch of Hindenburg as at the time an
4 unincorporated moniker and then later as an
5 incorporated stand-alone business.

6 107 Q. And then on the third page of this
7 article, right at the bottom, you say -- or the
8 article says, so the third-last paragraph:

9 "He was nervous as he published
10 his report on Hindenburg's website
11 and shared it with others. 'I know
12 people can lose their jobs, their
13 careers,' he says. 'People will
14 lose money, I'll be threatened with
15 lawsuits.'"

16 Are you accurately quoted there?

17 A. I am accurately quoted there, yes.

18 108 Q. And then at the top of page 3, in
19 the second paragraph:

20 "Mr. Anderson and a reporter
21 for The Wall Street Journal are
22 among the more than 20 defendants in
23 a lawsuit brought by private-equity
24 firm Catalyst Capital Group and
25 Callidus Capital Corp. alleging a

1 short-selling conspiracy related to
2 a 2017 article about Catalyst. A
3 Journal representative has said the
4 news organization is 'confident in
5 the fairness and accuracy' of its
6 reporting. Mr. Anderson says: 'We
7 stand by our research on the
8 subjects 100%.'

9 Are you accurately quoted there?

10 A. Yes.

11 109 Q. And, sir, I put it to you that
12 this conspiracy action against you hasn't
13 discouraged you at all from investigating
14 securities fraud; do you agree with that?

15 A. I agree with that.

16 110 Q. And this conspiracy action hasn't
17 discouraged you from filing whistleblower
18 complaints; do you agree with that?

19 A. I do agree with that.

20 111 Q. And this conspiracy action hasn't
21 deterred you from speaking to journalists like you
22 just did on September 23, 2020; do you agree with
23 that?

24 A. I think -- I agree with that. I
25 would also note that I think certainly these

1 actions intended to quell my speech and to quell my
2 communication with journalists and to quell my
3 confidence in submitting whistleblower reports and
4 engaging in fraud research, but it -- I didn't let
5 that succeed because I pushed through that and
6 continued to engage in my business of researching
7 fraudulent enterprises or enterprises that I
8 suspect are engaging in fraudulent or unethical
9 practices.

10 112 Q. And you haven't -- but this
11 conspiracy action hasn't deterred you a bit from
12 shorting companies that you believe are engaged in
13 improper conduct because, as I see at the fourth
14 page of this article, you won't say how much you
15 have made shorting Nikola, but it was a big win,
16 and you are still short. So you'll agree with me
17 that this conspiracy action hasn't deterred you
18 from shorting companies that you think are good to
19 short; is that fair?

20 A. I think I have continued my
21 business, despite the hurdles and the time and the
22 money and expense of dissenting against these
23 actions.

24 113 Q. Okay. Now I am going to take you
25 to the Broken Bridge report that is document 5. It

1 is a July 2017 report; do you see that, sir?

2 A. Yes.

3 114 Q. Okay. Now, we need paragraph 31
4 of your November 8th, 2019, affidavit. I already
5 read this paragraph into the record. Let's just go
6 directly to Exhibit O. So you later provided
7 copies of the Whistleblower Submissions, as well as
8 some of the supporting documents to Copeland.

9 "Attached at Exhibit 'O' is a
10 report I prepared, titled 'Callidus
11 Capital Corp. (TSE:CBL): Opaque
12 Portfolio, Questionable Disclosures,
13 Buyer Beware' and dated July 2017,
14 which is one of the documents I
15 provided to Copeland."

16 Do you see that?

17 A. Yes.

18 115 Q. And did you provide this Broken
19 Bridge report to Mr. Copeland the same time as you
20 provided him your OSC Whistleblower Submission?

21 A. I am not sure of the timing of
22 when each document was shared. I just know that I
23 had shared it.

24 116 Q. And how did you get this Broken
25 Bridge report and your OSC Whistleblower

1 Submissions to Rob Copeland?

2 A. Well, there were a lot of files
3 with -- relating to the OSC report and the SEC
4 report and the Broken Bridge report. So with the
5 hundreds of supporting documents that went into
6 these things, I think I had shared a Dropbox folder
7 that included much of it. I am not sure if there
8 were, you know, certain high level items shared
9 over email or the like beforehand. I mean, that
10 would be available in the email record as well, but
11 I think much of it was a Dropbox folder.

12 117 Q. So your best recollection,
13 Mr. Anderson, is that the Broken Bridge Research
14 report of July 2017 and your Ontario Securities
15 Commission Whistleblower Submission was put in a
16 Dropbox folder that Mr. Copeland had access to?

17 A. I believe so.

18 118 Q. Okay. And did you provide the
19 Broken Bridge report to Bruce Livesey?

20 A. I am not sure offhand.

21 119 Q. If I told you that he produced it
22 as part of his productions in this action, would
23 that help your memory?

24 A. It wouldn't surprise me. I think
25 I had probably shared a Dropbox folder with him as

1 well with information which could have included the
2 report.

3 120 Q. And by the way, when you were
4 telling me you deposited a whole bunch of documents
5 into the Dropbox that Mr. Copeland had access to,
6 this was for the purpose of the story that he was
7 working on?

8 A. I think what I had done was shared
9 research and supporting information to see if he or
10 the Wall Street Journal was interested in pursuing
11 an investigation of their own.

12 121 Q. Okay. Did you also provide your
13 Broken Bridge report to any Reuters reporter such
14 as Lawrence Delevingne or John Tilak?

15 A. I don't think so offhand.

16 122 Q. What about to other journalists?

17 A. I don't think so.

18 123 Q. What about other co-Defendants
19 such as Wesley Voorheis?

20 A. I didn't share it with other
21 Defendants like Wes Voorheis, to my knowledge, no.

22 124 Q. Darryl Levitt?

23 A. I am not sure if Darryl would have
24 seen it. We had had a non-disclosure with Darryl,
25 but I am not sure if he had ever seen this report

1 offhand.

2 125 Q. When you say "we", who are you
3 referring to?

4 A. ClaritySpring as an entity and
5 myself.

6 MR. LUNG: And to clarify, when you are
7 saying "this report", you are referring to the
8 Broken Bridge report, right?

9 MR. DEARDEN: Yes, Lucas.

10 MR. LUNG: Okay.

11 BY MR. DEARDEN:

12 126 Q. Did you share the Broken Bridge
13 report with Jeff McFarlane?

14 A. No, I don't think so.

15 127 Q. Can we go to the last page of the
16 Broken Bridge report, the "Conclusion". So the
17 "we" that I see in the first sentence:

18 "We ask the company to
19 thoroughly address the questions
20 [...]", et cetera.

21 Is that the same answer, the "we" is
22 you and ClaritySpring?

23 A. Yeah, I think that is fair.
24 Certainly, yeah, myself and ClaritySpring.

25 128 Q. And under "Disclosure" on the next

1 page, so the last page, it says:

2 "As of the publication date of
3 this report Contributors to the
4 research in this report and others
5 that we have shared our research
6 with (collectively, the 'Investors')
7 have short positions in the company
8 covered herein and stand to realize
9 gains in the event that the price of
10 the stock decreases. Following
11 publication of the report, the
12 Investors may transact in the
13 securities of the company covered
14 herein."

15 So who are the investors that you refer
16 to?

17 A. Ultimately, that would have been
18 ClaritySpring, and for more context, this report
19 never was actually published. I had contemplated
20 publishing it, but in the end had just provided it
21 to the Wall Street Journal to aid in their research
22 efforts and held it more as a reference document.

23 So there were no outside investors
24 contemplated at that time or ever, aside from
25 myself. We never pursued the publication approach

1 for this report in the end.

2 129 Q. Okay.

3 A. Meaning we never actually
4 published it, but we had thought about it.

5 130 Q. Okay. Now switching off from the
6 Broken Bridge report to document 16, which should
7 be a July 13, 2017, email from you to Mr. Copeland
8 at 20:46. So you say:

9 "Hi Rob,

10 Nathan Anderson invited you to
11 edit the folder 'Catalyst' on
12 Dropbox."

13 Now, could that have been when you
14 provided the Broken Bridge report in the OSC
15 Whistleblower Submissions or --

16 A. Certainly it could have been.

17 131 Q. And is that the Dropbox that you
18 were referring to earlier in your testimony?

19 A. I am not sure if there was more
20 than one link shared, but that would certainly have
21 been a Dropbox folder shared.

22 132 Q. Okay. And then document 17,
23 Mr. Lung provided me this document with the May
24 28th, 2020, letter, and this is Rob Copeland
25 inviting you to edit the folder "Claims" on

1 Dropbox. What is that about?

2 A. I'm not a hundred percent sure
3 offhand, but if it was following the filing of the
4 lawsuit, it could have been sharing the complaint
5 or something relating to what was just filed in
6 that way. I am not sure when the actual complaint
7 was filed.

8 133 Q. Does -- is that Dropbox still
9 available to you today that you could check out
10 what's in it?

11 A. I don't know if it is available to
12 me today, but I believe Dropbox links expire after
13 a certain period of time, whether 30, 90 days or
14 something of that sort.

15 134 Q. Well, I would ask that you check
16 to see if that is so.

17 MR. LUNG: Sorry, what are you exactly
18 looking for, Rick?

19 BY MR. DEARDEN:

20 135 Q. Whether that Dropbox is still
21 accessible today and, if it is, could he indicate
22 what documents Rob Copeland invited him to take a
23 look at?

24 U/A MR. LUNG: Let me get that down. I'll
25 take that under advisement.

1 MR. DEARDEN: Okay.

2 MR. LUNG: And just so I understand,
3 you want to know what is in there today, if it is
4 there today?

5 MR. DEARDEN: Uhm-hmm, yes, please.

6 MR. LUNG: Okay. I'll take it under
7 advisement.

8 BY MR. DEARDEN:

9 136 Q. And document 18. It should be an
10 email from Mr. Copeland to you, Mr. Anderson, July
11 24, 2017, at 3:25 p.m., and "Missing transcript" is
12 the subject line, and the attachment is a Callidus
13 PDF, which is actually a final transcript of the Q1
14 2017 Callidus Capital Corp. earnings call, and that
15 is what it is.

16 And my question for you, sir, is you
17 filed your Ontario Securities Commission
18 Whistleblower Submission on May 22nd, 2017,
19 anonymously through your lawyer, Bryan Wood;
20 correct?

21 A. I don't know if it was
22 anonymously, but I had filed my Whistleblower
23 Submission -- my initial Whistleblower Submission
24 through my attorney Bryan Wood.

25 MR. LUNG: Sorry, Rick, just if I could

1 point this out, the Whistleblower Submission
2 identifies Mr. Anderson and his company and
3 provides background on who the whistleblowers are.
4 So it wouldn't have been anonymous.

5 MR. DEARDEN: Well, it was, initially
6 anyway, but I do have questions on that, so why
7 don't I leave it until then.

8 MR. LUNG: Okay.

9 BY MR. DEARDEN:

10 137 Q. But I do have a form, an OSC
11 Whistleblower Submission Form, where Bryan Wood
12 submits it and does it anonymously and says that he
13 certifies that he has got from the whistleblower
14 what they require when a complaint is filed
15 anonymously. But I'll get to that.

16 Can we go to the Statement of Defence,
17 paragraph 30 -- or document 30, rather, paragraph
18 37 of the Statement of Defence. So this paragraph
19 37 of the Defence says:

20 "The particular circumstances
21 of this case did not require
22 Anderson and ClaritySpring to
23 provide the plaintiffs with an
24 opportunity to comment on the
25 allegations in the Whistleblower

1 Submissions prior to their delivery
2 to the reporters. At all times,
3 Anderson and ClaritySpring knew that
4 the reporters would seek the
5 plaintiffs' position prior to the
6 publication of any article."

7 So, sir, the part where you say you
8 knew the reporters would seek the Plaintiffs'
9 position prior to the publication of any article,
10 that would be the Plaintiffs' position with respect
11 to your Whistleblower Submission or complaint;
12 correct?

13 A. Could you please repeat that?
14 There were a couple -- it was a rather long
15 question. If you could just ask it again, please?

16 138 Q. Of course. You say that you knew
17 that the reporters would seek the Plaintiffs'
18 position prior to the publication of any article,
19 and my question is the reference to the
20 "plaintiffs' position", that would be about your
21 allegations in your whistleblower complaint;
22 correct?

23 A. Well, to the extent that any media
24 organization, especially of the caliber of the Wall
25 Street Journal, if they were to publish an article

1 on any subject, the standard procedure is to seek
2 comments from the subject on any issues, questions
3 that might arise.

4 139 Q. You are saying at all times you,
5 sir, knew that the reporters would seek the
6 Plaintiffs' position prior to publication, and my
7 question again, because you haven't answered it, is
8 seek the Plaintiffs' position about your
9 whistleblower complaint, right? I don't think
10 there is anything contentious about that.

11 A. It would have been impossible for
12 me to know what position the Wall Street Journal
13 would have needed to seek clarification on or
14 comment on because I wasn't sure when or whether
15 they would publish, and if they did publish an
16 article, I wasn't sure which issues they would
17 choose to focus on.

18 But I knew that if they were publishing
19 an article on a subject, it is standard practice to
20 reach out to that subject for comment before
21 publishing any article on that subject.

22 140 Q. Mr. Anderson, the first sentence
23 of your paragraph 37 is specifically referencing
24 the allegations in the Whistleblower Submission,
25 your Whistleblower Submission, and you say you knew

1 that the reporters -- at all times you knew that
2 the reporters would seek the Plaintiffs' position
3 prior to the publication of any article. And for
4 sure this isn't contentious. What you are saying
5 there is you knew that the reporters would seek the
6 Plaintiffs' position about your Whistleblower
7 Submissions, which is referenced in the previous
8 sentence, right?

9 MR. LUNG: I thought he had answered
10 that, Rick. I don't understand where the
11 controversy is. We pleaded that, those two line
12 lines. We are not seeking to withdraw anything
13 that is pleaded in paragraph 37. So I am a bit
14 confused as to how he is not answering the
15 question.

16 BY MR. DEARDEN:

17 141 Q. So, Mr. Lung, so I am right,
18 correct, that the reporters would be seeking the
19 Plaintiffs' position about the allegations in
20 Mr. Anderson's Whistleblower Submission; that's all
21 I'm looking for, yes or no? I believe it is yes.

22 A. If it was an article that focussed
23 on an allegations, and it was relating to a
24 subject, then it is standard practice for media
25 outlets to seek comment and that was something that

1 I knew, that standard practice.

2 142 Q. And did you also know, sir, that
3 for the Plaintiffs to be able to state their
4 position about the allegations in their
5 Whistleblower Submissions, they would need to read
6 your allegations; they would need to know your
7 allegations, correct? Is that a fair expectation?

8 A. I think the question presumes that
9 an article would be focussed specifically on the
10 allegations, the substance of the allegations
11 within the whistleblower report, and I have no
12 control over what ultimately is published by the
13 Wall Street Journal or which issues they would seek
14 comment on. That is --

15 143 Q. No, that is not my question, sir.
16 That is not my question. You are saying in this
17 pleading that the particular circumstances of the
18 case didn't require you, Nathan Anderson, to
19 provide the Plaintiffs with an opportunity to
20 comment on the allegations in your Whistleblower
21 Submissions, but you expected -- at all times you
22 knew that the reporters would seek the Plaintiffs'
23 position on your allegations.

24 And did you also have the expectation,
25 sir, that they would actually put your allegations

1 to the Plaintiffs so they could give their position
2 about your allegations? Isn't that a fair --

3 MR. LUNG: He has already answered that
4 question. I think he has answered it three times.

5 MR. DEARDEN: No, he didn't.

6 MR. LUNG: Well, he has. You know, I
7 don't understand why he hasn't. He has answered
8 the question.

9 MR. DEARDEN: Okay. Well, just so we
10 can --

11 MR. LUNG: I am sorry, I'm confused,
12 Mr. Dearden, as to how he hasn't. He has answered
13 it three times. You put a couple of lines from his
14 pleading to him, and he has responded.

15 BY MR. DEARDEN:

16 144 Q. Would you have expected, in
17 fairness, Mr. Anderson, that reporters would
18 actually let the Plaintiffs read your allegations
19 in your Whistleblower Submissions so that they
20 could then provide their position about your
21 allegations? Isn't that a fair expectation?

22 A. I wouldn't presume to personally
23 be comfortable telling the Wall Street Journal how
24 to do their jobs.

25 145 Q. I didn't ask you --

1 A. They are experienced reporters
2 with --

3 146 Q. I'm talking about your expectation
4 when you are saying the particular circumstances of
5 the case didn't require you, Nathan Anderson, to
6 provide the Plaintiffs with an opportunity to
7 comment on the allegations in your Whistleblower
8 Submissions.

9 MR. LUNG: Sorry, what is the question?

10 BY MR. DEARDEN:

11 147 Q. To do that, they would need to
12 know what is in your Whistleblower Submissions;
13 correct?

14 A. To respond to the specific
15 allegations in the whistleblower report, well, I
16 didn't publish the whistleblower report. I --

17 148 Q. You are not answering the
18 question, sir.

19 A. I'm sorry, I may be missing which
20 part of the question I'm not answering.

21 149 Q. Would the Plaintiffs need to know
22 what is in your Whistleblower Submissions to be
23 able to respond and give their position about them?
24 Would they not need to have those allegations, yes
25 or no? I put it to you that they do.

1 A. If the Plaintiffs were to respond
2 to every issue or allegation in a whistleblower
3 report in general, then I think responding to those
4 allegations would -- to the extent that it needed a
5 response, they would need to know what the
6 allegations are. I don't think that is a
7 contentious point either, if that is what you are
8 asking.

9 150 Q. Yes. Thank you. So can we go to
10 paragraph -- and this will be my last questions,
11 Mr. Lung, and we'll take a break, paragraph 20 of
12 the November 8th, 2019, affidavit of Mr. Anderson.

13 So you see that says:

14 "I proceeded to conduct
15 independent research to investigate
16 the true state of affairs at
17 Catalyst and Callidus. Among other
18 things, my research included:"

19 And I am going to (c):

20 "Discussions with numerous
21 individuals, including former
22 employees of Catalyst and Callidus,
23 Catalyst investors, Catalyst
24 counterparties, and members of
25 Canada's financial services sector

1 with knowledge of Catalyst, Glassman
2 and other principals of
3 Glassman-controlled entities."

4 So my question to you, sir, is which
5 Catalyst investors did you contact as part of your
6 research?

7 A. I reviewed public disclosures for
8 which investors had allocated to Catalyst and
9 called several and spoke with several investors.
10 As part of those calls, I told them that I would
11 protect their confidentiality, knowing that they
12 would be unlikely to speak to me if I had done
13 otherwise.

14 151 Q. So you are not going to tell me
15 the names of the Catalyst investors you referred to
16 in paragraph 20(c) of your affidavit?

17 R/F MR. LUNG: No.

18 BY MR. DEARDEN:

19 152 Q. Did you contact anyone at Harvard
20 Management Company?

21 R/F MR. LUNG: Well, we are not going to
22 do it that way either. So, no, I think
23 Mr. Anderson's evidence is that he -- the investors
24 he spoke to, he told them that he would maintain
25 their confidentiality.

1 BY MR. DEARDEN:

2 153 Q. Yeah, well, I don't know that
3 Harvard Management Company is one of them. So I am
4 going to put it on the record. Did you contact
5 McGill University?

6 R/F MR. LUNG: Refused.

7 BY MR. DEARDEN:

8 154 Q. Marcus Loveland?

9 R/F MR. LUNG: Refused.

10 BY MR. DEARDEN:

11 155 Q. Ira Glustein?

12 R/F MR. LUNG: Refused.

13 BY MR. DEARDEN:

14 156 Q. Okay. What did you say to the
15 Catalyst investors?

16 A. For the conversations I had, I
17 said I was researching Catalyst, Callidus,
18 described my business generally, and then asked
19 questions about Catalyst, its investments, its
20 operations, its management, trying to get a sense
21 of how the firm was run, trying to get a sense of
22 the positives and negatives that these investors
23 might have experienced through the course of being
24 invested in Catalyst and general due diligence
25 information like that.

1 157 Q. Did you indicate to any of these
2 investors that you were investigating fraud or
3 other improper behaviour on the part of Catalyst,
4 Callidus, or any of their officers?

5 A. I made clear that I was
6 researching the firm, and I believe I indicated
7 that I was looking at different issues relating to
8 its financials. I am not sure if I had
9 specifically said to all of them that I was taking
10 a forensic approach, but I wasn't sure early on in
11 my research whether there were issues of fraud. It
12 was an investigation to determine that.

13 158 Q. All I want to know, sir, is at any
14 time did you inform a Catalyst investor that you
15 were investigating fraud or other improper conduct
16 on the part of the companies or their officers?

17 A. I think I made it clear that I was
18 investigating irregularities and issues that I had
19 identified.

20 159 Q. Did you use the "fraud" word?

21 A. I am not sure offhand.

22 160 Q. And the last document and then we
23 are going to take a break, Mr. Anderson, document
24 20, which is Exhibit I to your August 20, 2020,
25 affidavit, and this would be a confidential -- a

1 document marked "Confidential" and dated April 4,
2 2017, and it is dealing with the 2016 annual
3 meeting for Catalyst Funds III and IV, the joint
4 annual meeting, presented by the Catalyst Capital
5 Group Inc.

6 So this is an Exhibit to your August
7 2020 affidavit, sir. You recall this document;
8 correct?

9 A. Yes.

10 161 Q. And how did that confidential
11 document come into your possession, sir?

12 A. I had called and spoke with
13 multiple industry consultants, institutional
14 investors, and just well-connected industry folks
15 as part of my initial research just trying to get a
16 sense of Catalyst and what they had heard, whether
17 good things, bad things, of that sort, and had
18 asked multiple investors if they could provide any
19 information, whether it be documents or due
20 diligence information, and made clear to them that
21 if they didn't already know, that Catalyst was, you
22 know, fairly -- a firm oriented toward contention
23 and to be aware of that if they were going to send
24 me documents.

25 And I received a large series of

1 documents over the mail, which I had scanned and
2 uploaded as part of my due diligence documents that
3 I ended up sending to you guys through the
4 discovery materials.

5 So this may have been part of that
6 document dump.

7 162 Q. So it is your evidence, sir, that
8 this Exhibit I document came in a brown envelope in
9 the mail?

10 A. I actually received a large box of
11 documents in the mail. I am not sure specifically
12 if this one was part of that, but that was where
13 much of the documentation I received or how I
14 received it.

15 163 Q. And do you know who sent you the
16 box?

17 A. I can't be sure of that actually.
18 I am not sure.

19 164 Q. And what did you mean when you
20 told me earlier "a firm oriented toward
21 contention"? I am not familiar with that phrase.
22 Catalyst --

23 A. Mr. Glassman specifically and
24 Catalyst have been known to be relatively
25 litigious, so I wanted to make clear to potential

1 sources that that would be a risk they were taking,
2 whether a lawsuit had merit or not, that that was
3 certainly within the realm of possibility, just so
4 that they could be aware that if they were, you
5 know, oriented toward helping share information,
6 that that was a potential risk they should be --
7 that they should consider.

8 165 Q. Okay. Why don't we take a break.

9 MR. LUNG: What do you think in terms
10 of a break? 15?

11 MR. DEARDEN: Yes.

12 MR. LUNG: You want to round it off and
13 take us to 5 to?

14 MR. DEARDEN: Agreed.

15 MR. LUNG: Okay. We will see you at 5
16 to 12:00.

17 MR. DEARDEN: Okay.

18 -- RECESSED AT 11:39 A.M.

19 -- RESUMED AT 11:55 A.M.

20 BY MR. DEARDEN:

21 166 Q. So, Mr. Anderson, as part of your
22 research, did you have communications with anyone
23 at West Face Capital?

24 A. Yes.

25 167 Q. And who were you in communication

1 with there?

2 A. I spoke with Greg Boland and Phil
3 Panet.

4 168 Q. And did they provide any written
5 information, any documentation?

6 A. No, I don't think so.

7 169 Q. Did you have any emails or text
8 messages with either of those gentlemen?

9 A. No, I don't think so.

10 170 Q. And what did you speak to them
11 about?

12 A. As part of my research, I was
13 calling, as you know, different investors, business
14 partners, former employees, and litigants or people
15 that had been in litigation, just trying to develop
16 sources and identify information that might be
17 relevant to my research.

18 171 Q. That doesn't give me an answer to
19 what did you speak to them about.

20 A. I --

21 172 Q. And by the way, did you call them
22 or did they call you?

23 A. I think I had reached out
24 initially and was asking -- I had seen the
25 litigation relating to -- I believe it was a

1 Veritas matter. I saw that there was litigation
2 relating to Moyse. I saw within some of those
3 litigation documents there were references to loans
4 and the like.

5 So I called asking to see if there was
6 more information available on any accounting
7 irregularities, on any issues with loan portfolios,
8 to get a general understanding of management, if
9 there had been any additional issues that they may
10 have identified relating to Catalyst Funds as part
11 of their interaction with Catalyst, and really just
12 generally any information that might have come up
13 that would have explained away some of the initial
14 issues that they had raised and trying to just kind
15 of probe to develop more information, if there were
16 any other additional places to potentially look for
17 information or other sources or individuals that
18 may be worth speaking to that could provide more
19 information, and kind of standard due diligence
20 questions of that nature.

21 173 Q. And did they provide you leads, if
22 I can use that term, as to where you might want to
23 look to assist you in your research on that litany
24 of issues that you mentioned in your answer?

25 A. I think they had really referred

1 to a lot of the public documentation that I had
2 already read, so a lot of the litigation documents
3 and exhibits. But overall, they didn't provide
4 much, aside from references to kind of those
5 documents and mostly things I had already known.

6 I don't know offhand if they had named
7 any sources or additional people to talk to that
8 might have more information, but we had -- there
9 was several brief conversations, and ultimately, it
10 seemed that the documentation that they had that
11 could be of aid in the investigation was really
12 that which was in the lawsuits and the exhibits and
13 some of the supporting documentation.

14 174 Q. So these several conversations,
15 were they separate ones, some with Greg Boland,
16 some with Phil Panet, or were they both in the same
17 room at the time, or all of the above?

18 A. No, I think it was separate. I
19 think it was separate. I spoke with Greg Boland
20 several times and Phil Panet several times as well.
21 I think at one point they -- I received a call
22 asking if there were any people that were, I think,
23 following me or any signs that investigators were
24 looking into me, and I think that was the extent of
25 it.

1 175 Q. Who did you receive the call from
2 that asked if there were people following you?

3 A. I believe it was Phil Panet.

4 176 Q. And did you ask him what the hell
5 are you talking about?

6 A. I didn't get much context on it,
7 so it was a little bit of an unusual call, and I
8 was relatively confused at the time. Of course,
9 things made sense later, but no, it was just really
10 a brief call kind of, you know, asking if I had
11 seen anything unusual of that sort.

12 177 Q. Did Mr. Panet also provide you
13 some information that I would call personal
14 information about Mr. Glassman and his marriage and
15 his wife and the divorce she was going through or
16 the custody battle she was going through with her
17 ex-husband? Did he provide you any information
18 about that?

19 A. No, I don't think so.

20 178 Q. Did he give you any court file
21 numbers that you might want to look into?

22 A. I don't know if he specifically
23 gave me numbers. I think there were references to
24 cases, and I did a litigation search to really try
25 and find any relevant litigation to Catalyst,

1 Callidus, its principals.

2 179 Q. That is Mr. Panet was making
3 reference to cases?

4 A. I'm not sure if it was in my call
5 with Greg or Phil Panet, but that was the gist of
6 those calls, was kind of sharing where to look in
7 court records and the like, much --

8 180 Q. And did --

9 A. -- was already on the website that
10 they had set up.

11 181 Q. I'm sorry?

12 A. I think much of it was on the
13 website that, I believe, they had set up relating
14 to Catalyst litigation where it kind of tracks all
15 of Catalyst's lawsuits against various individuals
16 and posts the documents and exhibits and such.

17 182 Q. Did you discuss XTG with either
18 Mr. Boland or Mr. Panet?

19 A. I don't remember offhand if we
20 spoke about that specific asset.

21 183 Q. So these are phone calls, sir?

22 A. Yes.

23 184 Q. So I would like you to produce
24 your phone records of all your conversations with
25 Greg Boland and Philip Panet prior to August the

1 10th -- prior to and including August 10, 2017.

2 U/A MR. LUNG: I'll take that under
3 advisement.

4 BY MR. DEARDEN:

5 185 Q. Thank you. And as part of your
6 research, did you call anybody at University of
7 Toronto?

8 R/F MR. LUNG: We are not going to answer
9 that.

10 BY MR. DEARDEN:

11 186 Q. Can we go back to the texts at
12 page 44? So at the top of this page 44 of the text
13 messages you ask Mr. Copeland if he has anyone in
14 Mexico City that can pull corporate docs by any
15 chance:

16 "Trying to pull up de Alba's
17 holdings down there. The guy has
18 off the books assets but I know
19 where they hide."

20 So you are referring to Gabriel de Alba
21 of Catalyst?

22 A. Yes.

23 187 Q. And Mr. Copeland says:

24 "Ya we have a whole bureau."

25 And then you say:

1 "Oh man I'm an idiot that's
2 amazing.

3 We've been trying to get a way
4 to pull these docs for months",
5 et cetera.

6 And did the Wall Street Journal Mexican
7 Bureau and/or Mr. Copeland assist you in finding
8 the information that you were looking for on this
9 page of the text messages?

10 MR. LUNG: Rick, can you do me a
11 favour? Can we find a date for this text so I can
12 have a reference here?

13 MR. DEARDEN: It is August 3, 2017.

14 MR. LUNG: Okay.

15 THE DEPONENT: Unfortunately, no, I
16 don't think they were able to be helpful in that.
17 Pulling corporate records in Mexico is a much more
18 involved process than North America, from what I
19 learned.

20 BY MR. DEARDEN:

21 188 Q. But they tried?

22 A. I don't know if they ultimately
23 tried. I just know that they weren't successful in
24 getting documents.

25 189 Q. And document 22 is an email from

1 Rob Copeland to you, Mr. Anderson, September 13,
2 2017, at 12:09 p.m., and its subject is "Mexico
3 request"; do you see that?

4 A. Uhm-hmm.

5 190 Q. So Mr. Copeland is providing you
6 this information regarding your request for
7 information about Mr. de Alba's activities in
8 Mexico?

9 A. It looks like it. It looks like
10 it is kind of biographical information and
11 background information, yeah.

12 191 Q. But this was part of the
13 information you were looking for when you sent that
14 text that we looked at at page 44?

15 A. I was specifically looking for the
16 corporate records of assets that were held in the
17 de Alba family name.

18 192 Q. Well, did you ask for this
19 information that Mr. Copeland is providing you on
20 September the 13th, 2017, or is he just providing
21 that to you out of the blue?

22 A. I think that was in response to my
23 request for corporate records, and I think it
24 looked like he had found some background
25 information that could be helpful in the process of

1 trying to pull corporate records and the like.

2 193 Q. Okay. The text messages, page 4.
3 So you recall earlier you provided Darryl Levitt's
4 cell number in these texts at the bottom of page 4,
5 you provided that to Mr. Copeland, right?

6 A. Yes.

7 194 Q. And at page 7, on July 16, 2017,
8 at 5:58 p.m., Mr. Copeland texts you that:

9 "Your boy darryl has been
10 shopping this for a long time. He
11 spoke to my colleague ben dummet
12 about it years ago."

13 What was your boy Darryl Levitt
14 shopping for a long time?

15 A. I am not sure what Darryl was
16 shopping for a long time, as Mr. Copeland
17 characterized it. I know that Darryl had been
18 involved with Catalyst both on the business side
19 through Fortress for some time and then had
20 certainly been doing his own investigation and
21 research prior to my even being aware of Catalyst.

22 But he would probably be best situated
23 to know, you know, what, if anything, he spoke
24 about with any other reporters before my
25 involvement.

1 195 Q. Your answer is referring to
2 Catalyst. Do you mean Callidus?

3 A. I guess it is not entirely clear
4 what the focus was. I know that Fortress had done
5 dealings with Callidus, so if you were looking into
6 it, he would either be looking into Catalyst,
7 Callidus, or both, but again, that would be better
8 directed to him, I imagine.

9 196 Q. Okay. So we are going to go to
10 the Ontario Securities Commission's Whistleblower
11 Program, Policy 15-601, which is document 27, and I
12 am going to take you to paragraph 11(1) of that
13 policy. Are you familiar with this policy, sir?

14 A. I would probably have to read it
15 to re-familiarize myself with it. I haven't
16 committed it to memory obviously.

17 197 Q. Well, you knew when you filed the
18 whistleblower complaint that the OSC staff would
19 make all reasonable efforts to keep the identity of
20 the whistleblower and the information that could
21 reasonably be expected to reveal the
22 whistleblower's identity confidential; you knew
23 that?

24 A. Yes.

25 198 Q. And earlier when I mentioned that

1 you filed your whistleblower complaints
2 anonymously, if we get document 29 up, you will see
3 that I was right, but you were right too.

4 A. I am not sure what you mean.

5 199 Q. We are going to -- I am asking to
6 have --

7 MR. LUNG: He is going to show us.

8 BY MR. DEARDEN:

9 200 Q. -- document 29. It is just a
10 little delayed, guys.

11 MR. LUNG: Okay.

12 BY MR. DEARDEN:

13 201 Q. So what I was referring to
14 earlier, Mr. Lung and Mr. Anderson -- no, you had
15 it there. There is a box that is checked by Bryan
16 Wood that says:

17 "I am a lawyer representing a
18 whistleblower [...] who wishes to be
19 anonymous".

20 So that is where I was getting that
21 from, and the rest of this document will show that
22 it was submitted anonymously, except attachment A,
23 which I think is what you gentlemen were referring
24 to earlier, the attachment A certainly identifies
25 Nathan Anderson as the whistleblower.

1 So we are both right.

2 MR. LUNG: Okay. Happy to have both of
3 us right.

4 BY MR. DEARDEN:

5 202 Q. Happy to have both of us right.
6 Okay.

7 A. That seems to be, if anything,
8 more nuanced with the form --

9 MR. LUNG: Nate, there is no question.

10 THE DEPONENT: Okay.

11 BY MR. DEARDEN:

12 203 Q. Going back to the whistleblower
13 policy, section 10, section 10(1) says:

14 "Commission Staff will
15 generally not provide information
16 about the status of a matter to a
17 whistleblower or make public any
18 information about a matter it may be
19 investigating, including whether an
20 investigation has been undertaken."

21 You were familiar with that provision
22 of the policy, Mr. Anderson?

23 A. Yes.

24 204 Q. And with respect to your
25 Whistleblower Submission, to your knowledge did the

1 OSC staff make public any information about your
2 whistleblower complaint?

3 A. Not that I am aware of.

4 205 Q. And with respect to your
5 Whistleblower Submission, did OSC staff, to your
6 knowledge, make public that an investigation had
7 been undertaken regarding your complaint?

8 A. No.

9 206 Q. And paragraph 9 of this policy
10 deals with "Confidentiality of Information", and it
11 says:

12 "The Commission expects that
13 whistleblowers will maintain as
14 confidential any information
15 provided to a whistleblower by
16 Commission Staff or of which the
17 whistleblower becomes aware because
18 of the whistleblower's ongoing
19 participation in the investigation
20 of a matter."

21 So you were aware of this section of
22 the policy when you were communicating with Wall
23 Street Journal reporter Rob Copeland?

24 A. Yes.

25 207 Q. And, sir, did you provide a copy

1 of your Whistleblower Submission to Reuters News,
2 like Mr. Delevingne or Mr. Tilak?

3 A. Yes.

4 208 Q. And was that prior to August 9,
5 2017, when the Wall Street Journal published its
6 article?

7 A. I am not sure which date I
8 provided it to them, but I believe I had
9 communicated with them about Catalyst prior to the
10 Wall Street Journal article.

11 209 Q. Okay. Did you provide a copy of
12 your Whistleblower Submission to any other
13 reporters?

14 A. I think -- I think I sent over
15 information to Bruce Livesey as well.

16 210 Q. And what about your co-Defendants
17 such as Mr. Levitt?

18 A. Levitt helped in preparing and
19 reviewing the Whistleblower Submissions, so he had
20 seen a copy as well. He was bound by an NDA on
21 that.

22 211 Q. But so I am clear, he helped you
23 in preparing your OSC Whistleblower Submission?

24 A. I think he had aided in the
25 research process.

1 212 Q. Okay. And what about
2 Mr. McFarlane, did he have a copy of your
3 Whistleblower Submission?

4 A. No, I don't think so.

5 213 Q. And what about loose-lipped
6 Mr. Baumann?

7 A. No.

8 214 Q. Anybody else that you provided a
9 copy of your OSC Whistleblower Submission to prior
10 to August 9, 2017?

11 A. I presume we are excluding my own
12 counsel as well, but no, otherwise, I think that
13 was it.

14 215 Q. Okay. Did you inform OSC staff
15 that you provided your whistleblower complaint to
16 the Wall Street Journal and Reuters News?

17 A. No, I don't think so.

18 216 Q. Did you inform them that you
19 provided your Whistleblower Submission to Bruce
20 Livesey?

21 A. No.

22 217 Q. Did you inform OSC staff that you
23 held short positions in Callidus?

24 A. No, we provided the whistleblower
25 report, I believe, and just the supporting

1 documentation and exhibits.

2 218 Q. Paragraph 70 of your August 20,
3 2020, affidavit we are going to get up on the
4 screen for you. Paragraph 70. So your paragraph
5 70 of your August 2020 affidavit says:

6 "At paragraph 179 of the Riley
7 Conspiracy Affidavit, Mr. Riley
8 states that 'it appears that
9 Anderson made arrangements to have
10 his lawyer, Bryan Wood, speak to the
11 Police.' I am advised by Mr. Wood
12 that he never spoke to the police in
13 relation to this matter."

14 But I'll take you to document 19, which
15 is an email you sent to Darryl Levitt on June 5,
16 2017, at 11:45 a.m., and if you look under -- or
17 the middle of the page, the numbered paragraph 1:

18 "Spoke with Bryan so he's going
19 to reach out to Gail."

20 Or another email that just came up is
21 you, Mr. Anderson, to Darryl Levitt, subject "3
22 things", this one sent at 3:45 p.m., and the first
23 one is:

24 "Spoke with Bryan so he's going
25 to reach out to Gail."

1 So "Bryan" is Bryan Wood?

2 A. Yes.

3 219 Q. Your lawyer? That is your lawyer?
4 And that is B-r-y-a-n, Dee. And he is going to
5 reach out to Gail, and that is Detective Gail Regan
6 of the Toronto Police Force?

7 A. Yes, I believe so.

8 220 Q. Okay. So although you say that
9 Mr. Wood told you that he didn't speak to the
10 Toronto Police, you wanted him to reach out to
11 Detective Regan of the Toronto Police Service;
12 correct?

13 A. Yes.

14 221 Q. And why did you want him to do
15 that?

16 MR. LUNG: There are other emails that
17 put this into context as well, and, you know, I
18 think it is fair to let Mr. Anderson --

19 MR. DEARDEN: You can re-examine,
20 Mr. Lung. You can re-examine. I'm just asking the
21 witness why he wanted Bryan, his lawyer, Bryan
22 Wood, to reach out to Detective Regan.

23 MR. LUNG: All right.

24 BY MR. DEARDEN:

25 222 Q. So why did you want that to happen

1 on June 5, 2017?

2 A. I think there had been some
3 communication with -- between some of the borrowers
4 and Gail Regan that I was made aware of after I
5 came to the case. And we wanted to see if there
6 was any information that either the police would
7 have that could be relevant to our own
8 investigation or an understanding of whether there
9 are any issues with our investigation that we were
10 researching that might be relevant to them.

11 But I think Bryan had called, and
12 Ms. Regan had not picked up, and they ultimately
13 didn't connect.

14 223 Q. But you were going to offer
15 through your lawyer Bryan Wood information to the
16 police?

17 A. Not necessarily. I think, as part
18 of any investigation and as part of any research
19 project, it is beneficial to understand the scope
20 of what is being looked at and the parties and what
21 the parties are examining or looking into.

22 So I think this was proposed as a
23 potential initial intro call to see if there was
24 any value to having a discussion on the issues.

25 224 Q. Why are you speaking or wanting

1 your lawyer to reach out to Detective Regan after
2 you filed your May 22nd, 2017, OSC Whistleblower
3 Submission?

4 A. Well, investigations into fraud
5 don't stop when a whistleblower report is filed. I
6 view -- all of these investigations and matters
7 that are open and haven't been yet litigated by
8 regulators or haven't had any, you know, formal
9 conclusion, I view them all as ongoing research
10 projects.

11 So we will file and continue to gather
12 information and evidence as events unfold to see if
13 there is evidence worthy of a follow-up submission
14 or evidence that can be provided to regulators to
15 aid in any investigation or inquiry.

16 So these research projects are ongoing.

17 225 Q. Why didn't you phone them
18 yourself?

19 A. Well, part of running a small
20 organization is effective distribution of
21 resources, and Bryan, being an attorney, seemed to
22 be well-situated to talk to individuals in law
23 enforcement. My experience is that typically
24 regulators and law enforcement officials prefer to
25 communicate with attorneys who have an

1 understanding of the regulatory and legal process
2 and the legal elements of those discussions that I
3 might not have as much expertise in.

4 So he seemed pretty well-versed to have
5 that conversation, and I had confidence in him to
6 be able to.

7 226 Q. You'll agree with me,
8 Mr. Anderson, that the Toronto Police Service is
9 not going to give you information from their file?
10 It is a one-way street; you give information to
11 them. They are not opening their file up for your
12 purposes. Agreed?

13 A. Not necessarily. I think every
14 conversation is two-way to some extent.

15 227 Q. You'll agree with me that a media
16 report that Toronto Police were making inquiries or
17 investigating Callidus or Catalyst for fraud would
18 cause the Callidus share price to decrease; do you
19 agree with me?

20 A. Depending on the full context of
21 the work, yeah, I think it could have an impact on
22 the share price.

23 228 Q. Okay. Now, let's just briefly
24 touch on your Whistleblower Submission, attachment
25 A, and I am going to the XTG section. So let's go

1 to page 12 first.

2 MR. LUNG: Are you going to bring it
3 up?

4 MR. DEARDEN: Yes.

5 MR. LUNG: Okay.

6 BY MR. DEARDEN:

7 229 Q. So go to the top. So I'll let you
8 read this page, Mr. Anderson, just to
9 familiarize -- you let me know when you are ready
10 for a question. And my question is going to deal
11 with the last sentence on this page, so you have
12 full context.

13 A. [Witness reviews document.]

14 230 Q. Just let me know when you are
15 ready.

16 A. [Witness reviews document.]

17 I'm ready.

18 231 Q. Okay. So the last sentence says,
19 in part:

20 "In reality, somewhere north of
21 \$45 million is missing [...]"

22 And I am going to try my math on how
23 you came up with that \$45 million that are missing.
24 Did you take the total capital invested by Funds
25 III and IV, which was 54.8 million, and subtract

1 that from the 101.3 million that was paid out under
2 the guarantee to come to, by my math, 46.5 million,
3 which was the north of 45 million you are referring
4 to there?

5 A. I believe so, but we also cited to
6 the documents that we pulled from in those
7 footnotes relating to that. It looks like it is,
8 at the very least, footnote 66, but also, I would
9 say, it looks like footnote 63 through 66.

10 232 Q. Right. But that is how you got
11 that number of north of 45 million. It is 101.3
12 minus 54.8 equals 46.5 million, and that is north
13 of 45 million? So I did my math right, did I?

14 A. I will take your math at its word
15 for the numbers that we have cited to from those
16 documents, yeah.

17 233 Q. Okay. And is that north of 45
18 million in U.S. dollar currency?

19 A. I am not sure which currency is
20 being referred to in this document.

21 234 Q. Well, take a look.

22 A. Within the document, I think we
23 refer to Canadian and U.S., depending on which part
24 of the document we are in, right, and some of the
25 documents on Catalyst and Callidus are in Canadian

1 and I think some are in U.S. dollars. So I am not
2 sure looking at the page at this moment which
3 currency we are specifically referring to in that
4 sentence.

5 235 Q. Okay. And you'll agree that the
6 Catalyst Funds III and IV, they never made loans to
7 XTG. The money that was loaned to XTG was loaned
8 by Callidus Capital, not Catalyst Funds; do you
9 agree with me?

10 A. I'm going on memory, but I believe
11 Catalyst had purchased the loan from Callidus,
12 which had originally lent the money to Xchange.

13 236 Q. I put it to you, sir -- and tell
14 me if you don't know -- Callidus loaned the money
15 to XTG?

16 MR. LUNG: I think that is what he just
17 said. Did I miss that? He just said that he
18 believes that Catalyst acquired the loan, but the
19 loan was originally extended by Callidus.

20 THE DEPONENT: Yes.

21 MR. LUNG: So maybe I missed that.

22 BY MR. DEARDEN:

23 237 Q. Okay. Then -- fair enough, we are
24 in agreement again then. Callidus loaned --

25 MR. LUNG: It is amazing sometimes.

1 BY MR. DEARDEN:

2 238 Q. Yeah. Yeah, that is twice.

3 Callidus loaned the money to XTG, and eventually
4 Catalyst took over the assets of XTG or took over
5 the business under the guarantee. So we are in
6 agreement, which is good.

7 So, Mr. Anderson, what is the
8 difference between the carrying value of an asset
9 held for sale and a gross loan receivable?

10 A. I believe a gross loan receivable
11 is the total amount of a loan that is still --
12 well, the carrying value of the loan, I believe, is
13 the number that is held on the books of the party
14 that is carrying the value, and the gross value is
15 the total value of the loan without netting for
16 impairments, write-downs, and those types of
17 deductions.

18 239 Q. And those two amounts are distinct
19 and different, aren't they?

20 A. Honestly, depending on the
21 financial institution, the definitions of these can
22 vary pretty considerably. So I am going on memory
23 here on how they are defined, but those metrics
24 are, I believe, defined in -- if we are talking
25 about Callidus, in Callidus's financial statements

1 on how they characterize those metrics.

2 240 Q. I am speaking generally now. It
3 is fair to say that an amount for carrying value of
4 an asset held for sale and an amount of the gross
5 loan receivable, these are different amounts,
6 right?

7 A. The -- I think generally that is
8 the case, but I also think you might be surprised
9 at how many differences there can be in the
10 definitions of these types of metrics, depending on
11 which institution is reporting them.

12 So it would always be best to refer to
13 a specific definition within the financial
14 statements for how that specific institution is
15 characterizing that metric.

16 But just based on a visceral reaction,
17 I would think that the carrying value at least
18 should be distinct from the -- or, in other words,
19 the carrying value or a net value should be
20 distinct from a gross value.

21 241 Q. And that was the case for XTG,
22 according to your research, right?

23 A. I am not sure offhand which
24 Callidus metric we were -- we had referred to.

25 242 Q. Okay. Now I want to take you to

1 several footnotes in your appendix A -- or
2 attachment A, rather.

3 So starting on page 11, there is a
4 footnote 58 -- or actually, let's go to page 10, do
5 it in order. I don't know why I have it out of
6 order. So page 10, footnote 51, refers to a
7 "former Xchange senior executive", and is that Jeff
8 McFarlane?

9 A. Yes.

10 243 Q. And footnote 58 on page 11:

11 "Based on Whistleblower's
12 conversation with a former Xchange
13 executive."

14 Is that Mr. McFarlane?

15 A. Yes.

16 244 Q. And page 12, footnote 66:

17 "Based on whistleblowers'
18 conversations with former senior
19 management at Xchange, the
20 participation agreement entered
21 concerning Xchange involved only
22 Catalyst Funds III and IV."

23 Is former senior management Jeff
24 McFarlane?

25 A. Yes, I believe so.

1 245 Q. And did you have any notes of
2 these conversations with Jeff McFarlane?

3 A. I think I had just written them
4 directly into the document, if anything.

5 246 Q. So I have your attachment A. I am
6 not going to have any other documentation of your
7 conversations with Jeff McFarlane?

8 A. Offhand, I don't think so.

9 247 Q. Okay. Let's go back to document
10 4, which is the text messages, at page 59. So in
11 the middle of the page Rob Copeland texts you on
12 August 9th, 2017, at 4:13 p.m. and says:

13 "Shares tankinggggg".

14 With "tanking" spelled with five "g's".

15 And you write back at 4:25:

16 "Lol that'll happen when they
17 get called out for fraud."

18 Do you see that?

19 A. I do.

20 248 Q. So why would a Wall Street Journal
21 story accusing a public company of fraud cause its
22 shares to tank, Mr. Anderson?

23 A. I think fraud, when exposed, is
24 not generally helpful to the share price of the
25 companies that get called out for it.

1 [Court Reporter intervenes for
2 clarification.]

3 Yeah, I think fraud, when exposed, is
4 not generally helpful for the share price of
5 companies when they get called out for it.

6 249 Q. You would put it a little
7 stronger, wouldn't you, than not generally helpful?
8 It would cause shares to tank, as Mr. Copeland
9 texted you; correct? That is the expectation,
10 shares are going to tank?

11 A. I think if an article exposes
12 fraud on a company, it is likely that the shares
13 will go down.

14 250 Q. And that is your experience with
15 EROS, who we dealt with earlier today; it went
16 ironically 20 percent as well? And the Callidus
17 shares in the 31 minutes -- not even 31 minutes, in
18 less than a half hour after the online article was
19 posted went down over 20 percent. And that
20 is --

21 A. Generally --

22 251 Q. -- what you say will happen when a
23 company is called out for fraud?

24 A. Generally.

25 252 Q. Okay. And the last document I'll

1 take you to before lunch, and Mr. Na will then ask
2 you questions after lunch, is document 10, and it
3 should be an email from you, sir, to Mr. Levitt and
4 Mr. McFarlane dated December 7, 2016, at 10:38
5 a.m., and I am looking at the first paragraph, last
6 sentence. You say:

7 "Frankly most due-diligence
8 pros in the industry stop caring
9 when they get even a whiff of fraud
10 because they know its uninvestible
11 and just move on."

12 So why do due diligence pros, when they
13 get a whiff of fraud, just stay away?

14 A. Well, this email is actually
15 referring to Catalyst, which is a private equity
16 fund, and typically when investors are doing due
17 diligence on a private equity fund or a hedge fund,
18 if they identify enough issues where they can
19 comfortably pass on the investment, they pass.

20 So this is describing conversations
21 where groups had independently researched Catalyst
22 and found enough issues with Catalyst that they
23 didn't feel they needed to pursue additional due
24 diligence or investigation.

25 253

Q. I mean, an accusation of fraud is

1 sort of like radioactive as far as they are
2 concerned? Like, I got a whiff of fraud or I read
3 a report in the Wall Street Journal that the
4 company is accused of fraud, I am just not dealing
5 with them, right?

6 A. Well, it depends on the context of
7 the allegation. It depends on the magnitude of the
8 issues. It depends on the credibility of the
9 allegation. So there are some factors that go into
10 play, but generally when there is evidence of
11 fraud, investors prefer to stay away.

12 254 Q. Okay. Now is a good time to
13 break. So it is 12:45. We'll come back at 1:45,
14 Mr. Lung, is that okay, and Mr. Anderson?

15 MR. LUNG: That is fine with me.

16 -- RECESSED AT 12:45 P.M.

17 -- RESUMED AT 1:45 P.M.

18 CROSS-EXAMINATION BY MR. NA:

19 255 Q. So, Mr. Anderson, just before the
20 lunch break, Mr. Dearden took you to the
21 whistleblower complaint. I am actually going to
22 take you back further in time to when you first met
23 with Mr. Levitt and Mr. McFarlane, which I believe
24 was in November. But before that, I have just got
25 a few questions about ClaritySpring.

1 So, Marco, can you pull up his
2 affidavit of November 8th, paragraph 1. Mr.
3 Anderson, can you see your affidavit of November
4 8th on the screen?

5 A. Yes.

6 256 Q. Paragraph 1, you say that:

7 "I am a Defendant in this
8 action. I also am a director and
9 shareholder, and the Chief Executive
10 Officer and co-founder, of the
11 Defendant ClaritySpring Inc."

12 Who is the other co-founder of
13 ClaritySpring?

14 A. The other co-founder was an
15 engineer named Dmitry Yermolayev. D-m-i-t-r-y
16 Y-e-r-m-o-l-a-y-e-v, I believe.

17 257 Q. All right. Well, then let me just
18 call him Dmitry for now. I haven't seen his name
19 come up in any of these documents. Is he still
20 with ClaritySpring?

21 A. No, he was -- he had co-founded
22 the company, and when we had first started, we were
23 developing a technology platform to integrate due
24 diligence information for hedge funds and private
25 equity funds. So he was --

1 258 Q. I see.

2 A. -- focussed on the technology and
3 the development side and then later pivoted more
4 towards forensic research, fraud research, and he
5 wasn't involved in that part.

6 259 Q. I see. Okay. So he subsequently
7 left. Did he leave at around the time when
8 ClaritySpring started to focus on filing
9 whistleblower complaints?

10 A. Yeah, that was -- as we started to
11 move away from the technology platform, his role
12 diminished until we didn't focus on it, and he
13 moved on.

14 260 Q. Okay. Got it. So then you say in
15 paragraph 9 of your affidavit that in 2014 you made
16 your first Whistleblower Submissions?

17 A. Yes.

18 261 Q. Yes?

19 A. Yes.

20 262 Q. And I take it that is RD Capital?

21 A. That was RD Legal Capital, yes.

22 263 Q. RD Legal Capital? Right. And
23 then I take it as well that you filed another
24 whistleblower complaint about RD Legal Capital in
25 2016?

1 A. There were two RD Legal
2 submissions, I believe. I'm not sure offhand of
3 the dates.

4 264 Q. Well, let me take you to paragraph
5 15 then. Do you see that? In paragraph 15, second
6 sentence:

7 "For example, in 2014 and then
8 in 2016, I submitted whistleblower
9 reports to the SEC relating to RD
10 Legal Capital [...]"?

11 A. Yes.

12 265 Q. Right. And I understand you also
13 filed a whistleblower complaint against Platinum
14 Partners?

15 A. Yes.

16 266 Q. Right. And Mr. Copeland published
17 articles in 2014 and in 2016 relating to RD Legal
18 Capital?

19 A. Yes, I believe so.

20 267 Q. Right. He also published articles
21 about Platinum Partners as well?

22 A. Yes.

23 268 Q. And that is, I take it, consistent
24 with what you state in paragraph 30 of your
25 affidavit. You state in paragraph 30 that:

1 "In the normal course of my and
2 ClaritySpring's whistleblower work,
3 I often communicate with the members
4 of the media. In my view and
5 experience, investigative reporters
6 and the media, like whistleblowers
7 often play an important role in the
8 process of vetting and exposing
9 fraud [...]"

10 Do you see that?

11 A. Yes.

12 269 Q. And I take it when you say
13 "exposing fraud", you are talking about publishing
14 articles?

15 A. I think publishing articles along
16 with the exposure of evidence that furthers a fraud
17 case, which can include information that ends up
18 going to regulators and agencies that ultimately
19 stop the fraud. So --

20 270 Q. But my question was focussed on
21 the media. The media exposes a fraud by publishing
22 articles?

23 A. I think that is in large part
24 their role of exposing fraud, yes.

25 271 Q. Right. And we knew that that's

1 what happened in this case with Mr. Copeland on
2 August the 9th when he published his article?

3 A. I'm sorry, what was your question?

4 272 Q. And that is what happened in this
5 case on August the 9th when Mr. Copeland published
6 his article about Catalyst and Callidus, he was
7 exposing a fraud?

8 A. I think he exposed some
9 information relating to allegations of fraud.

10 273 Q. Right. And you were the source, a
11 source for that article?

12 A. I was a source for that article.

13 274 Q. Right. And I take it similarly
14 you were a source of the articles that Mr. Copeland
15 published relating to RD Legal Capital and Platinum
16 Partners?

17 A. Yes.

18 275 Q. And this morning Mr. Dearden asked
19 you questions about ClaritySpring's business, and
20 you spoke about the two components; do you recall
21 that?

22 A. Yes.

23 276 Q. All right. One is seeking
24 investors to invest in the whistleblower work; that
25 is the first component? The second component --

1 A. Well, the -- go ahead, please.

2 Sorry.

3 277 Q. Sorry, when I speak, you won't,
4 and when you speak, I won't, okay? Sorry, there is
5 a bit of a delay. I think that is the problem.

6 So let me just help you then. Let me
7 take you to paragraph 16 of your affidavit,
8 Mr. Anderson. Just picking up from the second --
9 or I can read the entire paragraph, if you like:

10 "While the OSC and SEC
11 whistleblower programs have the
12 potential to be lucrative, it may
13 take years for a regulatory
14 prosecution to conclude and there is
15 a high degree of uncertainty as to
16 outcome. As a result, I and
17 ClaritySpring adopted two approaches
18 to fund our ongoing whistleblower
19 activities. First, we sought
20 investors to make immediate monetary
21 investments and share in the risk of
22 our whistleblower cases. Second, to
23 the extent a whistleblower case
24 involved a public security that we
25 believed to be overvalued,

1 ClaritySpring shorted that
2 security."

3 Sorry, nodding doesn't help in terms of
4 picking it up on a transcript. You have to say
5 yes.

6 A. What was the question, sorry,
7 whether that --

8 278 Q. Those are the two components we
9 talked about this morning?

10 MR. LUNG: Well, you know, sorry, I
11 don't mean to jump in, but this speaks to how the
12 activities are funded, and I think the evidence
13 that you are referring to from this morning speaks
14 to the business model, which is, you know, not the
15 same thing. So I just don't want there to be any
16 confusion here.

17 THE DEPONENT: Right. I don't think we
18 talked this morning about the investors to make
19 immediate monetary investments and share in the --

20 BY MR. NA:

21 279 Q. Well, no, I am -- and I will take
22 you there. I will take you to those investments
23 that were made, but you did speak -- you did tell
24 Mr. Dearden about the two components.

25 MR. LUNG: Well, he was -- the

1 questions that were asked this morning related to
2 how he earns revenue versus how he funds his
3 activities, and I think you are pointing to
4 something different here.

5 BY MR. NA:

6 280 Q. I understand that, Mr. Lung. But
7 we are talking about the business components.
8 There were two parts, correct?

9 MR. LUNG: But you were talking
10 about -- what Mr. Anderson was talking about this
11 morning is different from what you are pointing at
12 here in paragraph 16, to be fair.

13 BY MR. NA:

14 281 Q. I understand that, Mr. Lung, and I
15 am asking about this morning first. There was
16 about two business components -- two components of
17 the business; correct?

18 A. Yes.

19 282 Q. Mr. Anderson, you have to say yes.
20 Mr. Anderson?

21 A. Yes.

22 283 Q. Because this is on a transcript,
23 you are going to have to verbalize your response.
24 You can't nod. It just doesn't get picked up.

25 A. Sorry, I was waiting for the end

1 of the question. Yes, we spoke this morning about
2 two components of the business model relating to
3 the whistleblower programs and short-selling.

4 284 Q. Right. And I will take you to the
5 investors that invested in the whistleblower work
6 relating to Callidus and Catalyst, but in terms of
7 the short-selling, you state in paragraph 16 that:

8 "[...] to the extent a
9 whistleblower case involved a public
10 security that we believed to be
11 overvalued, ClaritySpring shorted
12 that security."

13 MR. LUNG: So I don't want to keep
14 objecting on this point, Mr. Na, but as I pointed
15 out already, what is being referred to in paragraph
16 16 is not the same as what was being referred to
17 this morning, and you have linked them together
18 again. And what he is talking about in paragraph
19 16 is two approaches to fund the activities. He is
20 not talking about how the business works and how he
21 earns revenue, which is a different question.

22 MR. NA: Absolutely it is a different
23 question. You said that three times, Mr. Lung. I
24 get it. It is a different question.

25 MR. LUNG: Okay.

1 THE DEPONENT: What is the question?

2 BY MR. NA:

3 285 Q. Mr. Anderson?

4 A. Yes.

5 286 Q. To the extent that a whistleblower
6 case involves a public security that we believe to
7 be overvalued, ClaritySpring shorted that security;
8 correct? That is what you state in your --

9 A. Correct.

10 287 Q. Right. And to short a security
11 and to gain or profit from that shorting activity,
12 the stock price of a company needs to decline,
13 right?

14 A. Yes.

15 288 Q. The company has to suffer a loss
16 of its share value; correct?

17 A. The stock price needs to go down
18 from where you initially shorted it.

19 289 Q. Correct. The company's stock
20 needs to suffer a loss in order for you and
21 ClaritySpring to gain on stocks that you and
22 ClaritySpring have shorted?

23 A. I think that is consistent with
24 the stock going down from where you shorted it.

25 290 Q. All right. And let's go to

1 paragraph 31. Mr. Dearden took you to this
2 paragraph. It says:

3 "In or around January or
4 February 2017, while I was
5 conducting my investigation into
6 Catalyst and Callidus, I contacted
7 Rob Copeland, a reporter at the Wall
8 Street Journal, to inform him about
9 the information I had uncovered, as
10 I thought the Wall Street Journal
11 may have an interest in reporting on
12 that information."

13 Do you see that?

14 A. Yes.

15 291 Q. And you read that this morning?

16 A. Yes.

17 292 Q. All right. And Mr. Copeland did
18 report on that information?

19 A. Yes.

20 293 Q. Right. And you mentioned a couple
21 of other journalists and media outlets. Copeland
22 is not the only media person that you contacted;
23 correct?

24 A. Correct.

25 294 Q. I think at paragraph 32 you say

1 that by March of 2017 you had contacted Lawrence
2 Delevingne at Reuters?

3 A. Yes.

4 295 Q. All right. And we also mentioned
5 this morning John Tilak, he was at Reuters as well?

6 A. I don't think we mentioned John
7 Tilak this morning.

8 296 Q. Okay. You did, but I'll ask you
9 the question. John Tilak is a reporter at Reuters?

10 A. He is -- or he was at the time.

11 297 Q. Yes. And you had communicated
12 with him as well in relation to Callidus and
13 Catalyst? Yes?

14 A. Yes.

15 298 Q. You also spoke about Mr. Livesey
16 this morning. You also communicated with him --

17 A. Yes.

18 299 Q. -- about Catalyst and Callidus?

19 A. Yes.

20 300 Q. And before speaking to
21 Mr. Copeland, Mr. Livesey, Mr. Delevingne,
22 Mr. Tilak at Reuters, you were communicating with
23 Mr. Levitt; correct?

24 A. Yes.

25 301 Q. You were communicating with

1 Mr. McFarlane; correct?

2 A. Yes.

3 302 Q. Mr. Duhamel?

4 A. Yes.

5 303 Q. Mr. Langstaff?

6 A. Yes.

7 304 Q. Mr. Voorheis?

8 A. I am not sure when I was first
9 introduced to Voorheis.

10 305 Q. Okay. Well, I'll take you to some
11 documents that may help, Mr. Anderson.

12 A. Okay.

13 306 Q. In your affidavit at paragraph 18,
14 though, you state that you first learned about
15 Callidus and Catalyst through a Twitter account
16 called StopTheScandal?

17 A. Yes.

18 307 Q. All right. And how did you come
19 across that Twitter account?

20 A. I was on Twitter, and I believe it
21 must have been someone that I follow on Twitter had
22 commented on it or re-tweeted one of the postings;
23 otherwise, I wouldn't have been able to see it.

24 308 Q. Okay. And do you recall what that
25 Twitter handle was?

1 A. No, not offhand.

2 309 Q. Okay. So I am showing you on the
3 screen a Twitter message from StopTheScandal that
4 you received on November 22nd, 2016, to you, and it
5 reads:

6 "There are other professionals
7 directly involved. Do you want to
8 speak to them?"

9 That is the first Twitter message that
10 I have seen from your productions. Is that the
11 first one that you recall?

12 A. That is the first one that we
13 have.

14 310 Q. Right. And you don't have the
15 messages that go -- that were sent by you to
16 StopTheScandal; correct?

17 A. Correct.

18 311 Q. Right. So what we have in your
19 productions are the Twitter messages that you
20 received from StopTheScandal?

21 A. Yes.

22 312 Q. The next Twitter message that you
23 have produced is dated November the 28th. It says
24 it is from StopTheScandal to you, November 28th,
25 2016, and it says:

1 "100%. You will see in good
2 time I promise. Beers on me."

3 Right? Correct?

4 A. Yes.

5 313 Q. Right. And there is no mention of
6 any of Mr. Levitt or Mr. McFarlane or Mr. Baumann
7 or Mr. Duhamel on that message; correct?

8 A. Correct.

9 314 Q. All right. I am showing you on
10 the screen an email that you sent to Mr. Levitt of
11 November 27, 2016. This is an email message that
12 you sent -- that was sent before the Twitter
13 message that you got on November 28th, and I am
14 just wondering how is it that you come to email
15 Mr. Levitt? How did you get his email address?
16 How did you come to know that he was involved?

17 A. I believe it was through that
18 StopTheScandal account, that Twitter account. I
19 don't know that Twitter sends an email message for
20 every single message that is received from an
21 account, but my introduction to Catalyst, Callidus,
22 and the initial sources that I spoke with was
23 through that Twitter account.

24 315 Q. Well, that is why I am posing the
25 question, because the Twitter messages that you

1 have produced, the first one we have is November
2 22nd, and the second one that we see is November
3 28th, but you are sending a message to Mr. Levitt
4 on November the 27th. And I am just wondering how
5 does that come to be. Do you recall how you got
6 Mr. Levitt's email address?

7 A. I think it was through that
8 exchange with StopTheScandal.

9 316 Q. So are there other messages then
10 from the StopTheScandal Twitter message that have
11 not been produced?

12 A. We have produced all the messages
13 we have. I don't think Twitter sends an email
14 notification for every single message that is sent.

15 317 Q. No, but go back, Marco, to the
16 Twitter. This is a message that is sent to you at
17 your Nathan@ClaritySpring.com email address; do you
18 see that?

19 A. Yes.

20 318 Q. So it is not a matter of whether
21 Twitter keeps it. This was sent to you at your
22 email address at Nathan@ClaritySpring.com; correct?

23 A. Yes, sent by Twitter.

24 319 Q. Sent by Twitter. So it would
25 be -- reside on the ClaritySpring server?

1 A. I don't think so because I don't
2 think Twitter sends individual messages for every
3 single message that it received on the app, if that
4 makes sense.

5 320 Q. No, it doesn't make sense to me.
6 I am just wondering -- there seems to be some
7 messages missing with Mr. Levitt's contact
8 information, and I take it you don't have any other
9 explanation than what you have just told me?

10 A. We have produced all the messages
11 we have. My guess is that --

12 MR. LUNG: Well, don't guess, Nate.
13 You are not here to guess.

14 THE DEPONENT: Okay.

15 BY MR. NA:

16 321 Q. Yes, it is not helpful if you
17 guess. You don't know other than what you have
18 told me?

19 A. Correct.

20 322 Q. Okay. Let's go back to number 86,
21 and just scroll down. Mr. Anderson, there is also
22 a message that you sent to Mr. Baumann. Right, and
23 scroll down as well. Keep going down. And there
24 is a message that you sent to Mr. McFarlane, all on
25 November 27th. Subject "Fraud research/Callidus".

1 I take it you sent those messages all on that day
2 on November 27th? So whatever Twitter messages
3 that you may have got, you received it for -- you
4 received the contact information from
5 Mr. McFarlane, Mr. Baumann, and Mr. Levitt; is that
6 correct?

7 A. Yes.

8 323 Q. And just go back to the top. And
9 you say to Mr. Levitt -- and I will tell you that
10 you send the same message to Mr. Baumann and
11 Mr. McFarlane that:

12 "I was reading about the
13 situation with Callidus. I run a
14 firm focussed on hedge fund &
15 private equity fraud research.
16 We've found that financial firms
17 that are comfortable engaging in
18 shady business practices are also
19 more inclined to disadvantage their
20 own investors. If helpful I'm happy
21 to dig in on Callidus and take a
22 closer look. Let me know if it'd be
23 worth a chat to discuss."

24 And as I said, that was the same
25 message that you sent to Mr. McFarlane and

1 Mr. Baumann.

2 And I take it by 2016 -- you state in
3 your affidavit that by late 2016 you had already
4 completed 12 whistleblower cases; do you recall
5 that in your affidavit?

6 A. I definitely had completed
7 multiple whistleblower cases. I'll take your word
8 for it that that's what the affidavit said.

9 324 Q. All right. So by this time, at
10 least to your recollection, you had completed
11 multiple whistleblower cases?

12 A. Yes.

13 325 Q. And I take it when you say "I'm
14 happy to dig in on Callidus", you are talking about
15 possibly filing a whistleblower complaint?

16 A. This was preliminary research on a
17 prospective whistleblower case, yes.

18 326 Q. Yes. And go to 87. And,
19 Mr. Anderson, after you reached out to
20 Mr. McFarlane -- what I am showing you is an email
21 from Mr. McFarlane to yourself for a conference
22 call -- sorry, for a call to be held on November
23 28th at 9:30 p.m. to 10:00 p.m., subject
24 "Introduction Nate Anderson of ClaritySpring/Jeff
25 McFarlane of Triathlon"; do you see that?

1 A. Yes.

2 327 Q. Yes. And I take it that you did
3 have a call with Mr. McFarlane on that date and at
4 that time?

5 A. It appears so.

6 328 Q. Right. And can you go to 88.
7 Right. What I am showing you on the screen is
8 another email from yourself to Darryl Levitt for
9 November 28. Just doing the conversion there, it
10 is 9:00 p.m. to 9:30 p.m. on November 28th, and I
11 take it that you had a call with Mr. Levitt on that
12 date and at that time as well?

13 A. I believe so.

14 329 Q. Right. And the purpose -- or the
15 subject it says is "Introduction Nate Anderson of
16 ClaritySpring/Darryl Levitt"; correct?

17 A. Yes.

18 330 Q. And do you recall your first -- I
19 take it that was the first discussion that you had
20 with Mr. McFarlane and Mr. Levitt?

21 A. Do I recall having the discussion?
22 Yes.

23 331 Q. Yes. Okay. And can you tell me
24 what you recall from the discussion? What did you
25 guys speak about?

1 A. The introductory discussion, I
2 don't recall the specifics because it has been
3 quite awhile.

4 332 Q. Right.

5 A. But it was to learn more about
6 their experiences with Callidus and Catalyst and to
7 try and understand the firms and their business
8 practices better.

9 333 Q. Right. I take it that was the
10 first time you ever spoke to Mr. Levitt and
11 Mr. McFarlane?

12 A. Yes.

13 334 Q. All right. And they didn't know
14 who you were, I take it?

15 A. I don't know offhand. You would
16 probably have to ask them, but --

17 335 Q. Right.

18 A. -- I didn't get the impression
19 that they were familiar with me prior to my
20 outreach.

21 336 Q. They were -- I'm sorry? I'm
22 sorry, I didn't hear that.

23 A. Oh, I didn't get the impression
24 that they were familiar with me prior to my
25 outreach.

1 337 Q. Right. And I take it -- I take
2 what the subject line says is "Introduction Nate
3 Anderson of ClaritySpring", you introduced
4 yourself, what ClaritySpring did, what its business
5 was, sort of the same things that were discussed in
6 your -- or mentioned in your affidavit that we just
7 went through?

8 A. Yes.

9 338 Q. And as part of that discussion, I
10 take it that you spoke about -- I just want to use
11 your words here, that in the normal course of your
12 whistleblower work, you communicate with the media;
13 do you recall that?

14 A. In the introductory conversation,
15 I don't know if that came up.

16 339 Q. Okay. Well, let me help you. So
17 what I am showing you is document 172. It is an
18 email from Jeff McFarlane to you sent November 28th
19 at 9:57 p.m. It says subject "media
20 contacts/background information". There are
21 attachments, Ben Dummett, John Tilak, Bruce
22 Livesey, Scott Deveau, with the one line:

23 "Who have followed the Callidus
24 story."

25 This email, as I said, was sent at

1 November 28th at 9:57 p.m. I take it, based on the
2 calendar invitation that we saw, that this email
3 was sent either during your call with Mr. McFarlane
4 or shortly after?

5 A. I would say that is fair.

6 340 Q. All right. And I take it then
7 that he is sending you this information because I
8 suspect that you did speak about the media and how,
9 in the normal course, you often communicate with
10 the media in the course of your whistleblower work?

11 A. Given that, I think Jeff was
12 volunteering potential sources that could have more
13 information and...[inaudible]...filed the story,
14 including those members of the media, yes.

15 [Court Reporter intervenes for
16 clarification.]

17 THE DEPONENT: Given that, yeah, I
18 think Jeff was sending individuals that could be
19 helpful sources who know something about Callidus,
20 including those individuals in the media.

21 BY MR. NA:

22 341 Q. Okay. Let me take you to another
23 document then that might help. So I am showing you
24 another email. It is from our production, CATC591.
25 It is an email from Mr. Levitt to Mr. Levy and

1 Mr. Jaross. You know who they are; correct?

2 A. Yes.

3 342 Q. And you dealt with them, of
4 course, in preparing the whistleblower complaint?

5 A. I spoke with them as part of my
6 research, yes.

7 343 Q. Right. And Mr. Levitt on November
8 28th is sending an email to Mr. Levy, and I
9 appreciate you may not have seen this. It is at
10 2:53 p.m.:

11 "You should put Bruce Livesey
12 in touch with him."

13 Do you see that?

14 A. I do.

15 344 Q. Right. And the "him" is in
16 reference to you; correct?

17 A. I presume so.

18 345 Q. Right. Well, he is forwarding an
19 email to Mr. Levy -- he is forwarding your email to
20 Mr. Levitt to Mr. Levy.

21 MR. LUNG: Well, to be fair, he wasn't
22 part of this conversation, so all he has is what
23 you have, which is the text of the email.

24 BY MR. NA:

25 346 Q. That is exactly what I said. I

1 appreciate that you have never seen this, but the
2 "him" is in reference to you; correct?

3 A. I presume so.

4 347 Q. Right. And does that help you
5 that during your conversations with Mr. Levitt and
6 Mr. McFarlane that you spoke about the media?

7 A. Spoke about certainly speaking
8 with individuals in the media who might know more
9 about the case, yes.

10 348 Q. Okay. So let's go to -- this is
11 number 90, the first page. I am showing you an
12 email from you to Mr. McFarlane, subject line
13 "Media contacts/background information". This is
14 an email that you sent in response to
15 Mr. McFarlane's email where he is providing you
16 with media contacts. You state:

17 "Thank you Jeff and good
18 speaking with you yesterday. I'll
19 connect with all of them when the
20 timing makes sense. Looking forward
21 to learning more; it sounds like
22 they are running a large, complex
23 fraud. Next time you make it up to
24 NYC or vice versa when I'm down in
25 North Carolina it would be great to

1 shake hands in person".

2 So two things. What you tell
3 Mr. McFarlane is that "it sounds like they are
4 running a large, complex fraud"; correct?

5 A. Yes.

6 349 Q. Right. And you say that you will
7 "connect with all of them", being the media
8 contacts, "when the timing makes sense"; correct?

9 A. Yes.

10 350 Q. Right? And that is no different
11 or is consistent with what you state in paragraph
12 30, that you often communicate with the media to
13 help expose the fraud; correct?

14 A. Yes.

15 351 Q. Right. And we do know that you do
16 end up contacting Mr. Livesey and Mr. Tilak;
17 correct?

18 A. Yes.

19 352 Q. Right. And so what you are
20 telling Mr. McFarlane is -- or as Mr. McFarlane
21 understood it, based on your email, is that at some
22 point in the future you would be contacting the
23 media; correct?

24 A. Yes.

25 353 Q. All right.

1 A. That sounds like what
2 Mr. McFarlane would have taken.

3 354 Q. Well, if he -- yeah, sorry.
4 Everyone in my room is telling you to speak up a
5 little bit, Mr. Anderson, if you don't mind.

6 A. I said, yes, that is what I
7 presume Mr. McFarlane would have taken.

8 355 Q. And over the -- from and after
9 November, over the ensuing months until you filed
10 your whistleblower complaints, I take it that you
11 were gathering information from various sources?

12 A. Yes.

13 356 Q. Like Mr. Langstaff who we spoke
14 about earlier?

15 A. Yes.

16 357 Q. Right. Mr. Duhamel?

17 A. I am not sure -- oh, yes, yes,
18 Mr. Duhamel.

19 358 Q. I'll take you to some emails with
20 Mr. Duhamel in a moment. But Mr. Levy and Jaross
21 who we mentioned earlier?

22 A. Yes, Levy. I am not sure offhand
23 if I spoke directly with Jaross.

24 359 Q. Okay. Obviously Mr. Levitt?

25 A. Yes.

1 360 Q. Right. And Mr. Spears?

2 A. Yes.

3 361 Q. And just help me for a moment.

4 When we talk about Mr. Levitt -- can we go to the
5 whistleblower complaint. And go to "Background".
6 Mr. Anderson, I'm showing you a copy of your -- of
7 the whistleblower complaint that Mr. Dearden took
8 you through this afternoon -- or this morning, I
9 should say. And can you go to "Whistleblower
10 Background".

11 So under the heading "Whistleblower
12 Background", it states:

13 "Nathan Anderson. Mr. Anderson
14 is CEO of ClaritySpring [...]"

15 Do you see that?

16 A. Yes.

17 362 Q. Right. And I just want to go
18 above that. So "Whistleblower Background", do you
19 see the footnote, number 14?

20 A. Actually I think Zoom is in the
21 way.

22 363 Q. Can you blow that up?

23 A. Oh, yes. Okay.

24 364 Q. Right. Okay. Sorry. It is a bit
25 small on the screen here. So if you go to footnote

1 14, footnote 14, a footnote to the heading
2 "Whistleblower Background", it says:

3 "An additional Whistleblower is
4 involved in this case but wishes to
5 remain anonymous at this time."

6 MR. LUNG: So, Mr. Na, I'm just going
7 to anticipate your question here, but if that
8 whistleblower has not identified him or herself at
9 this point, Mr. Anderson is not going to do so.

10 MR. NA: Well, I am pretty sure he has,
11 Mr. Lung. That is Mr. Levitt.

12 MR. LUNG: Just throwing that out
13 there. Has Mr. Levitt identified himself as that
14 whistleblower?

15 BY MR. NA:

16 365 Q. Mr. Levitt has filed the same
17 whistleblower complaint stating that he filed this
18 Whistleblower Submission. So I take it the
19 additional whistleblower is Mr. Levitt?

20 MR. LUNG: Well, my concern is if -- I
21 would like some confirmation that that's been
22 confirmed before we have any more discussion about
23 that.

24 BY MR. NA:

25 366 Q. Sure. I'm happy to do that. Why

1 don't we go to Exhibit I. Go to Exhibit I.

2 MR. LUNG: What is it Exhibit I to,
3 Mr. Na?

4 MR. NA: Mr. Levitt's affidavit.

5 MR. LUNG: Okay.

6 BY MR. NA:

7 367 Q. Oh, that is Mr. Anderson. Sorry.

8 Sorry, it is Exhibit D as in "David" to
9 Mr. Levitt's affidavit.

10 MR. LUNG: Is that Exhibit D?

11 MR. NA: Correct.

12 MR. LUNG: Okay. I am fine with that.
13 Go ahead.

14 BY MR. NA:

15 368 Q. Mr. Anderson, the additional
16 whistleblower is Mr. Levitt?

17 A. Yes.

18 369 Q. Yes. The Whistleblower Submission
19 was filed, I take it, on your behalf and
20 Mr. Levitt's behalf?

21 A. Yes.

22 370 Q. Right. You filed those
23 whistleblower complaints jointly?

24 A. I believe so, yes.

25 371 Q. Right. He was your

1 co-whistleblower; correct?

2 A. Yes, I believe so.

3 372 Q. Right. And Mr. Levitt is the one
4 who put what we have been calling the whistleblower
5 syndicate together, the investors?

6 A. I don't know. I don't know how to
7 respond in terms of putting together investors.

8 373 Q. Well, let me help you. We know
9 that John Wright invested?

10 A. So Darryl had introduced me to
11 several of the individuals that ultimately
12 invested.

13 374 Q. Right. Sorry, and that is what I
14 meant, Mr. Anderson, sorry for the confusion. He
15 is the one who introduced you to potential
16 investors to invest in the Whistleblower
17 Submissions; correct?

18 A. He introduced me to several of the
19 individuals that ultimately invested.

20 375 Q. Right. And those are Mr. John
21 Wright; correct?

22 A. I believe he is one of them.

23 376 Q. Right. Les Fernandes?

24 A. I believe so.

25 377 Q. All right. And Mary Zambri?

1 A. Mary didn't invest capital.

2 378 Q. She invested her sweat equity;
3 correct?

4 A. Yeah, she had put time.

5 379 Q. Right. And she was working with
6 Mr. Levitt at the time?

7 A. I think she was Mr. Levitt's
8 assistant at the time.

9 380 Q. Correct. At Norton Rose; correct?

10 A. I am not sure if she -- where she
11 was, but I think she was working as Mr. Levitt's
12 assistant. I am not sure. I know he had left
13 Norton Rose at a certain point.

14 381 Q. Okay. And then there was --
15 Mr. Molyneux invested as well?

16 A. Yes, he did.

17 382 Q. And, again, you met Mr. Molyneux
18 through Mr. Levitt?

19 A. Yes.

20 383 Q. And, sorry, going back to
21 November, after you first met Mr. McFarlane and
22 Mr. Levitt and Mr. Duhamel and the others we
23 mentioned, over the ensuing months, I think you
24 answered the question, that you were relying on
25 them to provide you with information for the

1 purposes of filing the whistleblower complaint?

2 A. I wasn't relying on anyone, per
3 se, to provide information. They were sources as
4 part of my due diligence and research.

5 384 Q. Well, you certainly asked them for
6 help, didn't you?

7 A. I asked them for information.

8 385 Q. Correct, to help with the
9 whistleblower complaint?

10 A. At the time it was a potential
11 whistleblower complaint, but yes, I was looking for
12 sources and information to aid in research to --
13 with an eye to eventually preparing a whistleblower
14 report.

15 386 Q. Right. And go to number 90 and
16 scroll down. What we have at number 90 is an email
17 from you to Mr. Duhamel on December the 11th, 2016:

18 "Hi Gerald,

19 Nice speaking with you the other
20 day. As mentioned, here are the
21 basic due-diligence docs on the fund
22 that would be helpful for
23 understanding the larger entity."

24 And you list a number of items. Again,
25 you were asking Mr. Duhamel for some help on

1 gathering these, quote, "due-diligence docs"?

2 A. Yes.

3 387 Q. Right. And go back to number 89.

4 I am showing you document 89.

5 MR. LUNG: Sorry, just so that I have

6 some assistance here, Ben, when you refer to the

7 document numbers, is that -- what does that mean?

8 MR. NA: 89 is Jim Riley's Exhibit 89.

9 MR. LUNG: Oh, okay.

10 MR. NA: And this will all go in the

11 brief. I am not -- you don't -- rather than sort

12 of keeping track, Mr. Lung, we are going to do what

13 we have been doing over the last couple of weeks

14 and that is put the documents that we refer to in

15 the examination into the same Exhibit No. 5 I

16 believe we are at now.

17 MR. DEARDEN: Mr. Lung, for Clarity,

18 the numbering I was using for documents was not

19 exhibit numbers. It was my pile of electronic

20 documents that I might have called on or didn't

21 call on, and so Mr. Romeo and I, we have a list and

22 that is how he would know where to find the

23 document I was looking for.

24 MR. LUNG: I understand. Okay. That

25 is fine.

1 BY MR. NA:

2 388 Q. All right. No, and I don't think
3 there is any magic to this, but what I am showing
4 you, Mr. Anderson, is an email from Mr. Langstaff
5 to yourself of November 29, 2016, where
6 Mr. Langstaff states to you -- the subject line is
7 "Fraud research/Callidus":

8 "You're on the right track.

9 Kevin forwarded me your email."

10 And you can see the email below:

11 "I can help."

12 Do you see that?

13 A. I do.

14 389 Q. And I take it he did help?

15 A. Yes.

16 390 Q. Right. And the others we
17 mentioned, like Mr. Voorheis, Mr. Langstaff, all
18 the Defendants that we have named in this lawsuit?

19 A. I think all of the people you just
20 named had knowledge and information that was
21 helpful in my research of Catalyst and Callidus
22 ultimately.

23 391 Q. Right. And they were providing
24 that research -- or the information, as I said, for
25 the purposes of helping you in your research to

1 file a potential whistleblower complaint?

2 A. That was my purpose for certainly
3 asking and receiving information from sources, yes.

4 392 Q. Right. And they understood what
5 the purpose was for your request?

6 A. I made clear that my business
7 included filing whistleblower complaints and
8 pursuing fraud research, so I think they
9 understood.

10 393 Q. Right. They understood. Can we
11 go to 96. Exhibit -- Jim Riley Exhibit 96. And as
12 part of the purpose that you just described,
13 Mr. Anderson, I am showing you an email from
14 Mr. McFarlane to yourself on November the 30th,
15 2016, where he is providing a Dropbox; do you see
16 that?

17 A. I do.

18 394 Q. Right. And it says:

19 "Jeff said:

20 'Nathan, I will start building
21 out this data room for you. The
22 initial batch of documents are in
23 support of the Ontario Securities
24 Commission Whistleblower complaint'
25 [...]"

1 Correct?

2 A. Yes.

3 395 Q. Right. And I take it he did
4 provide documents and information in that folder
5 titled "ClaritySpring"?

6 A. Yes.

7 396 Q. Right. And I take it that -- and
8 we mentioned it, we saw it in the email that you
9 sent to Mr. Duhamel that you were looking for due
10 diligence docs on the funds, you were looking for
11 information about the Catalyst Funds; correct?

12 A. That is correct.

13 397 Q. Go to Exhibit 80, JR80, 080. Oh,
14 sorry. Sorry, 85, go to the last page. Okay. Go
15 up to December 7. Right there. So, Mr. Anderson,
16 I am showing you a document from Mr. Riley's
17 Exhibit 85. It is an email from StopTheScandal, a
18 message to you on December the 7th. StopTheScandal
19 or Lex Lucifer, whoever it is, is telling you:

20 "Try to get the LP document for
21 Fund 5. I have seen it. It gives
22 such wide subjective discretion to
23 the GP to value the assets that it's
24 sickening."

25 I take it, Mr. Anderson, you were

1 trying to get the LP documents for Fund V?

2 A. I was.

3 398 Q. Right. And part of that effort to
4 try to get the LP documents for Fund V is that you
5 contacted Catalyst; correct?

6 A. Yes.

7 399 Q. Right. And you contacted
8 Catalyst -- let me help you, Mr. Anderson. This is
9 document CAT059113. This is an email that you sent
10 to Catalyst saying that:

11 "I work with several family
12 offices on their private equity
13 allocation and Canadian distressed
14 has been of interest given some of
15 the sensitivities to the oil & gas
16 industry and macro tailwinds. I'd
17 like to learn more and see if
18 Catalyst may be a fit. For context
19 I am currently working with 3 groups
20 that range in bite size from
21 \$5m-\$25m depending on the
22 opportunity."

23 Do you see that?

24 A. I do.

25 400 Q. You were contacting Catalyst in an

1 effort to get some fund documents, including Fund V
2 documents, by advising that you worked "with
3 several family offices on their private equity
4 allocation"; do you see that?

5 A. Yes.

6 401 Q. Right. And you did so under the
7 pretext of working with several family offices;
8 correct?

9 A. Yes.

10 402 Q. Right. You did not tell Catalyst
11 or Callidus that you were working with the
12 borrowers, like Mr. Levitt or Mr. McFarlane, in
13 trying to obtain those Catalyst documents?

14 A. At the time it was fairly
15 preliminary in the process, so I was looking for
16 information to further my research. So we had had
17 some red flags from various --

18 403 Q. But that is not an answer to my
19 question, Mr. Anderson.

20 MR. LUNG: He is in the middle of
21 giving an answer to the question, and you should
22 allow him to finish his answer.

23 BY MR. NA:

24 404 Q. You are absolutely right. You are
25 absolutely right. Mr. Anderson?

1 MR. LUNG: Go ahead, Nate, just finish
2 what you had to say.

3 THE DEPONENT: Yeah, I was -- this was
4 a preliminary stage of the research, and we had
5 heard some red flags from individuals that at the
6 time we hadn't thoroughly vetted, so my next step
7 was to seek more information and see where the
8 investigation went.

9 BY MR. NA:

10 405 Q. Right. And to gather more
11 information and see where the investigation went,
12 you did not ever tell Callidus or Catalyst that you
13 were working with the borrowers; correct?

14 A. I -- at that time I had spoken
15 with the borrowers as sources. I wasn't working
16 formally with anyone. I was just doing my due
17 diligence and research to see if there were any
18 issues that merited further investigation.

19 406 Q. Right. Again, you did not tell
20 them that you had been speaking to the borrowers
21 then?

22 A. No, not at that time.

23 407 Q. Not ever?

24 A. Correct.

25 408 Q. And if you go up, Marco. Keep

1 going. Mr. de Alba responds to you and says:

2 "Will be glad to connect and
3 give you an overview."

4 Do you see that on November 28th?

5 A. Yes.

6 409 Q. All right. And scroll down --

7 sorry, up. All right. So on December the 7th, you
8 write to Diana Moreno at Catalyst at 2:28 p.m., and
9 it says:

10 "Sounds good. Do you have any
11 basics on the fund that I can review
12 in advance?"

13 Do you see that?

14 A. I do.

15 410 Q. Again, that is in your effort to
16 get the fund documents; correct?

17 A. Yes.

18 411 Q. All right. And I take it you
19 never got those fund documents?

20 A. For Fund V, I don't think so.

21 412 Q. No. Okay. Can we go to CATC1516.
22 This is from Catalyst production 1516. It is an
23 email from McFarlane to Mr. Levitt and to yourself,
24 do you see that, of December 7, 2016?

25 A. Yes.

1 413 Q. All right. And it says:
2 "Darryl, it might be also
3 helpful to connect Nathan with West
4 Face."

5 Do you see that in the second line --
6 second sentence?

7 A. Yes.

8 414 Q. Right. And you told Mr. Dearden
9 that you did speak with representatives of West
10 Face; correct?

11 A. Yes.

12 415 Q. Right. And the purpose of
13 speaking with representatives of West Face is
14 because they would be helpful?

15 A. That was the hope.

16 416 Q. Right. And I take it they did
17 provide information, you said?

18 A. They told me about information. I
19 don't think they actually sent anything.

20 417 Q. Okay. So when you say they told
21 you, you are talking about on the phone, I take it?

22 A. Yes.

23 418 Q. Right. And I take it that you
24 were seeking information for the purposes of
25 working on the whistleblower complaint?

1 A. My intention was to continue my
2 research and, again, continue to see if there was
3 evidence that merited a whistleblower complaint.

4 419 Q. Right, right. And they understood
5 that was the reason why you were contacting them --
6 or speaking with them, I should say?

7 A. I believe so.

8 420 Q. Right. And, Mr. Anderson, I
9 actually tried to get on to your ClaritySpring
10 website, and it directs me to the Hindenburg
11 Research page; is that right?

12 A. At this stage, yes, because
13 Hindenburg is my focus, and ClaritySpring is
14 essentially the portfolio of whistleblower cases.

15 421 Q. Okay. Well, according to your
16 affidavit, Hindenburg started in 2018?

17 A. Hindenburg was formed as an entity
18 in 2018, yes.

19 422 Q. But I take it that ClaritySpring
20 had its own website back in 2016 and 2017?

21 A. It did, yes.

22 423 Q. All right. And it would describe
23 the work that it does in terms of filing
24 whistleblower complaints?

25 A. No, because initially

1 ClaritySpring was focussed on developing and
2 advancing a technology platform to aid in the due
3 diligence process, so that was --

4 424 Q. That would be -- sorry,
5 Mr. Anderson, please finish.

6 A. So that was the focus of the
7 website, to attract the funds and the investors
8 that we worked with when we had a capital raising
9 and broker/dealer and technology due diligence
10 platform.

11 425 Q. And if we were to go to the
12 Hindenburg website, for example, it describes the
13 whistleblower complaints that you filed?

14 A. Hindenburg describes the track
15 record of Hindenburg and also the -- some elements
16 of the track record of me, Nathan Anderson, but
17 Hindenburg doesn't actually own those early
18 whistleblower reports.

19 426 Q. No, I understand that, but you are
20 quite right, Mr. Anderson, that it does track what
21 you did back in 2014 with respect to RD Legal
22 Capital?

23 A. Yes.

24 427 Q. Right. And I take it that was
25 also on the ClaritySpring website?

1 A. No, I don't think we ever focussed
2 on the ClaritySpring website on the whistleblower
3 side. There didn't really seem to be much of a
4 need for that.

5 428 Q. All right. I am going to take you
6 to the -- actually, let me come back to that. I'll
7 come back to that.

8 I am going to take you to Exhibit 30 of
9 Mr. Riley's affidavit. This is a memo from Pete
10 Marketos -- sorry, to Pete Marketos from Andrew
11 Levy dated August 14, 2015; do you see that
12 memorandum?

13 A. I do.

14 429 Q. Right. And this comes from your
15 productions?

16 MR. LUNG: It does.

17 BY MR. NA:

18 430 Q. Right. And so you have had this
19 in your file, Mr. Anderson; correct?

20 A. I presume so.

21 431 Q. I presume you read it?

22 A. It has been awhile since I have
23 reviewed some of these documents, so this one in
24 particular, you know, isn't one of --

25 432 Q. Well, let me --

1 A. -- of them, but if it was in my
2 production, I am sure I had seen it on some level
3 at some point.

4 433 Q. Right. Well, let me help you.
5 The subject line is "Callidus Capital - Fraud in
6 the Inducement, Breach of Contract and Other
7 Claims"; those are the very things that you were
8 researching; correct?

9 A. No, my focus was actually on
10 securities fraud, not as much on breach of contract
11 and these kind of individual business torts.

12 434 Q. Okay.

13 A. It is --

14 435 Q. Do you remember how you got this
15 document?

16 A. Offhand, no.

17 436 Q. Okay. So let's go to paragraph
18 24. Maybe this will jog your memory, 23. It is at
19 paragraph 23. Paragraph 23, in the middle of that
20 first paragraph. All right. This is taken from
21 your file. It says:

22 "Esco principals started to
23 call the other Callidus borrowers
24 and have found out that the game
25 plan used by Callidus in the Esco

1 situation has been repeated in at
2 least four other situations. Philip
3 Parnet [sic] of West Face is a
4 fountain of info on Callidus [...]"

5 Do you see that?

6 A. I do.

7 437 Q. Right. And it says:

8 "[...] West Face is a fountain
9 of info on Callidus [...]"

10 And it gives Mr. Parnet's phone number.

11 "We have a copy of their 52
12 page research report of why Callidus
13 loans are underwater and why
14 Callidus stock is a good short."

15 Do you see that?

16 A. I see that.

17 438 Q. And does that help you at all in
18 terms of your recollection of this document?

19 A. On that document, not really.

20 439 Q. Okay. Well, would you agree with
21 me that Philip Parnet is a fountain of info on
22 Callidus? Oh, Mr. Parnet --

23 MR. LUNG: Panet I think it is.

24 THE DEPONENT: Personally I didn't find
25 him to be a fountain of info.

1 BY MR. NA:

2 440 Q. Okay. All right. Well, we have
3 an opportunity to examine Mr. Panet, so we'll see
4 how helpful he is then.

5 Okay. So I take it that what I just
6 read doesn't help you in terms of whether you
7 recall reviewing the document at the time you got
8 it or when you got it?

9 A. No.

10 441 Q. Okay. Let me take you to
11 document -- Mr. Riley's Exhibit 104. It is about a
12 meeting that is going to be held in December. Do
13 you recall that meeting?

14 A. I do.

15 442 Q. Right. And the purpose is to deal
16 with "two types of frauds"; do you see that?

17 A. Yes.

18 443 Q. Right. And "Securities Fraud -
19 SEC/OSC", and number 2, "Common law and Statutory,
20 RICO"; correct?

21 A. Yes.

22 444 Q. And that was the purpose of the
23 meeting, was to discuss those two items?

24 A. To discuss evidence of potential
25 fraud, yes.

1 445 Q. Right. And when it says
2 "Securities Frauds - SEC/OSC", I take it that is in
3 reference to filing a whistleblower complaint?

4 A. My personal aim was to learn
5 information and evidence relating to securities
6 fraud to see if it merited a whistleblower filing.

7 446 Q. Right. Well, let me help you with
8 this. You know what, I'll ask...[inaudible]

9 MR. LUNG: Sorry, I think we -- did we
10 lose Ben? I think he is frozen.

11 (DISCUSSION OFF THE RECORD.)

12 -- RECESSED AT 3:00 P.M.

13 -- RESUMED AT 3:15 P.M.

14 BY MR. NA:

15 447 Q. Mr. Anderson, I am going to take
16 you to document 1564, Anderson production 1564.
17 This is an email from Mr. Levitt sent on February
18 25th to Mr. Fernandes, Mr. Wright, to yourself, to
19 Mr. Spears, Mr. Molyneux, Ms. Zambri, Mr. Duhamel
20 and some others about a ClaritySpring visit to
21 Toronto; do you see that?

22 A. I do.

23 448 Q. All right. And I take it that the
24 purpose of this visit to Toronto, as it says, is
25 "to get everyone together so that he can do one

1 pitch". I take it the "pitch" is to invest in the
2 whistleblower complaint?

3 A. I believe so, yes.

4 449 Q. Right. So I take it by February
5 25th you were close to finalizing the -- or working
6 towards finalizing the whistleblower complaint;
7 otherwise, you wouldn't be seeking investors to
8 invest?

9 A. I think by that time I had
10 developed enough evidence and enough research to
11 have confidence that there was enough to merit a
12 whistleblower filing.

13 450 Q. Right. Well, maybe I can help
14 you. Go to Mr. Riley's Exhibit 121. Further down,
15 further down. Stop there. This is taken from
16 Mr. Riley's Exhibit 121. I am showing you an email
17 from Mr. McFarlane to Mr. Levy dated March 21,
18 2017. Mr. McFarlane says:

19 "I'm heading to Toronto".

20 So I guess everyone is coming to
21 tonight. He says:

22 "I've got meetings with:

23 - Bruce Langstaff, head of
24 equities group at Canaccord Genuity
25 - the firm that took Callidus

1 public.

2 - Wes Voorheis", who we spoke
3 about before.

4 "- John Tilak - a reporter from
5 Thomson Reuters who's been following
6 the story for a couple of years.

7 I also spoke to Nathan yesterday.
8 He's still about 2-3 weeks away from
9 filing SEC docs."

10 I take it that's accurate, that, (a),
11 Mr. McFarlane did speak to you and that at that
12 time you were about two to three weeks away from
13 filing your whistleblower complaint?

14 A. That may have been the estimate at
15 the time.

16 451 Q. Well, believe me, we know when it
17 was filed, Mr. Anderson, I'm not holding you to it,
18 but I take it at that time you were anticipating
19 filing the whistleblower complaint in about two to
20 three weeks' time?

21 A. I believe so, yes.

22 452 Q. Right. And so in two to three
23 weeks' time, that takes us to about mid-April,
24 right?

25 A. Yes.

1 453 Q. Right. And so can I take you to
2 128, Exhibit 128 of Mr. Riley's affidavit, and to
3 the bottom. You will see there is -- first of all,
4 there is an email of April 22 at 9:46 p.m. to
5 Darryl Levitt, and if you look at the subject line,
6 it says "will need to speak to you re material".

7 It is an email that Mr. Panet responds
8 to on April 23 at 5:11 p.m., and it says:

9 "I can talk later tonight if
10 that works."

11 And Mr. Levitt forwards you that email
12 on April 24th at 2 -- is that 2:26 a.m.? It says:

13 "If we don't connect tonight we
14 will be speaking in the morning."

15 Do you see that?

16 A. I do.

17 454 Q. Right. And the material that they
18 are talking about there is the whistleblower
19 complaint that you have been working on; correct?

20 A. Regarding the material that we
21 spoke of, I am not sure offhand.

22 455 Q. Well, I took you to
23 Mr. McFarlane's email where he said he spoke to you
24 and you were about two to three weeks away from
25 filing with the SEC. That takes us to about April.

1 Here Levitt is writing to Mr. Panet:

2 "Will need to speak to you re
3 the material."

4 And he has forwarded that email to you,
5 and I am suggesting that that material is relating
6 to the whistleblower complaint.

7 A. If material is relating to the
8 whistleblower complaint?

9 456 Q. I'm asking you, yes.

10 A. I don't know which material that
11 is referring to offhand.

12 457 Q. Okay. And then I take it then
13 that on April 28th -- sorry, go to JR144, Exhibit
14 144 of Mr. Riley's exhibit. This is April 28th.
15 Mr. Levitt is writing to you. So that is, what,
16 three or four days after the email we just showed
17 you. It says:

18 "Gentlemen,

19 Nathan will be here on Monday
20 and Tuesday and will want to take
21 everyone through the complaint and
22 where we are with it and filing
23 expectations and timeline and
24 investment.

25 Can we coordinate a central

1 meeting place [...]"

2 Does that help you, Mr. Anderson, about
3 the materials that was just referenced in the
4 earlier email I just showed you?

5 A. I don't know which specific
6 material that was -- that email was about.

7 458 Q. Okay. And I take it then, though,
8 that you were going to -- you were here on the
9 Monday and Tuesday, and you did take everyone
10 through the complaint and filing expectations,
11 timelines, and investments?

12 A. I did discuss the research and
13 filing expectations and timeline, yes.

14 459 Q. Well, Mr. Anderson, let's be
15 really precise here. Nowhere does that email --

16 MR. DEARDEN: We have a fire alarm.

17 MR. LUNG: That is not me.

18 MR. DEARDEN: Perfect.

19 (DISCUSSION OFF THE RECORD.)

20 [Reporter's Note: Fire alarm sounds at
21 Zoom participant's site. Recess
22 taken.]

23 BY MR. NA:

24 460 Q. Just picking up from your last
25 answer, Mr. Anderson, you said that you wanted to

1 take everyone through the research, but it is more
2 than that, Mr. Anderson. The word "research" is
3 not in that email. It is "take everyone through
4 the complaint"; correct?

5 A. That is the email that Darryl had
6 sent, yes.

7 461 Q. Right. And that is what you did,
8 you took everyone through the complaint, where you
9 were with at, filing expectations, timeline, and
10 investment; correct?

11 A. Well, there wasn't an actual
12 whistleblower complaint or report filed at that
13 time, but I took everyone through the whistleblower
14 program and made the investment proposal.

15 462 Q. Mr. Anderson, we all know when the
16 complaint was filed, but I take it what you are
17 doing is you are keeping everyone informed,
18 correct, of the progress?

19 A. I was giving prospective investors
20 the details on progress and the research and the
21 expectations and the nature of the whistleblower
22 program and the nature of what an investment in a
23 whistleblower filing would look like.

24 463 Q. Right. And one of the things you
25 did -- and I will take you to an email, if you

1 like -- is you took them through a draft complaint,
2 or you made one available if they were prepared to
3 invest?

4 A. I had brought a physical copy of a
5 draft with me and walked them through the research
6 to that point.

7 464 Q. Well, it is not just the research,
8 but you took them through the draft complaint;
9 correct?

10 A. It was a research filing. I
11 mean --

12 465 Q. You took them through a draft of
13 the complaint. That is why you brought it with
14 you; correct?

15 A. I took them through the draft.
16 Whether you want to call it a whistleblower filing,
17 a whistleblower complaint, draft research, I think
18 I'm generally comfortable with all of those.

19 466 Q. Right. Which had the fraud
20 allegations; correct?

21 A. Yes.

22 467 Q. And we know that you eventually
23 filed a whistleblower complaint on May 22; correct?

24 A. I'll take your word on the date.
25 Yes, I filed a whistleblower complaint ultimately.

1 468 Q. Right. Just shortly -- about a
2 month after this; correct?

3 A. Yes.

4 469 Q. Right. And then going back to the
5 draft complaint that you had as of April 28th, a
6 draft of something. Let's just call it draft --
7 what was the word you used?

8 A. Report?

9 470 Q. Draft report. I take it that that
10 was the materials that Mr. Levitt was referring to
11 a couple of days prior to this email of April 28th?

12 MR. LUNG: I think he has answered that
13 he doesn't know what that was.

14 BY MR. NA:

15 471 Q. I understand that, and now I have
16 taken him to another document where it mentions
17 "the complaint", and that's what I'm asking, to see
18 if we can get a little bit more specific, Mr. Lung.

19 A. No, it doesn't change that. I
20 don't actually know specifically what Darryl was
21 referring to in his email.

22 472 Q. Okay. So you don't know what
23 Mr. Levitt was referring to in his email of April
24 24th when he is talking about the materials with
25 Mr. Panet, but on April 28th, he is writing to the

1 others, to you, Mr. Fernandes, and Mr. Molyneux
2 about you coming on Monday and Tuesday wanting to
3 take everyone through the complaint; correct?

4 A. He did --

5 473 Q. That is what you are saying?

6 A. -- in the email.

7 474 Q. All right. Okay. So on May 22
8 you filed a whistleblower complaint with the OSC;
9 correct?

10 A. Yes.

11 475 Q. All right. And as you said,
12 Mr. Levitt was the other additional whistleblower
13 on that complaint; correct?

14 A. Yes.

15 476 Q. Right. And I take it you and
16 Mr. Levitt filed a supplementary complaint on May
17 30th?

18 A. Again, I am not a hundred percent
19 on the date, but we filed a supplementary
20 complaint, yes.

21 477 Q. But you don't have any -- you
22 don't take issue if it was filed on May 30th? That
23 sounds about right?

24 A. I'll take your word for it.

25 478 Q. I'm sorry?

1 A. Yes, I'll take your word for it on
2 the date.

3 479 Q. Right. And the complaint that was
4 made to the OSC related to Callidus and Catalyst,
5 and we talked a lot about them. But it also was
6 against Mr. Glassman personally; correct?

7 A. The management of Catalyst,
8 including Mr. Glassman, yes.

9 480 Q. Right. And the fraud allegations
10 against Mr. Riley personally?

11 A. The senior management being
12 Mr. Glassman, Mr. Riley, and Mr. de Alba, I
13 believe.

14 481 Q. That's right. So the fraud
15 allegations were not just against the companies
16 Callidus and Catalyst, but against the management,
17 Mr. Riley, Mr. Glassman, and Mr. de Alba
18 personally; correct?

19 A. Yes.

20 482 Q. Right. And on April 2, having
21 just filed the whistleblower complaint --

22 MR. LUNG: Sorry, you said April 2?

23 MR. NA: Sorry?

24 MR. LUNG: Did you say on April 2?

25 MR. NA: Did I say April 2?

1 MR. ROMEO: Yes.

2 MR. LUNG: Yes.

3 BY MR. NA:

4 483 Q. I'm so sorry. That was not a
5 trick question, Mr. Anderson. Let me put it
6 differently. On June 2, on June 2, having just
7 filed the whistleblower complaints on May 22 and
8 May 30th, you and Mr. Levitt spoke about what to
9 say to Mr. Tilak of Reuters; correct?

10 A. I don't know offhand, but --

11 484 Q. Okay. So let me help you then.
12 Let me help you. I am going to show you Exhibit
13 177 of Mr. Riley's affidavit. Blow that up. I
14 can't see it. Mr. Levitt writes to you on June 2
15 at 6:13 p.m., says subject line "Let's speak over
16 the weekend":

17 "And coordinate what we want to
18 say to John T."

19 And you respond:

20 "Sounds good."

21 The 'John T.' is in reference to
22 Mr. Tilak of Reuters; correct?

23 A. Yes.

24 485 Q. Right. And in fact on -- and I
25 take it you did speak with Mr. Tilak in and around

1 that weekend; correct?

2 A. I am not sure.

3 486 Q. Okay. Well, let me help you then
4 again. Riley Exhibit 178. I am showing you a
5 document that you may not have seen. This is a
6 text message between Mr. Levitt and Mr. Langstaff.
7 If you go to the third page. One more. Go to page
8 174. There it is right there. Scroll up.

9 Do you see that, June 3rd, a text
10 message June 3rd, 2017? So it is the day after the
11 email of June 2 between you and Mr. Levitt; do you
12 see the text message, the second bubble? Can you
13 blow that up?

14 A. Which one are you referring to?

15 MR. LUNG: Yeah, what are we looking
16 at?

17 BY MR. NA:

18 487 Q. Do you see that:

19 "Reuters working hard now."

20 A. Yes.

21 488 Q. Right. And I take it what that is
22 referring to is Reuters working hard on the
23 article -- on an article? Sorry.

24 MR. LUNG: Sorry, could I -- I don't
25 mean to interject, but you said this was after --

1 sorry, I am trying to understand. Can you just
2 clarify, the dark bubbles on the right, who is
3 that?

4 MR. NA: That is Mr. Langstaff.

5 MR. LUNG: Okay. And then the text on
6 the left is Mr. Levitt?

7 MR. NA: Correct.

8 MR. LUNG: Okay. And I'm having
9 trouble seeing. Does that say June 3rd, 2017,
10 10:45 a.m.?

11 MR. NA: Correct.

12 MR. LUNG: Okay. All right.

13 BY MR. NA:

14 489 Q. Does that help you, Mr. Anderson?

15 A. Does it help me with?

16 490 Q. With you having a conversation
17 with Reuters?

18 A. I don't know if I spoke with
19 Reuters at that time or if Darryl had. I am just
20 not sure offhand when I spoke with Reuters.

21 491 Q. Well, certainly you and Mr. Levitt
22 spoke about coordinating what you are going to say
23 to John T.; correct? We saw that on the previous
24 email of June 2?

25 A. Darryl had sent that over. I

1 don't know when or if we ultimately discussed what
2 to say or if he had --

3 492 Q. Okay.

4 A. -- contacted Reuters later or
5 how -- just the process of it. But I did speak
6 with Reuters ultimately.

7 493 Q. Right. And you told Mr. Dearden
8 this morning that you also gave them a copy of the
9 whistleblower complaint?

10 A. Yes.

11 494 Q. Right. And I take it that in this
12 June time frame that you were anticipating an
13 article by Reuters?

14 A. It is very difficult to say when
15 or whether a media organization actually publishes
16 an article, but it was clear that Reuters was
17 investigating the subject matter.

18 495 Q. Right, right. The subject matter
19 being your whistleblower complaint?

20 A. The subject matter being Catalyst
21 and Callidus, with the whistleblower information --

22 496 Q. And the whistleblower?

23 A. -- and the source material as
24 sources aiding in that investigation.

25 497 Q. Right. And sources of aiding in

1 that investigation is the whistleblower complaint
2 that you gave to Reuters; correct?

3 A. Yes, that was one of the sources.

4 498 Q. Right. And -- well, let me help
5 you further.

6 Sorry, just give me one second.

7 Sorry, just give me one second.

8 MR. LUNG: It's okay, take your time,
9 as long as we are done by 5:15.

10 BY MR. NA:

11 499 Q. Sorry, I apologize, Mr. Anderson.
12 What I am showing you -- and we are going to call
13 it document 17 for the moment for identification
14 purposes, but -- for the brief. It is an email
15 from Darryl Levitt dated June 26, 2017. It says:

16 "Thanks Andrew. Interesting
17 article [...]"

18 Can you blow that up? More?

19 Okay. Thank you. It says:

20 "If Reuters has contacted you
21 for comment on their article the one
22 thing that Detective Regan has
23 specifically said is that we are not
24 to discuss an investigation with the
25 Toronto Police Services on their

1 investigation. So please keep that
2 in mind.

3 I believe an article is coming
4 out mid week."

5 Do you see that?

6 A. Yes, I see that.

7 500 Q. Right. And as I said, that is
8 June 26th. I just took you through to June 2nd
9 where you and Mr. Levitt were talking about what to
10 say to Mr. Tilak.

11 I take it that around June 26th you
12 were anticipating an article coming out mid-week?

13 A. I think what you are seeing is the
14 kind of guessing game that often takes place when
15 you work with a media outlet on whether or when
16 they are going to publish an article, but I don't
17 think Reuters did publish an article at that time,
18 if I'm recalling correctly.

19 501 Q. No, you are recalling correctly,
20 Mr. Anderson. They did not publish an article at
21 that time, and I am going to take you to an
22 email -- or a text message with you and
23 Mr. Copeland where they were, quote, "wussing out",
24 but I'm putting it to you that on June 26th that --
25 and I agree with you, Mr. Anderson, it is not for

1 certain, but it was anticipated or as -- let's use
2 Mr. Levitt's words, that you believed an article
3 was coming out midweek.

4 A. That is what it says. It is
5 difficult for me to speculate on Darryl's belief
6 obviously.

7 502 Q. Well, let's go back then. You and
8 Mr. Levitt spoke about speaking to Mr. Tilak at
9 Reuters at the beginning of June after you filed
10 the whistleblower complaint; correct?

11 A. We -- Darryl had sent me an email
12 about discussing that. I am not sure whether we
13 had that conversation.

14 503 Q. Well, your response was "sounds
15 good"; do you remember that?

16 A. Yes.

17 504 Q. Right. And I take it that you
18 don't have anything to suggest that a call did not
19 occur; correct?

20 A. I don't have anything to suggest
21 either way from memory as I'm sitting here.

22 505 Q. Right. You told Mr. Dearden
23 earlier that you gave a copy of the Reuters -- gave
24 a copy to Reuters of the whistleblower complaints
25 that had been filed; correct?

1 A. Yes.

2 506 Q. All right. I took you to a text
3 message of Mr. Levitt with Mr. Langstaff where he
4 was saying that Reuters is working hard now;
5 correct?

6 A. Yes.

7 507 Q. All right. And on the 26th of
8 June, Mr. Levitt is saying, if Reuters contacts you
9 for your comment on the article -- for their
10 article, and then the second-last paragraph:

11 "I believe an article is coming
12 out mid week."

13 I suggest to you that that is in
14 accordance with your -- what you were anticipating
15 at that time, that there was an article that
16 Reuters was working on, and the belief was it was
17 coming out mid-week.

18 A. That was Darryl's belief, and from
19 my experience, Reuters seemed interested in
20 pursuing the subject matter. But I am not sure
21 that I ever had any conviction on when or whether
22 they would ultimately publish an article.

23 508 Q. I am not asking you whether they
24 were convicted. The belief was that an article --
25 that Reuters was working on an article, and it was

1 coming out mid-week. That was the belief. Whether
2 it came to pass or not is a different question,
3 Mr. Anderson.

4 A. I believe you are accurately
5 characterizing Darryl's belief that he sent in the
6 email, yes.

7 509 Q. Right. Well, Mr. Levitt is a
8 co-whistleblower of yours. You and Mr. Levitt
9 coordinated what you were going to say to
10 Mr. Tilak. And I take it that that was your belief
11 at the time as well?

12 A. I am not sure offhand.

13 510 Q. Do you have something to suggest
14 that -- well, when you say you are not sure, it is
15 possible, correct, that that was your belief at
16 that time?

17 A. Is it possible that I had a belief
18 that an article could come out?

19 511 Q. Yes.

20 A. That is possible, yes.

21 512 Q. Right. At around that time, as he
22 says, mid-week, end of June; correct?

23 A. It is possible that at some point
24 I leaned on believing that an article could come
25 out. I don't obviously have any recollection of

1 specifically when, if that took place, but it seems
2 like we are getting into -- deep into hypothetical
3 territory at the moment.

4 513 Q. I am not suggesting it is
5 hypothetical. I am suggesting that it could be --
6 at that time you could have had the belief that the
7 article was coming out at the end of June; correct?

8 A. At that time, I could have had
9 that belief.

10 514 Q. Right. And I take it then,
11 Mr. Anderson, that -- remember I used the words
12 "wussing out" just a moment ago?

13 A. Yes.

14 515 Q. All right. Those aren't my words;
15 those are your words, right?

16 A. Yes.

17 516 Q. Right. And you are quite right,
18 an article did not come out at the end of June or
19 as it was believed in mid-week of the week of June
20 26th, but you did contact Mr. Copeland on July
21 13th, correct, and told him that the Reuters
22 article -- or Reuters was wussing out?

23 A. If that is a text I sent, then
24 yes.

25 517 Q. Can you pull up the text? Right.

1 This is a text message of July 13th that you sent,
2 Mr. Anderson; do you see that?

3 A. I do.

4 518 Q. Can you go to the top? All right.
5 You say on July 13th:

6 "You around Monday? Got
7 something?"

8 "Ya brah"; do you see that?

9 A. I see that, yes.

10 519 Q. Right. And then go down to the
11 next page, please. Mr. Anderson says:

12 "I enjoy how you think you can
13 play me against Lawrence."

14 Sorry, Mr. Copeland says:

15 "I enjoy how you think you can
16 play me against Lawrence."

17 That is Lawrence Delevingne of Reuters;
18 correct?

19 A. Yes.

20 520 Q. Right. And you say:

21 "This one is our OSC and SEC
22 actual submissions.

23 I'm not playing! They appear to
24 be wussing out so it's yours."

25 Do you see that?

1 A. I do.

2 521 Q. Right. "Wussing out" is in
3 reference to wussing out of writing the article;
4 correct?

5 A. Of writing an article and
6 continuing to pursue a piece on Catalyst or
7 Callidus.

8 522 Q. Right. And so then you go on to
9 say:

10 "So it's yours."

11 The "it's" is in reference to the very
12 thing that Reuters wussed out of?

13 A. I think that is in reference to a
14 potential scoop relating to information and
15 investigation on Catalyst and Callidus that hadn't
16 been -- that hadn't had any public dissemination at
17 that time.

18 523 Q. Right. They wussed out of
19 publishing the article at that time. You contacted
20 Mr. Anderson to say it is yours. Mr. Copeland --

21 A. I'm Mr. Anderson.

22 [Court Reporter intervenes for
23 clarification.]

24 I just said -- identified myself as
25 Mr. Anderson, but I think he meant Mr. Copeland.

1 So, yeah, I think what I was conveying
2 there is that there didn't seem to be any
3 competition and to be able to take his time and
4 continue to do his work and continue to pursue it
5 without the added pressure of a competing outlet
6 potentially scooping him.

7 524 Q. All right. Sorry, Mr. Anderson,
8 we are having this little caucus here.

9 Mr. Anderson, I want to take you to
10 Exhibit A of your supplementary affidavit.
11 Mr. Anderson, I understand from your affidavit this
12 is the trading records of ClaritySpring with
13 interactive brokers; correct?

14 A. Yes.

15 525 Q. Right. And much of it is
16 redacted; do you see that?

17 A. I do.

18 526 Q. Right. And I take it that those
19 are trading records unrelated to Callidus; is that
20 why it has been redacted?

21 MR. LUNG: That's right.

22 BY MR. NA:

23 527 Q. Right. Okay. You have to go
24 quite a ways into the document before we come
25 across Callidus.

1 MR. LUNG: And we gave you all the
2 redact pages for completeness. I guess I could
3 have trimmed it down a bit.

4 BY MR. NA:

5 528 Q. I've got to tell you, when I first
6 saw it, I thought it was all redacted. So if you
7 go to page -- what I see as page 627. You will
8 have to blow that up. What I see is -- in between
9 the two blocked redacted sections there, do you see
10 that? It says "Symbol", right?

11 A. Yes.

12 529 Q. Right. And it says "CBL", and
13 that is the stock symbol for Callidus?

14 A. It used to be.

15 530 Q. Fair point. At that time it
16 certainly was, on June 27th?

17 A. Yes.

18 531 Q. Right. And the next column is
19 "Date/Time"?

20 A. Yes.

21 532 Q. Right. And then the next column
22 is "Quantity"; correct?

23 A. Yes.

24 533 Q. And "T" is what? I take it as
25 trading price?

1		A.	I am not a hundred percent sure.
2	534	Q.	Okay. But it certainly --
3		A.	Because I don't know what "T
4			Price" is.
5			[Court Reporter intervenes for
6			clarification.]
7			Ahh, okay. I think that is trading
8			price.
9	535	Q.	Right. And "C Price" is what?
10		A.	I am guessing, and I think it
11			would be closing price.
12	536	Q.	Right. And "Proceeds"; correct?
13		A.	Yes.
14	537	Q.	"Commission/Fee"?
15		A.	Yes.
16	538	Q.	All right. And what is that,
17			"Basis" or "Basic"? "Basis"?
18		A.	Yes.
19	539	Q.	All right. Do you know what that
20			means?
21		A.	"Basis"?
22	540	Q.	Yes.
23		A.	That is the cost basis of the
24			trade.
25	541	Q.	Okay. And then you have got

1 "Realized P&L". I take it that is realized profit
2 and loss; correct?

3 A. Yes.

4 542 Q. Right. And if I take the first
5 trade that you see there, it says June 27 at 10:06
6 a.m.; correct?

7 A. Yes.

8 543 Q. All right. And it says negative
9 300; I take it that is your short, that you are
10 shorting Callidus stock of 300 stocks, correct?

11 A. 300 shares, yes.

12 544 Q. 300 shares. I'm sorry. I take
13 it -- but I am right that a negative 300 means you
14 are borrowing shares as part of the short trade?

15 A. Yes.

16 545 Q. Okay. And you short again on June
17 27th at 10:40; correct?

18 A. Yes.

19 546 Q. And then you short again on June
20 27th another 100 shares; correct?

21 A. Yes.

22 547 Q. And you short again on June 27th
23 at 2:53 p.m.; correct?

24 A. Yes.

25 548 Q. 1,900 shares?

1 A. Yes.

2 549 Q. Right. And on June 28th, you
3 short another 100 shares at 11:52 a.m.; correct?

4 A. Yes.

5 550 Q. Right. And then at 3:59 at June
6 28th, you -- it is not a short. You close out that
7 short position, correct, of 100 shares?

8 A. Yes.

9 551 Q. Right. And then on June 28th at
10 3:59:34 you close out another 900 shares?

11 A. Yes.

12 552 Q. Right. And then you continue on,
13 Mr. Anderson, to short again on July the 4th at
14 10:05 a.m. and at 11:30 a.m. for 100 shares and
15 1,500 shares; correct?

16 A. Yes.

17 553 Q. Right. And then on July 13 at
18 10:57 a.m. and at 11:12 a.m. you close out 7,000
19 shares of short position that you held and another
20 700 shares; correct?

21 A. Yes.

22 554 Q. Right. And when I do the math --
23 and it is simple arithmetic -- I take it by July
24 13th you have closed out all of your short
25 positions that you took on June 27th and June 28th

1 and on July the 4th; correct?

2 A. Yes.

3 555 Q. Right. And looking at -- let's
4 just look at the next column there, the trading
5 price. You short at \$14.85; correct, on June 27th?
6 I'm sorry?

7 A. On June 27th, there were several
8 prices, yes.

9 556 Q. I'm looking at the trading price
10 of \$14.85.

11 A. Yeah. What about that?

12 557 Q. I'm sorry, I can't hear you.

13 MR. DEARDEN: He said what about that.

14 BY MR. NA:

15 558 Q. Well, that is right, isn't it? Am
16 I reading that right, that you shorted 300 shares
17 at \$14.85; correct?

18 A. Yes.

19 559 Q. Right. And I take it between June
20 27 and July 13, when you close out your short
21 positions, that the trading price did not fluctuate
22 very much, did it?

23 A. It looks like it fluctuated about
24 10 percent.

25 560 Q. Right. And I take it you made

1 about --

2 A. Oh, sorry. Actually, I don't
3 think 10 percent is accurate. Maybe 3 to 4
4 percent, eye-balling it.

5 561 Q. Right. And if I look at the
6 realized profit and loss section -- column, you can
7 see, when you close out 7,000 shares, the profit is
8 \$2,115; correct?

9 A. That sounds about right, yes.

10 562 Q. Right. And you lost \$182 when you
11 closed out your short position of 700 shares at
12 \$14.34; correct?

13 A. Yes.

14 563 Q. Right. You didn't make very much
15 during that period of time, I take it,
16 Mr. Anderson?

17 A. It doesn't appear so.

18 564 Q. No. So going back to June 27 when
19 you did your first short trade of 300 shares, 4,700
20 shares, 100 shares, 1,900 shares, that is what?
21 6,000 shares? 7,000 shares? Sorry, my math is
22 wrong.

23 A. That is about right.

24 565 Q. Right. On June 27th, you shorted
25 7,000 shares of Callidus; correct?

1 A. Yes.

2 566 Q. Right. And I took you to an email
3 with Mr. Levitt where he said on June 26th he
4 believed the article was coming out mid-week;
5 correct?

6 A. Yes.

7 567 Q. Right. Let me just help you a
8 little bit further, Mr. Anderson. If you go to the
9 calendar -- there is a document called "calendar".
10 All right. June 26th, you see there, of 2017 -- I
11 am showing you a calendar on the screen there. It
12 is the Monday of June 26; do you see that?

13 A. I do.

14 568 Q. Right. And when Mr. Levitt said
15 he believed the article coming out mid-week, that
16 is June 28th; correct?

17 A. Yes.

18 569 Q. Right. On June 27th, before the
19 mid-week hit, you shorted 7,000 shares of Callidus,
20 right?

21 A. Yes.

22 570 Q. Right. And then what you do --
23 but we all know that the article didn't come out,
24 as you said; correct?

25 A. Not at that time.

1 571 Q. By mid-week, right?

2 A. There was no article at that time.

3 572 Q. Right. And on July 13th, in fact,
4 you wrote to Mr. Anderson, and you said that
5 Reuters is wussing out; correct?

6 A. Yes.

7 573 Q. Right. And on the morning -- or
8 the day that you wrote to Mr. Anderson -- sorry,
9 Mr. Copeland on July 13th that Reuters is wussing
10 out, you actually closed out all your short
11 positions on July 13th; correct?

12 A. Let me see that again on the
13 trading records, if you might.

14 574 Q. Yes, I'm happy to show you. July
15 13th; do see that? The day that you wrote to
16 Mr. Copeland that Reuters is wussing out, you
17 closed out all of your short positions in Callidus;
18 correct?

19 A. I do. Yes.

20 575 Q. Right. What you do, though, is
21 you short again on July 28th; do you see that?

22 A. I do.

23 576 Q. Right. At 3:01, you short 1,000
24 shares of Callidus at \$15.12; correct?

25 A. Yes.

1 577 Q. And at 5:58 -- sorry, at 3:58 --
2 pardon me, 3:56 on July 28th you short another
3 1,000 shares; correct?

4 A. Yes.

5 578 Q. Right? At \$15.60; correct?

6 A. Yes.

7 579 Q. Right. Can you go back to the
8 text message, page 31 of 65? This is a text
9 message between you Mr. Copeland; do you see that?

10 A. I do.

11 580 Q. Do you see July 27, 2017?

12 A. Yes.

13 581 Q. At -- is that 5:47 or 6:47? I
14 can't see. That evening at 6:47 p.m.? I want to
15 direct you to that text message; do you see that?

16 A. I do.

17 582 Q. Right. And what Mr. Copeland
18 tells you is that the:

19 "Story should be out Tuesday.

20 Don't tell the conspiracy of
21 short sellers!"

22 Do you see that?

23 A. I do.

24 583 Q. Right. So that evening of July
25 27th Mr. Copeland tells you that the story should

1 be out Tuesday, right? That is what he told you?

2 A. He was quite clearly joking in
3 that message, but that is what that says, yes.

4 584 Q. Yes. That is exactly what he
5 says, isn't it?

6 A. Amongst other things.

7 585 Q. Whether it is a joke or not a
8 joke, he told you on July 27th, that evening at
9 6:47 p.m., "story should be out Tuesday"?

10 A. And then immediately said it was a
11 joke, but yes, that is an accurate re-reading of
12 those -- that text.

13 586 Q. Where does he say it is a joke?

14 A. Sarcasm.

15 MR. LUNG: I think he is referring to
16 the comments immediately underneath:

17 "When this is read aloud in
18 court please your honor know that
19 was sarcasm."

20 BY MR. NA:

21 587 Q. Right. And I am going to be
22 reading this out loud in court as well because
23 after the evening -- on the evening of July 27th
24 when you were told that the story should be out
25 Tuesday, on July 28th, the next day, you shorted

1 Callidus stock; correct?

2 A. It looks that way on the -- I
3 don't have the trading records in front of me, but
4 yeah, it looks like it.

5 588 Q. Well, now you do.

6 A. Yes.

7 589 Q. Right. Armed with the information
8 that Mr. Copeland told you the night before, you
9 coordinated the trade on July 28th to short
10 Callidus stock; correct?

11 A. I shorted some Callidus stock the
12 following day. I don't think it was in relation to
13 any coordination, as you put it.

14 590 Q. Okay. So I took you to the text
15 message that said Tuesday, the story should be out
16 Tuesday; correct? You saw that? You remember it?

17 A. I do.

18 591 Q. Right. Go to the calendar. The
19 text message was sent on Thursday, July 27th,
20 right? Right?

21 A. Yes.

22 592 Q. Right. You shorted on July 28th,
23 right?

24 A. I had shorted some the next day,
25 yes.

1 593 Q. Yes. You were told on the 27th
2 that it should come out on Tuesday, the story
3 should come out on Tuesday; correct?

4 A. Yes, amongst other things.

5 594 Q. And that is August the 1st?

6 A. Yes.

7 595 Q. Right. Go to the trading records.
8 You shorted again on August the 1st; correct?

9 A. Yes.

10 596 Q. Right. You shorted that morning
11 at 11:08 when -- the day that Mr. Copeland had told
12 you that the story should be out that day, you
13 shorted again; correct?

14 A. Some, yes.

15 597 Q. I'm sorry, what did he say?

16 MR. DEARDEN: Some.

17 BY MR. NA:

18 598 Q. Whether it is some or part, you
19 did short? You took a short position on Callidus
20 on August the 1st; correct?

21 A. Yes.

22 599 Q. Right. You had Mr. Copeland's
23 text message saying that the story should be out on
24 Tuesday, and you shorted that morning when he told
25 you that the article should be out on the Tuesday,

1 August 1st; correct?

2 A. Well, in addition to other
3 information, yes.

4 600 Q. Whether it is part of it or not,
5 you had that information; correct?

6 A. Yes. The other information I had
7 was that -- in response to different questions on
8 assets and specifics, that Catalyst and Callidus
9 was stonewalling on the answers, which certainly
10 increased my confidence that there were material
11 undisclosed accounting issues at the company.

12 THE COURT REPORTER: Sorry, I need to
13 clarify the answer. Did you say Catalyst and
14 Callidus was stonewalling or wasn't?

15 THE DEPONENT: The impression was.

16 BY MR. NA:

17 601 Q. Right. And you got that
18 impression from Mr. Copeland?

19 A. Yes.

20 602 Q. Right. He told you that they were
21 stonewalling?

22 A. Well, I was interested to know the
23 answers to some of the questions on the assets, and
24 I was disappointed to learn that there didn't
25 appear to be any.

1 603 Q. Right. And that the article got
2 delayed?

3 A. I wasn't aware of timing of delays
4 or whether they would ultimately get there. I just
5 knew that Catalyst was -- in lieu of answering
6 questions on assets and specifics had alleged that
7 there was a vast short seller conspiracy that
8 involved Marc Cohodes and that the questions were
9 in some way illegitimate and were rooted in that
10 conspiracy. And that was --

11 604 Q. Right. And you knew those
12 questions that were being asked because
13 Mr. Copeland told you?

14 A. Well, we had -- I, as a source, I
15 had provided information on what I believed to be
16 specific areas that were of interest, and I was
17 hoping that I would receive some kind of
18 information back on what was going on with those
19 individual assets and whether there were any
20 answers to any of the substance of the questions or
21 the allegations. But he instead told me that --
22 relayed the allegation of a short conspiracy and
23 something to do with Marc Cohodes.

24 605 Q. When you say "he", you are talking
25 about Copeland; correct?

1 A. Correct.

2 606 Q. Right. And when you talked about
3 stonewalling and questions on assets, you were
4 talking about questions that are being posed by
5 Mr. Copeland to Callidus and Catalyst; correct?

6 A. Yes.

7 607 Q. Right.

8 A. And the impression I got was that
9 there was a stonewalling.

10 608 Q. Well, Mr. Copeland told you that
11 he was meeting with Callidus and Catalyst; correct?

12 A. He did, yes.

13 609 Q. Right. And Mr. Copeland reported
14 back on that meeting; correct?

15 A. Yes.

16 610 Q. Right. And that is how you know
17 that he was stonewalling; correct?

18 A. Yes.

19 611 Q. Right. And that meeting occurred
20 on August the 8th; correct?

21 A. I am not sure offhand.

22 612 Q. Okay. Well, you don't know, but
23 let's go on back to your trading records. We know
24 that the story was not published on August the 1st.
25 It was published on August the 9th; correct?

1 A. I am not sure of the date of the
2 publication offhand, but I'll --

3 613 Q. Seriously, Mr. Anderson, are you
4 telling me you don't know when the article was
5 published that is the subject of this lawsuit?

6 A. This lawsuit at this point is
7 regarding an article that was over three years old,
8 so no, I don't have the precise date.

9 MR. LUNG: It is August 9th. It was
10 published on August 9th online.

11 BY MR. NA:

12 614 Q. It was published on August 9th.
13 It was published at August 9th online at 3:29 and
14 then at 3:32 p.m.; correct? Do you want me to take
15 you there, Mr. Anderson, to those articles?

16 A. I'll take your word for it as far
17 as the timing of it.

18 615 Q. Right. And the morning of August
19 the 9th you shorted Callidus, at 10:54 a.m., 5,600
20 shares; correct?

21 A. Yes.

22 616 Q. And you shorted again at 11:01
23 another 500 shares; correct?

24 A. Yes.

25 617 Q. Right. The morning that the

1 article was coming out, you took -- shorted 6,100
2 shares of Callidus, right?

3 A. Yes.

4 618 Q. Right. And at that afternoon,
5 after the article came out at 3:29 and 3:32 p.m.,
6 you closed out all your short positions; correct?

7 A. For that day, yes.

8 619 Q. No, not that day. You closed out
9 all the short positions that you took from July
10 13th to August the 9th?

11 A. The short that I had open was
12 closed that day.

13 620 Q. Right. After the article came
14 out, you closed them at -- 3:53, you closed out
15 2,000 shares, correct, on August the 9th?

16 A. Yes.

17 621 Q. At 3:54, you closed out another
18 2,000 shares; correct?

19 A. Yes.

20 622 Q. And at 3:59, you closed out 5,100
21 shares; correct?

22 A. Yes.

23 623 Q. Right. And that was -- you
24 shorted the morning of. You shorted that morning
25 and then you closed out in the afternoon?

1 A. Yes, and then I shorted the
2 next --

3 624 Q. And that was a quick hit, wasn't
4 it?

5 [Court Reporter intervenes for
6 clarification.]

7 A. Yes, I had shorted, covered, and
8 then I had re-shortened the next day.

9 625 Q. Right. That was a quick hit is
10 what I said?

11 A. Well, I had determined that the
12 stock had likely overreacted to the article based
13 on my reading of it late day, and I figured
14 Callidus would likely put out a response and move
15 it up. And my intention at that point was to put
16 on additional short in anticipation of earnings
17 which I predicted would probably underperform.

18 626 Q. Mr. Anderson, I am talking about
19 August the 9th.

20 A. Yes. What about it?

21 627 Q. You shorted that morning and then
22 closed it out that afternoon after the article came
23 out; correct?

24 A. Yes.

25 628 Q. And I am using my words very

1 advisedly here, that was a quick hit on Callidus,
2 wasn't it?

3 A. That was a gain.

4 629 Q. I'm sorry, what?

5 MR. DEARDEN: A gain.

6 BY MR. NA:

7 630 Q. A gain. Right. A gain for you,
8 right?

9 A. Yes.

10 631 Q. Right. That was a gain for you
11 and ClaritySpring?

12 A. Yes, shorting a --

13 632 Q. And that was a hit on Callidus?

14 A. That is not the words I would use.

15 633 Q. No, I know. That is not the
16 words, but will you agree with me that was quick?

17 A. It was a short-term gain on
18 shorting for them, for that particular instance.

19 634 Q. And you were told before the
20 article came out that the article would be coming
21 out; correct?

22 A. No, I don't think I was ever told
23 when or whether an article was actually going to
24 come out. I had certainly factored a chance, but I
25 also wasn't sure if there would be an article,

1 whether it would be published before or after
2 earnings, which were coming up as well.

3 635 Q. Okay. So let --

4 A. And I knew that I definitely
5 wanted to be short during earnings.

6 636 Q. Right. So I am going to take that
7 in two parts here. When you said there was a
8 chance, that chance that you thought that you had
9 was because of the discussions you had been having
10 with Mr. Copeland; correct?

11 A. Well, Mr. Copeland had asked
12 questions, and those questions seemed to indicate
13 that there was a likelihood of an article and that
14 it could be close.

15 637 Q. What could be close? You actually
16 thought that the article was coming out on Tuesday
17 August the 1st, right?

18 A. No, I mean when reporters tend to
19 get later in the stages of fact-checking, the
20 questions tend to get more precise.

21 638 Q. Okay. Again, the chance that the
22 article was coming out was based on discussions and
23 interactions you had with Mr. Copeland?

24 A. Yes.

25 639 Q. Right. And we know that he sent

1 you a text message at 3:20 p.m. before the article
2 came out that the article was coming out; do you
3 remember that?

4 A. I remember seeing it later. I
5 don't know if that was -- I mean, I was on the golf
6 course at that point, the mini golf course, but I
7 remember seeing it later, yes.

8 640 Q. Right. You were on the golf
9 course, the mini golf course, with your munchkins,
10 I believe?

11 A. That is correct.

12 641 Q. Right. So while you were on the
13 golf course with your munchkins, I take it you
14 called your broker up and said, Close out my short
15 positions; correct?

16 A. No. So --

17 642 Q. Did --

18 A. -- I don't have a broker that I
19 speak with on the phone. It is an electronic
20 broker. So I skimmed the article, and I was a
21 little underwhelmed because it seemed to focus more
22 on the existence of whistleblower complaints rather
23 than getting into the substance of the complaints.
24 And it made clear, you know, that these were --
25 there were litigants and described the

1 whistleblower program, but it was -- it struck me
2 as a pretty vanilla article, so I thought -- I
3 looked at the stock price. I thought it
4 overreacted based on the content and it would
5 likely bounce, so I covered my short and then
6 thought I would re-short on a bounce heading into
7 what I believed would be pretty disastrous
8 earnings.

9 But then it really never bounced
10 significantly the next day, so I put on a smaller
11 short heading into earnings.

12 643 Q. Okay. So let's break that --
13 let's unpack that then, Mr. Anderson. I take from
14 what you have told me is you read the article and
15 then you closed out your short position; correct?

16 A. Yes.

17 644 Q. Right. And Mr. Copeland told you
18 at 3:20 before the article came out that it was
19 coming out, the article; correct?

20 MR. LUNG: Can we see that text message
21 just so that we can have it up on the screen?

22 BY MR. NA:

23 645 Q. Sure. Do you see that, August
24 9th, 3:20 p.m.:

25 "I have never had to lift

1 harder to get a story out."

2 A. I didn't -- so I didn't take from
3 that that that meant there was an imminent article.
4 What I took from that was that the efforts at
5 stonewalling and the legal threats and the
6 intimidation tactics were so extreme that he had
7 never had to do as much work for as little
8 reporting, but that is --

9 646 Q. Mr. Anderson, are you serious?
10 Mr. Anderson, when it says "story out", we are
11 talking about the article coming out, being
12 published, are we not?

13 A. We are talking about the prospect
14 of an article coming out.

15 647 Q. Sorry:
16 "I have never had to lift
17 harder to get a story out."

18 Correct? Not a prospect; correct?

19 A. It was a prospect at the time
20 because there was no article, and I wasn't sure
21 whether that indicated that they would ever be able
22 to get through their process to complete one or
23 whether they would be able to get it over the line.

24 648 Q. Certainly Mr. Copeland would know
25 when the story would be out; correct?

1 A. I don't know what the internal
2 process is at the Wall Street Journal for whether
3 reporters are informed as to the timing of when an
4 article comes out --

5 649 Q. Are you suggesting to me that ten
6 minutes -- sorry, nine minutes before the story is
7 published that Mr. Copeland had no idea of when the
8 story was coming out?

9 A. I think given that he likely had
10 an indication of when or whether a story was coming
11 out, but that didn't convey to me through that
12 message.

13 650 Q. Mr. Anderson, nine minutes before
14 the story is out he texts you to say:

15 "I have never had to lift
16 harder to get a story out."

17 Correct?

18 A. Yes.

19 651 Q. Right. Mr. Copeland is telling
20 you the story is out; correct?

21 MR. LUNG: Sorry, just to correct, the
22 story is not out at 3:20, is it? I recall you
23 saying 3:29.

24 MR. NA: Mr. Lung, please, please.

25 MR. LUNG: Well, I just don't want to

1 confuse this. If you are looking at minutes here,
2 you know, it is relevant that the story wasn't out
3 at the time that that message was sent.

4 BY MR. NA:

5 652 Q. Mr. Lung, in my questions I said
6 nine minutes before the story is published
7 Mr. Copeland is writing to Mr. Anderson:

8 "I have never had to lift
9 harder to get a story out."

10 I said that in my question. There is
11 no confusion. Isn't that true, Mr. Anderson?

12 A. Well, from my vantage point
13 reading that and not knowing when or whether a
14 story is coming out, I interpret that as hopefully
15 your efforts are worthwhile and that you are
16 ultimately successful at getting a story out and
17 can get through the stonewalling process.

18 653 Q. We know that on August the 8th
19 they met with Callidus, Copeland did; correct?

20 MR. LUNG: I think Mr. Anderson
21 testified that he actually doesn't know. He wasn't
22 at that meeting.

23 BY MR. NA:

24 654 Q. You are absolutely right. What he
25 told -- what he said was Mr. Copeland reported on

1 their meeting that they had. He didn't know when.
2 So we now know on August the 8th that they met, and
3 Mr. Copeland reported to Mr. Anderson about the
4 meeting, and that is why he said there is stuff
5 about stonewalling; correct? Correct?

6 A. Throughout the process there
7 seemed to be stonewalling, so I don't know if I can
8 distinguish which, like, letter, meeting, call, was
9 stonewalling, but it all seemed to be stonewalling.

10 655 Q. Right. And after stonewalling, as
11 you put it, Mr. Copeland is writing to you:

12 "Never had to lift harder to
13 get a story [...]" and I put
14 emphasis on "out."

15 That is right, isn't it?

16 A. Well, the business of a journalist
17 is to get stories out, and I certainly think he
18 endeavoured to get a story out, and he conveyed to
19 me that it was really difficult in this case to get
20 any story out and that is what I took from it.

21 656 Q. Right. And we know --

22 A. Which was consistent with --

23 657 Q. -- where he got it -- sorry, go
24 ahead.

25 A. And that was consistent with the

1 kind of tidbits I had received along the way that
2 there was stonewalling.

3 658 Q. Mr. Anderson, we know that you did
4 communicate with Mr. Copeland by telephone. I
5 believe Mr. Copeland said he had two lines?
6 Correct?

7 A. Oh, yes, I spoke with Rob on the
8 phone multiple --

9 659 Q. Right, Mr. Lung knows exactly
10 where I'm going with this. In addition to the
11 telephone records that Mr. Dearden asked for, I
12 will ask for the telephone records of Mr. Anderson
13 to calls made to the Wall Street Journal or to Mr.
14 Copeland or Ms. McNish during the time frames that
15 we have been speaking about from January to August
16 10, 2017 --

17 MR. LUNG: Was that requested already?
18 Did Rick already ask for that?

19 MR. NA: I wasn't sure if he made the
20 request of Mr. Copeland.

21 U/A MR. LUNG: Okay. Well, I'll take it
22 under advisement. It is fine. I mean, I get what
23 you are asking for. You are asking for telephone
24 records evidencing calls between Mr. Anderson and
25 the Wall Street Journal during that time frame, the

1 time frame that we are talking about right now,
2 which is what? July and August, until August?

3 MR. NA: And Ms. McNish. Back to
4 January.

5 MR. LUNG: Back to January, okay. So
6 you are asking for --

7 MR. NA: Actually, Mr. Lung, let's
8 shortcut this. Now that someone is mentioning
9 January, you are right, Mr. Dearden did make the
10 request.

11 MR. LUNG: He didn't?

12 MR. NA: He did. He already did. So
13 no point in me renewing it.

14 U/A MR. LUNG: Whether he did or not, I'll
15 take that under advisement, and we'll let you know,
16 okay?

17 BY MR. NA:

18 660 Q. And you will take the next
19 question I am going to ask under advisement as
20 well, and that are the phone records of
21 Mr. Anderson with interactive brokers showing when
22 he called them to make the trade and when he called
23 them to short?

24 MR. LUNG: I think Mr. Anderson's
25 evidence was that he made no phone call to

1 interactive brokers.

2 BY MR. NA:

3 661 Q. Was it by email? Oh, you did it
4 yourself, Mr. Anderson, I take it?

5 A. Yes.

6 662 Q. Okay. Got it.

7 MR. LUNG: So refused, there is nothing
8 to give you.

9 BY MR. NA:

10 663 Q. Okay.

11 A. Yeah, I don't think there are any
12 phone records. I don't think I have ever phoned
13 with interactive brokers.

14 664 Q. Now, Mr. Anderson, you state in
15 your affidavit that you take short positions when
16 the stocks are overvalued; correct?

17 A. Yes.

18 665 Q. Right. And you did not take a
19 short position on May 23 after you filed your
20 whistleblower complaint; correct?

21 A. I am not sure offhand when the
22 first date of the shorting was, but it was in the
23 trading records.

24 666 Q. Right. The first date was June
25 27th. You state in your affidavit that you take

1 short positions when you think that they are
2 overvalued, and I am putting to you you did not
3 take any short positions on May 23 until June 27th;
4 correct?

5 A. Correct.

6 667 Q. Right. And the stock of -- or the
7 share price of Callidus was trading above \$14.65?

8 A. That sounds about right.

9 668 Q. I'm sorry?

10 A. That sounds about right.

11 669 Q. Right. So when the stocks were
12 trading for -- let me use your words. When the
13 shares were trading -- were more overvalued, you
14 did not take any short position until June 27th;
15 correct?

16 A. A slightly higher price, and no,
17 we didn't take the short position until June 27th.

18 670 Q. Whether it is slightly higher or
19 not, it is more overvalued than the price that you
20 took when you -- the price of the shares when you
21 took your first short position?

22 A. I think at all times Callidus was
23 overvalued by 100 percent, but yes, prior to that,
24 the share price was slightly higher.

25 671 Q. More overvalued, that is the word

1 I want to use, because those are your words,
2 overvalued. The shares were more overvalued before
3 June 27th; correct?

4 A. I think it was roughly the same
5 overvalued. I think Callidus was at that point
6 onward always kind of worthless as an equity.

7 672 Q. Okay. Do you want me to pull up
8 the share price? I am happy to do that, and we
9 will go through each day, if you like. My
10 proposition to you is that the shares were trading
11 higher than \$14.65 on June 27th; correct?

12 A. That makes sense, yes.

13 673 Q. Right, right. And as you say in
14 your affidavit, you take short positions in stock
15 that you believe is overvalued. I am just putting
16 to you that the shares were more overvalued, and
17 you did not take any short position?

18 A. Yeah, I mean, that is certainly
19 not the only reason we short. If we were to short
20 things purely on overvaluation, we would be short
21 most of the market.

22 674 Q. Do you want me to take you back to
23 your affidavit and what you say about when you take
24 short positions? I'm happy to do that, and I will
25 use your words if you like and take the time to do

1 it.

2 A. I think the clarification is that
3 it is not exclusively because a security is
4 overvalued because that would be a lot of different
5 securities, and that doesn't always make sense from
6 a shorting strategy.

7 So I think that there is multiple
8 considerations that go into it, but that is
9 definitely one of them.

10 675 Q. Right. Like tips on when an
11 article will be published, that could be one
12 consideration, couldn't it?

13 A. The question on tips, well, we
14 didn't ultimately know whether an article would be
15 published.

16 676 Q. Okay. I -- Mr. Anderson, I get
17 why you have to say that. Let me take you back to
18 paragraph 16 of your affidavit. Or maybe I'll just
19 read it to you because it is simple:

20 "[...] to the extent a
21 whistleblower case involved a public
22 security that we believed to be
23 overvalued, ClaritySpring shorted
24 that security."

25 And I am putting to you that between

1 May 23 and June 27, when Callidus shares were
2 trading above the trading price and when you took
3 your first short position, it was higher, it was
4 trading at a higher price?

5 MR. LUNG: That is actually not
6 completely correct if you take a look at the
7 trading records.

8 MR. NA: I am happy to take a look at
9 the trading records.

10 MR. LUNG: I mean, it fluctuates a lot,
11 but just as a factual matter, you said May 23rd,
12 and it was trading at \$14.76, so we are talking --
13 it is actually lower than June 27th.

14 BY MR. NA:

15 677 Q. That is perfect, and let's go with
16 that. Let's go to the stock price. I was hoping
17 to get you to your kid, Mr. Lung, but I am happy
18 to --

19 MR. LUNG: Well, I have already
20 disappointed my spouse by telling her that it
21 wasn't going to happen, so...

22 MR. NA: That is not my fault.

23 MR. LUNG: You can't take the
24 disappointment back, so I might as well take the
25 time, so...

1 MR. NA: All right. I appreciate it.

2 CBL.TO. Mr. Lung --

3 MR. LUNG: Where is this in the record,
4 Mr. Na?

5 MR. NA: I just pulled this from the
6 bar charts. I can --

7 MR. LUNG: If we could just go to
8 Exhibit 8 of Mr. Riley's affidavit.

9 MR. NA: Exhibit A in Mr. Riley's
10 affidavit.

11 MR. LUNG: 8.

12 MR. NA: Oh, 8.

13 MR. LUNG: Exhibit 8.

14 BY MR. NA:

15 678 Q. Actually, you know what? Let's do
16 this. Before we go to Exhibit 8, Mr. Anderson, do
17 you see the graph in front of you?

18 A. Yes.

19 679 Q. Okay. Do you see the date June
20 27th? Do you see that?

21 A. Yes.

22 680 Q. At the bottom there?

23 A. What is that?

24 681 Q. Do you see the date of June 27th,
25 2017?

1 A. Yes.

2 682 Q. Right. The day before that, the
3 stock was trading at a higher price?

4 A. Okay.

5 MR. LUNG: Which date are we looking
6 at?

7 MR. NA: June 26th.

8 MR. LUNG: Okay.

9 BY MR. NA:

10 683 Q. It was trading at a higher price;
11 correct?

12 A. Yes.

13 684 Q. Right. And you didn't take a
14 short position then, did you?

15 A. I'm a little confused in that I am
16 not sure if you are asking whether I can predict
17 all the gyrations of the market and whether these
18 stocks go up or down on a day-to-day basis. I
19 mean, there are certainly many reasons why these
20 stocks go down, but I wish I was perfect at picking
21 the precise high of every stock that I shorted and
22 covering it at the lows, but that is unfortunately
23 not within my capabilities.

24 685 Q. Mr. Anderson -- really?

25 Mr. Anderson, my simple question was, the stock was

1		trading at a higher price the day before?
2		A. Yes.
3	686	Q. You did not take a short position?
4		A. At that time, no.
5	687	Q. No. Two days before that you did
6		not execute a short position then, did you?
7		A. No.
8	688	Q. On August the 7th?
9		A. On the August the 7th?
10	689	Q. Sorry, on June 25th, sorry. June
11		25th. I am confusing you, and it is not on
12		purpose, Mr. Anderson.
13		A. No --
14	690	Q. Before that, you did not take a
15		short position?
16		A. What is that? Can you please
17		repeat that?
18	691	Q. June 25th.
19		A. Yes.
20	692	Q. The stock was trading at a higher
21		price? Yes?
22		A. Yes.
23	693	Q. You did not take a short position?
24		A. Correct.
25	694	Q. Right. Can I make this really

1 simple for you, Mr. Anderson. Do you see on the
2 chart the point where I show June 27th, you would
3 agree with me left of that chart until May 23 the
4 stock was trading at a higher price?

5 A. Yes.

6 695 Q. Thank you. And you didn't take
7 any short positions during that period of time?

8 A. No.

9 696 Q. No. And earlier this morning
10 Mr. Dearden took you to the Broken Bridge report,
11 and he took you to the definition of "investor"; do
12 you remember that?

13 A. I do.

14 697 Q. Right. And when he asked you the
15 question about investors, you said me and
16 ClaritySpring; do you remember that?

17 A. Yes.

18 698 Q. Right. You provided me with the
19 trading records of ClaritySpring. I would like to
20 know if you traded personally Callidus stock?

21 A. No.

22 699 Q. Sorry?

23 A. No.

24 700 Q. Did you have control over any --

25 MR. LUNG: Sorry, just to clarify that,

1 you asked for records, and his answer I think is to
2 whether he traded personally, and his answer is no.
3 So he is not refusing any records. He is saying
4 that he didn't trade personally on this.

5 BY MR. NA:

6 701 Q. No, I understand.

7 A. To be clear, I made the trades
8 through the ClaritySpring account, but there was no
9 separate personal account where I was shorting
10 Callidus as well.

11 702 Q. Okay. And so that would -- just
12 to make sure, because this is important for me, we
13 are talking about you did not short Callidus stock
14 through any account for which you had direct or
15 indirect control; is that what you are telling me?

16 A. Except for the ClaritySpring
17 account.

18 703 Q. Except for the ClaritySpring
19 account, correct.

20 A. Correct.

21 704 Q. Okay. You know what? We are just
22 a few more minutes. Why don't we take two, and I
23 may be able to short-cut this, Mr. Lung and
24 Mr. Anderson. We'll take two minutes, and then I
25 think we can wrap up.

1 MR. LUNG: Sure. That sounds good.

2 Thank you.

3 MR. NA: And I'll have odds and ends
4 questions to ask.

5 (DISCUSSION OFF THE RECORD.)

6 BY MR. NA:

7 705 Q. So I want to take you back to that
8 text message. We looked at the text message of
9 3:20 p.m. on August 9th where he says -- where
10 Mr. Copeland says "I never had to lift harder to
11 get a story out"?

12 A. Uhm-hmm.

13 706 Q. The message, the text message
14 before then, though, is at 8:23 a.m.; do you see
15 that, where you write to him? It says:

16 "Good questions. Sound like
17 they're grasping."

18 A. Yes.

19 707 Q. And there are no text messages
20 from Mr. Anderson -- sorry, from Mr. Copeland in
21 response to your text of 8:23 a.m., do you see
22 that, until 3:23 p.m.?

23 A. Yes.

24 708 Q. Right. And I would like to know
25 if you had a phone call with Mr. Copeland that

1 morning?

2 A. I don't know offhand.

3 709 Q. Right. Your phone records would
4 show that, possibly, right?

5 A. Yes.

6 710 Q. Right. And we do know, as I said
7 or I took you to -- right. At 10:54 a.m. on August
8 the 9th, so about two and a half hours after your
9 first text message of 8:23, you execute a short
10 trade of 5,600 shares of Callidus, right?

11 A. Yes.

12 711 Q. And then seven minutes later or so
13 at 11:01, the same morning, you short another 500
14 shares of Callidus; correct?

15 A. Yes.

16 712 Q. And earlier you spoke about
17 stonewalling and questions; do you remember that?

18 A. I do.

19 713 Q. Right. And I take it that you
20 knew that because Mr. Copeland called you and told
21 you?

22 A. The stonewalling had been pretty
23 consistent.

24 714 Q. Sorry, how do you know that it was
25 consistent?

1 A. Oh, because --

2 715 Q. I ask the question because it is
3 difficult to get that impression from the text
4 messages, so again, I am asking if --

5 A. Yeah, we had spoken on the phone
6 several times throughout the research process.

7 716 Q. Right. Particularly in July 13
8 onwards?

9 A. I am not sure exactly when we
10 spoke, but we spoke multiple times throughout the
11 research process.

12 717 Q. Well, you certainly reached out to
13 him on July 13th and said I have got something for
14 you; correct?

15 A. Are you referring to text
16 messages?

17 718 Q. Yeah.

18 A. So --

19 719 Q. "Got something", see that? See
20 that, July 13th?

21 A. Yeah.

22 720 Q. Right. And he says "ya brah"? He
23 responds; do you see that?

24 A. I see "ya brah".

25 721 Q. And below that, it says:

1 "Have time in an hour actually?
2 Just quick call to give the
3 gist".

4 And Mr. Copeland responds:

5 "Ya try either number."

6 Do you see that?

7 A. I do.

8 722 Q. Right. And then we know certainly
9 then that you did have conversations on the phone
10 with Mr. Copeland after July the 13th?

11 A. That text message was on July the
12 13th, but I spoke with Mr. Copeland multiple times
13 throughout the research process, yes.

14 723 Q. And I take it that you spoke to
15 Mr. Copeland multiple times after July the 13th?

16 A. I am not sure on which dates and
17 times.

18 724 Q. Your phone records would show
19 that; correct?

20 A. They would.

21 725 Q. And Mr. Copeland's phone records
22 and the Wall Street Journal phone records would
23 show that?

24 MR. LUNG: Well, we don't know what the
25 Wall Street Journal's phone records are going to

1 show.

2 BY MR. NA:

3 726 Q. Well, Mr. Copeland's phone records
4 might show it, right?

5 MR. LUNG: Well, you had a chance to
6 ask Mr. Copeland that. I think you did ask,
7 somebody asked.

8 MR. NA: And I am just supporting that
9 request.

10 MR. LUNG: Are you going to help repair
11 my relationship with my wife? Are we done?

12 MR. NA: I'm sorry. Just give me five
13 more minutes. I promise.

14 MR. LUNG: Okay. No worries. No, take
15 your time. I'm not trying to rush you.

16 BY MR. NA:

17 727 Q. Believe me, I want to be done, so
18 does everyone else in this room, trust me.

19 Mr. Anderson, you may or may not want
20 to take my word for it, but the meeting that
21 Mr. Copeland and Ms. McNish had with Callidus
22 occurred on August the 8th, and you told me that --
23 leaving aside when it occurred, Mr. Anderson --
24 Mr. Copeland reported back to you on that meeting,
25 and I would like to know did Mr. Copeland tell you

1 that Callidus was stonewalling during that report?

2 A. I don't know which calls he
3 reported that they were kind of not addressing
4 those -- the issues -- some of the issues that I
5 was hoping they would address, but it seemed to be
6 pretty consistent throughout the process.

7 728 Q. Right. What else did he report
8 back to you about?

9 A. I don't remember too much of the
10 conversations offhand. I think ultimately I was
11 hoping to see if there would come any more
12 information that could either corroborate or
13 undermine some of the allegations in my research to
14 strengthen it. But I don't think I got too much of
15 either.

16 729 Q. One thing we certainly know is
17 that you did provide them with a lot of
18 information; correct?

19 A. The Wall Street Journal?

20 730 Q. Yes.

21 A. Yes.

22 731 Q. Right. And I'll just cover two
23 unrelated areas, if I may. Number one, you
24 mentioned earlier this afternoon -- or this morning
25 about the barbecue at Adam Spears' home?

1 A. Yes.

2 732 Q. Do you remember that? Right. And
3 Mr. Langstaff drove you to the barbecue; correct?

4 A. Yes.

5 733 Q. Right. And tell me, how did that
6 barbecue come about? How was it that you were
7 invited to that barbecue?

8 A. I am not sure who invited me
9 offhand, but I think I -- I am not sure. I would
10 presume either Adam Spears or Bruce Langstaff.

11 734 Q. Right. And you said that the
12 barbecue was at Mr. Spears' home. Obviously,
13 Mr. Spears was there?

14 A. He was.

15 735 Q. Right. And Mr. Langstaff was
16 there because he drove you?

17 A. Correct.

18 736 Q. Mr. Kassam was there?

19 A. Yes.

20 737 Q. Mr. Puri was there from Anson?

21 A. I am not sure.

22 738 Q. Okay. Mr. Bogdan Toulouse was
23 there?

24 A. I am not sure offhand. That was
25 my introductory meeting to most of the people at

1 Anson, so I am not a hundred percent clear on
2 names.

3 739 Q. Okay. Well, let me ask you this.
4 Who else was at the meeting that you recall?

5 A. Marc Cohodes was there, his son
6 was there, and certainly Adam Spears was there,
7 Moez Kassam, and I am not too sure on other names,
8 but there were other fraud researchers and members
9 of the kind of local Toronto finance community.

10 740 Q. Right.

11 MR. LUNG: I just want to clarify.
12 Sorry, Ben, you said "meeting". I just want to
13 clarify that we are talking about the barbecue,
14 right?

15 MR. NA: I'm sorry. Yes, I call
16 everything -- I call my social life a meeting.
17 Sorry.

18 MR. LUNG: That is all right.

19 BY MR. NA:

20 741 Q. Barbecue. You are absolutely
21 right, Mr. Lung, the barbecue. You said other
22 members of the Toronto -- what was the last bit?
23 Financial community?

24 A. Yeah, there were --

25 742 Q. Right.

1 A. -- people in the investment
2 business and fraud research, whistleblower types.
3 I didn't meet everyone, so I don't -- that is not
4 an all-exhaustive list.

5 743 Q. Okay. Well, we know you have had
6 communication with Mr. Voorheis. Was he there?

7 A. No, I don't think so.

8 744 Q. Okay. How about representatives
9 of West Face?

10 A. Not that I met, and I don't think
11 so offhand. But I obviously can't be sure without
12 knowing the entire guest list.

13 745 Q. Sure. Well, you know certain
14 people from West Face, like Greg Boland and Phil
15 Panet that we mentioned -- or that were mentioned
16 during this examination. Were they there?

17 A. No, or I have certainly never met
18 them to my knowledge.

19 746 Q. Okay. You mentioned Mr. Cohodes
20 was there?

21 A. Correct.

22 747 Q. Right. He is a short seller;
23 correct?

24 A. He is in the investment industry.
25 He is known for shorting. He is known for fraud

1 research, but he also invests long.

2 748 Q. Okay. But you knew that he
3 engages in short-selling?

4 A. He has, yes.

5 749 Q. Right. And the same with Anson?

6 A. Yes.

7 750 Q. Right. And in fact, during the
8 barbecue, you spoke about EROS?

9 A. I believe so, yes.

10 751 Q. Right. EROS is a company that you
11 shorted?

12 A. It is a company that I believe to
13 be...

14 [Court Reporter intervenes for
15 clarification.]

16 I said it is a company that I had
17 researched that I believed to be a fraud and had
18 bet against, yes.

19 752 Q. Did you say "bet against"? Is
20 that what he said? Sorry, is that what he said?

21 MR. DEARDEN: Yes.

22 MR. LUNG: Yes, that is what he said.

23 BY MR. NA:

24 753 Q. So "bet against" meaning short?

25 A. Correct.

1 754 Q. Right. And I take it, if you were
2 discussing EROS at the barbecue, you were
3 discussing short-selling?

4 A. I was certainly discussing fraud,
5 and in relation to EROS, if I was talking about it,
6 I can guarantee I wasn't discussing it in too
7 flattering and optimistic terms because I believe
8 there were some pretty significant accounting
9 irregularities at the company at the time.

10 755 Q. Mr. Anderson, this barbecue
11 occurred after you spoke with Mr. Copeland;
12 correct?

13 A. Yes.

14 756 Q. Right. You reached out to
15 Mr. Copeland, as he says, as the text message said,
16 Reuters was wussing out. It is yours; correct?

17 A. Yes.

18 757 Q. Right. And it was after --
19 obviously after you filed the whistleblower
20 complaint; correct?

21 A. To clarify, what was after filing
22 the whistleblower complaint, that text or the
23 barbecue?

24 758 Q. The barbecue. The barbecue.

25 A. I may --

1 759 Q. I call it a meeting. The
2 barbecue.

3 A. Right, the barbecue -- I am not
4 sure exactly the date of the barbecue meeting in
5 relation to the filing of the whistleblower
6 complaint.

7 760 Q. I was trying to save some time.
8 I'm sorry, I don't want to keep taking you to more
9 documents, but there is a document of email
10 exchanges between you and the Anson folks that
11 there is in the record about the barbecue of July
12 18; does that sound familiar to you?

13 A. That sounds about right.

14 761 Q. Yes. And were you aware that
15 after the barbecue that there were internal emails
16 among the Anson folks about spreading the shorts
17 around so as to not raise suspicion?

18 A. I have seen some of these
19 documents just through reviewing production.

20 762 Q. And I take it, Mr. Anderson, that
21 during the barbecue you told the folks at Anson
22 that you had filed a whistleblower complaint?

23 A. I doubt it. I think it was pretty
24 introductory to meeting a lot of these people, so I
25 don't know that I got into that level of detail on

1 anything, but --

2 763 Q. Well, we certainly know you had
3 spoke about EROS, a company that you have been
4 accused of short and distort; correct?

5 A. EROS had accused me of that in a
6 case that was dismissed.

7 764 Q. Right. And my point is you were
8 talking about a company that accused you of a short
9 and distort; correct?

10 A. I don't think they had accused me
11 of anything at that time because I was still
12 researching the company, from what I gather.

13 765 Q. Okay. So just so that when we get
14 the chance to ask Anson, your recollection is that
15 you did not tell the Anson folks that you had filed
16 a whistleblower complaint?

17 A. I don't know if I spoke about a
18 whistleblower complaint.

19 766 Q. Right. And when you say you don't
20 know, what you are -- you are not telling me it did
21 not happen. It is possible, but you just don't
22 recall?

23 A. I'm saying I don't remember a
24 conversation from three years ago at that level of
25 detail. I am not --

1 767 Q. Right. But my question is a
2 little bit more pointed than that. Some people say
3 I don't recall because it never happened, or some
4 people say it could have happened, but I just can't
5 recall. I am trying to pin down that it is the
6 latter. It could have happened, but you just have
7 no recollection of it?

8 A. I just don't remember what I spoke
9 about with them on that subject or what level of
10 detail.

11 768 Q. Right. And so how about an answer
12 to my question? It is possible you spoke about it,
13 but you just don't recall today?

14 A. I think it is possible we spoke
15 about Callidus to some extent.

16 769 Q. Right.

17 A. I just don't know what level of
18 detail.

19 770 Q. Okay. And is it possible that you
20 also spoke about your conversations with
21 Mr. Copeland?

22 A. I think it would be possible that
23 I mentioned that journalists are looking into the
24 subject, you know, similar to how I discussed how I
25 was looking into the subject. You know, part of

1 the research process is developing sources and
2 aiding in the furtherance of an investigation, so
3 yes, that is possible.

4 771 Q. But I am being a little bit more
5 specific than just journalists, because at this
6 time, at the time of the barbecue, you have already
7 reached out to Mr. Copeland at the Wall Street
8 Journal, and it is possible that you spoke or
9 mentioned or discussed at the barbecue with the
10 Anson folks Mr. Copeland and the Wall Street
11 Journal?

12 A. I think it is certainly possible
13 that I mentioned that Mr. Copeland was looking into
14 Catalyst and Callidus, and that is certainly part
15 of, you know, developing sources and connecting
16 with people that might be able to further an
17 investigation.

18 772 Q. Right.

19 A. So my answer is yes.

20 773 Q. Right. And I take it with some of
21 the folks that were at the barbecue, you were
22 meeting them for the first time; correct?

23 A. Correct.

24 774 Q. Right. And they were asking
25 probably what you do; correct?

1 A. Yes.

2 775 Q. And you introduce yourself and
3 ClaritySpring; correct?

4 A. Yes.

5 776 Q. Right. And it is sort of similar
6 to what you have described in your affidavit about
7 what ClaritySpring does? I took you to that
8 earlier in your affidavit.

9 A. I think in that barbecue, in that
10 context, I would have described our work in fraud
11 research.

12 777 Q. I'm sorry. All right. Now you
13 are saying "would have". That is a little bit
14 different than I don't recall, so I just want to be
15 clear.

16 MR. LUNG: Well, he said from the
17 beginning that he can't remember exactly what was
18 said, and you have asked him a number of times is
19 it possible you talked about this, or is it
20 possible that you talked about that, and so, I
21 mean, to be fair to the witness here, Mr. Na, his
22 original response was I don't remember exactly what
23 was discussed. You just weren't satisfied with
24 that, so you wanted him to go a little bit further
25 than that.

1 BY MR. NA:

2 778 Q. Yeah, and he did go further. He
3 talked about the possibilities of what he talked
4 about because he has got no recollection of it. I
5 made it pretty clear -- or to pin Mr. Anderson down
6 that when he says "I don't recall", it doesn't mean
7 it never happened. It is quite possible, but he
8 just has no recollection of it, but when people
9 throw in "would have", that to me is a little bit
10 different.

11 But you know what? I don't want to
12 belabour the point, given that it is already
13 quarter after 5:00.

14 Just another one-off question, if I
15 may, Mr. Anderson. In your affidavit you -- let me
16 just make it really simple for you. Get the
17 supplementary affidavit. It is paragraph 30, I
18 believe, of the supplementary affidavit. It is
19 your -- it is the paragraph dealing with your
20 discussion with Mr. Dawes, Chester Dawes.

21 Mr. Anderson, let me help you and pull paragraph 30
22 up for you. This is:

23 "I recall that the following
24 points were discussed during my
25 February 8, 2017 phone call with

1 Mr. Dawes".

2 Do you see that?

3 A. I do.

4 779 Q. Right. And if you go further, you
5 attach the phone records of the call that you had
6 with Mr. Dawes. Sorry, maybe it is before that.
7 Paragraph 29. Sorry, yes, you attach -- and you
8 say it is a 35-minute call on February the 8th;
9 correct?

10 A. Yes.

11 780 Q. Right? And you attached as a copy
12 a phone record from Verizon from January 9th, 2017,
13 to February 8, 2017; do you see that?

14 A. Yes.

15 781 Q. Right. You attached the phone
16 records, but do you have any notes of the call that
17 you had with Mr. Dawes?

18 A. Not in front of me, but I think I
19 had written much of that information into the
20 document itself.

21 782 Q. Sorry, when you say "the document
22 itself", what does that mean?

23 A. The --

24 783 Q. Oh, sorry, into this, the
25 affidavit, you mean, in paragraph 30?

1 A. No, into the draft Whistleblower
2 Submission.

3 784 Q. No, go to paragraph 30. I could
4 tell you, Mr. Anderson, that paragraph 30(a)
5 through to, what is it (h), those are not
6 referencing Mr. -- in the whistleblower documents.

7 MR. LUNG: I think your question is
8 whether he had any notes from the call.

9 MR. NA: Yes.

10 MR. LUNG: And I think his response is
11 that it sounds like he had a working document for
12 the whistleblower report, is what I think -- how I
13 interpreted his response. You can clarify that if
14 you want.

15 BY MR. NA:

16 785 Q. Right. So I take it then that
17 when you drafted this paragraph 30(a) to (h) you
18 had something that you did look at in order to
19 state what you state in paragraph 30? Is that what
20 you are saying, Mr. Anderson --

21 MR. LUNG: Just to be fair, I think
22 your question was whether he had any notes from the
23 call, not what was the basis of this -- of these
24 subparagraphs.

25 BY MR. NA:

1 786 Q. Mr. Lung, he said he had not
2 something in front of him, and so I am trying to
3 get at what the something is.

4 So Mr. Anderson --

5 A. So these kind of bullet points
6 were transcribed from my memory of the call, so
7 I -- that was a relatively important call in the
8 research process, and when I spoke with Chester, I
9 had identified myself. I had identified the
10 business model that we have in terms of pursuing
11 whistleblower work and forensic research and that I
12 was reviewing Catalyst and Callidus, and I was
13 essentially asked -- I went through my kind of
14 draft information that I had had in my notes that I
15 had developed and asked about information that
16 could be corroboratory or could undermine my
17 research to that point to see if I could enhance it
18 or if I could find additional information.

19 We had a discussion about multiple
20 different assets that showed signs of impairment,
21 that included Sonar Entertainment, which I believe
22 had had some executive turnover; that included
23 Natural Markets restaurants, which he had mentioned
24 that there were public news articles showing empty
25 shelves, this was a grocery store chain, and

1 suggested that could be indicative of potential
2 issues; also noted executive turnover, had
3 discussed Therapure as an asset. I had asked
4 several questions about Newton Glassman, the
5 management of Catalyst, the kind of disposition of
6 management because these things tend to help inform
7 research on the tendencies of the people that might
8 be engaging in unsavoury conduct.

9 And I had heard some stories about
10 Mr. Glassman's disposition and tendencies toward
11 loss aversion, so I asked about that, and that is
12 where he had said -- mentioned the "Newtonometer",
13 which focussed on a -- it was an anger scale
14 relating to Newton Glassman.

15 And got into some high level details.
16 I had mentioned the questions I had raised about
17 Gabriel de Alba. I had asked if he had heard of
18 SatMex, which was the focus of a supplemental
19 Whistleblower Submission, and he said that his
20 recollection was that Gabriel de Alba has a similar
21 name from his dad, so perhaps the SatMex deal was
22 focussed on his dad rather than Gabriel de Alba
23 himself, which didn't actually corroborate the news
24 article that I had found on the subject.

25 So we covered a pretty good number of

1 matters. We discussed specific assets, and I
2 remember that conversation to a pretty decent
3 degree two and a half years later, but there was a
4 lot of specific details that were kind of
5 articulated in that.

6 So I tried to include as much --

7 787 Q. So -- I'm sorry, go ahead. I'm
8 sorry, I was just going to ask you if there was
9 anything else that you recall.

10 A. I am trying to think. We talked a
11 little bit about Callidus. I had asked him about
12 that, but he had said that he didn't have as much
13 involvement in Callidus. It didn't sound like he
14 had any direct involvement in Callidus. He wasn't
15 familiar with the subject. His focus was on
16 Catalyst, serving as CFO there, and then had
17 mentioned that, you know, that there wasn't any
18 signs he detected of embezzlement or conversions of
19 funds or things of that nature.

20 We discussed kind of the difference
21 between realized assets and unrealized assets, and
22 the divergence of unrealized valuations from the
23 realizations for those assets.

24 We had discussed Preqin as an
25 independent source for private equity, realized and

1 unrealized gains and internal rates of return, and
2 return on capital, which is something that I had
3 already known prior to that.

4 And I think that about covers it. I
5 think there were some additional conversation about
6 specific assets. I was certainly looking at, as
7 you can see from the whistleblower reports, Bluberi
8 Gaming, Xchange Technology, and some of these other
9 assets, but I think we probably only got into those
10 lightly because it was a call of decent length, but
11 I think -- what was it, the 20, 30 minutes or so,
12 so we obviously couldn't cover everything, but for
13 a first call to a former executive of a private
14 equity fund, I think we covered a good amount of
15 ground. So it was definitely additive to the
16 overall research effort.

17 And he didn't actually send any
18 documents, so from that perspective, there wasn't a
19 lot, you know, that I could include in the
20 Whistleblower Submission aside from kind of my
21 takeaway from that call, but I think if anything it
22 certainly encouraged me that I was on the right
23 direction with my research and that a lot of the
24 issues that I had seen through the public record,
25 through the receivership filings, through

1 Callidus's public filings, through the Catalyst
2 documents that I was able to come across, and
3 through all the other sources of public information
4 and industry sources that I had spoken with, that
5 the issues seemed to check out and that there was
6 something there worth continuing to dig into.

7 788 Q. Anything else that you recall from
8 that 35-minute call?

9 A. Not offhand.

10 789 Q. And you said earlier in that
11 lengthy answer that you had notes that you had
12 developed for the call. Where are those notes?

13 A. I don't think I said I developed
14 notes for the call. I think I referred to my
15 drafting process of the whistleblower report, and
16 within the Dropbox folder, I had various documents
17 that could be considered notes along the way that
18 we have produced.

19 790 Q. Well, I take it, Mr. Anderson, you
20 had something in front of you when you had the call
21 with Mr. Dawes?

22 A. I don't think I had anything in
23 front of me. I was more focussed on listening.

24 791 Q. Right. And when you say you are
25 focussed on listening, I take it you didn't take

1 any notes then, as you say, of the important former
2 executive?

3 A. I didn't take any notes during the
4 call, no. It is hard to take notes and listen and
5 really engage at the same time, but I think from
6 what I took away from that I was able to
7 incorporate into the research ultimately from that
8 point onward.

9 792 Q. Okay. So then do I take what you
10 have just said then your entire recollection of the
11 call? Because you don't have notes. I just want
12 to make sure.

13 A. Yeah, that is what I remember
14 offhand.

15 793 Q. Okay. Mr. Anderson, if we could
16 just take a break for a moment, Mr. Lung?

17 MR. LUNG: Yes.

18 BY MR. NA:

19 794 Q. If it hasn't been asked already,
20 what I would like are phone records of Mr. Anderson
21 showing calls that he had with Mr. McFarlane,
22 Mr. Levitt, Mr. Langstaff, Mr. Voorheis,
23 Mr. Livesey, Mr. Duhamel, West Face
24 representatives, like Mr. Boland and Mr. Panet,
25 during the time frame of November to August the

1 10th, 2017.

2 U/A MR. LUNG: I'll take that under
3 advisement. I mean, one of the concerns I have is
4 that we are on a bit of a timetable. This has not
5 been requested in the past, and it is a lot of
6 work.

7 I am not sure that it exists. I am not
8 sure -- I think that it is a very broad request for
9 the context of this motion. So, yeah, I'll take it
10 under advisement.

11 MR. NA: Okay. Well, you can
12 appreciate the importance of these phone records.

13 MR. LUNG: I actually don't, but if
14 they were really important, I suspect I would have
15 received a request at some point earlier on. But I
16 have it, and let me think about it. I think this
17 is, you know, a little far afield for the purposes
18 of this motion, but let me think about it, and I'll
19 get back to you. I'll take it under advisement.

20 MR. NA: So, Mr. Anderson, subject
21 to -- I don't know if there were any questions
22 taken -- undertakings given, but subject to any
23 questions that may arise from answers that have
24 been refused or taken under advisement, those are
25 my questions.

1 MR. LUNG: Okay. All right. Thanks a
2 lot.

3
4 -- Adjourned at 5:32 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 24th day of November, 2020.



NEESONS, A VERITEXT COMPANY

PER: DEANA SANTEDICOLA, RPR, CRR, CSR

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TAB 1A

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April 27, 2021

FILE NUMBER 00110681-00001

DELIVERED VIA E-MAIL

Richard Dearden
 Gowling WLG (Canada) LLP
 Suite 2600, 160 Elgin Street
 Ottawa, ON K1P 1C3

Dear Mr. Dearden:

Re: Nathan Anderson and ClaritySpring Inc. ats Callidus Capital Corporation et al.

We write to provide answers to questions that were refused at the cross-examination of Nathan Anderson on November 20, 2020, as ordered by Justice McEwen on March 2, 2021.

Question #	Question	Answer
3.	To provide the "names of the Catalyst investors [Mr. Anderson] referred to in paragraph 20(c)" of Mr. Anderson's affidavit sworn November 8, 2019.	<p>The Catalyst investors referred to in paragraph 20(c) of Mr. Anderson's November 8, 2019 affidavit are Eastman Kodak (Jeffrey Murphy), Arizona State Retirement System (Mark Boatwright), Morgan Stanley (Ed Goldstein and John Wolok), The Rose Company (Norman Kraftchuk), Verdis Investments (Jamie Dranoff), University of Toronto (Benoit Sansoucy and Leon Lu), Metlife (Elvin Lopez).</p> <p>Attached as Appendix A is a spreadsheet that was used by Mr. Anderson to track his attempts to contact various sources, including investors, former employees, company executives and other industry sources. While the spreadsheet does not list every person Mr. Anderson contacted, it does include in the "Notes" field information he obtained from certain sources, including certain sources listed above. In particular, the information in the Notes field accurately summarizes his discussions with the following individuals: Ed Goldstein, Chester</p>

		Dawes, Gary Fulena and Sam Fleiser.
4.	To advise whether Mr. Anderson "contac[ed] anyone at Harvard Management Company".	He exchanged the emails with individuals at Harvard Management Company, which are attached as Appendix B, but there was no further substantive contact.
5.	To advise whether Mr. Anderson "contact[ed] McGill University."	No.
6.	To advise whether Mr. Anderson contacted Marcus Loveland.	No.
7.	To advise whether Mr. Anderson contacted Ira Glustein.	Yes.
9	To advise whether Mr. Anderson, "as part of [his] research, call[ed] anyone at the University of Toronto."	Mr. Anderson met with Benoit Sansoucy, Leon Lu on March 2, 2017. Mr. Sansoucy and Mr. Lu indicated that they had some concerns about the way in which the assets were valued. In particular, they thought some assets were valued high without any ways of exiting those assets (e.g. selling). They wanted to know what assets Mr. Anderson had looked at so they also could look at them more closely.

Yours truly,



Lucas E. Lung

Enclosures

6968579.1

TAB 1B

Name	Phone	Email	Former Title	Current Firm	Current Title	Notes
Albert Ngo	1.800.588.4880	albert.ngo@invesco.com	Former Associate	Invesco	VP	Left Invesco. Left Albert a LinkedIn message on 1/11/2017
Alanna Ostvik	61 7 3023 9322 (Main)	alanna.ostvik@allianz.com.au	Receptionist	Allianz Australia	Project Manager	
Alex Eiseman	(212) 418-1235 (Main)	Alex@zamacap.com	Investment Professional	Zama Capital	Co-founder	He was a bit circumspect but mentioned that the questions he'd be looking at are about the number of realizations they've had. He suggested there is a lot of public information out there (west face) that could be helpful as well. He was very cautious but seemed to have his doubts. Asked about a follow-up meeting to discuss hedge fund marketing in general.
Ally Lesniak	416.887.0421 (cell)		Receptionist	Girls of Toronto	Founder	Only worked @ Catalyst for 4 months
Amber Darrell			Executive Assistant	Nasdaq	Executive Assistant to the CEO	Seemed to pride herself on confidentiality
Andrew Yeh	212-403-3500	yeh.andrew@gmail.com	Analyst	Rothschild	Distressed	Called left VM
Ashley Medeiros	416-306-3041	amedeiros@turtlecreek.ca	Accountant	Turtle Creek	Executive Assistant	
Chris Brown	905-648-3588 Ext. 125, or 1-800-351-8264	chris.brown@holliswealth.com	CFO (Previously worked KPMG)	HollisWealth Advisors	Advisor	Called left VM
Danielle Likas			Receptionist	Canadian Renovations 2000 ltd	Project Coordinator	
Danuta Starowicz			Executive Assistant	IIROC	Executive Assistant to CIO	

Darla McPherson	1-416-230-1839 (direct)	bertling.darla@gmail.com il.com	Executive Assistant to Managing Director/Partner	BMO	Executive Assistant to SVP	Sent LinkedIn Message on 2016.12.28. At first she expressed surprise that a potential investor would contact her for references then seemed to hesitate to confirm a time for the call. After a series of LinkedIn exchanges (where she seemed very cautious and very suspicious of a basic reference call) I had a call with her 9:45 AM on 2016.12.29. On the call she asked again why anyone would want to speak with her for a reference and asked several questions of me. I said often that administrative assistants are in the best position to speak with everyone and learn about an organization. She agreed with that and then spoke very cautiously about her experience. She said she worked for Gabriel and was his main admin during her time there. Any time I asked a question about the organization she very quickly steered the conversation toward statements about how everyone was great, it was a great place with great people, and everyone is brilliant. She seemed unwilling to discuss anything beyond superficial platitudes and seemed to measure every word very carefully. My sense was that she was likely recording the call or at the very least was worried that I might be.
Dezerai McCormick	647-776-7900	dezerai@vlaadco.com	Executive Assistant	Vlaad & Co	Executive Assistant	
Diana Chow	(416) 441-2888 (main line)		Executive Assistant	Harvey Kalles Real Estate	Executive Assistant	Left VM on personal voicemail
Diana Matovic	647-621-2070 (Cell)		Office Manager	ZS Associates	Office Manager	Left VM on personal voicemail
Francis Chan						Sent LinkedIn message
Heidi Grantner			Administrative Assistant	Synergy	Project manager	Sent linkedin message. Included that she had to work with some "difficult" personalities when at the firm
Jean Lepine			Head of Corporate Affairs and Investor Relations			Only worked there for 8 months, left mid-2015
Jessica Davis						Sent linkedin message 1/11/2017
Joshua Bank						Worked at Catalyst in 2009

Kail Ross		Principal	Niska Gas Storage, Augyva Mining Resources, New Divide Energy Services	Consultant, Director, Co-Founder	Seems to be involved with a bunch of weirdly structured energy companies, including a Toronto Venture Exchange penny stock
Katherine Schultz	(416) 646-2656	Executive Assistant	INFOR Financial Inc	Executive Assistant	Called 1.12.2017. Receptionist said that she was working from home that day and would have to give me a call back. LinkedIn: No details around Catalyst experience although lots of details around other work experiences. Mentioned "tolerant of various temperments". Spoke with her briefly on 1.16.2017 and she said she'd prefer not to participate. She said she didn't want to ruffle feathers. I asked if there were any positive experiences and she said there were both. She implied that she was afraid to say anything given the Brandon Moyses experience that I had referenced.
Kim Lennert		Executive Assistant	N/A	N/A	Sent linkedin message 1/11/2017
Leanne Henshall	1 416-504-5900 (main)	Executive Assistant	Quark Expeditions	Executive Assistant	From LinkedIn: "Travel arrangements using personal jets and helicopters". "Preparation of all meeting Agendas" "Co-ordination of quarterly Advisory Panel Meetings"
Madeline Clark	416-925-7228 (main)	Executive Assistant	Tricon Capital	Executive Assistant	
Manjot Rana	manjot.rana@gmail.com	Investment Professional	CPP Investment Board	Principal	Left July 2011
Mark Catania					Left Catalyst 2007

Mark Horrox	1 (416) 601-2270 x1238 (direct)	Vice President	Third Eye Capital Management	Principal	Mark has been gone for 3 years so not close to what happened now. Mark managed some info on fund 3/fund 4. Mark thinks Catalyst is a large PE firm in Canada. Its an outlier in that Canada is very relationship focused and less transactioned focus. Deal origination/exits is the old boys network, not necessarily putting the right pitchbook together. The value of the relationships are typically more valuable. The antics are not much outlier relative to others so they need to be taken in context. The reason that's important in Canada is because its so relationship driven so they're not likely to be the first call on a deal. In a restructuring context its not that important because you are just taking a look at heavily discounted bonds and figuring out what's going on. Their MO is to scrub the management company out anyway. On the lack of realizations that is "a bigger issue". The investments that they've made have taken longer to monetize than they've ever thought. They've overestimated in terms of quantum or quality. You'd want to sit in there with the finance team in terms of each investment and how they are structuring them. Typically buying broken businesses and typically an element of delay in their ability to make money. It's a rare business that doesn't take operational restructuring. If doing a fair DD on each individual asset each are quite different. When he was there the valuations went through a fairly rigorous process. One of the big 4 "not the auditor" was independently verifying each asset. He's not sure what it is now as he was there 3 years ago but his sense was that there was a process that had some independent credibility.
Mary-Helen Kistner		Receptionist			Left Catalyst 2007
Melissa Dempsey	(416) 362-3658	Executive Assistant	Imperial Capital Ltd	Executive Assistant	Left Catalyst 2015. Called 1/12/2017 but she's on maternity leave
Michelle Howsam					Left Catalyst 2009
Mike Weinczok	O: 416-777-4026, C: 416-301-4883 mweinczok@dickins onwright.com	Partner	Dickinson Wright	Partner	Sued the firm for wrongful dismissal. Called on 1/12/2017 and left VM
Millicent Poon					Left Catalyst 2008
Olivia Rebelo		Executive Assistant			Left 2012 after 3 months
Phil Bacal	1 416 687 6590 (main)	Associate	Searchlight Capital Partners	Principal	Left 2012 after 2 years
Rachel MacLeod					Left 2011 at 3 months

Sam Fleiser	C: (416) 520-3118, B: (416) 479-7345	sfleiser@alignvest.com	Former Founder of Callidus	Tradecap	President	Callidus started with his own capital and a line of credit with Wachovia. Dearth of financing for distressed businesses in Canada. 2007 was introduced to Newton Glassman at Catalyst. he wanted to get involved in the space. They did a JV where Glassman agreed to supply \$150m to Callidus. He was always of the opinion that business financing the types of credit had limited scalability. If you looked at their book at any point it would turn every 14 months. If you're lending money at 18% there aren't too many businesses that can survive for a long time paying that type of interest. Either the companies would be successful in turning around and migrating back to a traditional lender or they wouldn't make it and they'd have to go into some sort of enforcement and liquidate the assets. when they liquidated they were always in a going concern environment. It wasn't scalable because the portfolio turned every 14 months, so the number of deals you'd have to do to fund the growth with the turnover you'd have to eventually compromise on your credit quality. The workouts become so intense and time consuming and require a lot of expertise. He left Callidus with a \$180m portfolio. He always believed it was \$150-\$250m Newton needed to take Callidus public. That was the end of the relationship Sam left in 2011 and Newton proceeded with the strategy and it's a trainwreck waiting for a time and place to happen They've grown the book because there's no shortage of businesses that desperately need money. They did really bad credits when there's no such thing It was driven by Newton's desire to get both in the portfolio. The book turns every 30 months. Credit bid and now own the businesses. Exchange technologies has probably \$80m in loan losses. They sold it at book value to Catalyst. From an accounting perspective it disappeared off Callidus's book. It should have been a loan loss. Bluberi is maybe worth \$20m. \$67m hit there. Value of a credit where the major customer is Venezuela. Glassman is a brilliant man intellectually. Anyone who does business with him will get screwed. Left Catalyst October 2016, lateral move, after 2 years. Call back at 2pm. He said he'd be reticent to talk about his experience but that I can call back in an hour.
Spencer Ross	647-789-6794 (direct)	spencer.ross@northleafcapital.com	Associate	Northleaf Capital Partners	Senior Associate	Left January 2015. Called 1/12/2017 but apparently she doesn't work in the Toronto office
Stacey Parsons	(800) 668-3450 (main)		Office Manager	Ingram Micro	Facilities Manager	
Stephanie Jones			Administrative			Left 2010 after 7 months
Tabitha Perry			Internal Projects Specialist	Bank of Montreal	Executive Assistant to the CFO	Left Catalyst 2013
Tiffany King			Exec Assist	Callidus	Exec Assist	Works for subsidiary in same position

Andre Sa (914) 219- asm.one2@gmail.com Operator at
 Machado 4421 m numerous
 portfolio
 Chester 416-887-9342 [chester_dawes@ho](mailto:chester_dawes@hotmail.com) CFO of Catalyst
 Dawes tmail.com

Had a call 2017.02.08. Left in 2016. He quit in January but formally departed in August. Confirmed that Ann Davis was the lead auditor at KPMG. He said Ann was a solid person and very above-board. She 'decided not to stand for re-election' to the board but Chester could not disclose her reasons for leaving. (The implication is that there are reasons beyond just retirement.) Chester said that Satmex was not part of the fund at all, but that it might have been Gabriel de Alba's dad or son which all have the same name. (It's not the case, it was both Gabriel AND his dad but Gabriel was involved.) He said that there was no misappropriation or anything of that sort as he made sure of it in his capacity as CFO. He did say that there was some different opinions regarding the valuation of the assets. He said that one of the reasons he left is because he didn't expect to receive any carry. He also suggested I look at preqin to see the lack of distributions for fund II which should give an indication of how things are going. He said that the gambling boards(Ontario and BC) did a thorough vetting of Glassman and execs to make sure there was nothing that would disqualify them in their backgrounds. He suggested some specific "areas of interest" to research on some of the portfolio companies. Sonar entertainment has put a lot of TV shows on but the board changes and the articles on the company show the level of discord and the issues. Natural Markets there are articles showing pictures of empty store shelves. Geneba sold a piece of the portfolio off so that establishes some sort of real valuation. He said that PWC does an internal valuation review after Catalyst puts their valuation framework together so there is some level of independent oversight but he didn't seem to place a high value on it. He suggested that the annual general meeting decks are a good place to get information as are the quarterly letters. Other than that the internal documentation is the best source but he didn't seem inclined to hand any of it over. When asked how he worked there fore 7.5 years he said he has "thick skin that's made of Called left VM 4.5

Zach 1 416 324 [Zachary.Michaud@c](mailto:Zachary.Michaud@colliers.com) VP Investments Colliers VP, M&A
 Michaud 4392 colliers.com International
 Craig Boyer 4168849533

Name	Phone	Email	Former Title	Current Firm	Current Title	Notes
Gene Stein	(424) 281-5200 (main)		CEO @ Sonar Entertainment	Gaumont Television US	President	didn't feel comfortable talking about it
Jeremy Klein	(405) 527-1232		CEO @ Horizontal Well Drillers			
Matt Williams		mwilliams@imparc.com	CEO Natural Markets	Impark	Regional Manager - Eastern Canada	Sent linkedin message 4/28. Was CEO in 2011 discussing an acquisition in a court filing with rosy EBITDA projections and then by next year he was out https://www.linkedin.com/in/matt-williams-9065a559/

Gary Fulena	847-226-8882	gfulena@gmail.com	COO Advantage Rent A Car		
Andre Sa Machado			Arthon Industries Former EVP Finance and COO at Richtree	unknown	
Ms. Robin Michel	(720) 446-0145	robin.s.michel323@gmail.com	CEO @ Natural Markets Foods	Froozer	CEO

They were the golden night that rode in 11th hour to rescue them from Chapter 7. Worked with Advantage. Hertz had sold them (forced by FTC). Macquarie bought them from Hertz. That transaction when Macquarie bought it included Hertz leasing 25,000 cars to Advantage which was their downfall. They were forced into bankruptcy because the deal as was structured wasn't good. Hertz had really put the pressure on and was forcing them into a Chapter 7. At last minute they were introduced to Catalyst. The crazy thing from his perspective is that they looked at them very briefly with minimal due-diligence and agreed to provide DIP financing and from there they went through and financed a bunch of cars even prior to purchasing them. They went through the auction and secured the company through the bankruptcy auction. Gary was a little taken aback with how little due-diligence they did. After they bought the company they were extremely involved. Invested a lot of money. Financed a lot of the cars themselves. De Alba had a couple of guys entrenched in the business. They didn't know or understand the business but bright guys and did the best they could but didn't want to take the time to

Linkedin mail 4/27. Sued Glassman for wrongful dismissal. Formerly worked at Snowbear and Cable Sao for Catalyst Emailed 4/28

Pat Brown			Former CEO of Natural Markets Restaurant Corp	Sent linkedin message 4/28 https://www.linkedin.com/in/patrick-brown-7227416/
Matthew G. Williams	14162882040		Former CEO of Natural Markets Restaurant Corp	Sent linkedin message 4/28 https://www.linkedin.com/in/matt-williams-9065a559/
Colin T. West	n/a	n/a	Former CEO of Richtree Markets	Passed away: http://www.legacy.com/obituaries/montrealgazette/obituary.aspx?pid=169157792
Steve Fox	(706)629-6489		Automed Owner of Bellwood Properties, LLC/ Fox & Brindle Great Lakes N64FD LLC Newtek Automotive Top Aces Inc	Address was 1216 North Wall Street, Calhoun, GA. Mailing address also includes a P.O. Box 1179 in Calhoun, GA

Company	First	Last	Title	Email	Phone	Address	Website	Investments	Notes
584981 Ontario Limited	Ira	Gluskin	Co-Founder			333 Bay Street Suite 5100, Toronto, Ontario	http://people.equilar.com/bio/ira-gluskin-sheff/salary/819424#.WHQ_7l		Met with
Aegon Investment Management	Jon	Skaggs		jskaggs@aegonsa.com	5025603943	400 West Market St. Louisville, KY	www.aegonusa.com	Fund 1/2?	emailed 4/28. On Catalysts 2009 investor reference list
AIP MPI Partners						100 Front St, West Conshohocken PA			
Alameda County Employees Retirement System (ACERA)						475-14th Street, Suite 1000, Oakland CA 94612			
Alan and Sharon Portnoi	Alan	Portnoi				62 Fairfield Drive, Short Hills, NJ			Sent LinkedIn mail 4/28

Arizona State Retirement System					3300 N. Central Ave. 14th Fl, Phoenix AZ	Have contact
Braeside 9 Holdings Inc	Aldo	Bensadoun	Founder		9 Braeside Place, Westmount, Quebec	
Con Edison Pension					100 Front St, West Conshohocken PA	
DMC (PED) Limited					c/o Golden Arc, Inc. 444 Madison Ave. 4th Fl, New York, NY	
DTC Private Equity IV	Samuel	Fraundorf	CIO	800.264.7498 (main)	6075 Poplar Avenue, Memphis, TN	
DWT Capital					1000 de la Gauchetiere West, Montreal Quebec	

Eastman Kodak Company	John Lane	Director of Pension Investments john.c.lane@kodak.com	5857242030	343 State Street, Rochester NY 14650	www.kodak.com	Fund 1/2?	Emailed new CIO (Thomas Mucha) 1/12/2017. On Catalyst's 2009 investor reference list, has since left firm for OPERS.
Edelweiss Development (Owner)	Jayson Kuti	(son?)					Sent LinkedIn Mail 4/28/2017 . https://www.linkedin.com/in/jayson-kuti-7a126013
Fednav Holdings				1000 de la Gauchetiere West, Montreal Quebec			

FNCD Investment Inc. (likely owned by the Don and Joan Walker Family Charity Trust)

15180 Bathurst Street, King City, Ontario, , (also may own 17555 Collins Ave Unit #2705 Sunny Isles Beach, FL) https://www.miamidade.county-taxes.com/public/real_estate/parcels/3122110621640

Foundation Investments of Ohio (Appears to be the "Jack, Joseph, and Frances Searle Charitable Trusts

John LacRoske

216.875.652 3 (main)

2829 Euclid Avenue, Cleveland OH 111 Monroe St, Chicago IL

Called left VM 4/28



GPK Investments	Gerhard Kuti d	Founder	[Redacted]	7255 West 98th St, Bldg 5, Suite 150 Overland Park, Kansas	http://www.bloombergest.com/research/stocks/private/person.asp?personId=5980477&privateId=3688399&previousTitle=Leopoldstadt,%20Inc.	
Harvard Management Private Equity	Richard Hall			hallr@hmc.harvard.edu x6569	600 Atlantic Avenue, Boston, MA	
Harvard Management Private Equity	John Shue		shuej@hmc.harvard.edu x6977	600 Atlantic Avenue, Boston, MA		
Hyperion (PED) Limited	[Redacted]	[Redacted]	[Redacted]	c/o Golden Arc, Inc. 444 Madison Ave. 4th Fl, New York, NY		

J. Christopher
Reyes Trust

561-469-
5600

Called left
message
with
receptioni
st. 6250
North
River
Road,
Rosemont
IL

Jenal Investments
Inc

1 Saint
Thomas
St., Suite
27A,
Toronto,
Ontario

Contacted on 4/27 via
linkedin (Fraser)

Jessen Family
Trust

8474468783

Called
Howard
Jessen
and he
wasn't
interested
in
speaking.
777 Bluff
Road,
Lake Bluff

John Searle
Charitable

111
Monroe
St,
Chicago IL

Johnson CAT LLC					610 Fifth Avenue, 2nd Floor, New York, NY		
Kinship Trust Company	Jason Einck	Investment Professional	jason.einck@kinshiptrustco.com	847-291-1030	400 Skokie Boulevard, Suite 300	www.kinshiptrustco.com	Fund 1/2? Called left VM 4/28. On Catalysts 2009 investor reference list
Kruger Inc Master Trust					3285 Bedford Rd. Montreal Quebec		Linkedin Mail George Bunze on 4/28. https://www.linkedin.com/in/george-j-bunze-966b1691/?ppe=1
KS Centoro					2450 Central Avenue, Windsor, Ontario		
KTC Alternatives Fund II LLC					303 W. Madison 18th floor, Chicago,		

Lillard Family Investments	[Redacted]			1340 North Waukegan Rd, Lake Forest IL 6250 North River Road, Rosemont IL			
M. Jude Reyes Trust	[Redacted]						
MacArthur Foundation	David Greenwald	Managing Director, Absolute Return & Fixed Income	dgreenwa@macfound.org	3129170207	140 Dearborn St, Suite 1100, Chicago, IL 60603	www.macfound.org	Fund 1/2? Called David left vm on 4/28. On Catalysts 2009 investor reference list
Manbro PE IV	[Redacted]				2829 Euclid Avenue, Cleveland OH		
McGill University Met Life Insurance Company	Claudia Cromie	Director	ccromie@metlife.com	9733554293	10 Park Avenue	www.metlife.com	Fund III Fund 1/2? Emailed on 4/28. On Catalysts 2009 investor reference list

Missouri State
Employees
Retirement
System

907
Wildwood
Drive,
Jefferson
City, MO
2401
Colonial
Drive 3rd
Fl, Helena
Montana

Montana Board of
Investments

Morgan Stanley

Karl

Beinkampen

Executive
Director,
Portfolio
Manager

karl.beinkampen@morganstanley.com

6102607614

One
Tower
Bridge,
100 Front
St, Suite
1100,
West
Conshaho
cken, PA
19428

www.morganstanley.com

Fund 1/2?

On Catalysts 2009 investor
reference list

Morgan Stanley
AIP

John

Wolak

CIO

john.wolak@morganstanley.com (610) 940-5000

Conshaho
cken

Called got transferred to
voicemail then sent email.
John suggested I give Ed
Goldstein a call. Ed covers
Catalyst

Morgan Stanley Ed Goldstein
AIP

edward.goldstein@morganstanley.com

610-260-7330

He's on the advisory board for fund 2/3/4. Good market story- the empirical evidence is waiting to be seen. Newton difficult to manage and unique personality. The constants are he and Gabriel. The team has churned. Newton and Gabriel are in ways like Obama and Biden. Newton is very effusive with his praise of Gabriel which sounds non-authentic. Operational issues related to the funds that would not be difficult to uncover. The notion that they're investing in relative protective markets in an inefficient landscape. The real estate business in Europe. Guarantee to backstop loan to PanAm-they sat on a massive guarantee and use of capital. "Fund hygiene". Fund is very overcommitted and tons of cross-over between funds which is "a problem for a lot of reasons". 2 issues with

Morgan Stanley
Private Markets
Fund IV

100 Front
St, West
Conshohocken PA

MSF Private
Equity Fund

25701
Science
Park
Drive,
Cleveland
OH

Nuclear Electric
Insurance Limited

1201
North
Market
Street,
Wilmington
DE

Partners Fund LLC

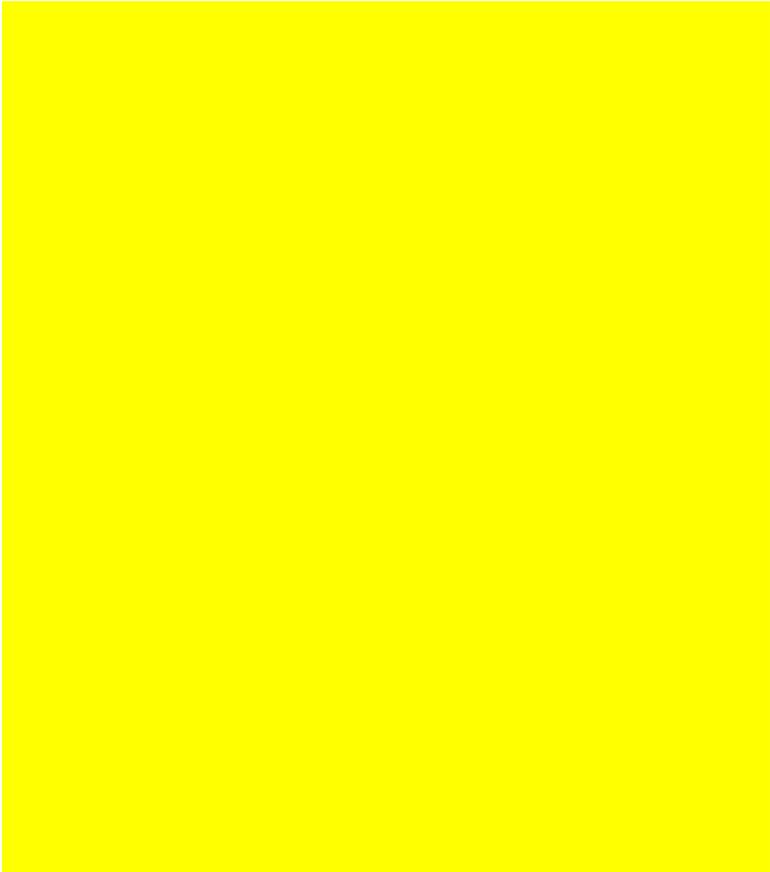
2829
Euclid
Avenue,
Cleveland
OH

PCM Private
Equity III

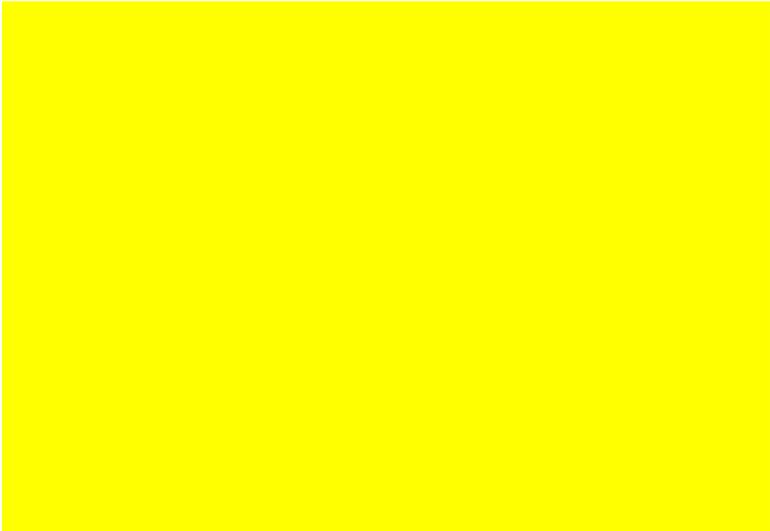
4900
Main
Street,
Kansas
City, MO

PCT Partners LLC

1201 N.
Market
Street,
Suite
1501,
Wilmington,
DE



Portmore Holdings Ltd



Cayman Corporate Center, 3rd Fl, 27 Hospital Road, P.O. Box 10741 George Town, Grand Cayman, KY1-1007 Cayman Islands

Pruco Life Insurance Company

213 Washington St. Newark, NJ

Pruco Life Insurance Company of New Jersey

213 Washington St. Newark, NJ

Prudential Annuities Life Assurance Corporation

1 Corporate Drive PO Box 884, Shelton, Connecticut

Prudential Insurance Company of America

751 Broad St, Newark, NJ

Robert Wood Johnson Foundation		Rt 1 and College Road East, Princeton, NJ
Rockefeller Saint-Zotique Holdings Inc		2300 Emile-Belanger, Montreal, Quebec
Sea Dog Holdings		Centennia I Place, East Tower, 1900-520 Third Ave SW, Calgary
SFT Distressed Securities		111 Monroe St, Chicago IL
Sidley Austin Master Pension Trust		c/o Northern Trust. 801 South Canal, Chicago IL
Sun Life Assurance Company of Canada		150 King Street West, Toronto Ontario

Tetral S.A.



Avenue
General-
Guisan 70,
1009 Pully
Switzerlan
d

The Rose
Company

Norma Kraftchuk VP
n

416-449-
3535

<http://www.theroseco.com/about/>

Spoke with

Universal
Prudential
Arizona
Reinsurance
Company
University of
Michigan



2999
North
44th St,
Phoenix
AZ
101 North
Main
Street,
Suite 525,
Ann
Arbor, MI

Verdis
Investments

Jamie Dranoff Senior Analyst
jdranoff@vioscapital.com

200 Four
Falls
Corporate
Center
Conshohocken, PA

Called spoke to receptionist

WK Kellogg
Foundation



500 Grant
St,
Pittsburg,
PA

Name	Firm	Type	Phone	Email	Notes
Mark Warnken	Bessemer	Industry Consultant			
Mike Evans	Rocaton	Industry Consultant			
Sander Doucette	Hamilton College	PE Investor			
Brendan Connor	Grosvenor	PE Investor			
Will Repath	Genspring	PE Investor			
Brey	StepStone	Industry Consultant			
Nick Gibbons	Citadel LLC	PE Investor	(212) 652-8918		Spoke to Nick (cold call) and he said he'd connect with me offline

TAB 2

Catalyst v West Face et al.

James Riley
on Tuesday, October 27, 2020



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

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 Continued Cross-Examination of JAMES
RILEY, on his affidavits sworn December 5, 2019,
May 29, 2020 and August 20, 2020 respectively,
taken via Zoom Videoconferencing with all
participants attending remotely, on the 27th day of
October, 2020.

1 A P P E A R A N C E S :

2 RICHARD G. DEARDEN, Esq., for the Plaintiffs,
3 & DAVID C. MOORE, Esq., (Defendants to the
4 & BENJAMIN NA, Esq., Counterclaim), The
5 & MARCO ROMEO, Esq., 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

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

20 LEORA JACKSON, Esq., for the Defendants,
21 & STACEY REISMAN, Esq., M5V Advisors Inc.
22 c.o.b. Anson Group
23 Canada, Admiralty
24 Advisors LLC, Frigate
25 Ventures LP, Anson

1		Investments LP, Anson
2		Capital LP, Anson
3		Investments Master
4		Fund LP, AIMF GP,
5		Anson Catalyst Master
6		Fund LP, ACF GP, Moez
7		Kassam, Adam Spears
8		and Sunny Puri
9		
10	LUCAS E. LUNG, Esq.,	for the Defendants,
11	& REBECCA SHOOM, Esq.,	ClaritySpring Inc. and
12		Nathan Anderson
13		
14	PHIL TUNLEY, Esq.,	for the Defendant, Rob
15	& JENNIFER SAVILLE, Esq.,	Copeland, Dow Jones &
16		Company and Jacquie
17		McNish
18		
19	DIMITRI LASCARIS, Esq.,	for the Defendant,
20		Bruce Livesey
21		
22	MICHAEL DARCY, Esq.,	for the Defendants to
23		the Counterclaim, BC
24		Strategy Ltd. d/b/a
25		Black Cube and BC

1		Strategy UK Ltd. d/b/a
2		Black Cube
3		
4	DARYLL LEVITT	Self-Represented
5		
6	KEVIN BAUMANN	Self-Represented
7		
8	JEFF McFARLANE	Self-Represented
9		
10	Also Present:	Greg Boland, CEO, West Face Capital
11		Philip Panet, General Counsel, West
12		Face Capital
13		Tanya Barbiero, Law Clerk,
14		Davies Ward
15		
16	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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1 -- Upon commencing at 10:00 a.m.

2

3 JIM RILEY; UNDER PRIOR AFFIRMATION.

4 CROSS-EXAMINATION BY MR. MILNE-SMITH

5 (CONT'D):

6 776 Q. Actually, the first question I had
7 is I just want to clarify something from yesterday
8 with Mr. Moore, to make sure that we understand
9 your position and the scope of it.

10 So, Mr. Moore, you'll recall that
11 yesterday I started asking some questions about the
12 basis for the claim of privilege over
13 communications involving Dan Gagnier, and as I
14 understood it, you indicated that you would be
15 refusing any questions regarding privilege of any
16 kind that were asserted on Schedule B, so not just
17 limited to Black Cube or PSY Group, but that you
18 were refusing questions regarding the assertion of
19 any privilege, including everything on Schedule B;
20 is that correct?

21 MR. MOORE: Yes.

22 BY MR. MILNE-SMITH:

23 777 Q. Okay, and this isn't meant to be
24 an exhaustive list but just by way of greater
25 certainty, that means that you will refuse any

1 questions that would be intended to test the
2 assertion of privilege over Tamara Global, Yossi
3 Tanuri, the SEC, and that is the U.S. Securities
4 and Exchange Commission, the Ontario Securities
5 Commission, Patrick Dalton, Vincent Hanna/Danny Guy
6 or his counsel, Dan Gagnier and Virginia Jamieson;
7 you are refusing any questions over any assertions
8 of privilege, including those individuals or
9 organizations I named; correct?

10 R/F MR. MOORE: Yes, that's right. I mean,
11 I think in several instances questions did not come
12 up yesterday, but as I said, you don't need to put
13 all the questions. So that is fine, I agree with
14 what you have just said.

15 MR. MILNE-SMITH: Okay, thank you.

16 Just so I understand it - and hopefully
17 that echo will go away - is it your position that
18 anything other than Black Cube or PSY Group should
19 be dealt with in the refusals motion before Justice
20 McEwen or the privilege motion before Justice
21 Boswell? I understand Boswell is handling Black
22 Cube and PSY Group.

23 MR. MOORE: Yes.

24 MR. MILNE-SMITH: But where do you say
25 all the other privilege assertions can be tested?

1 MR. MOORE: My understanding is that
2 the dates in December, the 15th and 16th, have been
3 set aside for the privilege issues, and then the
4 Black Cube and PSY-related privilege issues got
5 hived off to be dealt with by Justice Boswell.
6 That is my understanding.

7 BY MR. MILNE-SMITH:

8 778 Q. Fine, okay, and everything else
9 goes to McEwen.

10 And just to be clear, you are not just
11 refusing questions that would invade the privilege.
12 As we saw earlier when I started to ask about
13 Mr. Gagnier, you are refusing questions that would
14 explore the basis for the privilege?

15 R/F MR. MOORE: Yeah, I mean, I think that
16 is a subtle distinction, but sometimes it is
17 difficult to delineate. And so it seemed to me
18 that we could potentially get into some issues and
19 difficulties and it would clutter up the transcript
20 and not be particularly helpful or productive or
21 efficient in terms of what you wanted to get
22 through, so yes.

23 BY MR. MILNE-SMITH:

24 779 Q. Okay, thank you.

25 So let's then pull up, if we could,

1 Tanya, I am going to put one more affidavit on the
2 record here and, Mr. Riley, this is your affidavit
3 from August 20 of this year. It was a reply
4 affidavit to an affidavit of Mr. Boland sworn on
5 May 29th, and I am going to label that as document
6 G for the purposes of this examination.

7 And I would like to go to paragraph 27,
8 and you will see the highlighted portions there.
9 And maybe just scroll up a little bit so you can
10 see the highlighting on (d) as well there, and you
11 can get the whole thing on one page.

12 So is it fair to say, Mr. Riley, that
13 in this affidavit and in particular in this
14 passage, parts of which I have highlighted, you
15 criticize the fund performance of certain funds
16 managed by West Face?

17 A. That is correct.

18 780 Q. And in paragraph 27(a) in
19 particular you say that:

20 "West Face had an abysmal
21 investment track record as a hedge
22 fund"?

23 A. I do.

24 781 Q. And in paragraph (d) you give the
25 detail for that, I suppose, which is you say that:

1 "West Face was marketing off of
2 a negative return of minus 1.6% in
3 YTD March 31, 2017."

4 Is that correct?

5 A. Yes.

6 782 Q. And that is what you characterize
7 as an abysmal investment track record; correct?

8 A. No, I think it is the broader
9 track record in the last five years, but that was
10 in that one period where was minus 1.6.

11 783 Q. Okay, so that is part of it.
12 Let's turn up document 91. And we can see the
13 heading. This is an article from May 14, 2020, in
14 Bloomberg News by Paula Sambo titled "Glassman's
15 Catalyst Says Third Fund Plunged More Than 60%",
16 and it states that:

17 "Catalyst Capital Group Inc.
18 told investors that assets in one of
19 its oldest active funds declined in
20 value by more than 60% last year."

21 A. This was for 2019?

22 784 Q. This is for 2019, because it is
23 May 14, 2020, so it is disclosing the results from
24 2019. This is pre-pandemic.

25 A. Well, no, and I am not quibbling,

1 it is pre-pandemic, but the valuation of that
2 particular asset, Gateway and the other ones in the
3 funds, were affected by COVID because the auditors
4 took the view that it was an event that you had to
5 take into account in valuing the assets.

6 785 Q. Okay, well, let's just look at
7 what this article says:

8 "The Toronto-based firm, which
9 invests primarily in distressed debt
10 and private equity, marked down the
11 value of the portfolio in the
12 Catalyst Fund Limited Partnership
13 III to about \$320 million at the end
14 of last year," meaning the end of
15 2019, "from about \$820 million at
16 the start of the year, according to
17 a document sent to its limited
18 partners."

19 Is that a true reporting of Catalyst
20 reporting to its investors?

21 A. Yes. What I am saying, though, is
22 the reason for that writedown was directly related
23 to COVID because Gateway is a casino that could not
24 be open during COVID.

25 786 Q. So, Mr. Riley, I am going to have

1 to ask you to produce then the reporting that was
2 sent to your investors, because I don't understand
3 how events that started in March of 2020 affect the
4 valuation which says \$320 at the end of last year.

5 U/A MR. MOORE: Well, we'll take that under
6 advisement, but I think Mr. Riley said that the
7 auditors in effect took the position that the COVID
8 events, even though they were post year-end, had to
9 be taken into account in the valuation that was
10 circulated. But in any event, I have your question
11 and we'll take it under advisement.

12 BY MR. MILNE-SMITH:

13 787 Q. And, Mr. Riley, you see the next
14 highlighted paragraph says that the fund started
15 with about 1 billion in 2009. Just on that, so you
16 would agree that it started at 1 billion, and then
17 by the start of 2019, it was at 820 million;
18 correct?

19 A. I would want to defer to my CFO to
20 make sure these numbers are correct and the
21 accounting for them in each of those periods.

22 788 Q. Okay, so that would be -- if that
23 were true, that would be a decline of 18 percent;
24 correct?

25 A. I didn't hear, Matt.

1 789 Q. If true, that would be a decline
2 of 18 percent from 1 billion to 820 million?

3 A. I would want to go back and look
4 at those numbers to make sure that they are
5 accurate, that is all, because part of the impact
6 in Fund III in that time frame was the results of
7 Callidus. So it is not just one event in there.

8 790 Q. Oh, I'm sure that's right. And,
9 Mr. Riley, sometimes the fact is in financial
10 management is sometimes markets move against a fund
11 manager; correct?

12 A. Well, it depends on -- yes.

13 791 Q. And it is not necessarily a sign
14 of incompetence?

15 A. Well, it depends on how you define
16 "competence". In other words, if someone is a good
17 stock-picker, then their track record would
18 generally be more positive than negative. There
19 will be events where it is negative.

20 792 Q. Right, and so the simple fact that
21 Catalyst went from 1 billion at the inception down
22 to 820 million at the beginning of 2019 to 320
23 million at the end of 2019 is not necessarily a
24 sign of incompetence on the part of Catalyst; it
25 could just be you got unlucky, correct?

1 A. Well, I don't think COVID is a
2 matter of luck.

3 793 Q. Then let's talk about what
4 happened before COVID, down from a billion to 820.
5 It is not necessarily incompetence?

6 A. I would want to look at the
7 numbers to make sure. Again, I am deferring
8 because I want to review those numbers with my CFO
9 to make sure they are accurate.

10 794 Q. So take it as an assumption.
11 Assuming that it was down from a billion to 820.
12 That is not necessarily a sign of incompetence on
13 the part of the fund manager?

14 A. No.

15 795 Q. And more important for a fund
16 manager, rather than any particular short-term
17 results, is their reputation for integrity;
18 correct?

19 A. That is important.

20 796 Q. Okay. I would like to see
21 obviously the communications to investors in Fund
22 III, Fund IV and Fund V for year-end 2019, so it
23 was referred to in this article and whatever the
24 equivalents are for Fund IV and V?

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

1 advisement

2 BY MR. MILNE-SMITH:

3 A. And to the extent that those
4 investor communications rely on financial reporting
5 by auditors, accountants and or other external
6 firm, I would like to see their underlying
7 reporting?

8 U/A MR. MOORE: Well, I'll take that under
9 advisement, but I think that we are not likely to
10 agree to that, but I'll take that under advisement.

11 BY MR. MILNE-SMITH:

12 797 Q. Well, put it this way. I would
13 like to know what the basis is for the reporting to
14 investors, and then whatever that is, I would like
15 to see the underlying documentation that supports
16 the reporting to investors.

17 MR. MOORE: Well, let me understand
18 your question. Do you mean by that all of the
19 audit working papers and that kind of material in
20 the hands of the auditors? What are you talking
21 about?

22 MR. MILNE-SMITH: The end product of
23 whatever the auditors produced that was relied on
24 by Catalyst in its reporting to investors.

25 U/A MR. MOORE: All right, we'll take that

1 under advisement.

2 MR. DEARDEN: Why is that relevant, Mr.
3 Milne-Smith?

4 MR. MILNE-SMITH: Pardon me?

5 MR. DEARDEN: Why is it relevant to go
6 into the weeds to the point where you are actually
7 looking for documents from auditors? What is the
8 relevance?

9 MR. MILNE-SMITH: I am not looking to
10 get it from working papers. I am asking for one
11 level down from the reporting to the investors so I
12 can have some comfort in the basis for what is told
13 to investors. Mr. Riley has explained in his
14 testimony this morning that there are requirements
15 by auditors that writedowns be made after the fact
16 and so forth, so I just want to see so I can
17 properly understand the reporting to investors what
18 it was that Catalyst relied on in doing so.

19 MR. DEARDEN: I want to know the
20 relevance.

21 MR. MILNE-SMITH: The relevance was
22 established at the beginning of the
23 cross-examination when Mr. Riley has attacked the,
24 quote, "abysmal track record of West Face". I
25 think it is fair to look at the same kind of

1 information for Catalyst.

2 MR. DEARDEN: That is your basis for
3 relevance?

4 MR. MILNE-SMITH: Yes.

5 MR. DEARDEN: Okay, we'll take it under
6 advisement.

7 MR. MILNE-SMITH: And of course, the
8 anti-SLAPP suit talks about the relevance of harm
9 to the -- harm suffered by the investment manager,
10 and therefore, for the very same reasons that you
11 say that West Face's performance is relevant, I say
12 that the performance of Catalyst is relevant.

13 MR. MOORE: We have your question.

14 MR. MILNE-SMITH: All right, subject to
15 the questions taken under advisement and refused
16 and the undertakings and answers arising therefrom,
17 those are my questions for this witness, and I will
18 turn it over to Mr. Lung.

19 CROSS-EXAMINATION BY MR. LUNG:

20 798 Q. Good morning, Mr. Riley.

21 A. Good morning.

22 799 Q. Can you hear me okay?

23 A. I can. Can you hear me?

24 800 Q. I can hear you just fine.

25 Deana, if you need me to stop or if you

1 can't hear anything, just jump in.

2 Mr. Riley, Callidus was a private
3 company until 2014; is that right?

4 A. Yes.

5 801 Q. And in 2014 there was an IPO?

6 A. Yes.

7 802 Q. And at that point certain of the
8 shares of Callidus were retained by certain
9 Catalyst funds; is that right?

10 A. Catalyst III and IV held the
11 majority of the shares, and there was a small
12 number in Fund II after disposition, so Fund II
13 basically exited.

14 803 Q. And in your affidavit you say that
15 more than 60 percent of Callidus's shares after the
16 IPO were owned by Fund II, Fund III and Fund IV; is
17 that right?

18 A. Which paragraph?

19 MR. DEARDEN: Which paragraph in which
20 affidavit?

21 BY MR. LUNG:

22 804 Q. Sure, it is paragraph 21. I can
23 bring it up if you want.

24 A. Which affidavit, please?

25 805 Q. Oh, it is the conspiracy

1 affidavit.

2 A. And page 21?

3 806 Q. That's right.

4 MR. DEARDEN: Paragraph 21.

5 BY MR. LUNG:

6 807 Q. So, Mr. Riley, it is up on the
7 screen here, if you want to take a look.

8 A. Yes, I agree with that number.

9 808 Q. And did it remain that way until
10 Callidus went private in 2019?

11 A. That it controlled more than 60
12 percent?

13 809 Q. Or that these three funds
14 controlled more than 60 percent?

15 A. That is correct.

16 810 Q. And at any time did Catalyst
17 Capital Group own any shares?

18 A. No.

19 811 Q. So the shares --

20 A. All the --

21 812 Q. So the shares were always owned by
22 the funds?

23 A. Yes.

24 813 Q. So at paragraph 32 of your
25 conspiracy affidavit, and I have got it up on the

1 screen, in the second sentence you state:

2 "The shares owned by Catalyst
3 and its related funds comprised over
4 60% of the outstanding shares and
5 were not traded."

6 That statement is not quite accurate;
7 is that fair?

8 A. Sorry, what is the -- sorry, I was
9 getting to the --

10 814 Q. Sorry, the second sentence of
11 paragraph 32 says:

12 "The shares owned by Catalyst
13 and its related funds comprised over
14 60% of the outstanding shares and
15 were not traded."

16 That sentence isn't accurate?

17 A. I assume you are saying that it
18 should be Catalyst fund?

19 815 Q. Because Catalyst never owned any
20 shares in Callidus?

21 A. That is correct.

22 816 Q. What is Callidus's --

23 A. Do we define Catalyst in this
24 affidavit?

25 817 Q. Catalyst is the Plaintiff, right.

1 Well, Mr. Riley, just that particular sentence
2 there, it identifies Catalyst separate and apart
3 from its related funds, so --

4 A. Yes, but it is the funds that own
5 the shares, and those shares were not traded.

6 818 Q. So, Mr. Riley, Callidus went
7 private in 2019?

8 A. Yes.

9 819 Q. And does it continue as a
10 business? Is it still in business?

11 A. Callidus is in the course of a
12 wind-down, and there is a new entity called
13 FrontWell Partners that was launched in September.

14 820 Q. And does --

15 A. It is the same. They carry on the
16 same business.

17 821 Q. So FrontWell Partners carries on
18 the same business?

19 A. Yes.

20 822 Q. It provides loans to high-risk
21 lenders?

22 A. Yes.

23 823 Q. And who owns FrontWell Capital?

24 A. It is owned by -- primarily by the
25 Catalyst Funds III, IV and II, and I can't remember

1 which one of Joe Lewis's companies owns the
2 balance.

3 824 Q. And does Catalyst Capital Group
4 own any part of FrontWell Capital?

5 A. No, Newton Glassman and Jim Riley
6 own a very small percentage of shares because we
7 had purchased shares in Callidus when it was
8 public.

9 825 Q. So that ownership structure under
10 Callidus was impressed on FrontWell Capital?

11 A. Yes, the same -- well, no,
12 FrontWell is 85 percent owned by the funds and 15
13 percent by I think it is Braslyn. I think that is
14 the Joe Lewis company.

15 826 Q. That is the company that
16 participated in the privatization in 2019?

17 A. Yes, I believe that the name is
18 Braslyn.

19 827 Q. Okay. Can you explain to me what
20 is a yield enhancement?

21 A. A yield enhancement is where there
22 is an expectation that you may realize more than
23 the value of -- well, there is several types of
24 yield enhancements, so let me step back.

25 The idea of a yield enhancement started

1 when a valuation of Callidus was performed by
2 National Bank and they saw some additional value in
3 some of the positions we held.

4 A yield enhancement, in our view, is an
5 amount where you are realizing an amount more than
6 the value or the as it were face amount of the
7 loan, so it could be a fee; it could be an option
8 to acquire equity; or it could be in a position
9 that you own, there is value in excess of the loan.

10 828 Q. And is it fair to say that while
11 Callidus was in business, yield enhancements were a
12 key component of its business and its operation and
13 valuation?

14 A. I don't think it was a key
15 component. It was information that was material,
16 we thought had some materiality to the market or
17 informed the market of possible additional value.

18 829 Q. But yield enhancements were an
19 important --

20 A. The -- I'm sorry --

21 830 Q. I'm sorry, is it fair to say that
22 yield enhancements were --

23 A. I didn't finish -- sorry, Deana,
24 could you please read back to me how far you got in
25 my answer? Or can I see it there?

1 [Court Reporter intervenes for
2 clarification.]

3 BY MR. LUNG:

4 831 Q. Mr. Riley, why don't we reset that
5 question. Is it fair to say that yield
6 enhancements were an important part of Callidus's
7 business?

8 A. No, it was an aspect of the
9 business -- or it was not a business. It provided
10 information to the marketplace.

11 832 Q. But it was an important aspect of
12 Callidus's operations?

13 A. Again, I am not trying to quibble.
14 It was an aspect. How important it was at the end
15 of the day is unclear.

16 833 Q. So I am just going to bring up a
17 document, and this is -- it is actually Exhibit 21
18 to Mr. Anderson's May 22nd, 2017 whistleblower
19 submission, and I just want to make sure it comes
20 up.

21 MR. DEARDEN: You said 117?

22 MR. LUNG: Sorry, Rick, I didn't hear
23 that.

24 MR. DEARDEN: Sorry.

25 MR. LUNG: What is the question?

1 MR. DEARDEN: No, I was just confused
2 on which exhibit you were referring to, my
3 apologies. I thought you were talking about the
4 affidavit, so --

5 BY MR. LUNG:

6 834 Q. So Exhibit K to Mr. Anderson's
7 first affidavit is a number of documents that are
8 exhibits to his OSC submissions, and one of those
9 is Exhibit 21 to the May 22nd, 2017 OSC submission,
10 and that is what is up on the screen now.

11 And this document is a transcript from
12 the Q2 2016 earnings call on August the 12th, 2016,
13 and there is some comments that are made by Mr.
14 Glassman during this call.

15 A. Is this -- because you have gone
16 so quickly, is this after the -- is this during
17 the question period or is this during the call? It
18 is just you went so fast, because there are two
19 parts to it.

20 835 Q. So the first part there is a
21 "Management Discussion Section"?

22 A. Yes.

23 836 Q. And that is what this is part of.

24 A. Okay, thank you.

25 837 Q. So Mr. Glassman made some

1 comments, and on the issue of yield enhancements he
2 made a number of comments and I will give you a
3 moment to take -- well, take a moment to maybe read
4 this.

5 A. [Witness reviews document.]
6 Okay.

7 838 Q. So on page 5 of this exhibit, Mr.
8 Glassman says about yield enhancements, he says:

9 "For the benefit of those who
10 are unfamiliar with yield
11 enhancements, they are required
12 under IFRS accounting rules and are
13 generally no-risk or low-risk
14 financial instruments we receive
15 when we make an accommodation to a
16 borrower."

17 Is that statement correct?

18 A. I am confused by why he says if it
19 is under IFRS accounting rules. It depends on what
20 the form of the investment is. In some cases
21 they'll be taken into account; in other cases, they
22 are not IFRS and they are unrealized. So I think
23 what he was talking about there was realized.

24 839 Q. And he goes on to say:

25 "Yield enhancements are

1 unequivocally and undeniably a
2 fundamental, ongoing, repeating part
3 of the business for a company such
4 as Callidus. It is therefore a key
5 part of normal operations, albeit
6 they can be lumpy."

7 A. Again, not knowing what all the
8 yield enhancements were in that period, were we to
9 receive let's say a fee of 1 percent for an
10 accommodation to a borrower, that is part of our
11 business. It is part of any lending business where
12 the borrower is asking for an accommodation,
13 whether it is Callidus or whether it is one of the
14 schedule 1 banks; if you ask for an accommodation,
15 you will be charged a fee.

16 840 Q. You will agree with Mr. Glassman's
17 comment here that yield enhancements are
18 unequivocally and undeniably a fundamental, ongoing
19 repeating part of the business and that it is a key
20 part of normal operations?

21 A. I thought I had answered that by
22 saying where you charge a fee that is let's say a
23 cash fee that is taken into income, that is for an
24 accommodation; that is part of the business of
25 lending, not just our business.

1 841 Q. I'll put it this way. That
2 statement is not inaccurate; is that fair?

3 A. That is fair.

4 842 Q. You mentioned a second ago that
5 there are some yield enhancements that are taken
6 into income?

7 A. Yes.

8 843 Q. So there is a difference between
9 yield enhancements that are recognized as income
10 and others that are unrecognized; is that fair?

11 A. Correct. Correct.

12 844 Q. And yield enhancements that are
13 recognized are included on Callidus's income
14 statement?

15 A. Correct.

16 845 Q. And they are subject to scrutiny
17 by the auditor?

18 A. Correct.

19 846 Q. And IFRS accounting rules?

20 A. Correct.

21 847 Q. And yield enhancements that are
22 not recognized are not in the financial statements?

23 A. That is correct.

24 848 Q. They are forward-looking,
25 non-IFRS; is that right?

1 A. Yes.

2 849 Q. And because they are not on the
3 financial statements, they are not subject to
4 scrutiny by the auditor; is that fair?

5 A. That is correct, because the
6 auditors do not review MD&A, which is where
7 unrealized yield enhancements are shown.

8 850 Q. Of the yield enhancements that
9 were reported or disclosed by Callidus, what
10 percentage would have been recognized versus
11 unrecognized?

12 A. I do not know.

13 851 Q. Is it fair to say that recognized
14 yield enhancements made a very small portion of
15 yield enhancements generally?

16 A. I would have to go back and look
17 at the particular period and see what were realized
18 and what were not realized.

19 852 Q. So I have got up on the screen,
20 this is Exhibit 4 to Mr. McFarlane's supplementary
21 affidavit that was in his reply record, and it is
22 Callidus's -- it is the MD&A from December 31st,
23 2018.

24 So, Mr. Riley, we are looking at page
25 17 of the MD&A, and there is a table and it appears

1 to indicate that recognized yield enhancements --
2 and it sets it out by quarter, but it indicates
3 that recognized yield enhancements were \$900,000
4 for Q4 2017, \$900,000 for Q3 2017, and 5.8 million
5 for Q1 2017; do you see that?

6 A. I do.

7 853 Q. And this seems to indicate that
8 there were no recognized yield enhancements in
9 2018?

10 A. That would be -- that is what I
11 would take from that. This is from the income
12 statement?

13 854 Q. It is. It is from -- well, it is
14 from the MD&A.

15 A. No, but, sorry, but this is
16 from -- yes, okay, I agree with my answer.

17 855 Q. So those amounts, would they be a
18 small proportion of the overall yield enhancements
19 if you take into account the recognized and
20 unrecognized?

21 A. Well, by definition there is no
22 recognized in that period.

23 856 Q. I guess that is my point, that
24 there would be unrecognized yield enhancements that
25 were reported during that period?

1 A. I'm sorry, could you ask -- sorry,
2 this is talking about recognized. The unrecognized
3 would be somewhere else in this MD&A, the
4 unrealized or unrecognized.

5 857 Q. Would it be in this one? This is
6 the MD&A for the year-ended December 31st, 2018.

7 A. It should be somewhere else, but
8 it would not show up in the financial -- this is
9 information I believe derived primarily from the
10 financial statements.

11 858 Q. By this time, hadn't Callidus
12 discontinued reporting its unrecognized yield
13 enhancements in its public disclosure?

14 A. I do not recall what date we
15 ceased doing that.

16 859 Q. Okay. Isn't it fair that or isn't
17 it true that at some point the OSC expressed
18 concerns about Callidus's reporting of unrecognized
19 yield enhancements in its continuous disclosure?

20 A. In summary, they -- well, you will
21 see if you look through the various MD&As that over
22 time we enhanced the amount of information
23 provided, so more risk factors, more explanations.
24 Eventually we came to the conclusion that we were
25 never going to be able to satisfy the OSC even

1 though we believed we were correctly disclosing,
2 and therefore, we ceased doing it because by that
3 time we were looking at going private in any event,
4 so it wasn't worth continuing the discussion with
5 the OSC as to how to disclose.

6 860 Q. And what was the OSC's concern?

7 A. It was really whether we had
8 complied with the rules as to whether we had
9 provided sufficient basis for the assessment, i.e.,
10 did we show enough information on assumptions, risk
11 factors, milestones.

12 861 Q. Is it a fair characterization that
13 the OSC was concerned that the reporting of
14 unrecognized yield enhancements might cause
15 confusion or might mislead investors?

16 A. No, I don't believe that is
17 correct.

18 862 Q. There was no concern that there
19 might be confusion created by your reporting of
20 unrecognized yield enhancements?

21 A. I don't believe that was correct.

22 863 Q. Then why would the OSC want you to
23 provide additional disclosure and --

24 A. Because --

25 864 Q. Sorry, go ahead.

1 A. No, sorry, finish your question, I
2 apologize.

3 865 Q. Well, additional disclosure and
4 explanation as it relates to your disclosure of
5 unrecognized yield enhancements, why would it want
6 more disclosure of the risk factors?

7 A. Their belief -- it is not just
8 risk factors, but the components of what gave rise
9 to it. I can't speak for the OSC, but I can just
10 say that in going back and forth, we were not able
11 to reach a level of disclosure that we felt was
12 going to be satisfactory to them.

13 It is not unusual in dealing with
14 securities regulators where there is a question of
15 how you disclose things. For example, when you do
16 a prospectus, it is the same phenomenon, i.e.,
17 there will be back and forth until you get to the
18 level of disclosure. But that, although we thought
19 it was important to the market, the OSC did not,
20 did not have that same view, I suppose. But I
21 can't speak for them.

22 866 Q. Well, did the OSC express its
23 concerns to Callidus in correspondence?

24 MR. MOORE: Well, we have raised the
25 issue of privilege with respect to certain

1 documentation, so I don't want to cross into that
2 area.

3 MR. LUNG: Well, he has already given
4 evidence on the discussions between Callidus and
5 the OSC, so I don't understand how that would be
6 privileged.

7 MR. MOORE: Well, he has given his
8 understanding in a summary way as to his
9 conclusions, and he has indicated that he has not
10 spoken to or he is not speaking for the OSC. So
11 let's not cross over any lines that we anticipate
12 that will be or may be the subject of some of those
13 upcoming privilege motions.

14 MR. LUNG: Can you please identify that
15 line for me?

16 MR. MOORE: Sorry?

17 MR. LUNG: Can you identify that line
18 for me?

19 R/F MR. MOORE: Yes, I am identifying it
20 now. I think questions about documents, which
21 seems to be where you are headed, is over that line
22 because they have been designated as privileged
23 documents in our Schedule B.

24 And so I am saying you are at that line
25 right now, and so I would instruct the witness not

1 to answer questions about those documents.

2 MR. LUNG: We are talking about
3 documents between Callidus and a third party.

4 MR. MOORE: You are talking about the
5 OSC documents that are listed in Schedule B to our
6 affidavit of documents and --

7 MR. LUNG: But they --

8 MR. MOORE: That is what I perceive
9 your question to be getting to.

10 MR. LUNG: But they are communications
11 between Callidus and the OSC.

12 MR. MOORE: That's right.

13 MR. LUNG: And privilege is being
14 asserted over that; is that what I understand?

15 MR. MOORE: Well, that is what the
16 Schedule B reveals.

17 MR. LUNG: Can you explain what
18 privilege is being asserted?

19 MR. MOORE: I am not going to get into
20 a debate about privilege when --

21 MR. LUNG: I don't want a debate. I
22 just want you to tell me what the privilege is,
23 because right now I don't see any privilege at all
24 and you have got a -- you have a witness who has
25 testified to these discussions. He has deposed in

1 his affidavit the interactions that lead to the
2 notations on the re-filings and errors list. I am
3 trying to understand where the privilege is.

4 MR. MOORE: This cross-examination is
5 not about privilege debates or disputes or grounds
6 or issues. That can be dealt with on the motions,
7 if anyone ever brings a motion, but not now. We
8 can agree to disagree about that, but that is the
9 position.

10 BY MR. LUNG:

11 867 Q. I apologize. My computer is
12 working a little slower right now than normal.

13 So, Mr. Riley, I am bringing up on
14 screen, this is the Schedule B from your affidavit
15 of documents. It is a supplemental Schedule B.
16 And listed in this document appears to be a lot of
17 communication with the OSC; is that correct?

18 MR. MOORE: It speaks for itself.

19 BY MR. LUNG:

20 868 Q. Well, that is what is on the
21 document?

22 R/F MR. MOORE: I am not going to debate
23 about what is on the Schedule B to this
24 cross-examination on a SLAPP motion. And as I
25 said, you can disagree with that position. We can

1 agree to disagree, and the place to deal with that,
2 as far as we are concerned, is if and when someone
3 brings a motion about this assertion of privilege,
4 not on a SLAPP cross-examination.

5 So you don't have to put all your
6 questions, and I am not prepared to engage in a
7 debate about this on this SLAPP cross-examination.

8 MR. LUNG: Well, I would like to mark
9 this as Exhibit 1 on this cross-examination, so
10 this is the Supplemental Schedule B of the
11 Plaintiffs.

12 [Court reporter intervenes for
13 clarification.]

14 So we'll do this as number 3.

15 EXHIBIT NO. 3: Supplemental Schedule B
16 of the Plaintiffs.

17 BY MR. LUNG:

18 869 Q. Mr. Moore, just to be clear, I
19 would like an undertaking for the production of any
20 correspondence with the OSC relating to the matters
21 that are listed on the re-filings and errors list
22 that appears as Exhibit G to Mr. Anderson's second
23 affidavit?

24 R/F MR. MOORE: We'll take that as a
25 refusal or I'll refuse. I'll take it under

1 advisement, which you can take for a refusal.

2 MR. LUNG: So you are refusing, aren't
3 you?

4 MR. MOORE: Yes.

5 BY MR. LUNG:

6 870 Q. Okay. Mr. Riley, has there ever
7 been a -- has Callidus ever been the subject of an
8 investigation order under section 11 of the
9 Securities Act?

10 R/F MR. MOORE: Don't answer that question.
11 You know full well, and don't read anything into my
12 objection one way or the other, but you know full
13 well that --

14 MR. LUNG: He can answer that. Why
15 can't he answer that?

16 MR. MOORE: Let me finish, please,
17 okay. I am not interrupting you. You have put
18 your question and I am responding.

19 I practice, and whether it be this case
20 or any other case, where any counsel raises
21 questions about any OSC investigations, but
22 typically on ones like you have just asked, is to
23 treat that and take the position that that is a
24 totally improper question. It has got nothing to
25 do with this specific case. It has got to do with

1 the prohibitions under the Securities Act that make
2 that whole subject matter completely out of bounds.

3 And so we can agree to disagree about
4 that too. Don't answer the question. It is an
5 improper question.

6 BY MR. LUNG:

7 871 Q. Has the OSC made any inquiries
8 with Callidus or Catalyst about any of the issues
9 raised in Mr. Anderson's whistleblower report?

10 R/F MR. MOORE: Don't answer the question.

11 BY MR. LUNG:

12 872 Q. If any inquiries were made, when
13 were they made?

14 R/F MR. MOORE: Don't answer the question.
15 You don't have to put all your questions.

16 BY MR. LUNG:

17 873 Q. Has the SEC made inquiries with
18 Catalyst or Callidus about any of the issues raised
19 in Mr. Anderson's whistleblower report?

20 MR. MOORE: Don't answer the question.
21 We claim privilege over the SEC case, and it is
22 evident to me you are trying to go down that same
23 road.

24 MR. LUNG: What is the nature of the
25 privilege that is being claimed?

1 THE COURT REPORTER: I'm sorry --

2 MR. MOORE: I'll repeat what I said
3 about your inquiry in relation to the OSC
4 documents. The same applies to the SEC documents.
5 If anyone wants to bring a motion about the
6 privilege being asserted, they can do so, and that
7 will be the time and place to deal with it.

8 [Court Reporter intervenes for
9 clarification.]

10 R/F MR. MOORE: What I was saying just now
11 in case didn't get it was that that question was in
12 effect the same type of question that you were
13 asking with respect to the OSC documents.
14 Privilege has been claimed over the SEC documents.

15 I am not going to get into a debate
16 about that or an argument about that or a
17 discussion about that on this cross-examination.
18 If and when anyone brings a motion with respect to
19 the SEC claim of privilege, as I indicated to Mr.
20 Milne-Smith earlier, those motions presumably could
21 be heard on December 15th or 16th and that it is in
22 the context of such motions, if they are ever
23 brought, that these kinds of issues and questions
24 can be raised, but not today.

25 BY MR. LUNG:

1 874 Q. Mr. Riley, are you aware of or are
2 you familiar with an action that was commenced by a
3 person named Craig Boyer against Callidus?

4 A. Yes, I am.

5 875 Q. And who was Mr. Boyer?

6 A. He was I believe a Vice President
7 and he was essentially our chief credit officer at
8 the time, but I don't think he had that title. I
9 think he was just Vice President.

10 876 Q. At some point he either quit or
11 was fired?

12 A. That is the subject matter of that
13 dispute whether he was constructively dismissed or
14 whether he quit.

15 877 Q. I am going to bring the pleadings
16 from that action up on the screen, and this is
17 Exhibit 61 to Mr. Boland's first affidavit. And,
18 Mr. Riley, do you recall that there was a
19 counterclaim that was asserted in that action?

20 A. Yes.

21 878 Q. And did you participate in the
22 preparation of the Defence and Counterclaim for the
23 action?

24 R/F MR. MOORE: Don't answer that question.

25 BY MR. LUNG:

1 879 Q. Have you read the Statement of
2 Defence and Counterclaim?

3 A. I have, at some point, not
4 recently.

5 880 Q. There were allegations in the
6 Statement of Defence and Counterclaim that
7 Mr. Boyer during his time at Callidus committed
8 fraud; do you recall that?

9 MR. MOORE: Well, you better bring that
10 up on the screen.

11 BY MR. LUNG:

12 881 Q. I'll get the page reference here.
13 Just give me a moment.

14 Okay, here we go. This is paragraph 11
15 of Callidus's pleading, if you want to take a
16 moment to read that.

17 A. Just are you looking at 11? Is
18 that what you are looking at, Mr. Lung?

19 882 Q. Yes, I am, and the subparagraphs,
20 Mr. Riley.

21 MR. DEARDEN: Is this the Statement of
22 Defence and Counterclaim, Mr. Lung?

23 BY MR. LUNG:

24 883 Q. That's right, this is Callidus's
25 Statement of Defence and Counterclaim.

1 A. [Witness reviews document.]

2 Yes, which I think, if we scroll down,
3 I think we characterize these as breach of his
4 fiduciary duty.

5 884 Q. Is it fair to say that what the
6 pleading says is that Mr. Boyer, in his capacity as
7 an officer of Callidus, was committing the acts
8 that were described in the pleading?

9 A. That he was in breach of his
10 fiduciary duty, yes.

11 885 Q. And you can confirm the facts that
12 were set out in that paragraph 11, that those are
13 true?

14 A. They are allegations.

15 886 Q. Callidus wouldn't put false
16 allegations in a pleading, would it?

17 A. No, but we made those allegations
18 believing them to be true, but they haven't been
19 proven in a court yet.

20 887 Q. Okay. I am just going to scroll
21 down and take us to Mr. Boyer's Reply and Defence
22 to Counterclaim.

23 A. What is the date of his reply,
24 please?

25 888 Q. I'll give that to you.

1 MR. DEARDEN: March 10, 2017.

2 BY MR. LUNG:

3 889 Q. March 10, 2017.

4 A. And when did the continuous
5 disclosure review start, can you recall?

6 890 Q. If you could tell me, that would
7 be good. When did the continuous disclosure review
8 start?

9 MR. MOORE: Well, without prejudice to
10 our position on privilege, I think it is probably
11 evident from Schedule B, but in any event --

12 BY MR. LUNG:

13 891 Q. Well, it is actually in Mr.
14 Riley's affidavit.

15 A. Yes, and I just can't remember the
16 date. I don't -- I can take time to go to that
17 part of my affidavit, but do you recall what the
18 date was?

19 892 Q. I am not sure you specified a date
20 when it began. You just said that the company was
21 subject to that review.

22 U/T MR. MOORE: We'll undertake to let you
23 know.

24 THE DEPONENT: Yes, again -- yes,
25 anyways, please.

1 BY MR. LUNG:

2 893 Q. And in Mr. Boyer's Reply and
3 Defence to Counterclaim at paragraph 20(c)
4 Mr. Boyer pleads:

5 "The counterclaim is raised for
6 ulterior purposes. Callidus is
7 subject to multiple complaints and
8 regulatory investigations with
9 respect to its material
10 non-disclosure to fund members and
11 the public as to the status, and
12 transfer, of its various
13 investments."

14 Do you see that?

15 A. I do.

16 894 Q. Is that correct? Is it correct
17 that Callidus at the time was subject to multiple
18 complaints and regulatory investigations?

19 R/F MR. MOORE: We are not going to comment
20 on his pleading any further.

21 MR. LUNG: Is that a refusal?

22 MR. MOORE: Yes, it is.

23 BY MR. LUNG:

24 895 Q. At the time of this pleading,
25 which was March 10, 2017 -- and just to situate

1 this in the chronology, this would have been a
2 couple of months before Mr. Anderson delivered his
3 report to the OSC. At the time of this pleading,
4 was Callidus the subject of complaints and
5 regulatory investigations in relation to the
6 matters that were raised in Mr. Anderson's report?

7 R/F MR. DEARDEN: We are objecting.

8 MR. LUNG: And what is the basis for
9 the objection? You just don't want to answer any
10 questions about the OSC?

11 MR. DEARDEN: Whatever Mr. Moore put on
12 the record before applies to what you just asked.
13 And the reason I am objecting is because he was
14 talking to Mr. Na out of turn and didn't hear your
15 question. So we are objecting, Mr. Lung.

16 MR. LUNG: Sorry, he didn't hear my
17 question?

18 MR. DEARDEN: Mr. Moore didn't hear
19 your question because he was having a side
20 conversation with Mr. Na. That is why I jumped in.

21 MR. LUNG: You are simply saying that
22 Mr. Moore would have objected instead of you?

23 MR. DEARDEN: Correct.

24 MR. LUNG: I understand.

25 MR. MOORE: I'm sorry, there is just

1 something about that I find funny.

2 BY MR. LUNG:

3 896 Q. Is it fair to say that by the time
4 of the Wall Street Journal article in August 2017,
5 Callidus's share price had been falling for some
6 time?

7 A. Yes, it had declined over that
8 year.

9 897 Q. And that decline obviously had
10 nothing to do with Mr. Anderson?

11 A. Well, I don't know one way or the
12 other.

13 898 Q. Well, do you know what the decline
14 was attributable to?

15 A. Yeah, when I say I don't know one
16 way or the other, I don't know what activities
17 Mr. Anderson and the other conspirators might have
18 been engaged in at the time that was affecting the
19 stock price. I don't know. Certainly our earnings
20 had declined in that period or we had losses in
21 that period.

22 899 Q. The decline had nothing to do with
23 the Wall Street Journal article obviously because
24 it hadn't been published yet?

25 A. I don't know what activities the

1 conspirators were undertaking during the relevant
2 time period.

3 900 Q. Well, the decline was attributable
4 to the company's business performance; is that
5 fair?

6 A. In part, but I also believe it
7 might have been affected by activities in the
8 marketplace.

9 901 Q. And what types of activities are
10 those?

11 A. Well, the various rumours that
12 were being provided, the Twitter traffic. I don't
13 know what was being said by various parties to
14 various people. That is yet to be fully disclosed.

15 902 Q. So there were rumours, but you
16 have identified some rumours and those rumours were
17 you said by Twitter?

18 A. Yes.

19 903 Q. And those are --

20 A. Those are in my affidavit.

21 904 Q. And those are rumours that
22 occurred prior to the Wall Street Journal article?

23 A. Yes.

24 905 Q. And were those rumours being
25 published in any other format other than Twitter?

1 A. I don't know. I don't know how
2 other -- how else those were being communicated to
3 the market.

4 906 Q. But those rumours were already in
5 the public; is that fair?

6 A. Well, they were rumours that,
7 among other things, alleged fraud.

8 907 Q. And those allegations were not
9 allegations that were made by Mr. Anderson?

10 A. I don't know.

11 908 Q. Well, you have identified some
12 Twitter traffic. None of that Twitter traffic is
13 from Mr. Anderson; is that fair?

14 MR. MOORE: Well, part of the problem
15 is that we don't know who all the authors were of
16 the various tweets and Twitter traffic and --

17 MR. LUNG: Well, let's put it to --

18 MR. MOORE: Just let me finish.

19 MR. LUNG: Fair enough.

20 MR. MOORE: But again, just to put this
21 in context, what we do know with absolute certainty
22 is that whatever circulation those tweets and
23 Tweets had, they in no way, shape or form came
24 close to matching the circulation and widespread
25 exposure that occurred when the article was

1 published by Dow Jones on August 9th, 2017.

2 BY MR. LUNG:

3 909 Q. Well, thank you for that. But
4 there was -- those types of allegations were
5 already in the market; is that fair, Mr. Riley?

6 A. Yes.

7 910 Q. And they had been in the public
8 for some time?

9 A. The actual time frame, I would
10 have to go back to the tweets and identify what
11 time period.

12 911 Q. There was also a decline in
13 revenues; is that fair?

14 A. There were losses in that period,
15 I believe.

16 912 Q. And I understand that in 2016
17 Callidus signed no new loans; does that sound
18 right?

19 A. Yes, 2016, because we were -- and
20 this was announced, that we were slowing down the
21 loan book because we wanted to go back through and
22 make sure that there were no further issues
23 relating to Boyer's conduct.

24 913 Q. Because Boyer's conduct had an
25 impact on the business?

1 A. He -- yes, yes, it did. It had an
2 adverse impact.

3 914 Q. Did it have an impact beyond XTG
4 and Horizontal Well Drillers?

5 A. It also had an impact on Gray
6 Aqua, which was an aqua-culture operation on the
7 East Coast.

8 915 Q. Was it only those three
9 portfolios, XTG, Horizontal Well Drillers and Gray
10 Aqua?

11 A. He was the Chief Credit Officer at
12 the time. I would have to go back and see if there
13 was any others, but those are the ones that we
14 think were the most important.

15 916 Q. So Callidus essentially wound down
16 its business for a year while they investigated
17 Mr. --

18 A. Well, we didn't wind down the
19 business. We didn't advance new loans --

20 917 Q. Fair enough. So Callidus slowed
21 down new business generation --

22 A. Correct.

23 918 Q. -- during 2016 while it was
24 investigating Boyer's conduct while he was an
25 employee of the company?

1 A. Yes.

2 919 Q. And that continued into 2017?

3 A. Well, by 2017 I think we had
4 re-started lending.

5 920 Q. But there was only one loan I
6 think that was signed for the first half of 2017?

7 A. Is that -- have I put that in my
8 affidavit? Where does that appear? It sounds
9 correct, but I don't remember.

10 921 Q. It is in your affidavit. I won't
11 take you there because it is already in there,
12 but --

13 A. Okay, that is fine. Then could I
14 ask you, if it is already in my affidavit, it would
15 be best if you could point me to it if you want me
16 to agree to it again.

17 922 Q. I'll do that.

18 A. Thanks.

19 923 Q. The Wall Street Journal article
20 was published on August 9th, 2017 online?

21 A. Yes.

22 924 Q. And there was a movement of the
23 share price that afternoon?

24 A. Yes.

25 925 Q. And then on the following day

1 there was a press release from Callidus on its
2 second quarter results?

3 A. After the close of markets.

4 926 Q. But there was a press release?

5 A. Yes, after the close of markets.

6 That is important, because there was no new
7 corporate information in the marketplace other than
8 the Wall Street Journal article and our press
9 release that Callidus issued in a statement that we
10 issued on Catalyst.

11 927 Q. That statement was in the press
12 release, isn't that right?

13 A. Which statement?

14 928 Q. You said that Callidus issued a
15 statement?

16 A. Let me clarify.

17 929 Q. Sure.

18 A. Because I perhaps haven't said it
19 clearly. Callidus issued a press release in
20 response to the Wall Street Journal article, and I
21 think that is in my affidavit.

22 Catalyst also issued a statement to its
23 limited partners. That is also in my affidavit,
24 and I think it is in the libel affidavit.

25 Then on the 10th, after the close of

1 markets, we issued the financial results for
2 whatever quarter that was, the June -- yeah,
3 Callidus.

4 930 Q. I am going just going to bring
5 up --

6 A. Pardon me?

7 931 Q. Sorry, you were saying?

8 A. Callidus's financial results.

9 932 Q. Okay, I am just going to bring up
10 your libel affidavit.

11 MR. DEARDEN: Sorry, Mr. Lung, I am
12 just looking at the realtime transcript, and Mr.
13 Riley, were you saying the Catalyst Funds'
14 financial results or Callidus?

15 THE DEPONENT: Callidus.

16 MR. DEARDEN: So if we could make a
17 correction there, Deana.

18 BY MR. LUNG:

19 933 Q. I'm sorry, I apologize, I thought
20 I said Callidus.

21 A. I think you did, but I try to use
22 the words "funds" when I am talking about the
23 Catalyst family, and Callidus when I am talking
24 about Callidus.

25 934 Q. Okay.

1 A. Only because over time, when you
2 say the names, you'll start to confuse them. It
3 just happens to everybody.

4 [Court Reporter clarifies off the
5 record.]

6 BY MR. LUNG:

7 935 Q. So I am going to bring up Exhibit
8 236 from your conspiracy affidavit, and this is the
9 press release that was released on August 10, 2017,
10 and I have got the first page there. Do you
11 recognize that?

12 A. Yes, it appears to be. If it is
13 from my affidavit, I recognize it.

14 936 Q. And the report was not a
15 favourable one; is that fair to say?

16 A. Yes, these were not good results.

17 937 Q. There was a report of a loss, and
18 in particular a loss of 51 cents a share; do you
19 recall that?

20 A. Yes.

21 938 Q. And there was an expectation that
22 that type of news would have an impact on
23 Callidus's share price; is that fair?

24 A. It would have some impact, but
25 this is information that is in part of the mix that

1 is informed by the Wall Street Journal article at
2 this time.

3 939 Q. This press release also included a
4 refutation of the allegations in the Wall Street
5 Journal article; do you recall that?

6 A. Well, could you take it to me,
7 please -- take me to it, please.

8 940 Q. I am trying to find it. Here we
9 go. It is on page 4 of the Exhibit.

10 A. May I read it?

11 941 Q. Yes.

12 A. [Witness reviews document.]

13 Okay, I have read it.

14 942 Q. And in the statement Callidus
15 says, and this is a quote:

16 "The Company knows of no
17 legitimate basis for any
18 whistleblower complaint."

19 A. Yes.

20 943 Q. Had Callidus been the subject of a
21 whistleblower complaint before?

22 A. No -- well, not that we know of.

23 944 Q. Okay. So I am going to bring up
24 your libel affidavit, and I am going to take you to
25 paragraph 86. And you mentioned a few minutes ago

1 that a communication was sent out to Catalyst's
2 limited partners?

3 A. Yes.

4 945 Q. And at paragraph 86 you have
5 reproduced it. You have reproduced the text, and
6 it appears that it was sent out an August 9, 2017,
7 in the evening; does that sound right?

8 A. Yes.

9 946 Q. And you have reproduced the whole
10 text in your affidavit, and in the second-last
11 paragraph you state, and this is the second
12 sentence of the second-last paragraph:

13 "We have already met with
14 government authorities in light of
15 what is clearly a misuse and abuse
16 of their whistleblower program and
17 are currently reviewing the legal
18 remedies available to us."

19 So this was sent on the evening of
20 August 9th, a few hours after the Wall Street
21 Journal article went online. Had you already met
22 with government authorities to discuss misuse of
23 and abuse of their whistleblower programs at that
24 point?

25 A. We had met with the Integrated

1 Market Enforcement Team of the RCMP because it had
2 been alleged by Reuters in an earlier iteration of
3 what eventually ran in the Wall Street Journal that
4 we were under investigation. We met with IMET.
5 Without wanting to complicate things, the people we
6 met with are IMETs but they are also part of the
7 Joint Serious Offences Task Force, JSOT, and we
8 asked them whether we were under investigation and
9 they said no, you are not. And that was in
10 response to the allegation that had been made by
11 Reuters.

12 947 Q. But you had a conversation with
13 them about their whistleblower program?

14 A. It was in the context of the
15 potential that the whistleblower program was being
16 used to affect -- because we had been informed by
17 Reuters that there were at least two
18 whistleblowers, which I think they identified as
19 Mr. Baumann and Mr. McFarlane.

20 948 Q. And that was a report that was
21 sent out prior to the Wall Street Journal report?

22 A. No, those were questions raised by
23 Reuters in the course of preparing an article that
24 was essentially the same article but was run by the
25 Wall Street Journal. Reuters was attempting to

1 write the same -- a similar article and apparently
2 informed by the same people.

3 949 Q. So after August 10th, the share
4 price continued to fall; is that fair to say?

5 A. Without reviewing -- did I state
6 in my affidavit somewhere that it continued to
7 fall?

8 950 Q. Well, you have put in some TSX
9 data that shows that it keeps going down.
10 Eventually, by the time that you get to the
11 privatization, the share price is under a dollar;
12 is that fair to say?

13 A. That is correct. That is correct,
14 75 cents, I think so.

15 951 Q. 75 cents, that's right.

16 A. I think that is correct.

17 952 Q. And at that point the company goes
18 private?

19 A. Yes.

20 953 Q. And were you involved in the
21 privatization process?

22 A. In the early stages, yes, but for
23 a variety of family reasons I was not participating
24 in the latter part of it. The other is -- the
25 privatization was primarily run by the Independent

1 Committee.

2 954 Q. And the Chair of the Independent
3 Committee was David Sutin?

4 A. Sutin.

5 955 Q. David Sutin, sorry. It is
6 S-u-t-i-n, right?

7 A. Yes.

8 956 Q. Now, the fall in share price
9 between August 2017 and the fall of 2019, is it
10 fair to say that that was attributable to problems
11 in Callidus's business?

12 A. I think the biggest effect at that
13 time was the allegation that we were -- that we
14 acted fraudulently or were fraudsters, whatever you
15 want to say. It made it very difficult to get
16 people to borrow from us.

17 957 Q. I am just going to bring up
18 another document here. So I am going to bring up
19 Exhibit M to Mr. Anderson's supplementary
20 affidavit, and this is an affidavit sworn by David
21 Sutin on September 12th, 2019, in support of an
22 application for a Plan of Arrangement and this is
23 part of the privatization process. Do you remember
24 this affidavit and this proceeding?

25 A. As I mentioned to you, I was not

1 involved at this stage. I was in Australia because
2 of family reasons.

3 958 Q. So Mr. Sutin was an independent
4 director and he was a Chair of the Special
5 Committee of Independent Directors; is that right?

6 A. Yes, yes, that is correct.

7 959 Q. And I am just going to take us to
8 paragraph 15, and I am going to read this, what Mr.
9 Sutin deposes:

10 "The Arrangement has resulted
11 from negotiation of a transaction by
12 the Special Committee, CCGI", which
13 is Catalyst Capital, "and Braslyn
14 following a lengthy process to
15 solicit privatization proposals for
16 Callidus commenced in September
17 2016."

18 And he goes on to say:

19 "The length of time over which
20 the Privatization Process and
21 negotiation of the Arrangement were
22 conducted, and the inability to
23 develop interest of third parties in
24 addition to Braslyn in a
25 privatization or other transaction,

1 were the result of a number of
2 factors, including the following:"
3 And he lists off a number of factors.
4 So the first factor that he raises in
5 subparagraph (a)(i) he says --

6 A. Sorry, could you please make it
7 larger?

8 960 Q. Sure, I can do that. I'm sorry.

9 A. Thank you.

10 961 Q. Mr. Sutin says:

11 "On a quarter-by-quarter basis
12 beginning with the quarter ended
13 September 30, 2016, ongoing
14 operating losses and negative cash
15 flows from operations resulting from
16 non-performing loans made by
17 Callidus and quarterly increases in
18 its loan loss provisions."

19 And he says that that impacted the
20 operating and financial performance of Catalyst.
21 Is that correct, that statement?

22 A. Yeah, as I recall -- that is
23 correct in the sense that Mr. Sutin said it.
24 However, as I recall, there is a subsequent
25 affidavit when the going-private was approved, and

1 this affidavit was prepared by counsel that were
2 not involved in the litigation surrounding the Wolf
3 Pack conspiracy action.

4 So that is not something they were
5 involved in, and I think that this affidavit is
6 then -- there are additional factors that are
7 addressed relating to the adverse effect of the
8 fraud allegation.

9 So this relates to, as I call it, the
10 historical book of Callidus. The issue is the
11 inability to grow further loans because nobody
12 wanted to borrow from a fraudster, an alleged
13 fraudster.

14 962 Q. Sorry, that is what it says here?

15 A. No, no, I am giving you the
16 context of Sutin is talking about the historical
17 book. We need to look at his other affidavit
18 for -- which was reviewed by lawyers familiar with
19 the Wolf Pack litigation.

20 963 Q. Okay, I don't see any other
21 affidavit. This affidavit that is before us
22 identifies this as a problem that is having an
23 impact on the operating financial performance of
24 Catalyst --

25 A. There is no -- sorry, okay, I

1 apologize, I have just been corrected. It was in
2 the circular that those statements were made, and
3 that circular, this was in back -- this was part
4 of -- there was a -- sorry, I am getting confused
5 between the draft circular and the final circular,
6 not just the affidavit.

7 964 Q. Okay, Mr. Riley, this was -- this
8 affidavit was filed in support of an application to
9 complete the privatization, right?

10 A. An application to hold a meeting.

11 965 Q. An application to hold a meeting,
12 fair enough. And Mr. Sutin, who is an independent
13 director and the Chair of the Committee of
14 Independent Directors on the Board of Callidus, he
15 is identifying a number of factors that had an
16 impact on the operating financial performance of
17 Callidus.

18 And so the first question I have is,
19 the first factor that he has identified, which is
20 on a quarter-by-quarter basis, from September 30,
21 2016 onwards, there were operating losses and
22 negative cash flows resulting from non-performing
23 loans?

24 A. Yes.

25 966 Q. So that was a factor, and that is

1 correct; isn't that right?

2 A. Yes, sorry, and I am not trying to
3 be argumentative. I am just saying that you have
4 to look -- that is the affidavit that he filed with
5 the court. The more meaningful document is the
6 final circular that was -- on the basis on which
7 the proxies were solicited for the going private.
8 That is the relevant document. I think what he
9 chose to say there wasn't necessarily reviewed by
10 people familiar with the Wolf Pack litigation and
11 the effect of that on the ongoing business.

12 967 Q. But as a member of the Board of
13 Directors of Callidus, he would be aware of the
14 reasons for the decline in performance; is that
15 fair?

16 A. Yes.

17 968 Q. And all of the reasons for that
18 decline of performance would have been provided to
19 him; is that fair?

20 A. Sorry? I didn't hear --

21 969 Q. He would have been fully briefed
22 on all of the reasons for the decline in
23 performance; isn't that fair?

24 A. Not necessarily.

25 970 Q. So there is a possibility that a

1 director of the Board would not have been briefed
2 on what you say is the most important factor
3 relating to the declining performance of this
4 company?

5 A. The directors were aware of the
6 Wolf Pack litigation, but --

7 971 Q. They may have been aware of the --
8 sorry, go ahead.

9 A. Sorry, they were aware of the Wolf
10 Pack litigation.

11 972 Q. So Mr. Sutin was aware and he
12 prepared this affidavit setting out what he and
13 presumably other members of the committee believed
14 were the factors that impacted the financial
15 performance, and one of those factors was operating
16 losses and negative cash flows from September 30th,
17 2016 onwards; and I think you would agree that that
18 was one of the factors that impacted the
19 performance of --

20 A. Yeah, it is a factor, yes.

21 973 Q. And another factor he identifies
22 is it says "negative operating performance of, and
23 the extent of the capital required by, a number of
24 the non-core subsidiaries", so it is fair that that
25 was a factor as well?

1 A. Yes, I just don't know what the
2 non-core subsidiaries are.

3 974 Q. I was going to ask you that, so --

4 A. I don't know. I don't know what
5 Mr. Sutin meant by that.

6 975 Q. Is it possible that by "non-core
7 subsidiaries" he meant companies that had been
8 acquired by Callidus, perhaps companies that were
9 in default that had been acquired by Callidus; is
10 that possibly what he meant?

11 A. I don't know what he -- I'll say
12 it again, I don't know what he meant by "non-core
13 subsidiaries" because I don't know what "core
14 subsidiaries" meant in those terms.

15 976 Q. He identifies a number of other
16 factors, two other factors, or three, I guess:

17 "Deterioration in the financial
18 condition of Callidus, leading to an
19 inability to obtain additional
20 financing to invest in Callidus'
21 existing business and to pursue new
22 loan origination."

23 A. I believe that Callidus was still
24 financeable if it had new loans.

25 977 Q. So you would disagree with

1 Mr. Sutin's observation here?

2 A. Yes, I would.

3 978 Q. Well, the company obviously
4 endorsed this affidavit when it was filed; is that
5 fair to say?

6 A. Well, the Independent Committee
7 did.

8 979 Q. Item number (iv):

9 "A number of senior personnel
10 issues [...]"

11 And it talks about a number of people
12 who left, including it looks like Mr. Glassman had
13 a medical leave.

14 A. Yes.

15 980 Q. And the resignation of Callidus's
16 Interim Chief Executive Officer, Patrick Dalton?

17 A. Patrick has returned and is the
18 Chief Executive Officer of Callidus and of
19 FrontWell Partners, FrontWell Capital Partners.

20 981 Q. Mr. Dalton was only with the
21 company for a short time during that period; is
22 that fair?

23 A. Yes, yes.

24 982 Q. I think it was just a few months?

25 A. I would have to go back and look

1 at the sequence of events.

2 983 Q. Mr. Sutin goes on to say another
3 factor that he identifies is:

4 "Increasing inability to retain
5 personnel despite retention
6 programs."

7 A. Yes.

8 984 Q. Is it fair to say that he doesn't
9 identify any sort of short attack as a factor?

10 A. Well, it looks to me like there is
11 a careful balance between what he wanted to say and
12 what was later reflected in the final circular.

13 985 Q. Well, I am saying in this
14 affidavit that he doesn't seem to mention anything
15 about a short attack; is that fair?

16 A. In the affidavit, but as I say, in
17 the materials that went out, which is the relevant
18 materials, in my view, because those are the ones
19 that informed the securities markets.

20 986 Q. Well, I am just looking at -- you
21 know, Mr. Riley, I am just looking at an affidavit
22 that was sworn, and Mr. Sutin is explaining to the
23 court the reasons for the decline of Callidus and I
24 am sure he is not trying to be misleading by
25 leaving out significant factors; is that fair to

1 say?

2 A. I think that this -- could you go
3 back up to the top?

4 987 Q. Are you saying that this was --

5 A. This is not exhaustive. This is
6 not an exhaustive list of what the effects were
7 including.

8 988 Q. Well, but you would expect that
9 the most important factor, the most important
10 factors would be included on this list, wouldn't
11 you?

12 A. But whoever prepared this
13 affidavit, I can tell you it was not someone
14 involved with the Wolf Pack litigation. So whoever
15 prepared the affidavit, and it was not Mr. Sutin,
16 it would have been counsel.

17 989 Q. Why did Mr. Dalton resign?

18 A. I actually can't recall.

19 990 Q. So I am going to bring up on the
20 screen Callidus's MD&A of December 31st, 2018.

21 A. Sorry, what date again?

22 991 Q. December 31st, 2018, and this is
23 Exhibit 4.

24 A. Exhibit 4 in your document brief?

25 992 Q. No, I am just finding that. Give

1 me a moment, please. It is Exhibit 4 to
2 Mr. McFarlane's second affidavit. I am just going
3 to take us to page 8, and there is a highlighted
4 bullet point and it says:

5 "In November 2018, Patrick
6 Dalton joined as a consultant and as
7 Interim Chief Executive Officer.
8 Subsequent to the year-end, in March
9 2019, after completing his initial
10 assessment, Mr. Dalton resigned from
11 the Company as a consultant and as
12 Interim Chief Executive Officer.
13 Patrick greatly assisted the Company
14 by completing and delivering to the
15 Board a Strategic Review &
16 Remediation Plan. That Plan will
17 help the Company in setting its
18 future direction and the Board
19 wishes to thank Patrick for his
20 contribution."

21 Are you familiar with the Strategic
22 Review and Remediation Plan that is referred to in
23 this paragraph?

24 MR. MOORE: Well, that is one of the
25 documents over which privilege is claimed. So

1 answer that question, and we'll see how far you can
2 go with it.

3 THE DEPONENT: I am familiar with the
4 plan.

5 BY MR. LUNG:

6 993 Q. And what was the plan about? What
7 was the subject matter of the plan?

8 A. It was a review and remediation
9 plan as to how to proceed forward with Callidus
10 post-privatization, as I recall.

11 994 Q. Was Mr. Dalton asked to review the
12 current status of the company, identify weaknesses
13 and issues within the company and recommend a
14 strategy going forward?

15 MR. MOORE: Don't answer that question.

16 MR. LUNG: Well, why not?

17 MR. MOORE: Well, you are indirectly
18 trying to get into the contents of that document.
19 This doesn't --

20 MR. LUNG: Well, I --

21 MR. MOORE: -- the question to be
22 targeted.

23 MR. LUNG: Well, what part of that
24 question touches on privilege, anything that might
25 be privileged?

1 MR. MOORE: Well, are you not asking
2 indirectly for the content of that remediation
3 plan?

4 MR. LUNG: I am asking for Mr. Dalton's
5 mandate.

6 MR. MOORE: If you know what the
7 mandate was, if you know. Don't guess, but if you
8 know.

9 THE DEPONENT: I would have to go back
10 and look at his consulting agreement.

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

13 THE DEPONENT: But as I mentioned
14 earlier, Patrick is now the CEO of both Callidus
15 and the new FrontWell Partners or -- yeah,
16 FrontWell Capital Partners.

17 MR. LUNG: Mr. Moore, I didn't know
18 that any privilege was being asserted over this
19 document which appears to be some report to the
20 Board. Can you explain what privilege is being
21 asserted?

22 MR. MOORE: It is in Schedule B. I am
23 not going to engage in a debate about that, as I
24 said earlier, and that is not the issue for the
25 purpose of these cross-examinations on a SLAPP

1 motion. It is identified in Schedule B, and if
2 this is going to be the subject of a motion, it can
3 be dealt with by Justice McEwen in December.

4 MR. LUNG: I'm really sorry, Mr. Riley,
5 but it looks like you are probably going to have to
6 be re-examined sometime around Christmas time.

7 MR. MOORE: Well, we'll see if anyone
8 brings a motion, and if anyone does, we'll see what
9 the outcome is.

10 MR. LUNG: Well, we are certainly going
11 to move on these refusals.

12 MR. MOORE: Sorry?

13 MR. LUNG: We are certainly going to
14 move on these refusals.

15 MR. MOORE: Well, that is fine. What I
16 am saying to you is, and I confirmed this with Mr.
17 Milne-Smith, is my understanding is that the
18 privilege issues, to the extent they arise and to
19 the extent people want to pursue them, are now
20 intended to be dealt with, other than the PSY and
21 Black Cube, during the December 15th and 16th dates
22 that have been set aside by Justice McEwen.

23 MR. LUNG: Well, that was not my
24 understanding. I mean, my understanding was that
25 that was being held for a variety of matters,

1 including refusals, and you know, we should have
2 set those motion dates before the examinations.
3 This is a big waste of time.

4 MR. MOORE: Well, I don't think it is a
5 surprise or should be a surprise to anybody that
6 those dates in December were set a number of weeks,
7 if not months ago, with the focus being anticipated
8 privilege issues. I don't recall that those dates
9 were set for refusals. We can look at the record
10 and see.

11 But in any event, I recall distinctly
12 that those dates were originally set aside with the
13 focus being for privilege issues which were then
14 anticipated all to be dealt with by Justice McEwen.
15 Two have now been hived off and are to be dealt
16 with by Justice Boswell.

17 MR. LUNG: Well, we can poll the room,
18 but I am pretty sure that -- well, certainly my
19 understanding was that those dates were being held,
20 as far as privilege issues were concerned, that
21 those issues were the PSY Group issues. You know,
22 they didn't relate to general privilege issues that
23 might arise in the course of the motions in the
24 action.

25 MR. DEARDEN: Well, the timetable, Mr.

1 Lung, that was set for the anti-SLAPP motions
2 referred to the December 15th and 16th dates as
3 privilege motions and confidential source
4 redactions motions, and then - and I am doing this
5 from memory - other privilege issues is the way I
6 thought that timetable read. I don't recall ever
7 putting in there refusals. But anyway, that
8 timetable will speak for itself.

9 BY MR. LUNG:

10 995 Q. So, Mr. Riley --

11 A. Just before you ask me that
12 question, could we take a brief break, the morning
13 break?

14 MR. LUNG: Yes, no, sorry, my
15 apologies, Mr. Riley, it is time for a break.

16 (DISCUSSION OFF THE RECORD.)

17 -- RECESSED AT 11:34 A.M.

18 -- RESUMED AT 11:55 A.M.

19 MR. DEARDEN: So, Mr. Lung, just before
20 we took the break, I told you that I didn't recall
21 that the word "refusals" was in the timetable, and
22 I am absolutely wrong. The timetable does refer to
23 a "confidential source privilege motion, followed
24 by motions regarding other privilege issues;
25 refusals". That is for December 15 and 16, so your

1 recollection was right.

2 BY MR. LUNG:

3 996 Q. Thank you, Mr. Dearden.

4 Mr. Riley, are you ready to go?

5 A. Yes, I am.

6 997 Q. When did you first learn of

7 Anderson and ClaritySpring?

8 A. Around the time of the
9 publication, whether it was after -- ClaritySpring
10 was I think around that time.

11 998 Q. Were you familiar with
12 ClaritySpring prior to the Wall Street Journal
13 publication?

14 A. Not to my knowledge.

15 999 Q. You were involved in an interview
16 of Mr. Levy on August 30th, 2017?

17 A. Yes.

18 1000 Q. Mr. Levy identified Mr. Anderson
19 and his company -- identified Mr. Anderson as one
20 of the people he spoke to?

21 A. If that is what it says in the
22 transcript, I agree with it.

23 1001 Q. Well, the question I was going to
24 have for you is, is that the first time you heard
25 of Mr. Anderson?

1 A. That I do not know. Certainly it
2 was at that time that we -- that for sure that name
3 came up, but I don't recall prior to that.

4 MR. MOORE: Mr. Lung, my recollection,
5 and I could be mistaken here, but my recollection
6 is that Mr. Anderson's name may well have come up
7 in some of the correspondence from Reuters in June
8 or early July, but I am going from memory when I
9 say that.

10 THE DEPONENT: But my memory, and I
11 would have to go back and look at it for sure, is
12 that they mentioned McFarlane and Baumann. I don't
13 believe that they mentioned ClaritySpring or
14 Anderson, but if you want, we can go back and check
15 that, the Reuters information.

16 U/T MR. DEARDEN: We'll check.

17 BY MR. LUNG:

18 1002 Q. So in this case, Mr. Anderson
19 prepared -- he conducted research on Catalyst and
20 Callidus and he prepared a whistleblower report
21 that he delivered to the OSC; is that right?

22 A. Yes.

23 1003 Q. And would you agree with me that
24 there is nothing wrong with a member of the public
25 like Mr. Anderson researching the conduct of a

1 public company like Callidus?

2 A. I question how that research is
3 used and whether it is accurate, and I think that
4 the exhibit --

5 1004 Q. Well, the question is --

6 A. -- to which the Wall Street
7 Journal article is not correct.

8 1005 Q. Okay, but the question is whether
9 you would agree that there is nothing wrong with a
10 member of the public researching the conduct of a
11 public company?

12 A. Like Callidus, yes.

13 1006 Q. And that person would have no
14 obligation to tell the public company that it is
15 doing that research; is that fair?

16 A. I -- my concern is that I believe
17 that that kind of information, if it is being put
18 into the marketplace, should be accurate.

19 1007 Q. Mr. Riley, Catalyst as part of its
20 normal business regularly conducts research on
21 public companies and --

22 A. Sorry, did you say Catalyst?

23 1008 Q. Yes, so as part of its business,
24 isn't it fair to say that it regularly conducts
25 research on public companies to determine whether

1 they are potential acquisition targets or, you
2 know, potential investments; isn't that fair?

3 A. Well, we do that research for the
4 purpose of determining whether we want to acquire a
5 security in that company and use that security as a
6 way of restructuring. So we use it for the
7 purpose -- we do our own assessment as to what the
8 value of that security is and what its utility
9 would be in a restructuring. That is what you --

10 1009 Q. And do you feel that you have an
11 obligation to tell the public company that you are
12 researching that you are doing the research?

13 A. Those companies are usually in
14 insolvency proceedings or in the vicinity of
15 insolvency proceedings, but we might --

16 1010 Q. But does Catalyst --

17 A. We might interact with them.

18 1011 Q. You might or --

19 A. In order to make sure that we have
20 got the right information.

21 1012 Q. But are you saying that Catalyst
22 has an obligation to tell public companies that
23 they were doing research on their business --

24 A. No, no legal obligation.

25 [Court Reporter intervenes for

1 clarification.]

2 1013 Q. Okay, let's reset this one.

3 The question for you is will you agree
4 with me that Mr. Anderson did not have an
5 obligation to tell Callidus that he was doing
6 research on their business, on its business?

7 A. No.

8 1014 Q. You wouldn't agree with me?

9 A. No. He has no obligation.

10 1015 Q. So you would agree with me?

11 A. Yes.

12 1016 Q. And you would expect a person who
13 is doing that type of research would take certain
14 steps to verify the accuracy of information that he
15 is receiving; is that fair?

16 A. He should absolutely take those
17 steps.

18 1017 Q. And those steps might include or
19 probably include reading available documents?

20 A. Yes.

21 1018 Q. Obtaining and reviewing available
22 documents? It is pretty easy stuff.

23 A. Yes.

24 1019 Q. But those steps would include
25 that? Those steps would include that; is that

1 right?

2 A. Yes.

3 1020 Q. And they would include speaking to
4 people who have information and knowledge about the
5 business?

6 A. Yes.

7 1021 Q. And in the case of Callidus, you
8 would expect that person to speak to borrowers of
9 Callidus; isn't that fair?

10 A. Well, actually, it is interesting.
11 I think our loan agreements have confidentiality
12 provisions so that discussing the lending
13 arrangements is actually probably a breach of the
14 loan agreement. The other is in that assessment, I
15 think if he was dealing with people who were
16 disgruntled, I think he has to have a higher level
17 of caution.

18 1022 Q. But you would expect a person like
19 Mr. Anderson to speak to people like borrowers to
20 learn more about Callidus, wouldn't you, as part of
21 his process of verifying the information that he is
22 receiving?

23 A. I think I have answered that,
24 haven't I? I think I have answered that. I think
25 it is the same question that you asked a few

1 minutes ago.

2 1023 Q. Is the answer yes?

3 MR. DEARDEN: No, he answered that
4 there were confidentiality provisions in the loan
5 agreements.

6 BY MR. LUNG:

7 1024 Q. But are there confidentiality
8 agreements with Mr. Anderson? I think the answer
9 to that is no; would you agree?

10 A. Well, of course we didn't have a
11 confidentiality agreement with him --

12 1025 Q. So --

13 A. -- but he is going to people who
14 are willing to breach their confidentiality.

15 1026 Q. So focussing on the steps that
16 Mr. Anderson would take --

17 MR. MOORE: Well, hold on. Hold on.
18 If you want to ask questions in the abstract about
19 what a potential person looking into this might do
20 and you ask it, that is one thing. But you
21 shouldn't kind of morph back and forth between that
22 kind of general question and what did Mr. Anderson
23 do or not do. We don't know everything that
24 Mr. Anderson did or did not do. That will be the
25 subject of cross-examinations later on.

1 MR. LUNG: I am just asking questions
2 of what would be expected, and that is it. I am
3 just -- these are just questions that I am posing
4 for Mr. Riley. It is not controversial here. Can
5 I continue?

6 MR. MOORE: Well, I thought your
7 question was more along the lines of what did
8 Mr. Anderson actually do, but if not, if it is kind
9 of an abstract question, that is fine, go ahead.

10 BY MR. LUNG:

11 1027 Q. Well, he doesn't know -- look, I
12 mean, Mr. Riley obviously doesn't know and doesn't
13 have firsthand knowledge of what Mr. Anderson did,
14 but my question is not that.

15 My question is that it would be
16 reasonable to expect a person who was doing
17 research and trying to verify facts to speak to
18 people who have knowledge, like borrowers in this
19 case; is that fair to say?

20 MR. DEARDEN: Isn't that the same
21 question that he answered?

22 THE DEPONENT: Yeah, I think I have
23 answered it.

24 MR. DEARDEN: There is confidentiality
25 provisions in loan agreements.

1 BY MR. LUNG:

2 1028 Q. Okay. By early 2017, there were
3 actions against individuals like Mr. Levitt,
4 Mr. Baumann and Mr. McFarlane; isn't that right?

5 A. I'll take -- there would have been
6 actions involving Fortress and a commencement of
7 action on the guarantee of Levitt. There would
8 be -- there would have been even earlier than 2017
9 the -- and Fortress went through I believe a
10 Chapter 11 process in the U.S. that was initiated
11 by Fortress, not by us.

12 Baumann is Altair. There was an
13 action in the Alberta Court to, through a
14 court-supervised -- a court-appointed receiver
15 process, and then there is a subsequent action on
16 his guarantee which is still ongoing.

17 And McFarlane there was, again, I think
18 that was a -- yes, that was a court-supervised
19 receivership.

20 1029 Q. So all of Mr. Levitt, Mr. Baumann
21 and Mr. McFarlane by early '17 had been sued by
22 Callidus in connection with the loan agreements and
23 the guarantees; is that fair to say?

24 A. On the loan agreement, we would
25 have sued the company. On the guarantee, we would

1 have sued the guarantor.

2 1030 Q. That is fine. So there was
3 already ongoing actions relating to those
4 particular loan agreements and guarantees?

5 A. Yes.

6 1031 Q. And those documents obviously
7 would have been filed in court at that point?

8 A. Yes, they would have been.

9 1032 Q. And so to the extent that there
10 were any confidentiality agreements, clauses within
11 those agreements --

12 A. I think that is correct.

13 1033 Q. -- they would have been waived as
14 a result of the lawsuits; is that fair?

15 A. I think that is a fair comment.

16 1034 Q. At least to the extent of the
17 controversy in the lawsuit; is that fair?

18 A. Yes, because the controversy is on
19 the public record, but as I say, they went through
20 court-supervised processes where decisions were
21 made by judges.

22 1035 Q. So I would like to go back and ask
23 my question again. Is it fair that in a situation
24 like -- is it fair to say that in a situation like
25 this, a person like Mr. Anderson, you know, would

1 speak to individuals who have knowledge of the
2 business, including, in the case of Callidus,
3 borrowers of Callidus and guarantors?

4 A. Keep in mind that these people are
5 no longer connected with those companies. They
6 wouldn't have current information.

7 1036 Q. Okay, but I am just putting to you
8 that it would be reasonable for him to speak to
9 individuals like the borrowers and guarantors, and
10 you can agree with me or disagree with me. That is
11 up to you.

12 A. I will agree with you.

13 1037 Q. And also it would be reasonable
14 for a person like Mr. Anderson to speak to former
15 employees of Callidus and Catalyst?

16 A. That is a little more problematic
17 from my point of view because there are, in our
18 employment arrangements, there are various
19 provisions, not the least of which is a
20 non-disclosure.

21 1038 Q. Well, I don't doubt that. Why
22 don't I put it this way, and I'll rephrase the
23 question. Is it fair to say that you would expect
24 Mr. Anderson to seek out information from people
25 like former employees of Callidus and Catalyst,

1 whether it is provided or not?

2 A. That would be something he could
3 do, yes.

4 1039 Q. As a way of verifying information
5 that he has already received; would you agree with
6 that?

7 A. I can't necessarily agree with
8 that because I would have to know who he spoke to
9 and whether that person was someone who was
10 competent to discuss that.

11 1040 Q. And alternately, he has to assess
12 all of the information that he is getting from
13 various different sources to determine what is
14 reliable and what is not reliable, but former
15 employees would be one group of persons he might
16 speak to as part of his research; is that fair to
17 say?

18 A. Could you -- could I see that
19 question? Sorry, it was a long question, so I
20 didn't follow all of it.

21 [Witness reviews realtime transcript.]

22 That is a fair comment.

23 1041 Q. And another group of persons
24 Mr. Anderson might speak to to verify or that we
25 might expect Mr. Anderson to speak to to verify

1 information that he has received is Callidus's
2 competitors; is that a fair statement?

3 A. Callidus's competitors?

4 1042 Q. Yes.

5 A. I don't know who Callidus's
6 competitors are --

7 1043 Q. Or Catalyst's competitors,
8 Callidus or Catalyst's competitors; is that a fair
9 statement?

10 A. I am not sure who you are saying
11 our competitors are. I would want to know the
12 universe, because some people are our competitors
13 and some aren't.

14 1044 Q. Well, is it unreasonable to expect
15 Mr. Anderson to speak to individuals like people at
16 Anson or people at West Face to obtain more
17 information about Callidus and Catalyst?

18 A. I don't think that is necessarily
19 reasonable.

20 1045 Q. So you think that it is better
21 that Mr. Anderson not have any of that information
22 within the larger sort of universe of information
23 that he is receiving and assess it?

24 A. I stick with my answer.

25 1046 Q. Which is that he shouldn't have

1 that information?

2 A. That I did not think that is
3 appropriate in the circumstances.

4 1047 Q. Why isn't it appropriate?

5 A. I think that there is a degree
6 of -- in the case of the two entities you
7 mentioned, that there are -- there might be
8 different motivating factors.

9 1048 Q. And do you think that -- are you
10 suggesting that Mr. Anderson would not be capable
11 of assessing those different motivating factors?

12 A. I don't know. I don't know his
13 capability.

14 1049 Q. You know that Mr. Anderson spoke
15 to Chester Dawes; is that correct?

16 A. I know that -- well, actually, I
17 don't know that. He says it in his affidavit, in
18 his reply affidavit. Chester Dawes confirmed to me
19 that he had not spoken with Nathan Anderson when I
20 spoke to him.

21 1050 Q. So when you spoke to Chester
22 Dawes, he told you that he never spoke to any of
23 the guarantors and that he never spoke to
24 Mr. Anderson?

25 A. I only asked him about Nathan

1 Anderson.

2 1051 Q. So in response to that,
3 Mr. Anderson in his reply record has produced phone
4 records indicating that he had a 35-minute call
5 with Mr. Dawes. Did you see that exhibit?

6 A. I did.

7 1052 Q. And would you agree that that
8 evidence indicates that Mr. Dawes and Mr. Anderson
9 were on the phone for a significant period of time?

10 A. What I don't know is what they
11 talked about.

12 1053 Q. Well, would you agree with me that
13 that suggests that Mr. Dawes was not telling you
14 the truth when he said he didn't speak to
15 Mr. Anderson?

16 MR. MOORE: Well, I don't think it is
17 fair to ask that kind of question of the witness,
18 whether Mr. Dawes --

19 MR. LUNG: Well, I am asking and you
20 can either refuse it --

21 R/F MR. MOORE: Let me finish, okay.
22 Whether he was not telling the truth or he forgot
23 or researched the inquiry is an open question. The
24 state of the record is what it is. Your client
25 says he spoke with Mr. Dawes, and in the reply

1 affidavit there is attached certain documentation
2 to support or corroborate that contention and that
3 is the current state of the record.

4 BY MR. LUNG:

5 1054 Q. When you spoke to Mr. Dawes, did
6 you tell him that there was a possibility that he
7 might be sued?

8 A. No.

9 1055 Q. Was he reminded of his obligations
10 as a former officer of Catalyst, including his
11 confidentiality obligations?

12 A. Yes, he was.

13 1056 Q. Did you explain to him the
14 potential consequences of breaching those
15 obligations?

16 A. I don't recall.

17 1057 Q. According to Mr. Anderson, during
18 his conversation with Mr. Dawes, Mr. Dawes referred
19 to something called a "Newtometer"? Have you ever
20 heard of that word before?

21 MR. MOORE: It is not in the
22 dictionary, I don't think.

23 THE DEPONENT: The first time I ever
24 heard that word was when I read it in
25 Mr. Anderson's affidavit.

1 BY MR. LUNG:

2 1058 Q. You never heard that word being
3 used by employees at Catalyst?

4 A. No. At Catalyst?

5 1059 Q. Yes.

6 A. Employees of Catalyst?

7 1060 Q. Yes.

8 A. And, sorry, I'm not trying to --
9 it is just it will screw up the record, that's all.

10 1061 Q. Sorry, that is what I thought I
11 said, Catalyst. Sorry, I have to work on
12 enunciating my "t's".

13 A. Okay, I heard "Callidus", but I'll
14 work on my hearing.

15 1062 Q. Did you guys do this on purpose to
16 confuse us, picking two names that are similar?

17 A. Well, it does --

18 MR. MOORE: It is a plot going back to
19 the very beginning.

20 THE DEPONENT: It is -- we are
21 always -- we try to be careful using the names.
22 That is why it is now called FrontWell Partners.

23 BY MR. LUNG:

24 1063 Q. Well, thank you for doing that, in
25 case there is any future lawsuit.

1 So do you at this point deny that
2 Mr. Anderson and Mr. Dawes spoke?

3 A. I have Mr. Anderson's comments and
4 I have the phone record, but Chester Dawes told me
5 he did not talk to Anderson, so I don't know what
6 went on in that conversation.

7 1064 Q. So all you know is what Mr. Dawes
8 said to you and you don't know anything else?

9 A. Correct.

10 1065 Q. I am going to ask you some
11 questions about short-selling.

12 A. Uhm-hmm.

13 1066 Q. Would you agree with me that
14 short-selling is not illegal?

15 A. Correct.

16 1067 Q. I'll take you to -- I am going to
17 take you to Mr. Anderson's supplementary affidavit
18 at paragraph 20.

19 A. I see that.

20 1068 Q. So Mr. Anderson makes a number of
21 statements in paragraph 20, and at subparagraph (a)
22 he says:

23 "I did not do any naked
24 short-selling in respect of
25 Callidus."

1 Do you have any evidence to the
2 contrary?

3 A. Not at this time.

4 1069 Q. Mr. Anderson goes on to say, and
5 this is subparagraph (b):

6 "I released no false or
7 misleading information to the
8 market."

9 Do you disagree with that comment?

10 A. I do.

11 1070 Q. At subparagraph (c) Mr. Anderson
12 says:

13 "I did not coordinate or
14 discuss my short-selling activity
15 with any other parties. Prior to
16 this action, I had no specific
17 knowledge of the short-selling
18 activities of any other party."

19 A. I disagree with that statement.

20 1071 Q. Do you have any evidence to refute
21 that statement?

22 A. Yes.

23 1072 Q. And what is the evidence?

24 A. The fact that he put together a
25 short-selling syndicate.

1 1073 Q. He put together a short-selling
2 syndicate. What was the short-selling syndicate
3 that he put together?

4 A. One that involves Molyneux and
5 some other individuals, and also he made a
6 statement in a document which he furnished to
7 Copeland that he was short Callidus.

8 1074 Q. So where -- so let's start with
9 the syndicate. Mr. Anderson says:

10 "I did not coordinate or
11 discuss my short-selling activity
12 with any other parties."

13 And I think by what you call syndicate,
14 you mean that he coordinated with several of the
15 other parties in preparing the whistleblower
16 report; is that what you are talking about?

17 A. No, but also that syndicate was to
18 take a short position in Callidus stock.

19 1075 Q. And where is the evidence to
20 support that?

21 A. Do you know where it is in my
22 affidavit? I think it is in the libel one.

23 1076 Q. So which affidavit should I be
24 looking at?

25 A. Well, I am trying to find it for

1 you. The background on the --

2 MR. MOORE: Just a moment.

3 THE DEPONENT: It is on page 82 of my
4 main action on the anti-SLAPP, so it is the
5 conspiracy action, and that is the affidavit of May
6 29 --

7 MR. LUNG: Sorry, this whole thing is a
8 conspiracy action, isn't it?

9 MR. DEARDEN: Yeah, he is just saying
10 that because that is the affidavit that he swore on
11 May 29th, because there is the libel action
12 affidavit and the conspiracy action affidavit.

13 MR. LUNG: Okay, I thought both
14 affidavits were being delivered in connection
15 with -- like I am only involved in the conspiracy
16 action. I think that -- are you calling the libel
17 action, that is the Dow Jones action?

18 MR. DEARDEN: Yes, they are both --
19 they are filed in both. Both of those May 29, 2020
20 affidavits were filed for the two separate actions,
21 the conspiracy action and the Dow Jones libel
22 action.

23 THE DEPONENT: Okay, and --

24 BY MR. LUNG:

25 1077 Q. Sorry, Mr. Riley, what page am I

1 looking at?

2 A. Okay, just, sorry, it is the main
3 action anti-SLAPP affidavit. It is sworn May 29th,
4 and it is page 82 of that affidavit.

5 1078 Q. And the paragraphs that I need to
6 look at?

7 A. 172.

8 1079 Q. And so that is what you rely upon
9 for your assertion that there was a syndicate to
10 short-sell?

11 A. Yes.

12 1080 Q. And nothing else, just that
13 paragraph?

14 A. Well, you will see there is a
15 number of exhibits.

16 MR. DEARDEN: There is other
17 paragraphs.

18 THE DEPONENT: There is other
19 paragraphs as well.

20 MR. LUNG: Okay, so --

21 MR. MOORE: Do you want us to give you
22 an undertaking to let you know what paragraphs in
23 this affidavit we rely upon?

24 BY MR. LUNG:

25 1081 Q. The only thing is I want to ask

1 him questions if he is going to assert that there
2 was some syndicate to short-sell, so I just want to
3 know what the basis of that is.

4 Well, let me ask you this other
5 question, Mr. Riley. Attached to your affidavit is
6 a lot of correspondence between the Defendants, and
7 including correspondence from and to or copied to
8 Mr. Anderson by some of the other parties in this
9 action; is that fair to say?

10 A. Yes.

11 1082 Q. You weren't personally a party to
12 any of those communications; is that fair to say?

13 A. That is correct.

14 1083 Q. And you don't have any information
15 about the underlying context of any of those
16 communications other than what you have read in the
17 documents; is that fair to say?

18 A. And I am not trying to be my own
19 lawyer because that is not something I want to do,
20 but I think part of the problem with a conspiracy
21 is getting at the underlying facts, and so --

22 1084 Q. No, I understand that.

23 A. So your client and the other
24 Defendants would have more information than we do.

25 1085 Q. No, and you know, I appreciate

1 that, because my client and the other Defendants
2 were parties to these communications.

3 A. Yes.

4 1086 Q. But my point -- I guess the point
5 is that this, all of that communication is simply
6 out of the parties' productions; is that fair?

7 A. No, some of it was informed by
8 productions -- or not productions, but on a
9 cross-examination a substantial number of documents
10 were provided by Mr. Levitt in accordance with the
11 direction order of Madam Justice Chiappetta, and
12 others were provided by Mr. Levy.

13 1087 Q. So let me revise that. They are
14 documents that were obtained through some way from
15 the other parties in this action or in other
16 actions; is that fair?

17 A. Yes.

18 1088 Q. And you have written these lengthy
19 affidavits setting out this narrative, but is it
20 fair to say that you don't really have any
21 information other than the information that is
22 actually written in the documents?

23 MR. MOORE: Well, just a minute. Part
24 of the context, and again, I don't want to argue
25 the case with you, but part of the context includes

1 some of the other legal proceedings and the events
2 leading up to what happened.

3 MR. LUNG: Okay, that is fair.

4 MR. MOORE: I don't think it is
5 restricted to just strictly speaking, you know,
6 communications back and forth between Defendants.
7 I think there is more to the context than that.

8 BY MR. LUNG:

9 1089 Q. Looking specifically at paragraph
10 173 and the subparagraphs under it, is it fair to
11 say that what you have done in paragraph 173 --

12 A. I apologize, I closed my
13 affidavit. 173?

14 1090 Q. Yes.

15 A. Yes, 172 and 173.

16 1091 Q. So in looking at paragraph 173 of
17 your conspiracy affidavit and the subparagraphs
18 under it, is it fair to say that all you are doing
19 here is reading the documents that are identified
20 and providing your interpretation of what is going
21 on in those documents?

22 A. Yes.

23 1092 Q. And you don't have any personal
24 knowledge of the events that are described in the
25 documents or personal knowledge of the underlying

1 circumstances of the communications?

2 A. Yes, that's correct, because we
3 hadn't examined the authors of those documents yet.

4 1093 Q. Well, even if you did, you
5 wouldn't have personal knowledge. You weren't a
6 party to these communications?

7 A. That's correct. I was not. The
8 conspirators did not copy us on any of these emails
9 or documents.

10 1094 Q. So these documents here are
11 documents that are received by your -- the
12 Plaintiff's counsel in some way. They are -- you
13 have read them and you are providing your
14 interpretation of them here?

15 A. Well, some of this is just a
16 recitation of what is in the exhibits.

17 1095 Q. Yeah, and that might be the case,
18 but it is not based on your personal knowledge?

19 A. No, no.

20 1096 Q. Can I have an undertaking, and you
21 can do this by way of undertaking, to provide -- to
22 identify any documentation that supports the
23 assertion that there was a syndicate to short-sell?

24 MR. MOORE: I'll give you that
25 undertaking.

1 MR. LUNG: Actually, you know what,
2 strike that. I don't want that undertaking. I
3 don't need it. It's okay, I can look it up myself.

4 MR. MOORE: All right.

5 MR. LUNG: Pardon me? Yeah, I don't
6 need the undertaking, it's okay.

7 THE DEPONENT: I have never seen
8 someone strike an undertaking.

9 BY MR. LUNG:

10 1097 Q. Yeah, that's okay, you are excused
11 from it. I don't need it.

12 Okay, moving on, I was looking at
13 Mr. Anderson's supplementary affidavit, and I will
14 bring it up again for you, okay.

15 A. Mr. Anderson's supplementary
16 affidavit?

17 1098 Q. And we were looking at
18 paragraph --

19 A. That is the one of August 20th,
20 right?

21 1099 Q. That's right. So we looked at
22 sub (c), 20(c), and you took us to paragraphs 172
23 and 173 of your conspiracy affidavit.

24 A. And we also said there were other
25 documents that we can point to, but we gave that

1 as -- I think that was the subject of an
2 undertaking, didn't we?

3 MR. MOORE: Yeah, I am not sure whether
4 the undertaking has been rejected or not rejected.

5 THE DEPONENT: Sorry, is that the
6 undertaking that was rejected?

7 BY MR. LUNG:

8 1100 Q. No, the request has been
9 rescinded.

10 A. Okay, sorry, I apologize.

11 1101 Q. So at sub (d) Mr. Anderson says:

12 "My short-selling was in small
13 quantities, such that it could not
14 have resulted in or contributed to a
15 misleading appearance of trading
16 activity in, or an artificial price
17 for, Callidus's shares."

18 And if you follow that exhibit to
19 Exhibit A -- and have you had a chance to look at
20 that exhibit, Mr. Riley, or should I take us there?

21 A. Could you bring it up, please,
22 just to make sure?

23 1102 Q. Sure. Let's go to Exhibit A.
24 Much of this is redacted because it relates to
25 other investments, but you will see, and I will

1 make this bigger for you, "CBL", that is the symbol
2 for Callidus; is that right?

3 A. That is correct.

4 1103 Q. And you will see a number of
5 different transactions, and there is a total. And
6 if you go up here to the heading, you will see a
7 "Realized P&L" of 27,544. Do you have any reason
8 to believe that that's inaccurate?

9 A. I didn't hear the last word.

10 1104 Q. Do you have any reason to believe
11 that that is inaccurate?

12 A. No.

13 1105 Q. Would you agree that trades that
14 result in a profit of 27,544, that that would not
15 constitute high volume short-selling?

16 A. It is interesting -- and, sorry,
17 I'll answer the question in a minute. I am more
18 interested in the trading pattern that I see in
19 these documents.

20 1106 Q. Sure, you can take a look at the
21 trading pattern.

22 A. If you look at when he is short
23 long, it bears an astonishing resemblance to when
24 Reuters was going to publish its article, when the
25 Wall Street Journal was going to publish its

1 article, originally in July I think it was, and
2 then in and around August 9th.

3 1107 Q. I am just talking about the
4 volumes and the numbers.

5 A. Well, I am talking about the
6 trading pattern.

7 1108 Q. So what you see here, is it fair
8 to say that that would not be considered high
9 volume in the context of a company like Callidus?

10 A. Well, actually, on that day, it
11 was not -- those are not insignificant numbers.
12 The trading volume I think on a daily basis
13 was -- I would have to go back and check, but it
14 was not -- there were not a lot of shares traded.

15 1109 Q. Would you agree with me that one
16 person acting alone making a profit of 27,000 on a
17 few trades wouldn't constitute market manipulation?

18 A. I think even one dollar if it is
19 market manipulation is contrary to the law.

20 1110 Q. Well, that wasn't my question. My
21 question is the trade itself would not be
22 manipulative of the market, would not move the
23 market or influence the market?

24 A. It would have some effect on the
25 market.

1 1111 Q. A single trade for one dollar?

2 A. No, but I am looking at the number
3 of shares traded. Those would have some effect.

4 1112 Q. Well, back at that time -- sorry,
5 I am echoing. Back at that time, I mean, is it
6 fair to say that back in 2017, Callidus was not so
7 fragile that a short-seller who made \$27,000 would
8 permanently destroy the company's share value?

9 A. I cannot make that assessment.

10 1113 Q. No, you think that that is
11 possible?

12 A. Anything is possible.

13 1114 Q. Well, anything is possible, but I
14 guess is it likely to happen?

15 A. I would stick with I am not
16 capable of making that assessment.

17 1115 Q. So you are not capable of making
18 that assessment, and is that because you have
19 limited knowledge of short-selling and its impact
20 on companies?

21 A. No, it is because I don't have the
22 full picture of what is short-selling and who was
23 selling short at that time.

24 1116 Q. I am going to take us back to
25 Mr. Anderson's supplementary affidavit, and we are

1 going to look at paragraph 69, and I have put it up
2 on the screen. So in paragraph 69 Mr. Anderson
3 says:

4 "I was not involved in the
5 preparation or submission of any
6 complaints to the police."

7 And do you have any evidence that is
8 contrary to that statement?

9 A. May I just look at something for a
10 second?

11 1117 Q. Yes.

12 A. If you look at my affidavit, my
13 conspiracy affidavit, and I don't have those
14 exhibits up, but I think paragraphs 156 address the
15 point in 70 and I think that Mr. Anderson was aware
16 of what was being done with the police.

17 1118 Q. Well, Mr. Anderson says that he
18 was not involved in the preparation or submission
19 of any complaints to the police.

20 A. Right, but I think that I would
21 say he was kept apprised.

22 1119 Q. And that is the extent of -- is
23 that the extent of it?

24 A. I am just -- I would have to go
25 back to those various emails that were produced.

1 Do you have Exhibit 179 -- or sorry, 156?

2 1120 Q. Sorry, which one was it?

3 A. It is tab 156, and it relates to
4 paragraph 179 of my conspiracy affidavit.

5 Yes, Darryl Levitt sends an "FYI" email
6 on May 1st, May 1st, 2017, to Nathan@ClaritySpring
7 and forwards "Toronto Commercial Crime Unit
8 Evidence - Privileged", and then it goes on to say
9 that he submitted four volumes of binders.

10 1121 Q. So Mr. Anderson says that he was
11 not involved in the preparation or submission of
12 complaints to the police, and I asked you if you
13 have any evidence to the contrary and this is what
14 you have is tab 156?

15 A. Yes, and can I go to the next
16 email on that tab, which is Nathan Anderson to
17 Darryl Levitt:

18 "Spoke with Brian, so he is
19 going to reach out to Gail. Do you
20 know any real estate agents in
21 Toronto? And any word from Mario?"

22 [As read.]

23 I don't know what those other two
24 comments are about, but that is a -- and then there
25 is one from Darryl to Nathan talking about --

1 1122 Q. Sorry, just slow down for a
2 second, Mr. Riley. What tab are we looking at? We
3 were looking at 156, so what should I be looking at
4 now?

5 A. Well, if you start with there are
6 one, two, three, four tabs -- emails, but
7 unfortunately some of them are not very clear.

8 MR. DEARDEN: There are five emails in
9 Exhibit 156.

10 THE DEPONENT: Five. Is there five?
11 So if you go through those emails, you will see
12 that there is -- Nathan Anderson is well aware of
13 the complaints to the police, and he also says that
14 he would have Brian reach out to Gail.

15 BY MR. LUNG:

16 1123 Q. So Mr. Anderson has said -- first
17 of all, let's break this down. Mr. Anderson has
18 said that he was not involved in the preparation of
19 any complaint to the police?

20 A. But --

21 1124 Q. Do you have any evidence that he
22 was involved in the preparation of a complaint to
23 the police?

24 MR. DEARDEN: He just gave it to you.

25 THE DEPONENT: I just gave it.

1 BY MR. LUNG:

2 1125 Q. Well, that is all there is. So
3 which ones are there --

4 MR. DEARDEN: He did not say that.

5 MR. MOORE: He did not say.

6 THE DEPONENT: I did not say that.

7 MR. LUNG: 156 --

8 MR. MOORE: If you want to go through
9 the whole affidavit for examples, if you look at
10 paragraphs 159 and onwards in the affidavit, what
11 we say, and I am going to say this in a general
12 way, is that from the time when Mr. Anderson got
13 involved in this matter, there is ample evidence of
14 frequent contacts, cooperation, encouragement,
15 knowledge among all the conspirators, among
16 Mr. Anderson and the other conspirators before
17 complaints are filed with the OSC, before police
18 complaints are filed, et cetera.

19 We are not going to go through, unless
20 you want to go through the whole affidavit,
21 paragraph by paragraph, but there is many examples
22 of that in the affidavit and it will just give you
23 another reams of paragraphs.

24 And so it is not -- you know, you have
25 got the affidavit. Mr. Riley has got the

1 affidavit. It is not a memory contest. But there
2 is lots of material in here that indicates ongoing
3 contact by Anderson with these people. And in
4 fact, at paragraph 1 -- well, I am not going to
5 read it all, but it is there.

6 BY MR. LUNG:

7 1126 Q. So, Mr. Riley, it is just the
8 emails that are attached to your affidavit? That
9 is the extent of it; is that fair?

10 A. I think that is fair, yes.

11 1127 Q. Now, Mr. Anderson in paragraph 70
12 of his supplementary affidavit says that Mr. Wood
13 never spoke to the police in relation to this
14 matter.

15 A. That is --

16 1128 Q. Do you have any evidence to the
17 contrary?

18 A. That he was going to speak to
19 them? We have just gone through that.

20 1129 Q. But that is the extent of it, is
21 that one email?

22 A. No, there were three emails in
23 which he references Mr. Wood.

24 1130 Q. Okay, but other than the emails
25 that are attached to your affidavit, do you have

1 any evidence that what Mr. Anderson says is untrue
2 that there ultimately was no communication between
3 Mr. Wood and the police?

4 A. That is what he says in paragraph
5 70.

6 1131 Q. 70, that is what he says?

7 A. Yes.

8 1132 Q. So do you have any evidence that
9 that's untrue?

10 A. I have no evidence to the
11 contrary.

12 1133 Q. Okay.

13 MR. MOORE: Except what you have
14 referred to.

15 THE DEPONENT: Except what I have
16 referred to.

17 BY MR. LUNG:

18 1134 Q. The emails attached to your
19 affidavit?

20 A. Yes.

21 1135 Q. And those emails, to be fair, it
22 looks like they are trying to set up a call or a
23 communication of some sort; isn't that right?

24 A. Well, that would appear to be the
25 words, yes.

1 1136 Q. I mean, the email doesn't say,
2 thanks for the call last week, or that there was a
3 call. It is to try to arrange a call; isn't that
4 fair to say?

5 MR. DEARDEN: The email says what it
6 says.

7 THE DEPONENT: It says what it says,
8 yeah.

9 BY MR. LUNG:

10 1137 Q. I think that is the point, is that
11 the email just says what it says, and what is
12 really in your affidavit is simply just an
13 interpretation to the emails that you have read
14 that have been produced by the parties, right?

15 MR. MOORE: We should go through it, if
16 you want to here and now if you want to, and I
17 don't think it's particularly productive,
18 paragraphs 159 to 171 of the conspiracy affidavit.
19 There is many, many, many emails back and forth to
20 and from Mr. Anderson, and different people can
21 draw different conclusions; and undoubtedly, you
22 would have one view and one argument to make and we
23 would have a different view and a different
24 argument to make about what it shows.

25 But the reason I say that is I don't

1 think it is fair on this record to say, oh, there
2 is one email here or only one email there. There
3 is many, many instances of communications.

4 MR. LUNG: I think I am entitled to
5 know what the basis of statements made -- I am
6 entitled to know the basis of the statements that
7 are made in Mr. Riley's affidavit, and if I want
8 to -- I think I am entitled to clarify that those
9 statements are based on particular documents alone.
10 So I'm sorry, I don't agree with that.

11 MR. MOORE: Well, I refer you to those
12 paragraphs in the affidavit as further indicia and
13 further examples of the types of communications
14 being relied upon by the Plaintiffs.

15 I mean, I am not going to say that
16 every single exhibit referred to in those
17 paragraphs refers to Mr. Anderson, but many, many
18 of them do, so I don't want you to be misled.

19 BY MR. LUNG:

20 1138 Q. I am going to take you to
21 Mr. Anderson's first affidavit.

22 A. Okay.

23 1139 Q. Paragraph 33, and I will just
24 bring it up on the screen for us. And I have
25 highlighted a part of paragraph 33, and this is

1 talking about the Wall Street Journal article, and
2 Mr. Anderson said:

3 "I had no control over or input
4 into the content of the Copeland
5 Article. I did not review it prior
6 to its publication. I gave no
7 instructions or suggestions as to
8 the timing of its release. To my
9 knowledge, I was nothing more than a
10 source to Copeland for that
11 article."

12 A. There is a lot of interaction
13 between Copeland and Anderson. Among other things,
14 there are various text messages which are in my
15 documents.

16 1140 Q. So --

17 A. He did have input into the
18 Copeland article because it was informed by his
19 whistleblower complaint.

20 1141 Q. Well, I was going to say that. So
21 we know that Mr. Anderson provided information to
22 Mr. Copeland but what Mr. -- and you know, this can
23 be clarified if you want, but what Mr. Anderson is
24 saying is that he didn't write the article and
25 didn't have any input into the writing of the

1 article. Do you have any reason to believe that
2 that's untrue?

3 A. There is some email exchanges
4 between Copeland and Anderson which involve a -- I
5 forget the term, when it is in the -- it's in the
6 Dropbox, a Dropbox, I believe it is a Dropbox they
7 referred to. I don't know what was in that
8 Dropbox.

9 1142 Q. Well, what was in that Dropbox was
10 materials that were being provided to Mr. Copeland,
11 so that was the materials that were delivered to
12 Mr. Copeland. But in terms of the writing of the
13 article, what Mr. Anderson is saying here is that
14 he had no input into that. And my question to you
15 is, do you have anything to refute that?

16 MR. DEARDEN: He just told you the
17 texts.

18 THE DEPONENT: The text messages.

19 MR. MOORE: If person A is providing
20 documentation and allegations and supposed
21 information to person B and person B then decides
22 to write an article, then person A has some input
23 into that article.

24 THE DEPONENT: And I think that there
25 are several texts that, when taken together, that

1 make it pretty clear that but for Mr. Copeland --
2 or Mr. Anderson's input, there would have been no
3 article because it would have been just disgruntled
4 borrowers or disaffected borrowers.

5 BY MR. LUNG:

6 1143 Q. Well, that is not really -- that
7 doesn't really answer the question, but that is
8 okay, I'll move on.

9 Mr. Anderson says --

10 MR. DEARDEN: Well, I object to that.
11 I object to that, Mr. Lung. He has answered the
12 question.

13 BY MR. LUNG:

14 1144 Q. Okay, he goes on to say:

15 "I did not review it prior to
16 its publication."

17 So Mr. Anderson says that he didn't
18 review the article prior to it being published. Do
19 you have anything to refute that?

20 A. There were certainly some
21 interactions that I think involved Anderson
22 directly or indirectly with McNish, which suggests
23 to me that he did have further input.

24 1145 Q. He says --

25 A. And as to the timing of its

1 release, I think that is an issue in this case.

2 1146 Q. I see --

3 A. I read the words.

4 1147 Q. He says:

5 "I did not review the article
6 before it was published."

7 And do you have any specific
8 information or evidence to refute that statement?

9 A. There is some email exchanges --
10 or text exchanges that suggest to me he may have
11 seen it. Suggest. I can go no further than that.

12 1148 Q. You don't have any evidence of
13 Mr. Copeland or Ms. McNish sending Mr. Anderson a
14 draft, do you?

15 A. No.

16 1149 Q. And you don't have any evidence
17 where they talk about a draft being provided to
18 Mr. Anderson or seeking his input on a draft, do
19 you?

20 A. There are some -- there is -- in
21 the totality of the text messages and also from
22 some of the notes that suggest that he was
23 consulted on this, not just a source but was
24 consulted would be my word.

25 1150 Q. He was clearly somebody who

1 communicated with Mr. Copeland about the subject
2 matter of the article, but the statement here is
3 that he didn't review a draft of the article before
4 it was published. And my question to you is, do
5 you have any evidence that a draft was provided to
6 him before it was published?

7 A. I don't believe so.

8 MR. MOORE: Well, actually, it is
9 interesting, his affidavit says that he didn't
10 review the quote/unquote "article", and it remains
11 to be seen exactly what he means by that. If you
12 take that literally, and we'll cross-examine him
13 about some of these issues --

14 MR. LUNG: I am just putting a
15 proposition to Mr. Riley, and you can answer it,
16 and you know, certainly you'll have an opportunity
17 to cross-examine Mr. Anderson on his affidavit.

18 MR. MOORE: That's right, but I think,
19 in fairness, the wording of his affidavit is
20 important. It doesn't refer to "drafts", so --

21 BY MR. LUNG:

22 1151 Q. Mr. Anderson goes on to say:

23 "I gave no instructions or
24 suggestions as to the timing of its
25 release."

1 Do you have any evidence that
2 Mr. Anderson gave instructions or suggestions as to
3 the timing of the release of the article?

4 A. I think that is a central issue in
5 this case, and my belief is that he was aware of
6 the timing of its release.

7 1152 Q. And what is that belief based on?

8 A. A text message that was sent to
9 him at approximately 3:00 -- and it is the Copeland
10 text message that said, I have never had to lift
11 harder to get a story out, and that was I think
12 around 3:28. I can't remember, but do you have the
13 email? It is in my affidavit.

14 1153 Q. And you rely on that for your
15 belief that Mr. Anderson gave instructions or
16 suggestions to the Wall Street Journal as to the
17 timing of the release of the article?

18 A. Sorry, I am trying to find --
19 sorry, if you could hold -- if you could re-ask
20 that question, because I want to get the document
21 for you.

22 MR. DEARDEN: The text -- and I am
23 letting Mr. Lung know that the text messages are at
24 Exhibit 9 to the libel action affidavit.

25 THE DEPONENT: So just to give you the

1 context, in that chain of emails, and it is at 5098
2 in the affidavit, there is one from --

3 BY MR. LUNG:

4 1154 Q. Sorry, can you just pause. Can we
5 just stop for a second. Are we looking at Exhibit
6 9 of --

7 A. Yes.

8 1155 Q. -- the libel affidavit?

9 A. Yes.

10 1156 Q. And what I see, these are text
11 messages?

12 A. Yes.

13 1157 Q. And what do you want me to look
14 at?

15 MR. DEARDEN: Page 5098 of the record,
16 Mr. Lung.

17 BY MR. LUNG:

18 1158 Q. Oh, I see, okay, I understand.

19 A. Yeah, sorry, I don't know how to
20 say the words.

21 1159 Q. I don't have page numbers on what
22 I received from your office, Mr. Dearden.

23 MR. DEARDEN: Yeah, you should, at the
24 bottom right-hand corner of each text page. It
25 goes like that is 907, DOW907, or at the top

1 right-hand corner of the motion record page which
2 is 5098 is what the witness has his hands on right
3 now.

4 BY MR. LUNG:

5 1160 Q. Am I looking at the right thing?
6 This is Exhibit 9 to the libel affidavit, and there
7 is some text messages.

8 A. Yes.

9 MR. DEARDEN: So if you go to the
10 bottom of the page, and so that is page -- that is
11 920, is that the number? Go to 896.

12 MR. LUNG: Those are production numbers
13 we are looking at, right, 896?

14 MR. DEARDEN: Yes.

15 THE DEPONENT: No, mine is 907.

16 MR. DEARDEN: Go to 896.

17 MR. LUNG: Sorry, Mr. Riley, should we
18 go to 896 or 907?

19 MR. DEARDEN: 5112.

20 MR. LUNG: 5112?

21 MR. DEARDEN: That is motion record
22 page 5112 or DOW896, and you will see what he was
23 referring to, "I have never had to lift harder to
24 get a story out."

25 THE DEPONENT: And that is at 3:20.

1 And then if you go back to DOW --

2 MR. DEARDEN: Well, let him get there.

3 THE DEPONENT: Sorry.

4 BY MR. LUNG:

5 1161 Q. Okay, so that is at 3:20 p.m. on
6 August 9th there is a text message?

7 A. Yes. And then --

8 1162 Q. And that is a text -- sorry, that
9 is a text message from Mr. Copeland; is that right?

10 A. Copeland to Anderson, correct,
11 Copeland to Anderson.

12 1163 Q. So just to be clear, the blue
13 bubbles are Mr. Copeland and the gray are
14 Mr. Anderson?

15 A. Yes.

16 1164 Q. Okay, so I have looked at that.

17 A. And if you could go to DOW907,
18 there is a text from --

19 1165 Q. I'm having some trouble here.

20 A. Yeah, I --

21 1166 Q. The numbering changes and the
22 prefix changes.

23 A. It is July 27th. You are looking
24 for July 27th is the other way to find it.

25 1167 Q. Is that where Mr. Copeland sends a

1 text message to Mr. Anderson and says, We expect it
2 to be out by next Tuesday, something like that?

3 A. Correct.

4 1168 Q. Okay, so --

5 A. It should be at --

6 1169 Q. So rather than continuing to
7 scroll through this, this mess, those are the two
8 text messages that you would point to to support
9 the proposition that Mr. Anderson suggested or --

10 MR. DEARDEN: He said was aware of the
11 timing.

12 BY MR. LUNG:

13 1170 Q. I don't think it was aware,
14 actually, but let me see.

15 A. I would say those two emails
16 indicate Mr. Copeland was informing Mr. Anderson of
17 when an article might run on two occasions.

18 1171 Q. So just to clarify, the question
19 that I had asked you was related to the statement:

20 "I gave no instructions or
21 suggestions as to the timing of its
22 release."

23 And this is in paragraph 33 of
24 Mr. Anderson's first affidavit. And you pointed to
25 two text messages from Mr. Copeland as evidence

1 that that is not correct.

2 A. Yes.

3 1172 Q. Okay, and that is it, I would
4 assume?

5 MR. MOORE: No, that is not it.

6 BY MR. LUNG:

7 1173 Q. Okay, then what else is there?

8 MR. MOORE: It is 1 o'clock or almost 1
9 o'clock, so why don't we just leave you with some
10 references that you may want to look at over the
11 lunch hour, or not. There is extensive additional
12 references in the other affidavit.

13 MR. LUNG: That will support the
14 proposition that Mr. Anderson gave instructions or
15 suggestions as to the timing of the release?

16 MR. MOORE: Well, as it relates to all
17 the questions you have just asked. So rather than
18 try and give them to you now -- and that is one of
19 the things I think I was undertaking to do earlier
20 but you don't want me to do. So I am just saying
21 that there is extensive additional references in
22 the conspiracy affidavit. I'll leave it at that
23 for now.

24 MR. LUNG: Okay, well, let's take the
25 break.

1 THE DEPONENT: What time do we
2 reconvene?

3 MR. DEARDEN: 2 o'clock?

4 -- RECESSED AT 12:59 P.M.

5 -- RESUMED AT 2:02 P.M.

6 BY MR. LUNG:

7 1174 Q. So, Mr. Dearden, I am going to ask
8 for - or Mr. Moore and Mr. Dearden - I am going to
9 ask for a number of undertakings, and you know, I
10 want to put them on the record and you are happy to
11 put your refusals on the record.

12 The first undertaking I am going to ask
13 for is an undertaking to produce Mr. Dalton's
14 Strategic Review and Remediation Plan? I don't
15 think I made a specific request, so I'm making it
16 now.

17 R/F MR. MOORE: We are not going to give
18 that undertaking.

19 MR. LUNG: So that is refused? Sorry,
20 David, I can barely hear you because you are a
21 little --

22 MR. MOORE: Yes.

23 MR. LUNG: Refused, right?

24 MR. MOORE: Correct.

25 BY MR. LUNG:

1 1175 Q. Okay. And second, an undertaking
2 to produce any document that sets out Mr. Dalton's
3 terms of reference for his strategic review?

4 U/A MR. MOORE: I'll tell you what, why
5 don't you put them all on the record and uniformly
6 I will say that we'll take them under advisement,
7 and then we can get back to you, rather than trying
8 to differentiate as you go through them. I don't
9 know how many there are, but it strikes me that
10 that would be the most efficient way to do it.

11 BY MR. LUNG:

12 1176 Q. Okay, then I'll get to the third
13 one, an undertaking to produce a copy of
14 Mr. Dalton's consulting agreement?

15 U/A MR. MOORE: We'll take that under
16 advisement.

17 BY MR. LUNG:

18 1177 Q. Number four, an undertaking to
19 produce Mr. Dalton's letter of resignation?

20 U/A MR. MOORE: The same answer.

21 BY MR. LUNG:

22 1178 Q. Number five, an undertaking to
23 produce any communications with the OSC relating to
24 the matters raised in Mr. Anderson's whistleblower
25 reports?

1 U/A MR. MOORE: I think we have claimed
2 privilege, but we'll take that under advisement in
3 any event.

4 BY MR. LUNG:

5 1179 Q. Next, an undertaking to produce
6 any communications with the SEC relating to the
7 matters raised in Mr. Anderson's whistleblower
8 reports?

9 U/A MR. MOORE: The same answer.

10 MR. LUNG: And that's it.

11 MR. MOORE: Okay.

12 MR. LUNG: I do want to state on the
13 record that I do object to the Plaintiffs' approach
14 to privilege here. I don't think that it is
15 conventional and I don't think that it was expected
16 or anticipated, but it is clear that these issues
17 are going to have to be dealt with by way of
18 motion. And so my client reserves all of their
19 rights, certainly a right to compel a re-attendance
20 after the hearing of whatever motion is going to
21 have to be argued in order to resolve the refusals.

22 So subject to that and the
23 undertakings, that is my cross-examination for
24 today.

25 MR. MOORE: Thank you. So we won't

1 debate that, but I hear what you have said.

2 And so as I understand it, Mr. Baumann
3 needs half an hour or so to be organized to start
4 his cross-examination, so --

5 MR. LUNG: 2:40?

6 THE DEPONENT: 2:40?

7 MR. LUNG: Well, I am just wondering,
8 Kevin, are you there?

9 MR. BAUMANN: Yes, sorry, 2:40 would be
10 perfect.

11 MR. MOORE: All right.

12 THE DEPONENT: Thank you.

13 MR. LUNG: Okay, thank you very much,
14 Mr. Riley.

15 THE DEPONENT: You are welcome.

16 -- RECESSED AT 2:07 P.M.

17 -- RESUMED AT 2:40 P.M.

18 CROSS-EXAMINATION BY MR. BAUMANN:

19 1180 Q. Good afternoon, Mr. Riley. So
20 obviously you are under oath?

21 A. Yes, I am. Actually, I have
22 affirmed.

23 1181 Q. All right.

24 A. But I am, yes.

25 1182 Q. Perfect. I would like to dig

1 down, if possible, to some of your testimony this
2 morning. You mentioned that Callidus was in the
3 process of being wound down. Can you explain that
4 for me, please? I would like to know what the end
5 result would be? Is there going to be a shell left
6 with a bunch of lawsuits? Who takes the lawsuits
7 on? Because I do have I believe substantial
8 claims against -- counterclaims against Callidus,
9 and I would just like to know Callidus's and
10 Catalyst's position on that.

11 A. I am no longer an officer or
12 director of Callidus, so I don't know what the end
13 result will look like.

14 1183 Q. So they have put you forward as a
15 witness for Callidus for me to question today; is
16 that correct?

17 A. Yes, because of my experience with
18 Callidus prior to, prior to today.

19 1184 Q. Okay, can you give me an
20 undertaking as to what has transpired relating to
21 the privatizing -- or sorry, the winding down of
22 Callidus?

23 MR. MOORE: I am not sure that he said
24 that it was being wound down --

25 MR. BAUMANN: Yes, he did.

1 MR. MOORE: -- and in any event, no, we
2 won't give that undertaking.

3 MR. BAUMANN: Yes, he did.

4 R/F MR. MOORE: Okay, I don't want to argue
5 with you. I am just saying we are not going to
6 give that undertaking.

7 THE DEPONENT: I can't remember what I
8 said, but --

9 MR. BAUMANN: So I can take that as a
10 refusal then?

11 MR. MOORE: Yes, you can.

12 BY MR. BAUMANN:

13 1185 Q. Okay, great.

14 My assistant, Darla, are you on?

15 MS. RATHWELL: Yes.

16 MR. BAUMANN: Okay, Darla, can you go
17 to number 25 which is the last item on my agenda?
18 I sent an agenda just more for convenience. I hope
19 to touch on a number of records here today.

20 If you can bring that up on the screen,
21 please?

22 MS. RATHWELL: Yes, just give me a
23 moment.

24 MR. BAUMANN: It is number 25.

25 MS. RATHWELL: Yeah, I am just trying

1 to get to it. Just give me one moment.

2 BY MR. BAUMANN:

3 1186 Q. Tab 25, the last one. It is the
4 last one. It is an email.

5 So, Mr. Riley, this is an email to your
6 counsel requesting information that I need to
7 defend the anti-SLAPP and the action relating to
8 your business or Callidus's or Catalyst's business.

9 MR. DEARDEN: Can we see the date, Mr.
10 Baumann, of that email? Because it is just showing
11 the recipients. So October 23, 2020, at 7:21 p.m.,
12 from you to all of us counsel.

13 BY MR. BAUMANN:

14 1187 Q. Yes. And I didn't want to flood
15 this with, you know, all of my requests, but you
16 know, as you know, I was trying to obtain
17 information and, you know, I haven't been able to
18 get it. Obviously Justice Hainey has been busy,
19 and there has been lots going on with COVID and the
20 courts are backed up, so I could not obtain an
21 initial sitting with him to obtain what I believe
22 should be Schedule "A" documents prior to this
23 cross-examination starting.

24 So to be fair to all the other parties
25 to the anti-SLAPP, I can't really bring that

1 application now. It would just complicate it too
2 much to bring information in at the eleventh hour
3 or after the fact when, you know, some parties
4 wouldn't have it prior to their questioning.

5 So this is information that relates
6 directly to my case, and I believe all the cases,
7 and can I get an undertaking from you, Mr. Riley,
8 to produce the information referenced in the five
9 different topics?

10 MR. MOORE: No.

11 MR. BAUMANN: Okay.

12 MR. MOORE: We are here to have a
13 cross-examination on the SLAPP motions. I am not
14 going to go through all of these points because it
15 will just take up too much time and debate on this
16 cross-examination, and I don't want to interfere
17 with your ability to ask relevant questions, but I
18 will just make this observation as an example.

19 The first document referred to involves
20 in CRO Sinclair and other parties, and he is one of
21 the parties who you wanted to enjoin in your
22 amended counterclaim that Justice Hainey said could
23 not be brought forward at this time.

24 And so we don't agree that all these
25 records are relevant or material to the SLAPP

1 motions, and so we are not going to give that
2 undertaking.

3 MR. BAUMANN: Okay, well, my position
4 is it is highly unfair for parties to bring
5 litigious, malicious litigation against me and to
6 spend millions of dollars and not receive the
7 information. So I want an undertaking or a refusal
8 whether you will provide that information or not,
9 because I will be asking for it.

10 R/F MR. MOORE: That is fine. Well, you
11 have a refusal.

12 BY MR. BAUMANN:

13 1188 Q. Okay, perfect.

14 Number 1 on my index, Darla, could you
15 bring it up, please?

16 Okay, so what we have here -- and I
17 didn't think you would have any objection, Mr.
18 Moore, to me producing this. I would like this as
19 my first exhibit today. This is the credit
20 agreement between Alken Basin Drilling Ltd. and
21 your client Callidus. It has been filed by
22 Callidus in many actions and I filed it myself. It
23 is more for a reference point.

24 MR. DEARDEN: Can the witness see the
25 whole document first, the whole letter, please?

1 MR. BAUMANN: Scroll up please, Darla.

2 THE DEPONENT: [Witness reviews

3 document.]

4 I don't have to see the whole thing.

5 MR. MOORE: Is this a signed version?

6 Like is it signed by both counterparties at the

7 end?

8 MR. BAUMANN: Yes, it is signed on the

9 bottom.

10 MR. MOORE: Okay, it starts out at the

11 beginning as an offer, so let's just go to the

12 bottom and see if it is the signed version.

13 MR. DEARDEN: Okay, stop.

14 MR. BAUMANN: It is just above that --

15 MS. RATHWELL: Sorry, it is moving on

16 its own, sorry.

17 MR. BAUMANN: Well, hopefully we can

18 speed this up.

19 MS. RATHWELL: Well, I can't get the --

20 I can't control the --

21 MR. BAUMANN: Okay, one moment. Just

22 be patient. We just need to show Mr. Moore it is

23 signed.

24 MS. RATHWELL: I have also provided

25 them with a copy as well.

1 THE DEPONENT: We have that?

2 MR. BAUMANN: That was sent by email
3 this morning.

4 MS. RATHWELL: It was sent by an email,
5 and also as a Google drive link.

6 MR. MOORE: I am not complaining. I am
7 just saying let's go to the very end. We just
8 haven't had a chance to go through all of the
9 various email messages from Mr. Baumann today,
10 that's all.

11 MS. RATHWELL: Yeah, not a problem.

12 Sorry, if I scroll too fast, then it
13 skips pages.

14 MR. BAUMANN: David Reese and James
15 Riley signed on behalf of Callidus.

16 MR. MOORE: Was it signed -- did you
17 sign it?

18 MR. BAUMANN: Just from a
19 counterparty --

20 MR. MOORE: Okay, that is fine. That
21 is all I was wanting clarified, that's all.

22 MR. BAUMANN: Okay, so fine, are you
23 okay with me advancing this or are you okay with it
24 being marked in the record as number 1?

25 MR. MOORE: I am not going to object.

1 If I am silent about anything or a question, it
2 doesn't mean I am acknowledging or agreeing to its
3 relevant. I am trying to be mindful of the need to
4 get through this and allow you to put questions,
5 and I am probably going to be liberal in not
6 objecting, but let's go if you have questions about
7 this document.

8 BY MR. BAUMANN:

9 1189 Q. Yeah, here they come.

10 Mr. Riley, you testified this morning
11 that a credit agreement prohibits a borrower from
12 discussing a Callidus loan because of
13 confidentiality provisions. Within this agreement,
14 and I hope that you guys will look at it later and
15 not now and waste my time on this examination, but
16 there is no confidentiality or non-disclosure
17 relating to this agreement.

18 So would you agree that, considering I
19 believe I was defrauded and wronged by Callidus
20 and/or Catalyst, that I would be able to talk to
21 whoever I wanted relating to this agreement?

22 MR. MOORE: Well, put your question.
23 My recollection is that there were several
24 documents signed contemporaneous with the credit
25 agreement, and there may be other confidentiality

1 agreements. There may be other terms. I don't
2 think it is a useful exercise to try to go through
3 them and figure all that out right now.

4 If you have got a specific question
5 about this document, and leaving aside the
6 pejorative characterization which we obviously do
7 not agree with, if you have got a question about
8 this document, just ask Mr. Riley and he will do
9 his best to answer and we'll go from there.

10 And recognize, though, that his
11 attendance today and yesterday was focussed on the
12 SLAPP motions and affidavits, and so he didn't come
13 here prepared to replicate, for example,
14 discoveries that have taken place in Alberta in
15 those proceedings.

16 But ask your questions about this
17 document and we'll go from there.

18 BY MR. BAUMANN:

19 1190 Q. Okay, well, anyways, this document
20 is the basis for all other documents, which would
21 have been the share hypothecation and everything
22 else that went behind it, so we'll leave it at
23 that.

24 [Court reporter intervenes for
25 clarification.]

1 This document is what led to any other
2 agreements, i.e., share hypothecation agreements,
3 powers of attorney and any other agreements with
4 Callidus, so this is the main document.

5 So for the record, contrary to what Mr.
6 Riley said this morning, there is no
7 confidentiality relating to this agreement, at
8 least this agreement. Would you agree with that,
9 Mr. Riley, or no?

10 A. I would have to read the
11 agreement. So if you want me to look at it now, I
12 will.

13 1191 Q. Can you guys review it later so we
14 can get going, or not?

15 U/A MR. MOORE: We'll take that question
16 under advisement. As I said - and I don't want to
17 keep repeating myself, I want to let you get on
18 with your questions, that is what I am inviting you
19 to do - my understanding and recollection is that,
20 in common with many of the loan arrangements
21 involving Callidus, there is more than one document
22 that borrowers or prospective borrowers signed.

23 And so let's not debate the point
24 because that is using up valuable time. Just if
25 you have got questions about this document, ask

1 them of Mr. Riley. By answering, he is not
2 acknowledging their relevance, and he will do the
3 best he can.

4 So just ask your questions on this
5 document.

6 BY MR. BAUMANN:

7 1192 Q. Great, yeah, so there is other
8 questions within that document.

9 So, Darla, if you can go to page 4 of
10 this credit agreement, Mr. Riley, do you see "p" as
11 in the letter "p" and "(v)":

12 "Are net of any reserves as
13 determined by the Lender, in its
14 sole discretion."

15 Do you see that?

16 A. I actually -- sorry, the document
17 is moving around. Sorry, "p" as in "Peter" and
18 what is the smaller paragraph?

19 1193 Q. So (v), right there where the
20 cursor is.

21 A. Oh, (v)? Yes, I see that.

22 1194 Q. So basically, any receivables
23 funding, even though when you go up top, you see my
24 loan was 'x' amount of million and my receivable
25 loan was up to 5 million dollars, it is covered off

1 down here where Callidus could advance basically
2 whatever they want, as little as they wanted or
3 none, right; is that your understanding? Because
4 there would --

5 A. Well, there is --

6 1195 Q. -- be the -- yes, go ahead.

7 A. ABL lending always
8 has...[inaudible.]

9 [Court reporter intervenes for
10 clarification.]

11 An asset-based loan always has built in
12 the ability of the lender to create reserves.

13 1196 Q. Okay, would them reserves be, Mr.
14 Riley, an initial hold-back out of the gate of the
15 loan and would they also include at Callidus's sole
16 discretion receivables denying, denying receivables
17 funding throughout the loan? Is that Callidus's
18 right, the way you understand it?

19 A. No, this talks about advances made
20 on eligible insured accounts receivable, which
21 would be net of any reserves, as well as -- so the
22 other criteria listed in there from "i" to
23 Romanette "x" -- sorry, Romanette "ix".

24 1197 Q. Also we have the comment on 11(e).
25 Darla, can you go to 11.

1 So the question is - and I have got to
2 hit on it here, Mr. Riley - could Callidus withhold
3 whatever they wanted on a particular Callidus loan,
4 any amount of funding on the receivables or
5 equipment or you name it, could they -- regardless
6 of what the loan was?

7 A. Sorry, I'm not sure, are you
8 saying can we impose a reserve? Yes, we can.

9 1198 Q. And do they have to be
10 communicated or have reasoning behind them, or can
11 they just be a plain --

12 A. It would be communicated.

13 1199 Q. In my case, it wasn't.

14 A. As part of the borrowing base
15 calculation.

16 1200 Q. Yeah, right. If a company like
17 mine had sufficient borrowing availability but
18 still couldn't access its funds that were due, what
19 do you have to say about that? Because it happened
20 in five different occasions with me, which is
21 why I -- which is the subject of me making
22 complaints to the police, to the Ontario Securities
23 Commission, and anyone else who would listen to me.

24 A. You would have to take me to the
25 particular instances of each of those borrowings

1 for me to answer that question properly.

2 1201 Q. Well, we will touch on that in the
3 many trials that we are in together, I guess.

4 Darla, go to 23, please, on that same
5 document -- or I'm sorry, 11(e), back up to 11(e).
6 It's 11, you passed it.

7 It may seem boring, Mr. Riley, but we
8 are going to get down to the nuts and bolts here in
9 a minute.

10 A. That is fine.

11 1202 Q. 11, Darla. Yes, thank you. 11(e)
12 in particular.

13 So basically what this says --

14 A. I'm sorry -- oh, I see 11(e), now
15 I see that.

16 1203 Q. Yes, so basically what it says is:

17 "In the event of a decrease in
18 the fair market value of property as
19 determined by the lender in its sole
20 discretion, the borrower shall also
21 make a payment of principal in the
22 amount equal to the difference."

23 MR. MOORE: That is what it says.

24 THE DEPONENT: Yes, I agree with that.

25 BY MR. BAUMANN:

1 1204 Q. Yes, did you ever ask or did
2 anyone within Callidus ever ask Alken to top up its
3 loan? Because Callidus did chop the appraisal down
4 on a Friday afternoon, seeing half the equipment
5 come up with an appraisal for half the price and
6 debited my account for \$50,000.

7 Did you ever -- do you have any records
8 that Alken was ever asked to top up the loan?

9 A. It is not a top-up. You have to
10 pay down principal.

11 1205 Q. Yeah, pay down. Pay down, top up,
12 the same thing, yeah.

13 A. But I wouldn't have that record
14 here.

15 1206 Q. Okay, can you undertake to try and
16 find that?

17 U/A MR. MOORE: We'll take that under
18 advisement. I mean, aren't these types of
19 questions matters that all arose in the Alberta
20 proceedings?

21 MR. BAUMANN: These matters arose in
22 every one of the proceedings I am involved in with
23 you guys, so it is all so intertwined, it's scary.
24 It is. You cannot separate any one claim from the
25 other in any jurisdiction. It is all the same

1 conduct. It is all the same playbook.

2 MR. MOORE: Mr. Baumann, I hear you --

3 MR. BAUMANN: So --

4 MR. MOORE: Just a minute -- sorry, you
5 finish what you wanted to say. I'm sorry, carry
6 on.

7 MR. BAUMANN: Yes, Darla, let's carry
8 on. Go to number 4, please, if you can bring up.

9 MR. MOORE: Just on that statement, let
10 me just register my disagreement with that. I am
11 not going to jump in every time --

12 MR. BAUMANN: I don't need your --

13 MR. MOORE: Just a minute. Let me
14 finish. I let you finish, so you can just let me
15 finish.

16 My understanding is that you brought
17 some kind of motion in Alberta to stay the
18 proceedings out there, and we don't agree that they
19 are all interspersed and intertwined.

20 So just as I said before, please don't
21 take my silence if I don't jump in and take issue
22 with everything you say as either acquiescence to
23 what you are saying or acknowledgment that what you
24 are going through is necessarily relevant to the
25 SLAPP motions; because otherwise, if I have got to

1 jump in every time, then it really is going to be
2 difficult for you to get to your questions.

3 So get your questions going, and we'll
4 just go one at a time.

5 BY MR. BAUMANN:

6 1207 Q. So to finish up and to comment on
7 that comment that you just gave me, all things
8 Callidus are complex. How can I defend an
9 anti-SLAPP when you say and when your claim is my
10 statements to the police, the OSC and any other
11 party were false? How could I defend that unless I
12 get the information, right, and question your
13 client? So it is obvious I am not going to get
14 much from him.

15 So we are on the Code of Conduct right
16 now. It is number 4. Darla has got it up on the
17 screen. So, Mr. Riley, are you familiar with this
18 document within Callidus or was it just made up?

19 A. I think that was prepared in
20 connection with the IPO. I would have to go back
21 and verify that, but I think that is when it was
22 prepared.

23 1208 Q. Okay. So within here, all
24 management, all representatives of the company, all
25 subcontractors have to sign these code of

1 conducts...[inaudible.]

2 A. [Inaudible]...I don't think it was
3 signed. I think it was...[inaudible.]

4 [Court Reporter intervenes for
5 clarification.]

6 BY MR. BAUMANN:

7 1209 Q. Yes, near the bottom of it, there
8 is a spot for every party to sign within this
9 document, right down there.

10 A. Yes, I see that.

11 1210 Q. So that basically it is a sign-off
12 that everybody that represents Callidus works for
13 them, and in essence, the document says you are
14 supposed to act ethical and treat parties honestly
15 and fairly and everyone is to sign it. Did you
16 sign one of them on behalf of yourself or for
17 Callidus?

18 A. I do not recall.

19 1211 Q. Can you undertake to find out if
20 you did sign it?

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

23 BY MR. BAUMANN:

24 1212 Q. And also can you find out if Scott
25 Sinclair signed one on behalf of him and his

1 company Sinclair Range?

2 R/F MR. MOORE: No, we are not going to
3 make that inquiry.

4 MR. BAUMANN: Well, he was a
5 contractor. Why not?

6 MR. MOORE: Well, if you sought to add
7 him in the counterclaim and -- again, I don't want
8 to clutter up the record unduly, but no, we are not
9 going to make that inquiry.

10 BY MR. BAUMANN:

11 1213 Q. Okay, Darla, go to the next one,
12 the CEDAR, number 5.

13 So I am going to take you through the
14 public process, Mr. Riley. You have been involved
15 with public companies, and you have taken over many
16 of them and you have been involved in them
17 and...[inaudible.]

18 A. We can't hear you. We can't hear
19 the question.

20 1214 Q. Obviously...[inaudible.]

21 A. We did not hear the question.

22 1215 Q. It is a condition of a prospectus
23 to file a code of conduct with securities
24 regulators; correct?

25 MR. DEARDEN: We did not hear his

1 question.

2 THE DEPONENT: We did not hear the
3 question, Kevin.

4 Deana, did you hear it?

5 MR. BAUMANN: Let me go and call in
6 from the land line.

7 Let's take a five-minute break, and
8 I'll call in, okay.

9 MR. MOORE: That's fine.

10 -- RECESSED AT 3:17 P.M.

11 -- RESUMED AT 3:20 P.M.

12 MR. DEARDEN: What we recommend you do
13 as the documents you are taking Mr. Riley to get
14 entered as an exhibit, we will have an Exhibit 4,
15 because that is the next exhibit, and any document
16 you refer to, best you can, before you ask
17 questions about it, indicate what the document is,
18 like I did earlier about, you know, we need to see
19 what the date of the email was and who it was from
20 and to. So try your best to do that.

21 And then at the end of your
22 cross-examination today, the documents that you do
23 refer to you are going to need to send to the court
24 reporter because those will collectively make up
25 Exhibit 4. Does that make sense?

1 MR. BAUMANN: Yes.

2 EXHIBIT NO. 4: Electronic brief of
3 documents referred to during the course
4 of Mr. Baumann's cross-examination of
5 Mr. Riley.

6 THE DEPONENT: And the document, I
7 don't know how it appears on your screen, but on
8 our screen here it appears to be a CEDAR page for
9 Callidus, but it is sideways. It is not --

10 MR. MOORE: Yeah.

11 THE DEPONENT: If there is a way of
12 converting that to vertical as opposed to
13 horizontal.

14 MR. DEARDEN: So how do we identify --

15 MR. BAUMANN: Darla, are you able to do
16 that?

17 MR. DEARDEN: Mr. Baumann, if you
18 could, first of all, identify what this document is
19 that is not completely upside down but it is
20 sideways, and then so we would be able to make
21 it --

22 BY MR. BAUMANN:

23 1216 Q. Yes, Darla is working on that.

24 So where we finished off when we had
25 the bad reception on the cell phone, I had asked

1 Mr. Riley would he agree that it is a condition of
2 a public company that they post a code of conduct
3 and ethics with securities regulators prior to
4 issuing an IPO or going public?

5 A. I don't know at what time you have
6 to file that. I just I don't know the answer to
7 that.

8 1217 Q. Okay, not that we are going to
9 take you there. I don't want to waste any more
10 time, because I'm not getting too far here.

11 But within Callidus's IPO, there was an
12 undertaking that they would file a code of conduct
13 and ethics on CEDAR, okay, so that is what led us
14 to this sideways schedule here, number 5, CEDAR
15 code of conduct. How it came about is I was
16 reviewing CEDAR filings, and there in fact was no
17 code of conduct and ethics.

18 I am not sure whether -- obviously
19 Callidus didn't follow that or weren't keeping up
20 on it. So I reached out to the OSC and said, Hey,
21 where is Callidus's filings? That was in the fall
22 of 2015.

23 Darla, can you turn to that, or not?

24 MS. RATHWELL: Not without going out
25 off the screen.

1 BY MR. BAUMANN:

2 1218 Q. Okay, good, so anyways, I reached
3 out in October or November. Actually, it was in
4 November, I believe, or the last few days of
5 October, 15, just basically saying, Hey, where is
6 the code of conduct? No return from them, no
7 communication other than a few days later Callidus
8 filed a Code of Conduct and Ethics.

9 So when I read the Code of Conduct and
10 Ethics, it contradicts all of the treatment I have
11 received from Callidus and Catalyst. That is my
12 opinion. I guess that will be proven in Court.

13 But why was the Code of Conduct and
14 Ethics not filed at CEDAR, as promised within the
15 prospectus?

16 A. I do not know.

17 1219 Q. Can I receive an undertaking for
18 you to do some digging as to find out why?

19 MR. MOORE: Well, the premise of your
20 question is that there was some departure from what
21 you say was undertaken in the prospectus. Now, I
22 am not sure that that is correct, but assuming the
23 prospectus did contain an undertaking to file a
24 code of conduct, one was filed. So I --

25 MR. BAUMANN: So --

1 U/A MR. MOORE: I have a problem with the
2 underlying premise of your question, so I'll take
3 the request -- and I'll do this generally so that
4 we can avoid debates. I'll take that request for
5 an undertaking under advisement. We likely won't
6 agree to it, but I'll take that under advisement.

7 And when you ask for undertakings, I'll
8 do the same thing to try and cut down on the back
9 and forth on the transcript.

10 BY MR. BAUMANN:

11 1220 Q. Okay. I don't expect I would be
12 getting much more from you guys, but we are going
13 to continue going.

14 So, Darla, can you bring the Q1
15 earnings transcript up for Callidus? It is number
16 2. It is on my index list as number 2. Deana, we
17 can get that for you whenever you would like.

18 MR. DEARDEN: Sorry, Mr. Baumann, can
19 you identify that document with a little more
20 detail, please?

21 BY MR. BAUMANN:

22 1221 Q. That is the Q1 2016 Callidus
23 Capital Earnings Call Transcript, Q1 2016, dated
24 August 27th. One of the other parties touched on
25 this prior in the questioning, but I have got a

1 couple of questions within the Q1 and Q2
2 transcript.

3 So first off, I am going to ask you the
4 blunt question. Did Callidus ever receive a yield
5 enhancement on my business, Alken Basin Drilling
6 Ltd.?

7 A. No, we did not.

8 1222 Q. You testified so in Calgary, but
9 there is evidence now that the name that you
10 provided relating to that is incorrect.

11 A. What name do you say was
12 incorrect?

13 1223 Q. Callidus was pretty clever. They
14 got the name sealed through the courts, so we are
15 going to have to unravel that. But within Mr.
16 Glassman's comments in here --

17 A. Well, sorry --

18 MR. MOORE: Just a minute. Let me just
19 try to be succinct here. You obviously have your
20 own views about what happened, et cetera. There is
21 obviously a dispute about that. Certainly there is
22 a dispute in the Alberta cases that have been going
23 on for several years. You have your view, and my
24 clients have a fundamentally different view.

25 So I suggest that if you can put your

1 observations in the form of questions to the
2 witness as opposed to, you know, getting into the
3 back and forth debate, that would be better. That
4 is my suggestion, but it is up to you. If you put
5 questions to the witness, we can deal with those
6 and you can get answers or advisements as the case
7 may be as we go along.

8 But saying, you know, that Callidus is
9 clever and did this and did that, it is really not
10 going to advance this cross-examination process.

11 BY MR. BAUMANN:

12 1224 Q. Okay, great.

13 Okay, so Mr. Riley, on page 3 of the
14 transcript, on the last paragraph, and I am going
15 to read it off to you:

16 "We have stated many times

17 [...]"

18 And this is Mr. Glassman's words:

19 "We have stated many times that
20 we deal in a market segment where
21 our clients often go through
22 structural changes. As a result, it
23 is not uncommon for our clients to
24 need or desire changes through the
25 original deal with Callidus."

1 Can you explain what the difference
2 between asking for help or needing it? What is the
3 difference between the need and request -- or
4 sorry, desire?

5 A. Need would be --

6 1225 Q. Like if you know.

7 A. Well, need means, for example, if
8 you had a covenant that you would be in breach if
9 you did a particular transaction, you would need an
10 accommodation for that.

11 Desiring change would be where you
12 would like it, so it is a nice to have, not a must
13 have.

14 1226 Q. Okay, I have a bit of a different
15 question within that. We were on the credit
16 agreement earlier, and there was a few provisions
17 within there that gives Callidus the right to
18 withhold funds. There is a common denominator in
19 every Callidus loan that every borrower has accused
20 them of withholding funds. So the only way
21 Callidus could have done it is, as covered by their
22 agreement, at their sole discretion. They covered
23 it off in a couple of words.

24 So would it be safe to say that even
25 though a borrower would be -- funds would be

1 withheld to a borrower even if a borrower had
2 sufficient receivables that he couldn't obtain from
3 Callidus, that Callidus could go on and obtain a
4 yield enhancement on that business once they
5 oppressed the business and put it through their
6 process of taking the business over, as you have
7 done in many cases?

8 MR. MOORE: Well, again, I really don't
9 want to interject every time, but the trouble is
10 that is a long, long kind of combination of speech
11 and an assertion and a set of allegations. If you
12 could just put a question and have it focussed on a
13 question and not have every second thought with an
14 allegation that is embedded in it, that would be a
15 lot more productive.

16 MR. BAUMANN: Okay.

17 MR. MOORE: I don't see what that
18 really has to do with the SLAPP motions in any
19 event, but if you could try and put it -- we are on
20 different sides here. I am not trying to interfere
21 with what you are doing. I am trying to make it
22 more efficient.

23 So I would urge you to try to focus on
24 the questions but without all of the allegations
25 built into every second line.

1 BY MR. BAUMANN:

2 1227 Q. Okay, Mr. Riley, did Callidus
3 oppress borrowers in order to take over their
4 businesses?

5 A. No.

6 1228 Q. That is the accusation by many --

7 A. No.

8 1229 Q. -- borrowers and myself.

9 A. No, we did not.

10 1230 Q. Why does everything else read to
11 the contrary?

12 A. I --

13 1231 Q. It was advantageous to oppress
14 borrowers in order to take over their business and
15 gain a yield enhancement buck. So we are going to
16 go to Glassman's words in these transcripts in a
17 minute, so obviously his words are what they are,
18 but you say no, thank you.

19 The National Bank gave Callidus a value
20 on the yield enhancements of between 50 cents and
21 \$1.00. So would you agree, Mr. Riley, it was
22 advantageous - right there in the second
23 paragraph - that it was advantageous to obtain
24 yield enhancements however they could obtain them,
25 Callidus could obtain them?

1 A. I disagree with that.

2 1232 Q. Well, why would they go and ask
3 the National Bank to prepare a report saying that
4 the yield enhancements alone are worth 50 cents or
5 \$1.00?

6 A. The National Bank determined that
7 based on the unrecognized enhancement -- the
8 unrecognized value within some of the entities at
9 that time.

10 1233 Q. Okay, so from my own summary of
11 all of the topics within all of the press releases
12 of Callidus on yield enhancements, Callidus
13 obtained approximately 300 million of yield
14 enhancements. Would you say that is about correct?

15 A. Well, when you say 300 -- I don't
16 think that number is correct, first of all. The
17 other is, are we talking realized or unrealized
18 yield enhancements?

19 1234 Q. Well, they tried to be realized,
20 but in the end none of them were realized, probably
21 not one. It is all about the game, right.

22 A. There were realized yield
23 enhancements, recognized.

24 1235 Q. It is a little more interesting in
25 the second transcript. Let me just finish up on

1 the first one. My apologies, I didn't think I
2 would be jumping on today.

3 On the National Bank, while we are on
4 that topic, before I finish off on the National
5 Bank, would you be able to provide, as they are
6 relevant and they relate right to this case, would
7 you be able to provide the National Bank reports
8 relating to the 50 cent to \$1.00 value of the yield
9 enhancements?

10 U/A MR. MOORE: As I said before, I am not
11 going to debate that with you. We'll take that
12 request for an undertaking under advisement.

13 MR. BAUMANN: Okay, so I'll take that
14 as a refusal, thank you.

15 Okay, so Darla, if you can go to --

16 MR. MOORE: And that may be produced
17 already, but rather than debate that and take up
18 time debating that and several other things that
19 you kind of give evidence about as opposed to
20 asking questions, we'll take that request for an
21 undertaking under advisement.

22 BY MR. BAUMANN:

23 1236 Q. Well, we are going to number two
24 in a minute. Mr. Glassman talks about why these
25 yield enhancements are so important, and so we need

1 to touch on it.

2 So, Darla, finishing up on page 10 on
3 the second transcript, the second paragraph of page
4 10.

5 MR. MOORE: Can I just, in keeping with
6 what Mr. Dearden suggested, when you say "the
7 second transcript", can you just --

8 MR. BAUMANN: Sorry, prior to going to
9 the second transcript, we are still on the first
10 transcript, Q1.

11 MR. MOORE: All right, thank you.

12 BY MR. BAUMANN:

13 1237 Q. Q1, page 10, the second paragraph,
14 Mr. Glassman is boasting that we have got seven
15 loans in this quarter and we have three more in the
16 process. That is 10. And then when you read
17 further in this agreement, it turns into 13 to 14
18 loans that they have yield enhancements on.

19 Would you be able to -- can you provide
20 the independent reports that Mr. Glassman talks
21 about relating to the yield enhancements? Would
22 you disclose them? Because they are not in your
23 Schedule A, B or C. There is some 2017 stuff
24 referenced in your Schedule B, but there is nothing
25 relating -- cleverly, there is nothing related to

1 '16 in your Schedule B. So basically you are
2 withholding information and I think you know it, so
3 I want it and I am going to be asking for it.

4 So I want all 14 independent reports
5 from the third party, the third party evaluators
6 relating to the 14 yield enhancements?

7 A. So --

8 MR. MOORE: Mr. Baumann, I am not going
9 to take you up on those loaded comments and
10 self-serving comments.

11 MR. BAUMANN: They are not loaded and
12 they are not self-serving.

13 MR. MOORE: We'll take that request --

14 MR. BAUMANN: You can't bring a claim
15 of this nature and then expect nobody to ask you a
16 question. We are trying to hold -- at least
17 attempt to hold you accountable.

18 MR. MOORE: Well, Mr. Baumann, okay, I
19 am not going to debate with you every time you make
20 some accusation about my client or about counsel
21 or --

22 MR. BAUMANN: It is not an accusation.
23 It is --

24 U/A MR. MOORE: Let me finish, sir, and I
25 will let you put your questions on the record. I

1 am simply not going to engage in a debate with you
2 every time. I will take that request for an
3 undertaking under advisement, and it will be much
4 quicker if we just do that every time rather than
5 clutter up the record with these debates. So let's
6 move on.

7 BY MR. BAUMANN:

8 1238 Q. Okay, as I finish off on this, Mr.
9 Riley, I want the 14 independent reports and I want
10 the reports from the National Bank relating to all
11 of the yield enhancements and I want Callidus's
12 material that went over to its auditor confirming
13 what they wanted them to evaluate for yield
14 enhancements. We know what Mr. Moore's response to
15 that is, so --

16 A. And just so -- and I am not quite
17 sure I understand the question anymore, but what is
18 referred to there is a quarter of our portfolio is
19 getting yield enhancements above and beyond normal
20 term sheet. Some of those would be -- I believe
21 all of those yield enhancements would be referenced
22 in the MD&A for the relevant period, so for the Q1
23 2016 MD&A.

24 1239 Q. I can't match your MD&A with your
25 press releases and your PR. None of it makes

1 sense. None of it matches up. So I asked, I want
2 the 14 independent reports --

3 A. I am surprised.

4 1240 Q. You know what I asked for.

5 U/A MR. MOORE: Okay, let's not debate
6 that, sir. I have your undertaking request. I am
7 not going to get into line by line accusation after
8 accusation. You have requested the undertaking,
9 and we have taken that under advisement. And let's
10 move on to your next question. And I would just
11 request that you --

12 MR. BAUMANN: Just to be clear, Mr.
13 Moore, and if you could please leave the room or
14 just please leave it to a refusal or to an
15 advisement. I am questioning your client, not you.

16 MR. MOORE: I am trying to make this
17 move along, sir. What is your next question?

18 BY MR. BAUMANN:

19 1241 Q. Darla, if you can go to the Q2
20 earnings call transcript.

21 So, Mr. Boyer, do you believe the yield
22 enhancements were very important to Callidus?

23 A. You used the name Boyer.

24 1242 Q. Sorry. Mr. Riley.

25 A. That is fine. I just don't want

1 to mess up the transcript.

2 1243 Q. Mr. Riley, do you believe the
3 yield enhancements are unequivocally and undeniably
4 a fundamental, ongoing, repeating part of the
5 business for a company such as Callidus?

6 A. Could you -- are you guiding me to
7 a portion of this earnings call?

8 1244 Q. It basically says that within the
9 first page -- or sorry, page 4 of the earnings call
10 transcript, and they were Mr. Glassman's words. So
11 would you agree with him that they were fundamental
12 and undeniably --

13 A. I think I answered that question
14 this morning, so I want to be consistent, and I
15 think what I said was it is a fundamental part of
16 any lending business where you provide
17 accommodations, there will be fees. How those fees
18 work depends on the nature of the yield -- of the
19 accommodation.

20 1245 Q. I don't think you should speak for
21 all asset-backed lenders, Mr. Riley. I can't find
22 any other one that loans funds for 18 to 20 percent
23 and purports to make 30 or 40.

24 A. I was not referring to
25 asset-backed lenders. I was talking about lenders

1 generally. Schedule 1 banks would also charge
2 fees.

3 1246 Q. Okay, I just have one more
4 question on the Q2 earnings call transcript, and I
5 will be there in just a moment. Hang on.

6 Darla, please go to page 9.

7 Okay, at about the middle of the page,
8 the sentence starts with:

9 "That being said [...]"

10 Do you see that?

11 A. Yes. Could you please increase
12 the size? I can't -- I am having trouble reading
13 it. Thank you.

14 "That being said [...]", okay, that
15 paragraph you want me to focus on is the one that
16 commences "That being said [...]"?

17 1247 Q. Yes.

18 A. [Witness reviews document.]

19 1248 Q. So basically what that says is if
20 Callidus, from a borrower's perspective, if
21 Callidus wants to take your business, they could
22 just rewrite your loan, revalue your equipment and
23 snatch you, which is what happened in my situation.
24 What does he mean in the third sentence where it
25 starts with:

1 "We will change the
2 requirements under the borrowing
3 base"?

4 You can't change the requirements under
5 the borrowing base. Either you agree to lend for a
6 certain amount under certain terms or not. What
7 does he mean? Can you perhaps speak on Mr.
8 Glassman's behalf? What does he mean by "change
9 the requirements under the borrowing base"?

10 A. Well, I think that if the
11 collateral is reduced in value, we will reduce the
12 availability. I don't think that -- I think that
13 is what he is saying.

14 1249 Q. Okay.

15 A. If you have insufficient
16 collateral either because you don't have that
17 collateral or because of a decline in the value of
18 the collateral, we'll adjust the availability. I
19 think that is what the loan agreement probably
20 says.

21 1250 Q. What if it is receivables-based?
22 Why did Callidus not allow me access to my 3.2
23 million dollars of receivables when they were
24 top-tier oil companies and they could not obtain
25 the funds? Callidus wouldn't cough them up to me.

1 The money was already in Callidus's account.

2 A. I -- Kevin --

3 1251 Q. Yeah, the game is made, right.

4 A. No, no --

5 MR. MOORE: No, sir --

6 THE DEPONENT: No, I am trying to

7 answer the question.

8 MR. MOORE: Stop with those

9 interjections, okay. You have got your view of

10 what happened. My client disagrees with that view.

11 If you keep interjecting with this quasi-evidence

12 and allegations and accusations in every question

13 you ask, it makes the process unfortunately

14 impossible.

15 So just ask your questions without

16 these accusations and assumptions bearing in,

17 please.

18 BY MR. BAUMANN:

19 1252 Q. Okay, we'll leave it at that, Mr.

20 Riley. I know we are -- you know that I know your

21 business plan and you know that I made it. I have

22 made you. So --

23 A. Sorry, sorry, sorry, I don't

24 necessarily have to take this abuse, do I?

25 MR. MOORE: No, you don't.

1 THE DEPONENT: Okay.

2 MR. MOORE: And we are not going to.

3 THE DEPONENT: Okay.

4 MR. MOORE: So ask your questions and
5 stop with the accusations.

6 BY MR. BAUMANN:

7 1253 Q. Okay, Jaeme Gloyn, an analyst with
8 the National Bank, he is asking Mr. Glassman on
9 page 9 near the bottom, the third paragraph from
10 the bottom:

11 "Okay. Great. Fair enough.
12 Shifting gears to the yield
13 enhancements and the CAD 32 million
14 gain, can you just sort of elaborate
15 on the size of the potential can,"
16 being the size of the loan, "the
17 size of the original loan that those
18 warrants are associated with?
19 What's the value of the
20 shareholders' equity or percentage
21 that [...] 32 million [...]" that
22 Callidus gained, basically.

23 What loan does that refer to? What
24 loan is he referring to there, Mr. --

25 A. Horizontal. Horizontal.

1 1254 Q. Okay, so from my information,
2 Horizontal blew up. Callidus wrote off over 2
3 million dollars relating to that loan. How does
4 Callidus take a 32 million dollar gain on a loan
5 that blew up that they lost all of their money?

6 A. The --

7 1255 Q. I am not trying to be argumentive,
8 sir. I am just asking --

9 A. No, no, you have asked a couple of
10 questions, so let me see if I can answer them.
11 When you ask two questions at once, I want to make
12 sure I am not -- the 32 million I believe was taken
13 in income in that quarter, but then over time it
14 was reduced because of what was happening in
15 Venezuela. You'll recall that Horizontal had
16 arrangements to drill for oil in Venezuela.

17 The problem was, from our point of view
18 and from Horizontal's point of view, the risk of
19 nationalization when the equipment was sent to
20 Venezuela, and if it wasn't nationalized, whether
21 we could get paid -- whether they could get paid on
22 the contract. Because they were paid in kind, so
23 they had to be able to get the oil out of the
24 pipeline and into a ship.

25 So that loan, ultimately its demise was

1 because nobody could get satisfied that we could
2 execute that contract in Venezuela, quite apart
3 from the sanctions that were imposed over time for
4 people -- that would prevent people doing business
5 with Venezuela.

6 1256 Q. Okay, does the Horizontal
7 contract, from your recollection and memory, Mr.
8 Riley, correspond with the date timeline of when
9 the contract was signed and when the sanctions came
10 in in Venezuela?

11 A. I'm sorry, I am not -- could you
12 ask that as a question, please?

13 1257 Q. Does everything line up on the
14 timeline between the press release -- or sorry, the
15 earnings call comment, the contract for Horizontal
16 and the sanctions which came in in Venezuela?

17 A. I don't remember what --

18 1258 Q. It is a legitimate -- it was a
19 legitimate yield enhancement at that time; correct?

20 A. Yes. Well, yes, there had to be
21 agreement with the auditors for us to recognize
22 that in income.

23 1259 Q. Yeah, okay, so the auditors would
24 have information on this; correct?

25 A. Yes, I mean, somewhere in their

1 files, I assume.

2 1260 Q. Can I get an undertaking, because
3 nothing should be confidential between a public
4 company and their auditor? Can I receive an --

5 A. We are not a public company
6 anymore, and those documents --

7 1261 Q. Well, you were then, so --

8 A. Those documents that --

9 1262 Q. I know the answer. Mr. Moore
10 objects to it. He'll take it under advisement, and
11 they won't give it. So I'll be searching for it,
12 so leave it at that.

13 On the last paragraph relating to page
14 9, so the poster child was in fact Horizontal
15 rather than Alken; correct?

16 A. Sorry, where do you see "poster
17 child"?

18 1263 Q. The second sentence:

19 "They are a poster child of how
20 we can help and why we would want to
21 help a company that first was in
22 trouble and then figures out a way
23 to get out of trouble."

24 A. Yes.

25 1264 Q. So my business was not the poster

1 child. It was in fact Horizontal, right?

2 MR. MOORE: Well, you asked what was
3 the 32 million dollar yield enhancement, what
4 company was that associated with. He has answered
5 Horizontal. My understanding is that answer has
6 already been provided to you in Alberta since --

7 MR. BAUMANN: Okay, got it.

8 MR. MOORE: You have asked the question
9 and you have got the answer.

10 MR. BAUMANN: We are moving on. Bear
11 with me a minute, guys. How much more time do we
12 have today?

13 MR. MOORE: Well, until 5 o'clock.
14 That is what we did yesterday. Well, no, we
15 stopped a little before 5 o'clock yesterday, but we
16 still have another hour or so.

17 BY MR. BAUMANN:

18 1265 Q. Okay, good. Just give me one
19 minute.

20 Darla, can you take me to Mr. Riley's
21 responding motion record where he discusses me.

22 A. That is this, right?

23 MR. DEARDEN: I am not sure which one
24 it is.

25 MR. BAUMANN: It would be within your

1 sworn affidavit, yeah.

2 MS. RATHWELL: What number is that?

3 MR. BAUMANN: Just give me one second,
4 sorry.

5 MS. RATHWELL: It is on the index.

6 MR. BAUMANN: Yes, I'm looking.

7 MS. RATHWELL: Is it number 14,
8 confidential affidavit of Jim Riley?

9 MR. BAUMANN: Yes, and there is the
10 other one right below it, the conspiracy one. It
11 is within the conspiracy, 15, sorry. Thanks,
12 Darla.

13 MR. DEARDEN: Mr. Baumann, can we see a
14 little more of the front page to know? A little
15 more, Darla. There would be a title or something
16 as to what that document is. Darla, can you keep
17 scrolling down, please? No, that's too far. That
18 would be Mr. Baumann's document. Keep going.

19 THE DEPONENT: So that is this one.
20 That is the main action anti-SLAPP.

21 MR. BAUMANN: Okay, stop right there.
22 The conspirators, Darla, you know, where it
23 discusses me, it should be around page 41.

24 MR. DEARDEN: So just for the record
25 now, Mr. Baumann, that would be Mr. Riley's

1 affidavit sworn on May 29, 2020, that primarily
2 relates to the conspiracy action, and you are
3 taking us to page 41.

4 BY MR. BAUMANN:

5 1266 Q. That's correct. I just wanted to
6 touch on what I am accused of, just so I am
7 familiar with it and where we are coming from and
8 discuss -- I have a couple questions on it.

9 Okay, there we are. Okay, 75, I am
10 just going to clear up a few errors in there. 75,
11 I am the President of Alken Basin Drilling, not
12 was, but that is a technicality. Keep scrolling
13 up, Darla. And that transpired when I reactivated
14 Alken.

15 Stop there, Darla.

16 Number 76, Mr. Riley, you are aware of
17 what happened in this situation. Can you explain
18 what you are saying in number 76?

19 A. You had diverted funds from Alken
20 Basin into a new bank account with I believe the
21 Royal Bank of Canada when you were obliged to
22 deposit all receivables into the lock box.

23 1267 Q. Yes, that's correct, you know, at
24 a time I was into a loan where my lender was
25 obliged to loan receivables, which they were not

1 prepared to because they had a different game, but
2 that is my opinion.

3 Relating to that, just to be clear, I
4 informed Mr. Sinclair, it wasn't found. I informed
5 Sinclair, Listen, you guys --

6 MR. DEARDEN: Mr. Baumann, it is Rick
7 Dearden here. I know you are a self-rep and we are
8 trying to give you a lot of leeway, but you are not
9 allowed to be putting evidence in the record, sir.

10 BY MR. BAUMANN:

11 1268 Q. Okay, good, let's leave it there,
12 okay.

13 Callidus, two years after this event,
14 Mr. Riley, and I believe because I brought a
15 complaint to the RCMP Commercial Crimes in Alberta
16 on a recommendation --

17 MR. DEARDEN: That would be called
18 evidence, Mr. Baumann, that you are not allowed to
19 do when you are asking questions on cross.

20 BY MR. BAUMANN:

21 1269 Q. Okay, I'll stick to it.

22 Callidus brought a police report
23 against me with the RCMP relating to this opening
24 of a bank account and supposedly diverting funds.
25 Did you have anything to do with this, Mr. Riley?

1 A. I was involved in that.

2 1270 Q. So being that was two years later,
3 Mr. Riley, was that in retaliation of my submission
4 lodged with the RCMP Commercial Crimes or did you
5 just get around to it two years later?

6 A. We got around to it two years
7 later.

8 1271 Q. Okay, did you receive any comeback
9 from the RCMP relating to that?

10 A. Not that I am currently aware of.

11 1272 Q. Did your investigator out of
12 Edmonton receive anything that he informed you of
13 or not?

14 A. I would have to go back and
15 confirm with him what the state of affairs were.

16 1273 Q. Can you do that, please, and
17 provide me a copy of the file?

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

20 BY MR. BAUMANN:

21 1274 Q. Thank you, Mr. Moore.

22 Okay, number 77. What is your
23 understanding of where the litigation is amongst
24 Callidus and I as far as an ongoing proceeding?

25 A. I actually don't have the current

1 status of all of that. I would have to check with
2 Mr. DiPucchio and the firms in Alberta.

3 1275 Q. Okay. So you were in Calgary and
4 you were questioned, and you obviously would agree
5 that we beat a summary judgment attempt and an
6 appeal right directly from the bench?

7 A. You broke up a little bit.
8 What --

9 1276 Q. You would agree that I beat
10 Callidus's summary judgment attempt and appeal
11 directly from the bench relating to the Alberta
12 matter?

13 A. As I recall, it was rather than
14 giving summary judgment, it was directed over for
15 trial.

16 1277 Q. Yes, okay. So within number 77
17 you have an Exhibit 24. Can you tell me, Mr.
18 Riley, why Exhibit 24 appears to be selected when I
19 filed and received consent from the court to file
20 an Amended Defence and Counterclaim and an Amended
21 Counterclaim in the Alberta action, yet Exhibit 24
22 is a copy of the initial -- my initial defence in
23 the matter prepared by Norton Rose and filed by
24 Norton Rose way back when our issues in Alberta
25 first arose?

1 A. Sorry, is that a question?

2 1278 Q. Yes, why would you include as
3 Exhibit 24 a Statement of Defence that is so dated
4 when there is two other Statements of Defence that
5 the court should be abreast of that are not there?
6 It is actually a Norton Rose prepared, acting as
7 counsel, defence? Whose call was that?

8 A. I can't recall why we selected
9 this document as being the best one to file. It
10 was representative I think of what we were stating
11 as defences, because I think part of our case is
12 the similarity in the different -- or the
13 similarity between and among you, Mr. McFarlane,
14 and Levitt and Molyneux.

15 1279 Q. Darla, can you take me to my
16 Amended Defence and Counterclaim in Alberta. One
17 of them is 19. There is an Amended Statement of
18 Defence and there is an Amended Statement of
19 Defence and Counterclaim.

20 MS. RATHWELL: Number 19.

21 BY MR. BAUMANN:

22 1280 Q. 19, and there should be one more
23 Amended Statement of Defence and Counterclaim.
24 Number 6. So 6 and 19 within this little rinky
25 index I have.

1 I don't want to waste any more time,
2 Mr. Riley. I know you have obviously seen this.
3 You were questioned relating to it in Calgary. So
4 I would just ask that you please become familiar
5 with it in the future. I find it very --

6 MR. DEARDEN: What is the date of your
7 Amended Statement of Defence and Counterclaim
8 filed?

9 MR. BAUMANN: Darla, back up. January
10 '18.

11 MR. DEARDEN: January 19, 2018, Court
12 of Queen's Bench, Alberta, okay.

13 BY MR. BAUMANN:

14 1281 Q. Yes, and then there is the other
15 one.

16 A. And was this -- was I examined in
17 connection with this particular -- is this the
18 action that I was examined by Mr. Bodnar?

19 1282 Q. This is the action you were
20 examined by Mr. Bodnar relating to Callidus's
21 summary attempt. Here is my Statement of Defence
22 and Counterclaim which was advanced to the court.
23 You guys had it. Callidus had it. Your counsel
24 had it. You had it.

25 I just wondered if you had any answers

1 as to why the Norton Rose original statement, which
2 I believe my grandson could have done a better job
3 preparing, was advanced to the court when we had
4 far better material?

5 A. How old is your grandson?

6 1283 Q. He is very young. He is about 12.
7 And you know, for the record, after -- we are not
8 going to get into any evidence here, but after it
9 was filed, I was informed there was a conflict, so
10 they were turfed.

11 So anyways, that is it. Can you put
12 them in as exhibits, my Amended Statement of
13 Defence and Counterclaim and Amended Defence in
14 Alberta, two separate documents.

15 MR. DEARDEN: So. Mr. Baumann, you
16 need to identify what I think he said was document
17 number 6 that Darla has, and that is the Amended
18 Statement of Defence and Counterclaim, what date is
19 that and --

20 MR. BAUMANN: Yeah, Darla, can you
21 bring it up, please. So let's identify the date of
22 both of them, and keep track to make sure that
23 Deana please gets it.

24 MR. DEARDEN: Sorry, Mr. Baumann, is
25 that what you were trying to plead when Justice

1 Hainey --

2 MR. BAUMANN: Oh, sorry, we included
3 the wrong one within here, Mr. Moore, you are
4 right. Thanks for catching that and --

5 MS. RATHWELL: It is the document --

6 MR. BAUMANN: Yeah, the other is the
7 Statement of Defence in Alberta.

8 THE DEPONENT: Can we go back up,
9 please?

10 MR. MOORE: Can we go back to the first
11 page?

12 MR. BAUMANN: Go back to the previous
13 document on the January one?

14 MR. MOORE: No, this document.

15 THE DEPONENT: Just the first page of
16 this document, please.

17 MR. MOORE: This document.

18 MR. DEARDEN: Darla, can you just move
19 it up, please.

20 MR. BAUMANN: Yeah, the counterclaim
21 was obviously --

22 MS. RATHWELL: On Exhibit 19?

23 MR. DEARDEN: No, the one that is on
24 the screen now. Can you just give us the first
25 page, please.

1 MS. RATHWELL: Exhibit 6?

2 MR. DEARDEN: Yes, you have it up.
3 Yes, document 6, the Amended Statement of Defence
4 and Counterclaim. I just need to see page 1. We
5 are looking at page 2.

6 Yes.

7 MR. BAUMANN: Yeah, sorry, that is --

8 MS. RATHWELL: That is not the Alberta
9 one.

10 MR. BAUMANN: No, that is the Ontario
11 one, Darla. That is what we are trying to get in,
12 but we couldn't because of the anti-SLAPP being in
13 play. For now it is not.

14 MR. DEARDEN: So that won't be in
15 Exhibit 4. That is the wrong document.

16 MR. BAUMANN: That's right. Would you
17 be okay, Mr. Moore, if Darla just flipped to you
18 the correct one?

19 MR. MOORE: Sure, whatever you need to
20 do to properly identify your area of questions is
21 fine.

22 MR. BAUMANN: Yes.

23 MR. DEARDEN: Sorry, Deana, I just want
24 to put on record because my statement didn't get
25 totally recorded there. I was just saying that the

1 Amended Statement of Defence and Counterclaim from
2 the Ontario Superior Court, which was I believe
3 document number 6 that Mr. Baumann was referring
4 Darla to, is not going to be part of Exhibit No. 4
5 when we are finished with all the documents that
6 will be referenced by Mr. Baumann.

7 MS. RATHWELL: It should be Exhibit
8 number 20, I believe. Yes, 20.

9 MR. BAUMANN: Okay, bring -- there you
10 go. There is the other one. There, you have got
11 two. One is the Amended Statement of Defence and
12 Counterclaim, and the other one is an Amended
13 Counterclaim. So there is the two documents right
14 there.

15 MR. DEARDEN: And the Amended
16 Counterclaim is January 9, 2018.

17 MR. BAUMANN: That's correct.

18 MR. MOORE: Okay.

19 BY MR. BAUMANN:

20 1284 Q. So do you recall ever seeing
21 these, Mr. Riley?

22 A. I am sure I have seen them, but I
23 don't recall it.

24 1285 Q. Yeah. So those are -- either one
25 would have worked for being an inclusion for your

1 exhibit to have replaced the Norton Rose one, but
2 so be it. And just it gives a little more context
3 to the relationship.

4 We are getting pretty close to
5 finishing up. If you give me a few minutes of
6 silence, I am just going to go through the last of
7 my questions, and maybe bring a couple more and
8 then we are done, if that is all right with you
9 guys.

10 MR. MOORE: That is fine.

11 BY MR. BAUMANN:

12 1286 Q. A few items, Mr. Riley, and we'll
13 finish up so you can get out of there.

14 Scott Sinclair, when did you first meet
15 Scott Sinclair?

16 A. He was acting for a borrower,
17 Beresford Box. He was acting for them in arranging
18 for a sale of Beresford Box that was to pay us out.
19 So he was on the other side as it were.

20 1287 Q. Okay, and what year would that
21 have been, roughly?

22 A. 2014, 2015, somewhere in that
23 vicinity.

24 1288 Q. Okay, so he would have been
25 involved in how many companies that Callidus

1 financed?

2 A. I do not know. I do not know how
3 many he acted on. He acted on yours, and I don't
4 know what other ones he may have acted on.

5 1289 Q. So you are familiar with your
6 former associate Mr. Boyer actually with which
7 Callidus had some issues.

8 A. Yes.

9 1290 Q. Were you aware that Mr. Boyer
10 recommended and actually in fact insisted that
11 Sinclair be involved in Alken, to approve funding
12 or no funding would be coming to Alken?

13 A. I think at that point we put
14 forward several names for your consideration
15 because we wanted someone who was hired by Alken
16 that could oversee what was happening.

17 1291 Q. Well, my information says
18 otherwise, but were you --

19 A. You were provided with several
20 names.

21 1292 Q. Never. Was that in print, email,
22 print?

23 A. Sorry, you --

24 MR. DEARDEN: Was that by email or --

25 BY MR. BAUMANN:

1 1293 Q. Was that by email notification or
2 letter?

3 A. I would have to go back and look
4 at the file, but I know that that was the case.

5 1294 Q. Would you mind doing that, please?

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

8 BY MR. BAUMANN:

9 1295 Q. Okay. Relating to Sinclair, were
10 you aware that he had a securities conviction
11 basically for I guess you could call it
12 misrepresentation, fraud or whatever, were you
13 aware that he had that issue with the OSC prior to
14 him being advanced to my company by Boyer?

15 R/F MR. MOORE: Don't answer the question.
16 I believe you raised that in the Alberta
17 proceedings somewhere, and in any event, it is
18 connected to the counterclaim that was up on the
19 screen before that you wanted to amend but hasn't
20 been amended.

21 BY MR. BAUMANN:

22 1296 Q. We are going to finish off with
23 yield enhancements. They seem to be the big
24 mystery here, Mr. Boyer -- or sorry, Mr. Riley.
25 The only information in your firm's disclosure is

1 some stuff in Schedule B with a date of 2017,
2 nothing relating to '16 which is referenced in the
3 two earnings transcripts being Q1 and Q2.

4 Can you explain why there is such
5 limited information between yield enhancements when
6 Mr. Glassman states they were unequivocally and
7 undeniably a major part of the business? Is that
8 just by chance that there is no information, or is
9 it the secret sauce that has been hiding? Just
10 where is it?

11 MR. MOORE: We produced in Schedule A
12 what we believe to be the relevant documents. If
13 there is any additional documents to be produced,
14 we'll let you know.

15 MR. BAUMANN: Okay, there is not
16 enough -- there is nothing basically in Schedule A,
17 so I'll be searching for that and I guess I'll have
18 some applications myself.

19 So can I just get some confirmations
20 that my rights will be protected and I will be
21 notified relating to the privilege issue, because I
22 plan on advancing some applications as far as, you
23 know, the information I need relating to this case
24 that is being ignored on the dozens of requests I
25 have sent and whatnot.

1 MR. MOORE: Well, without addressing
2 some of those editorial comments, I think you have
3 been apprised of what dates have been set for
4 privilege motions. To the extent further privilege
5 motions are brought, presumably you'll be advised
6 of those dates. And if you have any legitimate
7 interest in participating, certainly you'll be
8 allowed to do so.

9 MR. BAUMANN: Okay, great, I definitely
10 have a legitimate interest.

11 Just to close up --

12 MR. DEARDEN: Well, Mr. Baumann, right
13 now there is dates before Justice Boswell on
14 December 1 to 3 on a very unique set of privilege
15 issues, and December 15 is a confidential source
16 privilege motion, and after it is completed, then
17 we have Justice McEwen available for December 16th
18 as well to deal with privilege and refusals
19 motions.

20 So those are the only dates set so far.

21 MR. BAUMANN: Okay, I'll take them up.

22 I think that's about it. There is not
23 much else I can receive here. So thanks for your
24 time, and Deana, I have watched throughout and you
25 have done a great job. Thank you very much.

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-- Adjourned at 4:15 p.m.

1 REPORTER'S CERTIFICATE

2
3 I, Deana SANTEDICOLA, RPR, CRR,
4 CSR, Certified Shorthand Reporter, certify:

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

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

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

15
16
17
18 Dated this 31st day of October, 2020.

19
20
21 

22
23 _____
24 NEESONS, A VERITEXT COMPANY

25 PER: Deana SANTEDICOLA, RPR, CRR, CSR

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TAB 2A

DRAFT
Confidential
Attorney Client Privilege

Callidus Capital Corporation

Strategic Review & Remediation Plan

February 25, 2019



Agenda

- I. **Executive Summary**

- II. Current State of the Business?

- III. How Did CBL Get Here?

- IV. Where does CBL want to be?

- V. Preliminary Remediation Plan Recommendation

Executive Summary

- The Company, the Shareholders and the team have all been through a challenging three years. CBL needs to focus on **Stabilizing** the platform, **Monetizing** non-core assets and **Simplifying** the business model back to a true Asset Based Lender
- **Stabilize the Platform**
 - CBL is in **CRISIS** and is no longer viable as a public company without a significant recapitalization of its balance sheet and a complete rotation of its portfolio from unprofitable, non-cash generating assets to stable to cash paying asset based loans
 - CBL requires significant annual funding just to maintain it's own current operations and to fund its Operating Subsidiaries and Watchlist Loans.
 - Virtually all sources of liquidity are fully depleted
 - The Braslyn Privatization process may be the only viable option for CBL to remain a going concern
 - An immediate Remediation Plan is necessary to return to a profitable business and will require significant changes to CBL's Governance, Credit Committee Approval Process, Loan Loss Provision/Valuation Approval Process, and Strategic Planning
- **Monetize Non-core Assets**
 - CBL has 15 of 17 non-core portfolio companies and should monetize assets as quickly as possible
 - In 2018, CBL funded \$82 million to these companies to protect net carrying values
- **Simplify the Business Model**
 - Corrective initiatives will take up to two years to fully implement for CBL to reposition, rotate and rebuild CBL's portfolio
 - Restart, Rebrand and Relaunch the platform and focus exclusively as an Asset Based Lender
 - Access near term funding to support current operations of CBL and money-losing subsidiaries as CBL transitions back to a lender from Distressed Private Equity
 - Access Growth capital in order to originate and rebuild build a cash paying Asset Based Loan portfolio that will generate enough positive income to fund on-going operations
 - Build a stable, diversified portfolio in order to raise less expensive debt capital to provide for a > 10% ROIC net off losses



Agenda

I. Executive Summary

II. Current State of the Business

III. How Did CBL Get Here?

IV. Where does CBL want to be?

V. Preliminary Remediation Plan Recommendation

Current State of the Business

- Callidus has transformed over the past five years from an Asset Based Lender to a Distressed Private Equity business with **59% of Investments** being valued on an Enterprise Value approach rather than hard asset coverage
- **Cash Flow Concerns**
 - CBL generated over \$312 million in net losses over the last three years
 - 2018 generated **\$8.7 million of cash interest** from its portfolio, yet had over **\$118 million** in cash outflows to fund CBL Operations and existing portfolio cash deficits
 - \$28 million spent to fund CBL operations; \$82 million to fund losses at Operating Subsidiaries and watchlist loans; \$8 million in interest payments
 - As of February 24, 2019, CBL has only **\$32 million cash** remaining on its Balance Sheet of which approximately \$5 million is restricted cash
 - CBL currently has three signed Term Sheets for new deals but lacks the capital to close any of these deals
 - No further access to Fund V participation or further Guarantee Advance or any other funding sources
 - CBL borrowed **\$135 million** from Catalyst under the Subordinated Debt Bridge, Catalyst Guarantee Advance and hold backs to Catalyst Fund V participations
 - Projected liquidity for 2019 is estimated at negative \$30 million and will end the year with \$0 cash on hand
- **Valuation Concerns**
 - Callidus Book Equity has fallen **76%** from the IPO and its Market Capitalization has also fallen **91%** from its peak in August 2015.
 - As of December 31, 2018, CBL will have a remaining **Book Value of only \$50 million** and that will continue to decline in 2019 and trend negative quickly as Operating Losses continue and the Subordinated Debt Bridge Loan continues to accrete an additional **\$40 million** in 2019
 - As of Q3 2018, there was only \$110 million (~\$2/share) of remaining BV. As of December 31, 2018, Book Value is estimated at approximately \$50 million or ~\$1 per share



Current State of the Business

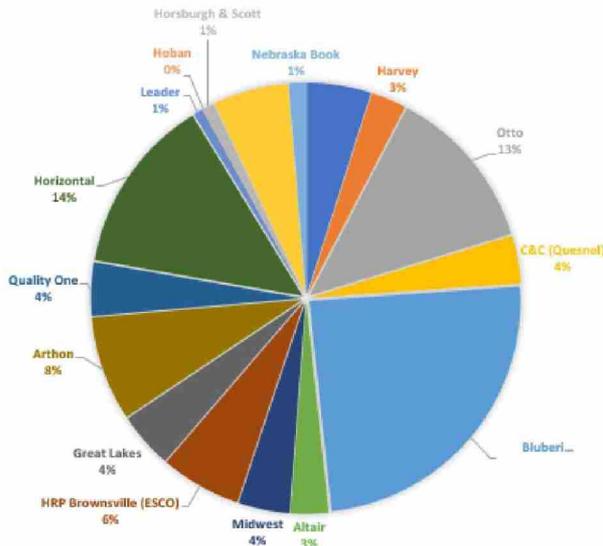
- **Imminent Portfolio Concerns**

- Bluberi is a significant asset that is presently unstable
 - Licensing remains a significant problem
 - 2018 Bonuses and 2019 plan remain unapproved by CBL Credit Committee given the Unanimous Approval requirement
 - If Management leaves the company, value will quickly deteriorate
 - CBL performed a wide search for a new CEO in 2018 and was unsuccessful attracting a CEO due to concerns over a budget that was determined to be too aggressive
- JD Norman is the latest threat to CBL and Catalyst, as it is a \$95 million (\$US) loan to a company that has encountered significant challenges which led to the need for additional capital immediately or possibly face bankruptcy

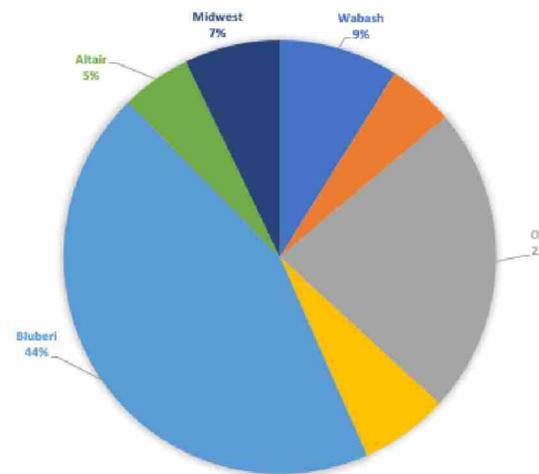
Current State of the Business

- As of Q3 2018, CBL managed \$550 million of net exposure (net of Fund V Participations), yet manages two distinctive pools of assets
 - Pool One: ~\$330 million in six owned distressed/stressed subsidiaries requiring a Distressed Private Equity skill set
 - Pool Two: ~\$250 million in 10 loans of which six effectively are/will be managed as wholly owned subsidiaries (i.e., HRP Brownsville, Great Lakes, Arthon, Horizontal, Leader and JDNorman (new))

NET EXPOSURE %
(OF TOTAL PORTFOLIO OF \$550MM AS OF 9/30/18)

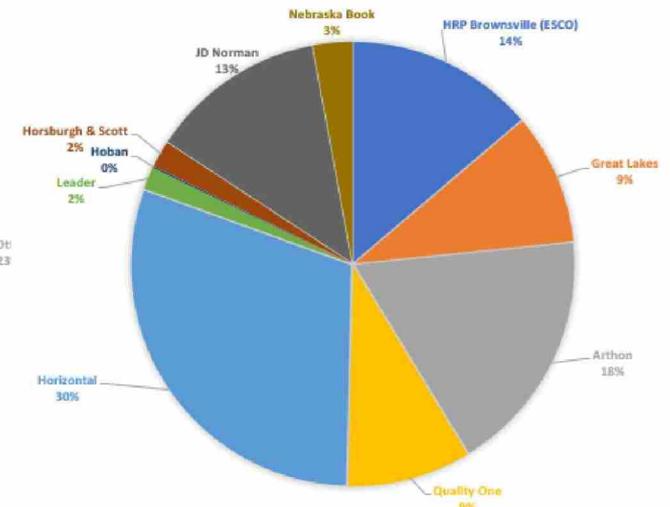


NET EXPOSURE %
(OF TOTAL OWNED PORTFOLIO OF \$304MM AS OF 9/30/18)



Pool One

NET EXPOSURE %
(OF TOTAL LOAN PORTFOLIO OF \$247MM AS OF 9/30/18)



Pool Two

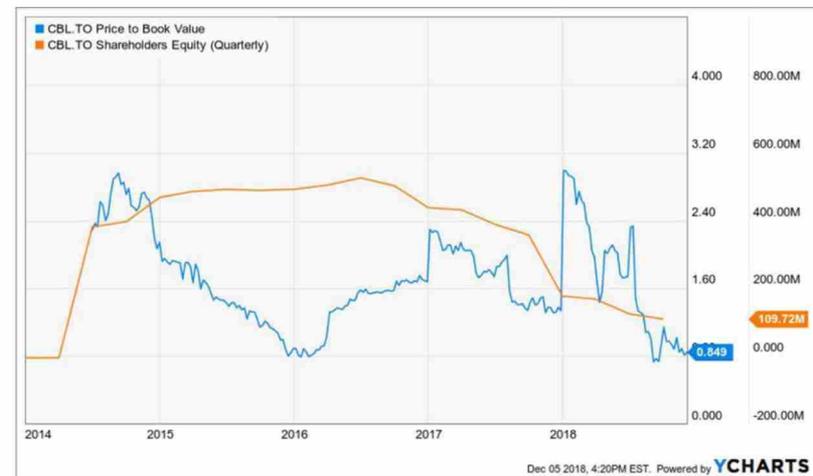
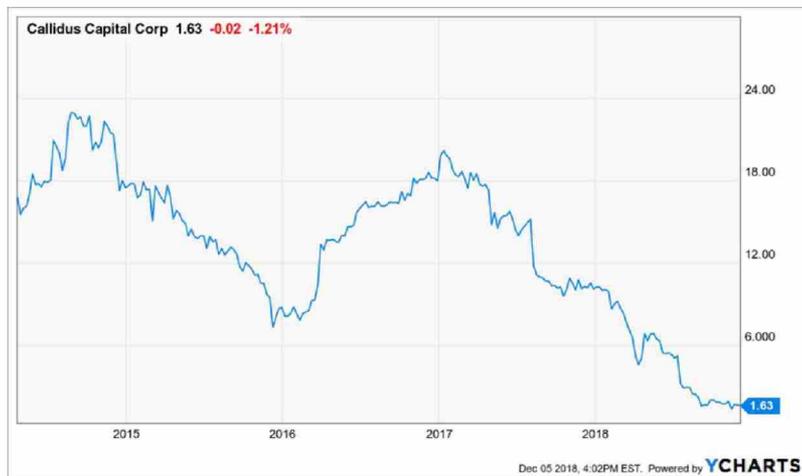
Conclusion

- CBL does not have the requisite skill set, resources or capital to properly manage owned subsidiary assets

Footnote: All figure net of Fund V Participations

CBL Stock/Market Cap Decline Driven by Weakening Loan Portfolio Performance and a Series of Dilutive Corporate Activities

- CBL currently trades at \$1.70 per share or \$97 million in market capitalization
- CBL trades at a .89x Book Value and .85x Braslyn's \$2 per share Privatization Offer based on September 30, 2018 balance sheet
- Performance of the stock has led to significant losses to shareholders and little confidence in the company



Agenda

- I. Executive Summary

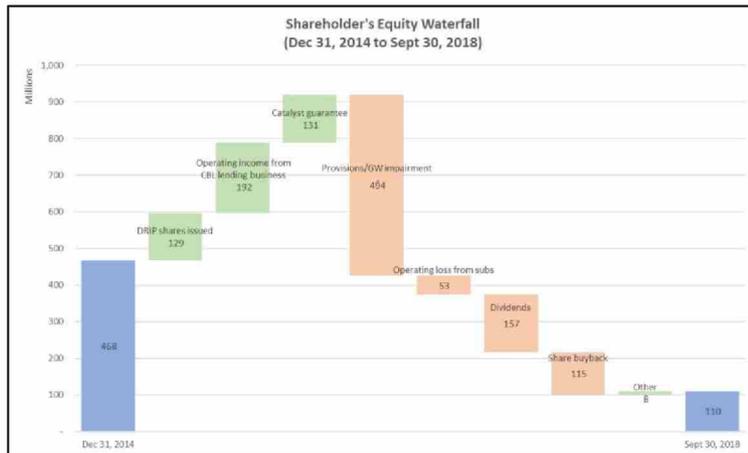
- II. Where is CBL Today?

- III. How Did CBL Get Here?**

- IV. Where does CBL want to be?

- V. Preliminary Remediation Plan Recommendation

How did CBL Get Here?



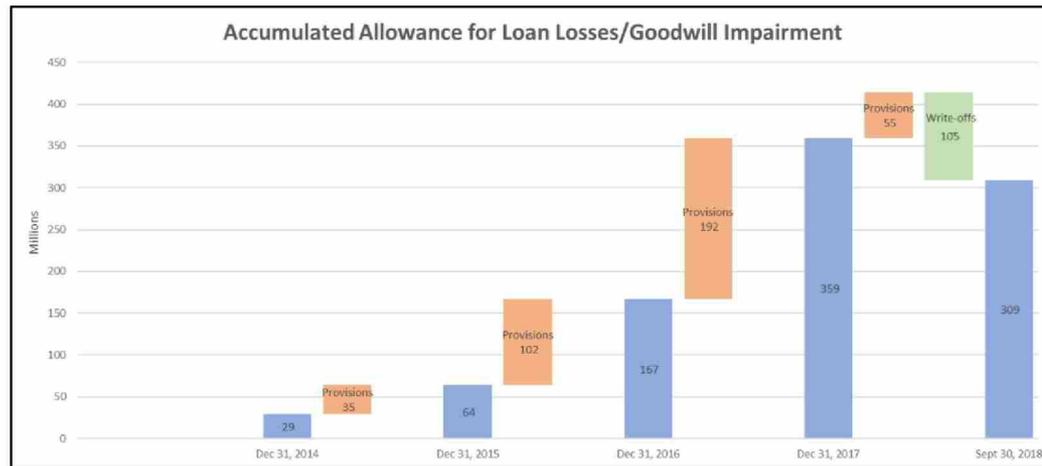
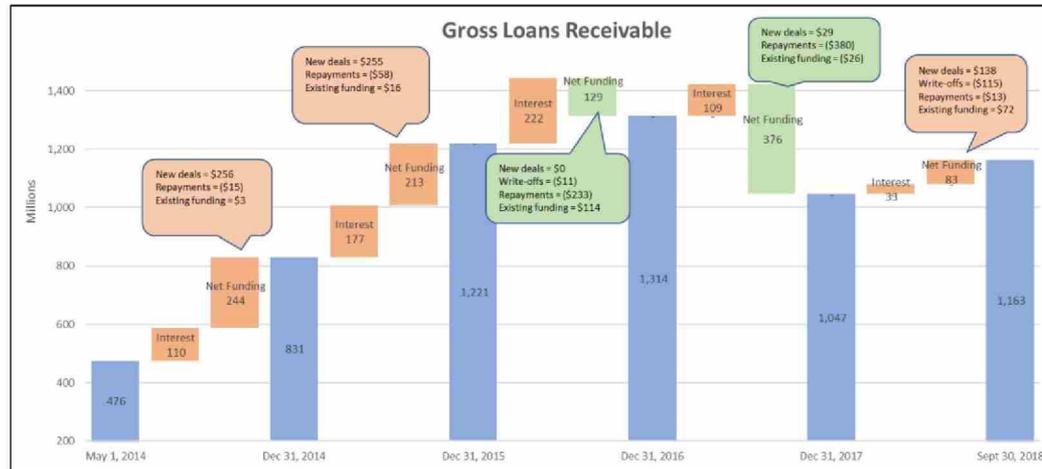
Key Facts

- CBL has lost over **77%** of Book Equity Value since the IPO in 2014
- CBL has also lost **91%** of Market Capitalization from \$1.139 Billion (Aug 25, 2015; 2.87x BV) to \$96.45 million (Feb 15, 2019; .88x BV)
- Loan Loss Provisions accounted for over \$494 million as of September 30, 2018
- High Gross Loan Yields produced extremely low Net Yields after Loan Losses
- Operating Company Subsidiaries have been and continue to be a drain on book value and liquidity for CBL

Conclusions

- Aggressive Enterprise Value valuations, “doubling down” on investments, and high Fees and PIK interest coupons drove unachievable realizations
- Unsuccessful Corporate Actions including a Dilutive Share Repurchase and Dividend Program cost \$272 million of book value and liquidity
- We expect further increase in LLPs for Q4 of approximately ~ \$66 million

How did CBL Get Here?



CBL Debt Summary 2014-2018

CALLIDUS CAPITAL CORPORATION Cost of Debt Summary

(\$MMs)	Dec-18	Dec-17	Dec-16	Dec-15	Dec-14
Debt					
Non-revolving term loan (Mar 31, 2019) ⁽¹⁾	\$ 38	\$ 50	\$ 50	\$ 50	\$ 50
Revolving credit facility ⁽²⁾	-	-	100	303	213
Bridge facility (Apr 30, 2019) ⁽³⁾	407	313	335	309	116
Collateralized loan obligation (Dec 7, 2021)	84	86	101	-	-
Fund V Over advance	53	-	-	-	-
Guarantee Over advance	33	-	-	-	-
Non-revolving term loan amortization facility	11	-	-	-	-
Other Payables (XTG cash, participation income, other)	6	-	-	-	-
Total (Inc. non-interest bearing amounts outstanding)	\$ 632	\$ 449	\$ 587	\$ 663	\$ 379
Total (Exc. non-interest bearing amounts outstanding)	\$ 529	\$ 449	\$ 587	\$ 663	\$ 379
Cost of debt ⁽⁴⁾					
Non-revolving term loan (Mar 31, 2019) ⁽¹⁾	8.7%	8.7%	8.7%	8.7%	8.7%
Revolving credit facility (Jan 15, 2019) ⁽²⁾	-	-	8.8%	5.0%	5.5%
Bridge facility (Apr 30, 2019) ⁽³⁾	9.5%	12.1%	9.6%	9.8%	14.4%
Collateralized loan obligation (Dec 7, 2021) ⁽⁵⁾	5.6%	5.7%	5.4%	-	-
Fund V Over advance	-	-	-	-	-
Guarantee Over advance	-	-	-	-	-
Non-revolving term loan amortization facility	-	-	-	-	-
Other Payables (XTG cash, participation income, other)	-	-	-	-	-
Cost of Debt (Inc. non-interest bearing)	7.3%	10.5%	8.7%	7.5%	8.7%
Cost of Debt (Exc. non-interest bearing)	8.8%	10.5%	8.7%	7.5%	8.7%

(1) Matures the earlier of: (i) March 31, 2019 and (ii) completion of privatization transaction

(2) Revolving credit facility terminated in FY17 as 'nil' loan balance outstanding at end of revolving period

(3) Matures the earlier of: (i) April 30, 2019 and (ii) day following repayment of senior debt in full

(4) Weighted average cost of debt for the three month periods ended Dec 31, 2014 through Sept 30, 2018; assumes cost of debt for Dec 31, 2018 is consistent with Sept 30, 2018

(5) Loan currently in amortization period; revolving period ended Dec, 2018

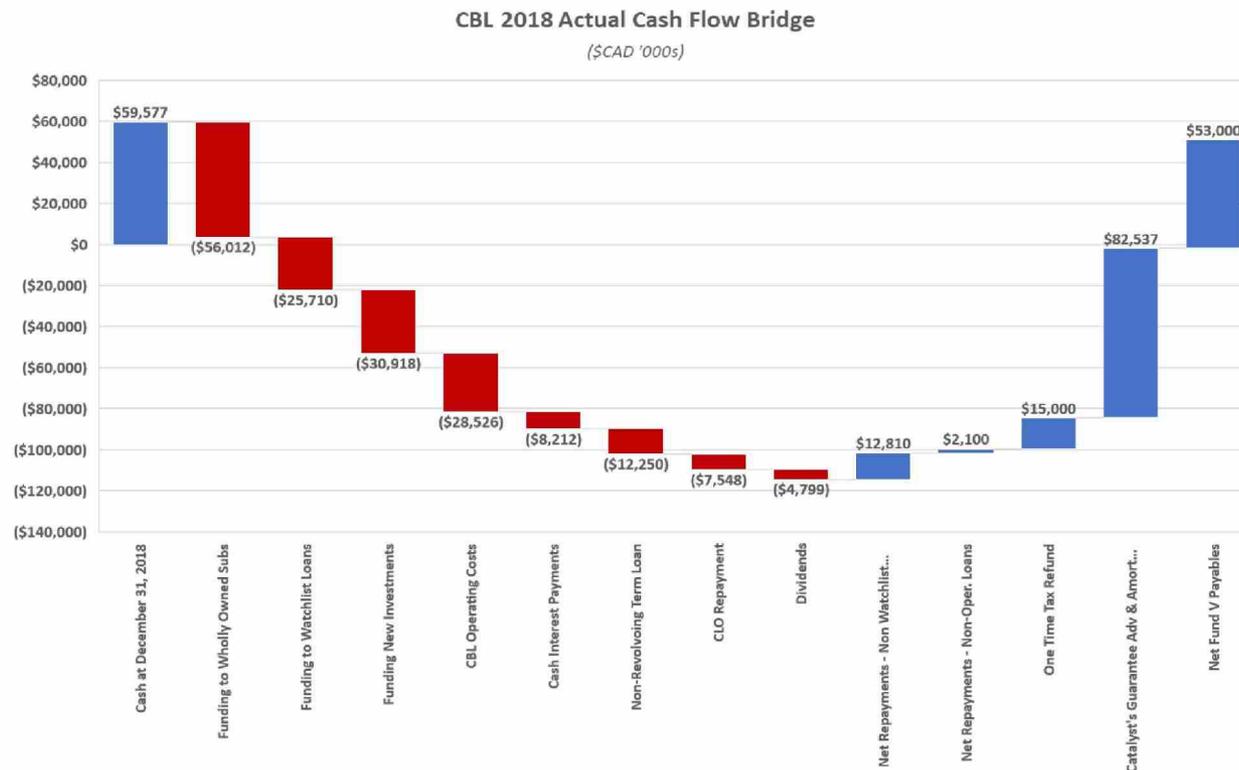
- Debt liabilities increased significantly in 2018
- Due to poor performance, access to third party debt funding has virtually vanished for CBL
- Since CBL has not produced positive cash flow for several years, it has relied on unnatural sources of liquidity from Catalyst



Conclusions

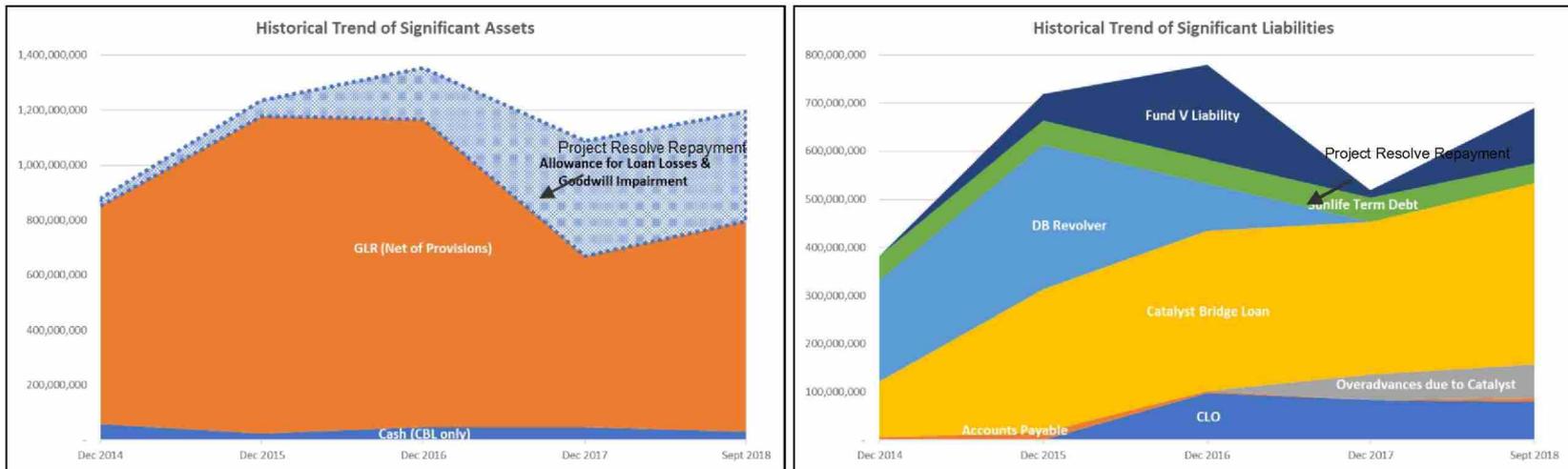
- CBL grew too aggressively post-IPO growing Gross Loans Receivable by 176% in 2 ½ years
- Loan Loss Provisions began to surface in 2015 and have continued through 2018
- High Unsustainable Gross Loan Yields produced extremely low Net Yields after Loan Losses
- New deal Origination was virtually halted in 2016 and capital was used to repurchase stock (above book value) and pay Dividends
- Catalyst became the only source of capital due to poor performance

CBL's 2018 ACTUAL Cash Flow Bridge



- For 2018, cash flow from Operations was **Negative \$118 million**
 - \$28 million of CBL Operating Costs plus
 - **\$82 to fund Existing Portfolio to cover losses, working capital and capex - \$56 million to Wholly Owned Subs + \$26 million to Watchlist Loans while the Net Carrying Value declined \$60 million over the year**
 - \$8mm of Interest Cost
- \$15 million Tax Refund is non-recurring
- Only \$31 million of New Investments in 2018
- Received \$136 million in funds from Catalyst from \$83 million in Guarantee Advances and \$53 million in Fund V Participation hold-hold backs
- Without Fund V Participation hold-backs cash would be \$0

....Driven by Weak Performance in CBL's Lending Business



Conclusions

- Beginning in 2016 Loan Loss Provisions began to accelerate and have continued to expand
- Except for \$62 million remaining on the CLO, the current portfolio is unfinanceable due to performance issues and lack of sufficient diversification
- Along with the Catalyst Subordinated Debt Bridge, Over-advances from Guarantees and Participation Interest payables have been used as a source of funding
- The Subordinated Debt Bridge will accrete another \$40 million in 2019

Performance at CBL's Owned Subsidiaries & Watchlist loans continue to drag on Book Value and Liquidity 542

Callidus Capital Corporation Subsidiaries & Material Loans

\$MM CAD	December 31, 2017			December 31, 2018			Avg rate = 1.2961				Δ in Net Carrying Value	
	GLR	LLP	Net Carrying Value	GLR	LLP	FX	Net Carrying Value	Δ in GLR	Δ in GLR (due to FX)	Δ in GLR (due to net loss)		Δ in GLR (due to actual funding)
Bluberi	128.6	75.0	203.6	135.4	-	-	135.4	6.8	-	(1.9)	8.7	(68.2)
Harvey	34.2	(11.2)	23.1	39.3	(8.9)	-	30.3	5.0	3.1	-	1.9	7.2
Wabash	35.6	(8.9)	26.6	37.4	(23.9)	-	13.5	1.8	3.5	(9.2)	7.5	(13.1)
Otto	80.9	10.2	91.1	95.0	26.7	-	121.6	14.1	7.9	(10.2)	16.4	30.6
C&C Value Add	-	-	-	-	-	-	-	-	-	-	-	-
C&C Quesnel	47.4	(21.9)	25.5	47.4	(21.9)	-	25.5	(0.0)	-	-	(0.0)	(0.0)
Midwest	21.7	(5.8)	15.9	26.6	(7.9)	-	18.7	4.9	2.3	(5.8)	8.3	2.8
Alken/Altair	29.1	(13.2)	15.9	28.8	(15.5)	-	13.2	(0.3)	-	(2.0)	1.7	(2.7)
Horizontal	185.2	(131.9)	53.3	223.6	(165.3)	-	58.3	38.4	17.2	-	21.1	5.0
Leader	31.7	-	31.7	42.4	(38.2)	-	4.2	10.7	3.2	-	7.5	(27.5)
Arthon	64.6	(19.8)	44.8	56.4	(27.2)	-	29.1	(8.2)	-	-	(8.2)	(15.6)
Great lakes	44.9	(15.5)	29.4	50.0	(34.7)	-	15.4	5.1	4.0	-	1.2	(14.0)
HRP ESCO (Oldco)	24.0	(21.6)	2.5	26.5	(26.5)	-	-	2.4	2.1	-	0.3	(2.5)
ESCO Opco	-	-	-	11.7	-	-	11.7	11.7	0.6	-	11.1	11.7
HRP Financial Instrument	46.9	(22.5)	-	51.9	(25.0)	-	26.8	5.0	4.1	-	0.8	26.8
Delta	774.9	(187.1)	563.3	872.1	(368.5)	-	503.7	97.3	48.0	(29.1)	78.4	(59.6)

Of the \$97 million change in GLR, \$48 million was due to FX and the remaining \$44 million change is due to \$78 million of net funding of which operating losses reduced values by \$29 million.

Conclusions

- Operating performance at CBL Subsidiaries and Watchlist Loans continue to deteriorate resulting in a **net write down of \$60 million despite over \$80 million in cash funding** throughout the year
- It is apparent that in an effort to keep loan loss provisions lower, the 5 year Discounted Cash Flow model was used. As a result, these companies needed cash to fund losses, capex and working capital, otherwise these companies would be forced to liquidate which would produce a very significant write down to Net Carrying Values
- These fundings were approved by CBL Credit Committee

CBL's Liquidity Projections for 2019

For the three month period ended (\$'MMs)	Mar-19	Jun-19	Sep-19	Dec-19	Mar-20	Total
Opening cash balance ⁽¹⁾	28	34	(2)	(2)	2	28
Liquidity (Needs):						
A. Funding proceeds (use) - existing portfolio ⁽²⁾	(1)	(47)	34	2	43	30
B. Debt service and principal repayment obligations						
(i) Debt service ⁽³⁾	(7)	(3)	(3)	(3)	(3)	(19)
(ii) Principal repayment obligations ⁽⁴⁾	(56)	(418)	-	-	(19)	(493)
C. Capital markets programs ⁽⁵⁾						-
D. Payments related to foreign currency contracts ⁽⁶⁾	-	-	-	-	-	-
E. Ongoing operating costs ⁽⁷⁾	(6)	(6)	(6)	(6)	(6)	(30)
Total	(70)	(474)	24	(7)	14	(512)
Liquidity Sources:						
F. Realize (fully or partially) on guarantee amounts ⁽⁸⁾		-				-
G. Undrawn / extension of maturing credit facilities ⁽⁹⁾		418				418
H. Catalyst Fund V - loan participation interests ⁽¹⁰⁾	(16)	21	(25)	8	(15)	(26)
I. Sale / recap of wholly owned subsidiaries ⁽¹¹⁾	92	(1)	-	2	-	93
J. Syndication of loans ⁽¹²⁾						-
K. Privatization transaction funding ⁽¹³⁾						-
Total	76	438	(25)	11	(15)	486
Ending cash balance	34	(2)	(2)	2	2	2
Realize on guarantee amounts - remaining	59	59	59	59	59	59
Availability - \$15.5MM liquidity support letter	4	4	4	4	4	4
less: undrawn borrower commitments ⁽¹⁴⁾	-	(10)	(6)	(9)	-	-
less: amounts owing to Catalyst Funds ⁽¹⁵⁾	(41)	(41)	(41)	(41)	(41)	(41)
less: minimum cash ⁽¹⁶⁾	(20)	(20)	(20)	(20)	(20)	(20)
less: contingency [NTID: to be determined]						
Cash and guarantee amounts	36	(10)	(6)	(5)	4	4

Conclusions

- Organic Liquidity is very tight and historic sources of additional liquidity are now very limited (i.e., guarantee over advance, Fund V Interest Participations Deferrals, and Sub Debt Bridge)
- CBL must do a much better job projecting liquidity
- Owned Subsidiaries funding requirements including Capex, W/C and Operating Losses remains significant and challenging to meet. However, reducing fundings will have a direct and immediate negative impact on Valuations of owned Subsidiaries

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- II. Where is CBL Today?

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- IV. Where does CBL want to be?**

- V. Preliminary Remediation Plan Recommendation

Qualities of a Successful Credit Manager

	Callidus' Grade
Strong Leadership & Vision	To Be Discussed
Experienced & Committed People	To Be Discussed
Secure, Positive, Collaborative Corporate Culture	To Be Discussed
Proven Performance Track Record	To Be Discussed
Dynamic Proprietary Originations Platform	To Be Discussed
Repeatable, Scalable, Objective & Responsive Investment Process	To Be Discussed
Consensus Driven Decision Making & Shared Accountability	To Be Discussed
Independent, Objective Valuation/LLP Process with Proven "Back Tested" Results	To Be Discussed
Access to Low Cost Debt Capital	To Be Discussed
Sound Governance, Oversight, Hygiene & Compliance – (e.g., Avoid Conflict of Interest)	To Be Discussed
Proven Risk Management System and Consistently Applied Protocols	To Be Discussed
High Percentage of Income from Recurring Cash Pay Interest Income	To Be Discussed
Strong External Relationships, Brand & Reputation	To Be Discussed
Effective Financial & Operations Infrastructure and Rigorous Control Environment	To Be Discussed
Alignment of Interests/Compensation to Investor Performance	To Be Discussed

What is Valued by the Market of the Investment Manager

- CBL is an Internally Managed commercial finance company
- Publicly traded credit managers trade on a combination as a multiple of NAV (i.e., Book Value) and ROE or Available capital left for distribution
- The Global Private Debt Market is among the fastest growing segments of Alternative Asset Investing
- The closest comparable companies to CBL are Business Development Companies in the US that trade on BV and an expected risk adjusted Dividend or ROE (8-12%)
- “Healthy” Internally Managed BDCs trade at a premium to BV given the market’s positive view of the Management Team’s track record, profitability, access and cost of capital
- Externally Managed BDC’s are valued in and around BV since the portfolio of loans can be repaid by the borrower
- Less healthy BDCs trade at a significant discount to Book Value because the market has lost confidence in the portfolio and expect more losses and a lower BV over time
- There have been several recent acquisitions and/or offers made to acquire portfolio and/or the manager
- Manager Values for healthy managers assume a 50% contribution margin on fees earned and apply a 4-5 multiple
- Given lack of profitability at CBL, it is more likely that the CBL Servicer/Manager platform would be valued on an Replacement Cost Approach of the Infrastructure, the perceived quality of the team and existing relationships versus a greenfield approach

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CBL Preliminary Remediation Plan Recommendation

	Action Item
STEP 1	Complete Privatization or Balance Sheet Recapitalization ASAP
STEP 2	Revamp Governance Oversight & Credit Committee Approval Process
STEP 3	Monetize Wholly Owned Subs as soon as practicable
STEP 4	Work out of ALL Watchlist Loans ASAP
STEP 5	Secure short term funding to maintain operations
STEP 6	Externalize CBL Management Company and manage legacy and New Investments separately
STEP 7	Secure growth capital
STEP 8	Rationalize expenses and right size team, G&A, legal, Accounting, rent and other public company expenses
STEP 9	Restart, Rebrand and Relaunch
STEP 10	Build a of ~20 healthy loans to securitize and reduce cost of capital and generate a 10-12% ROIC

Potential Callidus Restart Plan

- Assuming Balance Sheet is capitalized to the satisfaction of the Auditors to close out 2018
- CBL needs extensions of all Catalyst support/financing commitments
- CBL needs to maintain a minimum of \$20 million to fund existing daily revolver commitments [as already reflected in our 2019 Liquidity projections
- CBL Operations need to be supported until such time as CBL portfolio generates ~\$20 million in cash per year from operations
- Restart Plan:
 - CBL requires ~ \$50 million of Growth capital to support new cash pay Asset Based Loans
 - Fund V continues its participation up to an additional \$150 million in new loans
 - At ~25% Callidus and ~75% Fund V relationship would provide for a \$200 million total loan portfolio (estimated to take two years to build)
 - This diversified performing portfolio can be financed with a senior debt warehouse line up to ~\$120 million
 - \$120 million would be used to buyback Fund V participation
 - Portion to be used for new loans and a portion would be returned to Fund V
- Braslyn could also replace/partner with Catalyst in this plan

CBL Debt Refinancing

Callidus Capital Corporation Liquidity / Financing / Privatization Summary		
Firm Contacted	Amount	Outcome
Debt / Warehouse facility		
Macquarie	NAV based facility;	On hold; requires Catalyst guarantee
Barclays	Warehouse facility	Ongoing discussions; on hold; revisit once diversity increases
Fortress	Up to US\$175,000,000	Pricing undisclosed; "Revaluation Event"; 25-35% Advance Rate; Pending Privatization
Natixis	Warehouse facility	Referral to Fortress
Deutsche Bank	Extension of CLO amortization period	Investor (SEI) declined extension request;
Deutsche Bank	Extension of warehouse facility	Financial institution declined extension request; revisit once diversity increases
TD	Extension of warehouse facility	Financial institution was part of DB warehouse facility which was terminated Jul-17
State Bank of India	Extension of warehouse facility	Financial institution was part of DB warehouse facility which was terminated Jul-17
Sunlife	Extension	Extended to Mar-19
BAML	Refinance warehouse facility	Financial institution passed; pending privatization
JPM	Refinance warehouse facility	Financial institution passed; pending privatization
Wells Fargo	Refinance warehouse facility	Financial institution passed
BMO	Term facility	Financial institution passed
CIBC	Debt capital markets financing	Financial institution passed
NBF	Debt capital markets financing	Financial institution passed
Recapitalization of subsidiaries		
Gordon Brothers Finance Co	Up to \$50MM for HRP, HWD, Otto	12% Coupon plus 2.5% fee; 65% NOLV
RBC	Refinance Callidus loan (C&C)	Financial institution passed
Scotia	Refinance Callidus loan (C&C)	Financial institution passed
Fort Capital	Refinance Callidus loan (C&C)	Raymond James engaged
Alvarez Marsal	Refinance Callidus loan (C&C)	Raymond James engaged
Raymond James	Refinance Callidus loan (C&C)	Raymond James engaged
EDC, BDC	Capex facility (C&C)	Ongoing discussions with company directly
White Oak	Refinance Callidus loan (Otto)	up to \$10 million cash flow loan when business is EBITDA positive

- CBL has approached 14 Lenders about refinancing the Catalyst Sub Debt. To date, all have past, required a Catalyst Guarantee or in the case of Fortress put CBL in significant risk
- Catalyst Subordinated Debt is unfinanceable given current portfolio, lack of cash pay interest income and \$165 million in senior obligations (CLO, Guarantee Advances, Fund V Participation hold back, Sun Life Amortization facility)
- In addition, CBL has approached 9 lenders about senior debt financing at the subsidiaries



CBL Portfolio Refinancing

As at Dec. 31, 2018

All amounts in CAD

		Bluberi	Midwest	Otto	Wabash	Altair	C&C (Quesnel)	Total Proceeds	
Current 3rd party debt		\$0	\$4,227,519		\$0	\$0	\$0		
Working Capital Assets									
	AR	75.0%	\$3,027,044	\$18,140,594	\$3,015,281	\$699,419	\$2,013,791		
	INV	50.0%	\$5,260,878	\$13,531,947	\$834,814	\$80,640	\$4,962,388		
Total W/C Assets			\$8,287,922	\$0	\$31,672,541	\$3,850,095	\$780,059	\$6,976,179	
W/C Availability			\$4,900,722	\$0	\$20,371,419	\$2,678,868	\$564,884	\$3,991,537	\$32,507,430
M&E Assets (FLV)			\$0	\$1,464,986	\$12,506,270	\$2,922,985	\$1,500,000	\$5,000,000	
M&E advance rate		70.0%							
M&E Proceeds			\$0	\$1,025,490	\$8,754,389	\$2,046,090	\$1,050,000	\$3,500,000	\$16,375,969
Real Estate Assets (appraised value)			\$4,000,000	\$7,702,500	\$4,810,000	\$2,730,000	\$0		
RE advance rate		50.0%							
RE Proceeds			\$2,000,000	\$3,851,250	\$2,405,000	\$1,365,000	\$0	\$0	\$9,621,250
Total Potential Debt Proceeds			\$25,000,000	\$4,876,740	\$8,405,000	\$6,089,957	\$1,614,884	\$7,491,537	\$53,478,119
			Cash Flow	Term Sheet					
Less Net Funding Requirements			\$0	\$0	(\$2,945,000)	(\$5,124,000)	\$0	(\$6,969,000)	(\$15,038,000)
Subtotal			\$25,000,000	\$4,876,740	\$5,460,000	\$965,957	\$1,614,884	\$522,537	\$38,440,119
CLO Debt Repayment			(\$11,220,146)	(\$3,976,884)	(\$1,465,951)				(\$16,662,981)
Total Net Proceeds			\$13,779,854	\$899,856	\$3,994,049	\$965,957	\$1,614,884	\$522,537	\$21,777,138
TTM EBITDA			\$6,000,000	(\$1,883,700)	(\$391,300)	(\$6,940,488)	(\$635,835)	na	
Debt to TTM EBITDA			4.2x	na	na	na	na	na	
Quick Sale Estimate			\$70,000,000	\$13,000,000	\$40,000,000	\$20,000,000	\$3,000,000	\$10,000,000	\$156,000,000
Debt proceeds as a % of Quick Sale			36%	38%	21%	30%	54%	75%	34%

- The CBL teams have assessed the opportunity to raise senior debt financing at the subsidiaries. CBL has already pledge certain collateral to the CLO and would therefore be required to pay down the CLO



CBL Privatization Effort

Outreach Contact List			
Investor Name	Contact Names and Titles	Signed NDA	Did Not Sign NDA
AlpInvest Partners	Michael Hacker (Managing Director, Secondary Inve	Signed	
Apax Partners	Ashish Karandikar (Partner)Vivek Vyas (Principal)	Signed	
Apollo Global Management	Matt Michelini (Partner)Ming Dang (Principal)	Signed	
Ares Management	Michael Arougheti (Co-Founder, President of Ares M	Signed	
Blackstone Group LP / GSO Capital Partners	David Flannery (Senior Managing Director, Co-Head	Signed	
BlueMountain Capital	Avi Korn (Portfolio Manager)Brad Schwartz (Portfoli	Signed	
Centerbridge Partners	Matthew Kabaker (Managing Director, Head of FIG)I	Signed	
Coller Capital	David Platter (Partner, Co-Head of Origination)Yonat	Signed	
D.E. Shaw	Shi Nisman (Managing Director)Seth Charnow (Seni	Signed	
ECN Capital	Steve Hudson	Signed	
Fortress Investment Group	Joel Holsinger (Managing Director, Co-Head of Direc	Signed	
GIC	Eric Wilmes (Head of Private Equity, Americas) Krish	Signed	
HarbourVest Partners	Raj Senapati (Principal)	Signed	
Lone Star	Kevin Barner (Managing Director)	Signed	
Macquarie Group	David Horowitz (Managing Director, Corporate and	Signed	
Marubeni Corporation	Mokkoh Nobuyuki (Director, Marubeni America Cor	Signed	
Partners Group	Riyadh Mohammed (VP)	Signed	
PIMCO	Sean Hinze (SVP)Adam Gubner (SVP)Daniel Ballen (S	Signed	
Pine Brook	Larry Marsiello (Senior Managing Director)	Signed	
Reverence Capital Partners	Peter Aberg (Co-Founder, Partner)	Signed	
Solar Capital	Scott Rosen (Head of Specialty Finance)	Signed	
Soros Fund Management	Vipul Tandon (Managing Director, Private Equitiy)	Signed	
Stone Point Capital	Nicolas Zerbib (Senior Principal)Christopher Doody (Signed	
Tavistock	Joe Lewis (Contacted by Newton Glassman) James (.	Signed	

- CBL engaged Goldman Sachs to assist in finding a partner for the Privatization effort. GS reached out to 68 parties. Only 24 parties signed the NDA and only Tavistock/Braslyn remain interested.

CBL Privatization Effort

Investor Name	Contact Names and Titles	Signed NDA	Did Not Sign NDA
AB (AllianceBernstein)	Matthew Bass (COO, Alternatives)		Not Signed
ADIA	Jerome Mourgue d'Algue (Senior Portfolio Manager)		Not Signed
Atairos Group	Michael Angelakis (CEO) Vikram Pandit (Head of FIG / CEO, Orogen)		Not Signed
BlackRock Inc.	Tom Wojcik (Head of IR / Corporate Development) Ian Qiu (Director, C		Not Signed
Brookfield Asset Management	Bruce Flatt (CEO) Barry Blattman (Senior Partner)		Not Signed
Carlyle	John Redett (Managing Director, FIG)		Not Signed
CarVal Investors	Jerry Keefe (Managing Director, Head of Distressed Debt Americas) Ay		Not Signed
China Oceanwide	Can be provided upon request		Not Signed
Corsair Capital	James Kirk (Principal)		Not Signed
CPPIB	Mark Machin (President and CEO) Ryan Selwood (Global Head of Priva		Not Signed
Crescent Capital Group	Jean-Marc Chapus (Co-Founder) Jason Breaux (Managing Director, Spe		Not Signed
Crestview Partners	Quentin Chu (Partner)		Not Signed
Dundon Capital Partners	Tom Dundon (Founder) John Zutter (Partner)		Not Signed
Eldridge / Security Benefit	Tony Minella (President)		Not Signed
Fosun	Can be provided upon request		Not Signed
Franklin Resources	Chuck Johnson (Board)		Not Signed
GTCR	Collin Roche (Head of FIG/Technology)		Not Signed
Guggenheim Partners	Michael Constantino (Senior Managing Director, Head of Strategy)		Not Signed
HNA Capital	Tony Cui (CFO, HNA Capital) Mabel Li (CEO, HNA Capital)		Not Signed
Itochu Corporation	Shigeki Tsuchihara (M&A Group, Structured Finance Dept., Finance Di		Not Signed
JC Flowers	Eric Rahe (Managing Director)		Not Signed
KIC	Can be provided upon request		Not Signed
KKR	Tagar Olson (Head of Financial Services) Chris Harrington (Director)		Not Signed
Koch Industries	Brett Watson (Managing Director)		Not Signed
Legg Mason	Tom Hoops (Head of Business Development)		Not Signed
Lightyear Capital	Thierry Ho (Managing Director, FIG)		Not Signed
Lovell Minnick	Jason Barg (Principal)		Not Signed
Manulife	Can be provided upon request		Not Signed
Marathon Asset Management	Andrew Rabinowitz (President, COO)		Not Signed

CBL Privatization Effort

Investor Name	Contact Names and Titles	Signed NDA	Did Not Sign NDA
MSD Capital	David Caro (Managing Director, Private Capital Group)		Not Signed
Northleaf Capital Partners	Rob MacLellan (Chairman)		Not Signed
NPS	Can be provided upon request		Not Signed
Oaktree Capital Group	Matt Pendo (Managing Director)		Not Signed
OMERS Capital Partners	Eric Haley (Managing Director)		Not Signed
OTPP	Michael Murray (Director, Teachers Private Capital)		Not Signed
Power Corporation / Great-West Life	Can be provided upon request		Not Signed
PSP Investments	Guthrie Stewart (SVP, Global Head of Private Investments)		Not Signed
Qatar Investment Authority	Leslie Mapondera (Head of Financial Institutions Portfolio)		Not Signed
SMBC	Steve Lau (SVP, Corporate Development)		Not Signed
Starr Investments	Geoff Clark (Senior Managing Director)		Not Signed
Temasek Holdings	Dilhan Pillay (Head, Americas)Chin Yee Png (Managing Director)		Not Signed
TPG Capital	Eric Leathers (MD, Financial Services)Peter Nurnberg (VP, Financial Ser		Not Signed
Varde Partners	Aneek Mamik (NA Head of Specialty Finance)		Not Signed
Warburg Pincus	Arjun Thimmaya (Managing Director, FS)		Not Signed

CBL Privatization Effort

Firm Name	Contacts	Date Engaged	NDA/Data Room	Decline Reason
Ares	Mitchell Goldstein, Mary Fry	Sep-2017	Yes	Collateral quality and structure
Blackstone	Aaron Weiner, Alexander Greeley, Christopher James	Sep-2017	Yes	Collateral quality, structure and team
Bybrook	Ash Thomas-Watson	Jul-2018	Yes	Collateral quality and structure
Colbeck Capital Management	Peter Ma, Laura Albert	Sep-2018	Yes	Collateral quality and structure
Coller Capital	Benjamin Carper, Lauren Din, Yonatan Puterman	Mar-2017	Yes	Structure and terms. Provided a termheet
Gamut Capital	Brent Kirshner, Noah Leichtling	Jun-2018	Yes	Collateral quality and structure. Reputational/litigation risk.
Gordon Brothers Finance Company	Matthew Cohen, Michael Muldowney, Blair Nelson, Ken Frieze, Larry Klaff, Lisa Galeota, Caitlin Sanders, Chris Santos, Tim Lynch	Jul-2018	Yes	Terms. Submitted two termsheets (too expensive)
HG Vora Capital Management	Amos Amit, Marcus Dunlop, Jason Gart	Jul-2018	Yes	Collateral quality and structure
HPS Investment Partners, LLC	Colbert Cannon, Taylor Kushner	May-2018	Yes	Collateral quality and structure
King Street Capital	Patrick Dowd, Noah Charney, Brandon Brier	Sep-2017	Yes	Collateral quality
Landmark Partners	Christopher Bass, John Byrne, Kathryn Regan, Amrit Singh, Ian Charles, Michael Carrano	Aug-2017	Yes	Collateral quality and team
Marblegate Asset Management	Andrew Milgram	Jul-2018	Yes	Collateral quality
Monroe Capital	Aaron Peck, Kyle Asher, Jeremy Simmons	Dec-2017	Yes	Collateral quality
Origami	Jeff Young, Tom Elden	Aug-2017	Yes	Terms. Submitted a termsheet (steep discount)
Pretium	Ted Huffman, Donna Winston	Mar-2018		Collateral quality
Siguler Guff	Stephanie Slutzky, Tony Cusano	Jan-2018	Yes	Collateral quality
Solar Capital	Daniel Hong, Michael Pizette, Steven Migliero, Scott Rosen	Jun-2018	Yes	Collateral quality
Spectrum Financial	Bryan Martin	Sep-2017	Yes	Collateral quality and structure
Tavistock Group	James B. Avery, Josh Levy, Adam Cyrus	Apr-2017	Yes	Structure
Wynnchurch	John Hatherly, Morty White, JD Frank	May-2018	Yes	Collateral quality and structure
Alpinvest	Michael Hacker	Mar-2017		Collateral quality, structure and team
Fortress	Roger Baumann	Nov-2017	Yes	Team

- In addition, CBL engaged MetricPoint to assist in finding a Privatization partner. All parties declined due to reasons listed above.

Preliminary CBL Expense Rationalization Plan

Preliminary Conclusions

- CBL has a bloated infrastructure for an Asset Based Lending business. However, given that CBL is managing both Distressed Private Equity and Loans as a public company under IFRS rules, it had been necessary to retain most of the staff to date
- There are several areas that can be addressed quickly as a private company that can reduce operating expenses immediately
- However, it depends how much access to growth capital to rebuild the portfolio that will determine the ultimate headcount and salary
- Compensation systems need to be addressed to more closely align incentives to performance

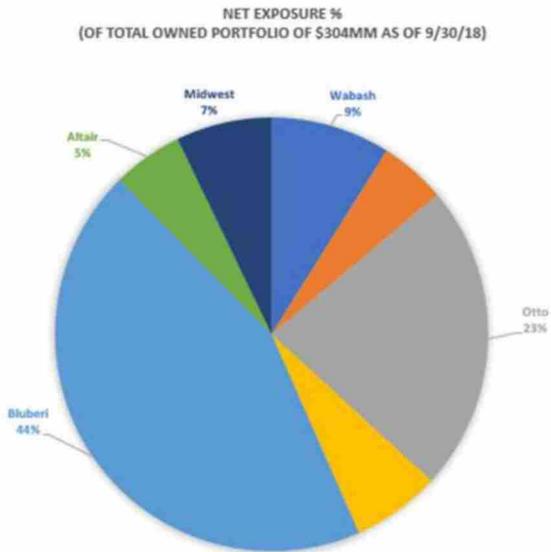
Callidus Capital

Preliminary Expense Rationalization Plan (\$000)

	<u>2018E</u>
CBL Lending Business Operating Expenses	\$25,000
Salaries	\$13,856
G&A	\$3,533
Legal & Professional Fees	\$4,387
Audit	\$1,702
Other (Legal, Audit, Ops, etc.)	\$1,522
	<u>\$25,000</u>
Adjustments	
Public Company Costs	
Director Fees	(\$803)
Legal & Professional Fees	(\$2,000)
Audit & Accounting Fees	(\$1,000)
General & Administrative Expense	(\$889)
Insurance	(\$59)
	<u>(\$4,752)</u>
Salaries Reductions	(\$3,000)
Other G&A Reductions	(\$500)
	<u>(\$3,500)</u>
Total Adjustments	<u>(\$8,252)</u>
Pro Forma Operating Costs	\$16,748



...Performance at CBL's Owned Subsidiaries continues to drag on Book Value and Liquidity



Summary of Subsidiary Operating Income (Losses)
Callidus Capital Corporation
For the Period Ended December 31, 2018
In CAD\$ millions

	Net Income (Loss) Excluding CBL Interest	
	Q4-2018	YTD-2018
Otto	(1.9)	(10.2)
Wabash	(2.3)	(9.2)
Midwest	(2.0)	(5.4)
Altair	(0.6)	(1.5)
Bluberi	(1.2)	(1.9)
C&C	(5.8)	4.4
Total for subs	(13.8)	(23.8)

Primary Conclusions

- All owned subsidiaries have been both unprofitable and cash flow negative
- In 2018, CBL funded over \$55 million into these subsidiaries and yet the enterprise values continued to deteriorate
- In addition, audit costs for CBL have skyrocketed due to consolidation required under IFRS
- All six subsidiaries should be sold in an orderly fashion as soon as is most practical



CBL Portfolio Monetization Plan - Bluberi

Bluberi	
Description	Slot machines development, manufacturing & distribution
Net Carrying Value 12/31/18	\$134 million
CLO Funding	\$18.7 million
Management Plan	Aggressive
Funding Requirements in 2019	\$0
Monetization Plan	Hold until Q3 2019. If management is on track to hit plan, hire Gaming Industry Investment Bank and launch a sale process in Q4 2019 and close sale in Q1 2020. Expected value - \$100-125 million if management achieves 2019 budget. If management misses plan - ~\$75 million
Risks	<ul style="list-style-type: none"> • Management turnover due to non-payment of 2018 earned bonuses • Consistently missed previous budgets • Further Licensing Delays

Bluberi (CAD '000s)	2018	2019	2020	2021	2022	2023	Total
Revenue	21,396	25,829	46,102	65,083	86,757	113,125	358,292
EBITDA	4,977	9,777	24,130	39,154	57,523	80,421	215,982
Net Income	(7,282)	(1,208)	8,231	15,676	30,745	44,666	90,827
Capex	(8,005)	(6,193)	(15,184)	(19,094)	(22,020)	(24,201)	(94,696)
Changes in W/C	(4,059)	(1,076)	(5,377)	(5,035)	(5,749)	(6,994)	(28,289)
Total repay / (funding)*	(7,087)	2,509	3,569	15,025	29,754	49,226	92,996



CBL Portfolio Monetization Plan - Otto

Otto	
Description	Manufacturer of plastic injection molded waste containers
Net Carrying Value 12/31/18	\$ million
CLO Funding	\$18.75 million
Management Plan	Legacy Business – Moderate Carts as a Service – Venture Risk
Funding Requirements in 2019	\$3 million
Monetization Plan	Market company as soon as possible. Hire investment bank in Q1. Two strategics interested (IPL and Akon Investment) and are interested in strategically located manufacturing locations. Expected Range \$30-\$40 million.
Risks	<ul style="list-style-type: none"> • Warranty issue with Waste Management – TBD • Contract renewal with Waste Management • Otto/Callidus credit profile cause for concern by key suppliers

Otto (USD '000s)	2018	2019	2020	2021	2022	2023	Total
Revenue	101,370	104,479	124,041	128,914	128,779		587,583
EBITDA	(13,833)	4,442	17,767	19,903	19,827		48,106
Net Income	(21,946)	(6,389)	4,713	6,356	6,479		(10,787)
Capex	(5,163)	(10,248)	(12,289)	(5,474)	(5,082)		(38,256)
Changes in W/C	(4,673)	2,860	(3,003)	(1,547)	119		(6,244)
Total repay / (funding)*	(23,669)	(2,945)	2,475	12,882	14,864	-	3,606

Legacy and Caas combined
Forecast is only 4 years out (ie. till FYE 2022)



CBL Portfolio Monetization Plan - Wabash

Wabash	
Description	Green sand casting manufacturing
Net Carrying Value 12/31/18	\$ 18.1million (US\$)
CLO Funding	\$0
Management Plan	Requires winning new lager contracts
Funding Requirements in 2019	\$5.1 million
Monetization Plan	Hold until Q4 2019. If management on track, hire Investment Bank to determine if there is demand for the company's or its plant assets. Would likely only include strategics interested in Wabash's capacity versus financial buyers at this point given negative EBITDA. Expected value of \$15-18 million if company on plan or \$8-10 million.
Risks	<ul style="list-style-type: none"> • Tesla volumes uncertainty • Requires \$5.1 million on new capex in 2019

Wabash (USD '000s)	2018	2019	2020	2021	2022	2023	Total
Revenue	6,312	16,504	30,299	40,761	48,587	53,673	196,137
EBITDA	(5,339)	(1,913)	4,566	8,967	10,274	11,513	28,068
Net Income	(7,946)	(5,391)	748	5,087	6,524	7,939	6,962
Capex	(1,442)	(2,000)	(2,000)	(2,500)	(2,500)	(3,000)	(13,442)
Changes in W/C	(924)	(1,211)	(2,032)	(1,399)	(1,139)	(740)	(7,446)
Total repay / (funding)*	(7,705)	(5,124)	534	5,068	6,634	7,772	7,180

CBL Portfolio Monetization Plan - Midwest

Midwest	
Description	Regional Asphalt Paving
Net Carrying Value 12/31/18	\$ million
CLO Funding	\$14.4 million
Management Plan	Fair, but weather dependent
Funding Requirements in 2019	\$0
Monetization Plan	If company has a strong spring season and can produce a \$3 million of Run Rate EBITDA, then market the asset in 3Q 2019. Estimated 5x EBITDA or \$15 million in proceeds
Risks	<ul style="list-style-type: none"> • Still recovering from Bankruptcy • Small company subject to uncontrollable risks (e.g., weather)

Midwest (USD's)	2018	2019	2020	2021	2022	2023	Total
Revenue	25,988	30,202	34,782	39,082	43,901	49,237	223,192
EBITDA	(2,968)	1,131	2,201	2,984	4,040	4,942	12,330
Net Income	(4,441)	(1,028)	(10)	728	1,706	2,742	(303)
Capex	(4,460)	(1,023)	(1,500)	(1,500)	(1,500)	(1,500)	(11,483)
Changes in W/C	(1,950)	307	(546)	(513)	(574)	(636)	(3,912)
Total repay / (funding)*	(9,377)	415	155	971	1,966	2,806	(3,064)

TCF Bank funded approx \$3mm of the FY'18 CAPEX



CBL Portfolio Monetization Plan – C&C Value Added Lumber

C&C Value Added Lumber	
Description	Manufacturer of Value Added specialty lumber
Net Carrying Value 12/31/18	\$25.5 million
CLO Funding	\$0
Management Plan	Venture Risk to commercialize manufacturing of New Products
Funding Requirements in 2019	\$7-10 million
Monetization Plan	Hold until Q4 2020. If successful in producing and selling new products, seek to sell in first half 2021.
Risks	<ul style="list-style-type: none"> Commercialization of manufacturing delayed Significant Capex required

C&C Value Added	2018	2019	2020	2021	2022	2023	Total
Revenue		40,313	50,755	50,755			141,823
EBITDA		4,961	13,492	13,492			31,944
Net Income		1,998	9,200	8,266			19,464
Capex		(6,745)	(4,575)	(4,365)			(15,685)
Changes in W/C		(5,186)	239	5,861			915
Total repay / (funding)*	-	(6,969)	9,156	14,988	-	-	17,175

Forecasts are only three years out (ie. till FYE 2021)

No 2018 data as value add is a new operation as of Jan 2019



CBL Portfolio Monetization Plan - Altair

Altair/Alken	
Description	Oil Well drilling services
Net Carrying Value 12/31/18	\$ 13.2 million
CLO Funding	\$0
Management Plan	Aggressive
Funding Requirements in 2019	\$0
Monetization Plan	Management currently pursuing new customers within Mining and Oil & Gas industries. If unsuccessful, move to liquidation in Q2 or Q4 (industry auctions). Proceeds estimated at \$2-\$4 million
Risks	<ul style="list-style-type: none"> • Unsuccessful in winning new business in new industries • Industry Risks • Negotiation & Execution of liquidations

Altair	2018	2019	2020	2021	2022	2023	Total
Revenue	3,283	12,196	11,800				27,279
EBITDA	(1,279)	2,156	3,086				3,963
Net Income	(3,144)						(3,144)
Capex		(366)	(354)				(720)
Changes in W/C	(0)	-	-				(0)
Total repay / (funding)*	(1,279)	1,790	2,732				3,243

Forecasts are only two years out (ie. till FYE 2020)

Disclaimer

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TAB 2B



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queen ouest
Toronto ON M5H 3S8

Telephone: 416-593-2316
Fax No: 416-593-8252
Email: jhancock@osc.gov.on.ca

February 23, 2017

Mr. Dan Nohdomi
Vice President & Chief Financial Officer
Callidus Capital Corporation
4620 – 181 Bay Street, P.O. Box 792
Bay Wellington Tower, Brookfield Place
Toronto, Ontario
M5J 2T3

Dear Mr. Nohdomi,

Thank you for your response letter dated January 18, 2017 (the **Response Letter**). We have the following additional comments as outlined below.

PART A

Please email your response to **Part A** to jhancock@osc.gov.on.ca and mtang@osc.gov.on.ca by March 2, 2017.

Non-GAAP Financial Measures

We are concerned that the disclosure provided in the Company's press release dated November 3, 2016 (the **Press Release**) is potentially misleading to investors for the following reasons:

- a. The below measures were not identified as non-GAAP financial measures in the Company's disclosures and as such the Company did not include the disclosures as set out Part III of CSA Staff Notice 52-306 (Revised) – *Non-GAAP Financial Measures (CSA Staff Notice 52-306)*:
 - Unrealized yield enhancements / total yield enhancements which includes unrealized yield enhancements.
 - Net income and earnings per share based on unrealized yield enhancements taken into income.
 - Net income, ROI and EPS before provisions and yield enhancements.
- b. The prominence given to non-GAAP financial measures is inconsistent with CSA Staff Notice 52-306:
 - The "Financial Highlights" table discloses all non-GAAP financial measures. For example, as communicated previously, it discloses the average loan portfolio outstanding (which grosses up IFRS loans receivables) without disclosing loans receivable under IFRS.
 - Similarly, net income before provisions and yield enhancements are disclosed in the same table with reported net income disclosed in a footnote.

- The narrative on page 1 and 2 of the Press Release gives prominence to ROE, net income and EPS before provisions and yield enhancements.
- c. The prominence of yield enhancements where there is a lack of specific disclosure to fully understand the risks and uncertainties related to yield enhancements:
- The Company discloses that over half the loans in the portfolio are generating yield enhancements, however 90% of yield enhancements are from only 2 loans.
 - The Company has not provided more specific disclosure to understand the terms, risks and uncertainties related to the Company's determination and realization of yield enhancements for these two loans.
 - It appears that unrecognized yield enhancements is forward looking information and while the Company has general disclosure regarding forward-looking statements on page 4 of the Press Release, the Company has not met the specific disclosure requirements in Part A of National Instrument 51-102 *Continuous Disclosure Obligations*.

In light of the discussion above, we request that the Company amend and refile its November 3, 2016 Press Release to address the above deficiencies. Please confirm that the requested Press Release will be amended and refiled, including a timeline of when this is anticipated to occur.

Please note that if the Company refiles its Press Release or if the Commission orders a refiling, the Company will be placed on the Refilings and Errors List for a period of three years from the date of refiling. The list is available on the Commission's website at: <http://www.osc.gov.on.ca/en/22198.htm>.

Part B

Please email your response to **Part B** to jhancock@osc.gov.on.ca and mtang@osc.gov.on.ca by March 17, 2017. Please note that the numbering below corresponds to the Company's Response Letter.

Loan Receivable

1. We have additional questions regarding certain loans in the Company's loan portfolio with reference to Schedules A to D to the Company's Response Letter. For the following loans, please provide the information below:
 - a. Blueberi Gaming:
 - i. An update on the status and expected timing of the court approval process to acquire Blueberi Gaming. Please discuss any risks or challenges that may impact the timing of the acquisition and the impact of delays on the operations of Blueberi Gaming and the Company's assumptions used in its valuation of Blueberi Gaming.
 - ii. The Company's analysis, including contractual provisions under the restructuring of Blueberi, for continuing to accrue significant interest under CCAA.
 - iii. The Company's most recent valuation along with significant assumptions to support its loan receivable balance and unrecognized yield amount (\$40M as disclosed in the Company's Q3, 2016 MD&A). Please provide the most recent third party reports to support the Company's valuations.
 - iv. The Company's specific exit strategy (i.e. sale of assets, sale of business), including anticipated timing, to realize fair value.

- b. Harvey Industries:
 - i. The Company's analysis for determining there was goodwill upon acquisition. Please provide the Corporation's most recent valuation along with significant assumptions to support the enterprise value and related goodwill balance. Please provide the most recent third party report to support the Company's valuation.
 - ii. The triggers that would result in the Company making a demand under the Catalyst guarantee.
 - iii. The Company's specific exist strategy (ie. sale of assets, sale of business), including anticipated timing, to realize fair value of the assets, including goodwill.
- c. C&C Wood Products:
 - i. The date the loans are contractually required to be repaid (maturity date of term loan).
 - ii. A description of the method for valuation. Please provide a breakdown of collateral and the Company's most recent valuation along with significant assumptions to support enterprise value, if applicable. Please provide the most recent third party report to support the Company's valuation.
 - iii. The status of the Company's option to acquire 100% of equity. (We note from Appendix A that shares of the borrower are being held in escrow to be transferred to Callidus upon payment of \$10).
 - iv. The Company's specific exist strategy, including anticipated timing, to realize fair value.
- d. Quality One Wireless:
 - i. Why the borrower is not on the Company's watchlist given its restructuring.
 - ii. Whether the Company expects to be repaid in normal course vs liquidation of Oldco and sale of shares of Newco.
- e. Grey Aqua Group:
 - i. It appears from Appendix B that the loans receivable balance, net of allowance for loan loss, of \$35M is supported by approximately \$15M of collateral. Please explain the discrepancy and discuss why the loan loss provision was determined to be sufficient.
 - ii. Please provide an update on when proceeds are expected to be received from the sale of assets.
- f. Aitken Basin Drilling:
 - i. The Company's specific exist strategy (i.e. sale of assets, sale of business), including anticipated timing to realize fair value of the assets.
- g. Esco Marine:
 - i. The Company's analysis in determining that using discounted cash flow of the joint venture was an appropriate valuation methodology to support its loan balance as it appears that the joint venture has not closed. Please also clarify if the Company has title to the "excluded assets".
 - ii. How the Company will account for its loan receivable and equity interest upon closing of the joint venture.
 - iii. The Company's specific exist strategy, including anticipated timing to realize fair value of the assets.
- h. Horizontal Well Drillers / Otto Environmental:
 - i. Whether principle payments are being received in accordance with the terms of the loan agreements.

- ii. A description of the method for valuation and the breakdown of collateral to support the loan receivable balances.
 - iii. The circumstances that would result in the Company exercising its warrant to purchase 10% of the equity of Horizontal Well Drillers or option to purchase 95% of the equity of Otto Environmental.
4. We note the Company's response that loans are generally not considered "past due" as cash receipts from the obligor's clients are swept on a daily basis. Please provide the following:
- a. A listing of the loans that fall within the contractual maturity categories (i.e. 0-3 months, 4-6 months, 7-12 months and 13 months or more) as disclosed in the Company's financial statements for the period ended September 30, 2016. Please specify the loans that the Company has considered to be non-performing or for which the Company is not receiving payments as contractually required as at September 30, 2016.
 - b. How the Company has considered loan extensions or other amendments to the loan agreements that defers payment in its assessment of whether the loan is performing.
 - c. The general nature and terms of the loans that are considered to be contractually due in less than 3 months, as this appears to be an increasingly large portion of the Company's loans receivable balance.

We note that the Company's commitment to provide further disclosure on financial assets that are impaired with reference to IFRS 7.37(b). Please also provide the factors that the Company considered in determining that they are impaired.

Please note that we may have additional questions as to the disclosure that should be provided under IFRS 7.37(a) to reflect an analysis of the age of the financial assets that are past due but not impaired upon review of the information provided in 4 a. to c. above. Please advise if the Company is anticipating providing further disclosure in this regard in its upcoming 2016 annual financial statements.

5. We note that enterprise value comprises one third of the collateral value coverage across net loans receivable. Please provide more detailed disclosure in future MD&A, AIF and financial statement filings (IFRS 7.36(b)) of the nature and weighting of collateral that comprises the collateral value coverage across net loans receivable. Please also confirm the following:
- The Company will provide coverage by watch list and non-watch list loans and a range of collateral coverage on an individual loan basis in its upcoming 2016 annual MD&A.
 - The Company will provide further disclosure in future financial statement filings of its policies for disposing of assets for collateral it has taken possession of with reference to IFRS 7.38.
6. We note the Company's commitment to provide more specific risk factor disclosure in future MD&A filings relating to collateral that has an uncertain period before liquidity or that is commodity based. Given the significant assumptions involved in determining enterprise value, please also include more specific risk factor disclosure regarding this collateral.

Yield Enhancements

8. It appears that the Company's recognized yield enhancement of \$32M relates to its warrant to purchase equity in Horizontal Well Drillers and its unrecognized yield enhancement of \$40M relates to a proposed disposition of Blueberi Gaming. The objective of disclosure under Item 1.14 *Financial Instruments and Other Instruments* of Form 51-102F1 is to assist with assessing the amounts, timing and certainty of future cash flows associated with those instruments. Please provide more information in future MD&A filings on:

- The nature of and significant assumptions used in determining material recognized and unrecognized yield enhancements.
 - More specific disclosure on the risks and uncertainties relating to the valuation and events that could cause significant variation in yield enhancements.
 - Clarification that the recognized yield enhancement and unrecognized yield enhancement relate to relate to one issuer each (at September 30, 2016).
9. We note the Company's commitment to provide more disclosure on its derivative asset with reference to IFRS 13.93(d) and (h).

Relationship with Catalyst

12. We note the Company's response that "*Whereas Callidus lends to viable businesses who may have difficulty obtaining financing from traditional lenders, the Catalyst Funds invest in distressed and under-valued entities with a view to seeking control*". However, it appears that the Company's business model has evolved such that the risk of conflict has increased. We note the following from the Company's response:

- Approximately one third of the Company's loan receivables were subject to a restructuring as of September 30, 2016 as shown in Appendix C.
- The use of yield enhancements as a fundamental part of its business model as disclosed by the Company in its Press Release and as shown in Appendix D.
- Yield enhancements comprise one-third of the collateral value coverage of the Company's net receivable balance (response 5 in the Response Letter).

We have the following comments:

- a. Please discuss how conflicts with Catalyst Funds are addressed as it appears that the Company is increasingly involved in restructurings and taking equity positions in borrowers.
- b. Please discuss generally the Company's expertise and strategies to realize fair value of its loans when equity positions are taken.
- c. Please ensure the Company's AIF filings are updated to reflect its evolving profile when discussing collateral and business strategy. (For example, page 10 of the Company's AIF dated March 29, 2016 states that the Company provides the borrower with access to capital without a dilution to their equity ownership and page 26 states that Callidus does not intend to take ownership positions in borrowers).

Additional Comments – Financial Statements Period Ended December 31, 2015 and September 30, 2016

We also have the following additional comments that are not with reference to the Company's Response Letter:

1. We note the Company's financial statements for the year ended December 31, 2015 did not include disclosure of cash flows from interest received and paid separately with reference to IAS 7.31. Please provide us with these amounts for the year ended December 31, 2015 and period ended September 30, 2016 and provide such disclosure in the Company's 2016 annual financial statements.
2. The Company has not provided the disclosures consistent with IFRS 3.B64 (for example (a) to (e) of IFRS 3.B64) in respect of businesses acquired. We also note that IFRS 12.10 requires disclosure about interest in subsidiaries necessary to understand the composition of the group.

Please provide further disclosure in this regard in the Company's 2016 annual financial statements.

Please email your response to **Part A** to jhancock@osc.gov.on.ca and mtang@osc.gov.on.ca by March 2, 2017 and to **Part B** by March 17, 2017. Please forward promptly to each member of the Company's audit committee a copy of this letter. Please also forward to each member of the audit committee a copy of the Company's response. We also request that a copy of this letter and the Company's response be forwarded to the Company's auditors. Please confirm specifically in your response that this has been done.

Note that we may have additional questions on the information you provide or upon further consideration of the information reviewed to date. After we have reviewed your response, we will write again with supplemental questions or confirm the completion of our review.

If you are considering filing a prospectus in the near term, please inform the writers at the earliest opportunity. Please note that the issues raised in this letter will be taken into consideration when determining whether a receipt should be issued. Consequently, unresolved issues may delay the prospectus receipt.

If you have any questions relating to the above, please contact the writers.

Yours truly,

"Jodie Hancock"

Senior Accountant
Tel: (416) 593-2316
Email: jhancock@osc.gov.on.ca

"Michael Tang"

Senior Legal Counsel,
Tel: (416) 593-2330
Email: mtang@osc.gov.on.ca

TAB 2C



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Fax No: 416-593-8252
Email: jhancock@osc.gov.on.ca

March 8, 2017

Mr. Dan Nohdomi
Vice President & Chief Financial Officer
Callidus Capital Corporation
4620 – 181 Bay Street, P.O. Box 792
Bay Wellington Tower, Brookfield Place
Toronto, Ontario
M5J 2T3

Dear Mr. Nohdomi,

Thank you for your response letter dated March 2, 2017. We have the following additional comments:

Part A

Please email your response to Part A to jhancock@osc.gov.on.ca and mtang@osc.gov.on.ca by March 10, 2017.

We continue to be of the view that the Company should amend and refile its press release dated November 3, 2016 (the **Press Release**). Because the Press Release is potentially misleading or harmful to the public interest, the Company should immediately issue a clarifying press release address our concerns.

The Press Release is potentially misleading or harmful to the public interest because:

- The manner of the disclosure regarding the internal value of total yield enhancements implies that revenue on total yield enhancements are, or should be, recognized sooner than permitted under IFRS.
- Certain measures (as set out in our comment letter dated February 23, 2017) were not identified as non-GAAP financial measures.
- The prominence given to certain non-GAAP financial measures (as set out in our comment letter dated February 23, 2017) is inconsistent with the guidance in CSA Staff Notice 52-306.
- The prominence of yield enhancements given the lack of specific disclosure to fully understand the risks and uncertainties related to yield enhancements (as set out in our comment letter dated February 23, 2017).

Depending on the Company's response, we may consider further regulatory action in connection with the Press Release, including a potential breach of securities law under subsection 126.2(1) (misleading or untrue statements) of the *Securities Act* (Ontario).

Part B

We have the following additional comments with reference to the Globe and Mail article (the **Article**) dated February 28, 2017 “Callidus hits back at former executive in legal dispute”.

Statement of Defence and Counterclaim

1. Please provide us with a copy of the Company’s statement of defence and counterclaim (the **Counterclaim**) in connection with Mr. Boyer’s claim against the Company for wrongful dismissal.
2. Please confirm the accuracy of the summary of the Counterclaim in the Article.

Loan Portfolio

3. Assuming the accuracy of the summary of the Counterclaim in the Article, please advise when the Company became aware that:
 - adequate due diligence was not conducted in respect of Gray Aqua,
 - the Company was misled over XTG’s financial results and an artificially inflated EBITDA, and
 - unauthorized commitments were made to Horizontal on behalf of the Company.

Please provide a timeline of the steps undertaken by the Company, the Credit Committee and the Company’s Board of Directors to address the financial reporting and disclosure related impacts of the above issues. Please also advise how the Company has concluded that only loans in respect of Gray Aqua, XTG and Horizontal have been impacted.

4. Please discuss if there is a commitment provided to Horizontal Drilling and if so, the terms and amount of such commitment and how the Company has disclosed such commitment.

Internal Controls

5. Assuming the accuracy of the summary of the Counterclaim in the Article, please discuss how the Company has determined that as a result of the issues identified in the Counterclaim that it does not have a material weakness in its internal control over financial reporting as defined in National Instrument 52-109 – *Certification of Disclosure in Issuers’ Annual and Interim Filings* which would require disclosure in the Company’s MD&A. Please also discuss any changes in the Company’s internal processes that would mitigate the issues identified in the Counterclaim that relate to the Company’s loan portfolio from recurring.
6. It appears that the Company has not disclosed in its MD&A for the year ended December 31, 2015 its conclusions about the effectiveness of disclosure controls and procedures and internal controls over financial reporting. Please discuss.
7. Please discuss why the Company’s process of engaging third party valuations of collateral did not mitigate that appropriate due diligence may not have been performed in respect of loans made to XTG and Gray Aqua.

Other

8. Assuming the accuracy of the summary of the Counterclaim in the Article, please explain why the Company did not file a material change report to disclose the concerns with Mr. Boyer's work when these concerns were uncovered. In your response, please specifically: (i) identify when the concerns were uncovered; (ii) describe how they were uncovered; (iii) describe the potential impact of the concerns on the Company's business, operations or capital; (iv) explain how the Company calculated alleged damages of \$150 million in connection with the concerns; (v) explain the potential impact of the concerns on the market price or value of any securities of the Company; and (vi) consider Mr. Boyer's position as former chief underwriter of the Company.
9. Item 12 of Form 51-102F2 requires disclosure of any legal proceedings during a company's financial year if it involves a claim for damages that exceed 10% of the company's current assets. Please provide us with the Company's proposed disclosure to be included in its annual information form for the year ended December 31, 2016.

Please email your response to jhancock@osc.gov.on.ca and mtang@osc.gov.on.ca by **March 17, 2017**. Please forward promptly to each member of the Company's audit committee a copy of this letter. Please also forward to each member of the audit committee a copy of the Company's response. We also request that a copy of this letter and the Company's response be forwarded to the Company's auditors. Please confirm specifically in your response that this has been done.

Note that we may have additional questions on the information you provide or upon further consideration of the information reviewed to date. After we have reviewed your response, we will write again with supplemental questions or confirm the completion of our review.

If you are considering filing a prospectus in the near term, please inform the writers at the earliest opportunity. Please note that the issues raised in this letter will be taken into consideration when determining whether a receipt should be issued. Consequently, unresolved issues may delay the prospectus receipt.

If you have any questions relating to the above, please contact the writers.

Yours truly,

"Jodie Hancock"

Senior Accountant
Tel: (416) 593-2316
Email: jhancock@osc.gov.on.ca

"Michael Tang"

Senior Legal Counsel,
Tel: (416) 593-2330
Email: mtang@osc.gov.on.ca

TAB 2D



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Telephone: 416-593-2316
Fax No: 416-593-8252
Email: jhancock@osc.gov.on.ca

July 27, 2017

Mr. Dan Nohdomi
Vice President & Chief Financial Officer
Callidus Capital Corporation
4620 – 181 Bay Street, P.O. Box 792
Bay Wellington Tower, Brookfield Place
Toronto, Ontario
M5J 2T3

Dear Mr. Nohdomi,

We have the following additional comments related to the Company's disclosure of forward-looking information. We request that the Company provide a response to the below by **July 31, 2017**.

Unrecognized Yield Enhancements

1. Based on the information reviewed to date, we believe the Company has not complied with the following continuous disclosure requirements (collectively, the **Deficiencies**):
 - i. The requirement in s. 4A.3(c) of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) that the Company identify the material factors or assumptions used to develop the forward-looking information in the Company's MD&A for the year ended December 31, 2016 and accompanying earnings release dated March 30, 2017 (the **Annual FLI**). Specifically, the Company failed to disclose in its Annual FLI the material factors and assumptions supporting the unrecognized yield enhancements in the amount of \$110.7 million relating to Bluberi Gaming Technologies Inc. (**Bluberi**).
 - ii. The requirement in s. 4A.3(b) of NI 51-102 that the Company include disclosure, with its Annual FLI, identifying the material risk factors that could cause actual results to differ materially from the Annual FLI.
 - iii. The requirement in s. 4A.3(c) of NI 51-102 that the Company identify the material factors or assumptions used to develop the forward-looking information for the period ended March 31, 2017 and accompanying earnings release dated May 3, 2017 (the **Interim FLI**). Specifically, the Company failed to disclose in its Interim FLI the material factors and assumptions supporting the unrecognized yield enhancements in the amount of \$110.4 million relating to Bluberi.
 - iv. The requirement in s. 4A.3(b) of NI 51-102 that the Company include disclosure, with its Interim FLI, identifying the material risk factors that could cause actual results to differ materially from the Interim FLI.

To address the Deficiencies, we request that the Company amend its disclosure and provide the following clarifying disclosure in its MD&A for the period ended June 30, 2017 and accompanying earnings release (collectively, the **Q2 2017 Filings**);

- The material factors or assumptions used to develop the unrecognized yield enhancement relating to Bluberi (the **FLI**), including:
 - The role of regulatory authorities in reaching an agreement to deploy 7000 EGMs to Gateway since the acquisition of games will be between the regulatory authorities (not Gateway) and Bluberi;
 - The timing and status of obtaining necessary regulatory approvals;
 - The basis for determining the deployment of 7000 EGMs to Gateway in the continued absence of a term sheet or agreement with Gateway;
 - Bluberi's ability (whether by outsourcing or internal manufacturing) to deploy 7000 EGMs to Gateway;
 - Significant assumptions related to working capital requirements (whether by outsourcing or internal manufacturing);
 - The significant internal milestones Bluberi must reach to execute deployment of 7000 EGMs to Gateway. For example, it appears that the FLI is based on the assumption that Bluberi has developed a premium EGM machine with a significantly higher EBITDA margin and that EGM machines can perform to Gateway standards based on testing to be performed at year end;
 - The period over which the 7000 EGMs are expected to be deployed;
 - The period over which the unrecognized yield enhancement is expected to be realized.
- The material risk factors that could cause actual results to differ materially from the FLI, including:
 - The need for regulatory approval;
 - The absence of a term sheet or agreement with Gateway;
 - The risk that Gateway may not require 7000 EGMs;
 - The risk of Bluberi being unable to deploy 7000 EGMs to Gateway in light of Bluberi's historical production capabilities and current working capital. For example, it appears that Bluberi's historical production is between 300 and 800 EGMs while management's base case assumes production of 3000 EGMs. Moreover, unrecognized yield enhancements assumes production of 7000 EGMs;
 - The risk of Bluberi being unable to deploy 7000 EGMs within the expected period of deployment.

We also request that the Company provide a draft of the clarifying disclosure to be included in the Q2 2017 Filings in advance for staff review. Please respond.

Please note that if the Company chooses to amend its disclosure, or if the Commission orders that the Company amend its continuous disclosure record, the Company will be placed on the Refilings and Errors List for a period of three years from the date of refiling. The list is available on the Commission's website at: http://www.osc.gov.on.ca/en/Investors_refilings-errors-list.htm. For more information, please refer to SN 51-711.

Q1, 2017 Earnings Call

We also note the following excerpt from the Q1 2017 earnings call (the **Q1 2017 Earnings Call Statements**):

Jaeme Gloyn

National Bank Financial, Inc., Research Division

Q: Okay, and one of the key assumptions is that there will be an agreement for 7000 units deployed. Can you give us an update on that process? Have there been units deployed to date? I guess what would be the financial drivers behind those units? Would it be on a sold basis? Or is it revenue sharing contracts? Or can you shed some light on what those assumptions were around those units?

Newton Gershon Zev Glassman

Executive Chairman and Chief Executive Officer

A: I can tell you that all agreements were reviewed by the third parties. And they came up with the valuation and confirmed the valuation to management. I'm not going to give you more disclosure than what's in the public domain already. Obviously, all key agreements would have been reviewed by those accounting firms which would include the status and/or the conclusion of any agreements including the minimum 7000 machine agreement that you're referring to. In the valuation, they would have correctly as we do internally value machines where there's a revenue sharing agreement differently than where there's an outright sale of the machines. That would have been included in the valuation and discounted appropriately and on the timeframes. And not only would the agreement itself have been brought into account in the valuation but the timing and the execution of the delivery of the machines would have affected the valuation also. Since you don't deliver 7000 machines like a light switch at the turn of a dime. David, do you have anything to add to that?

David M. Reese

President and Chief Operating Officer

A: No, I don't. And as Newton mentioned, the 7000 machines are spread over a relatively tight timeframe but not done in one day.

Jaeme Gloyn

National Bank Financial, Inc., Research Division

Q: Sorry, how would you define relatively tight? Is that within the next kind of three months, six months, is it a year?

Newton Gershon Zev Glassman

Executive Chairman and Chief Executive Officer

A: Jaeme, that's just not publically disclosed and we're not going to discuss it. The valuation was reviewed by third parties, two of them. It does include any and all material agreements. It does for sure include the timing of any delivery and contractual obligations by the parties.

Based on the foregoing transcript, it appears that the Company incorrectly disclosed that there was an agreement for the 7000 EGMs and that such agreement and valuation was reviewed by third parties. Accordingly, we believe that the Q1 2017 Earnings Call Statements require clarification that there are no agreements in place with respect to the 7000 EGMs and that the valuation related to the 7000 EGMs was not supported by third parties. Please confirm this disclosure will also be included in the Company's Q2 2017 Filings.

Your response

We note that the requested disclosure and correction referred to in this letter is based on Staff's review of the Company's continuous disclosure record and information provided by the Company to staff to date. There may be other regulatory concerns that have not been identified. We emphasize that responsibility for complying with Ontario securities law remains with issuers and their directors and officers. Nothing in this letter precludes staff from recommending the commencement of further regulatory action.

Please email your response to the undersigned by the **July 31, 2017**.

Please forward promptly to each member of the Company's audit committee a copy of this letter as well as a copy of the Company's response. We also request that a copy of this letter and the Company's response be forwarded to the Company's auditors. Please confirm specifically in your response whether this has been done.

If you have any questions relating to the above, please contact us.

Yours truly,

"Jodie Hancock"

Senior Accountant
Tel: (416) 593-2316
Email: jhancock@osc.gov.on.ca

"Michael Tang"

Senior Legal Counsel,
Tel: (416) 593-2330
Email: mtang@osc.gov.on.ca

TAB 2E

From: Jodie Hancock [JHANCOCK@osc.gov.on.ca]
Sent: 8/14/2017 4:42:32 PM
To: Dan Nohdomi [dnohdomi@calliduscapital.ca]
CC: Michael Tang [MTANG@osc.gov.on.ca]; Sheryl Antonio [SANTONIO@osc.gov.on.ca]
Subject: FW: Callidus Capital Corporation - Important Notification Regarding SEDAR filing

Importance: High

Hi Dan,

Thank you for your response letter dated August 10, 2017 and for sending us a copy of the Company's earnings release. As mentioned previously the Company will be added to our refilings and errors list in relation to forward-looking information with the following disclosed on the OSC website : http://www.osc.gov.on.ca/en/Investors_refilings-errors-list.htm

Description of Deficiency:

"Forward-looking information revised to included additional disclosure with respect to material assumptions, milestones and risk factors in relation to unrecognized yield enhancements". (The August 10, 2017 earnings release will be included as an attachment).

I was also forwarded the below email sent to the Company this morning by our financial examiner group requesting that the Company refile its CEO and CFO certificates for the period ended June 30, 2017. We also request that the Company refile its CEO and CFO certificates for the period ended March 31, 2017 to remove the modified wording such that the Company's certificates for fiscal 2017 are in the correct format.

Please let us know if you have any questions.

Best regards,

Jodie

Jodie Hancock | Ontario Securities Commission | Corporate Finance | Senior Accountant
20 Queen Street West, Suite 1903 | Toronto ON M5H 3S8
Phone: 416-593-2316 | Fax: 416-593-8252 | jhancock@osc.gov.on.ca

From: Sheryl Antonio
Sent: August-14-17 9:32 AM
To: dnohdomi@calliduscapital.ca
Cc: Matthew Au <MAU@osc.gov.on.ca>; Eden Williams <EWILLIAMS@osc.gov.on.ca>
Subject: Callidus Capital Corporation - Important Notification Regarding SEDAR filing
Importance: High

Dan,

With respect to the CEO and CFO certificates filed for the period ended June 30, 2017, we note that the certifying officers have modified the wording prescribed in the form. This is inconsistent with the requirements of Part 5 of National Instrument 52-109 (NI 52-109) and Part 2.1 of NI 52-109CP. The certifying officers should file the certificates in the exact wording prescribed by the form without any amendments.

Form 52-109F2
Certification of Interim Filings
Full Certificate

I, **Dan Nohdomi**, the *Chief Financial Officer* of Callidus Capital Corporation, acting in that capacity and without personal liability, certify the following:

1. **Review:** I have reviewed the interim financial report and interim MD&A (together, the "interim filings") of Callidus Capital Corporation (the "issuer") for the interim period ended June 30, 2017

Form 52-109F2
Certification of Interim Filings
Full Certificate

I, **Newton Glassman**, the *Chief Executive Officer* of Callidus Capital Corporation, acting in that capacity and without personal liability, certify the following:

1. **Review:** I have reviewed the interim financial report and interim MD&A (together, the "interim filings") of Callidus Capital Corporation (the "issuer") for the interim period ended June 30, 2017
2. **No misrepresentations:** Based on my knowledge, having exercised reasonable diligence, the interim filings do not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made, with respect to the period covered by the interim filings.

Please refile the certificates under SEDAR project number 2659676 and confirm once this has been done. The refiled certificates should include a note to reader explaining the refile. The Notice to Reader should include language similar to the following:

This Notice accompanies, and should be read in conjunction with, the [insert form number] of [insert name of certifying officer and title] dated [insert date of the Original Certificate] (the "Original Certificate") filed by [insert name of issuer] (the "Issuer") with the Canadian securities regulatory authorities through the System for Electronic Document Analysis and Retrieval ("SEDAR").

The Original Certificate contains a [indicate error] error and should be disregarded by the reader from the date of this notice. As of the date of this notice, the Original Certificate is superseded and replaced by the [insert form number] of [insert name of certifying officer and title] dated [insert date of the New Certificate] filed by the Issuer with the Canadian securities regulatory authorities through SEDAR.

Dated: [insert date that the New Certificate will be filed]

[insert Issuer's name]

[insert signature of person authorized to sign on behalf of the Issuer]

Do respond by **August 17, 2017**.

Feel free to contact me with any questions.

Regards,

Sheryl Antonio

Sheryl Antonio | Ontario Securities Commission | Corporate Finance | Financial Examiner

☎ 416-595-8941 | ✉ santonio@osc.gov.on.ca

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[Ontario Securities Commission](#)

TAB 2F



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December 19, 2017

Mr. Dan Nohdomi
Vice President & Chief Financial Officer
Callidus Capital Corporation
4620 – 181 Bay Street, P.O. Box 792
Bay Wellington Tower, Brookfield Place
Toronto, Ontario
M5J 2T3

Dear Mr. Nohdomi,

Thank you for your letter dated September 27, 2017. We confirm that we have no additional comments at this time.

Our review identified deficiencies in the Company's continuous disclosure record. To address these deficiencies, the Company has agreed to carry out a number of remedial steps. Please note that, notwithstanding these remedial steps, the Commission is not precluded from taking further action against the Company. The OSC may also undertake a further review of the Company's ongoing continuous disclosure record at any time.

We request that a copy of this letter be forwarded to each member of the Company's audit committee.

If you have any questions relating to the above, please contact the writers.

Yours truly,

"Jodie Hancock"

Senior Accountant
Tel: (416) 593-2316
Email: jhancock@osc.gov.on.ca

"Michael Tang"

Senior Legal Counsel,
Tel: (416) 593-2330
Email: mtang@osc.gov.on.ca

"Alex Fisher"

Senior Accountant
Tel: (416) 593-3682
Email: afisher@osc.gov.on.ca

TAB 2G



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Telephone: 416-593-2316
Fax No: 416-593-8252
Email: jhancock@osc.gov.on.ca

April 23, 2018

Mr. Dan Nohdomi
Chief Financial Officer
Callidus Capital Corporation
4620 – 181 Bay Street, P.O. Box 792
Bay Wellington Tower, Brookfield Place
Toronto, Ontario
M5J 2T3

Dear Mr. Nohdomi,

The Corporate Finance branch of the Ontario Securities Commission has recently selected the Company for an issue oriented review of its continuous disclosure record. For more information on the nature and purpose of the OSC's continuous disclosure review program, please consult CSA Staff Notice 51-312 *Harmonized Continuous Disclosure Review Program*. While the Company has been selected for a review, note that responsibility for complying with applicable securities legislation, policies and practices remain with issuers and their advisors. Our review does not in any way detract from such responsibility.

Our review is being conducted under section 20.1 of the Securities Act (Ontario). Commission staff will not put the information you provide in response to this request on the public file. The information that is provided will only be disclosed as permitted by the Securities Act (Ontario), or as otherwise required by law.

On the basis of this review, we have comments in relation to the following disclosures included in the Company's continuous disclosure filings for the year ended December 31, 2017.

Q4, 2017 Unrecognized Yield Enhancement

The Company's disclosure of the unrecognized yield enhancement in its MD&A for the year ended December 31, 2017 and press release dated April 2, 2018 (the **Q4, 2017 FLI Disclosure**) differs significantly from the Company's comparative disclosure in Q2, 2017 and Q3, 2017. Please respond to the following comments:

1. Please provide the following documents:
 - a. External valuation reports in relation to the valuation of Bluberi at September 30, 2017 and December 31, 2017.
 - b. The Company's internal valuation documentation, including significant assumptions, to arrive at the unrecognized yield enhancement of \$75 million at December 31, 2017 (the **Q4, 2017 Unrecognized Yield Enhancement**).
 - c. Documentation provided to the Board of Directors and/or the Audit and Risk Committee in relation to the valuation of Bluberi from October 1, 2017 to the current date.

2. The Company's Q4, 2017 Unrecognized Yield Enhancement decreased materially from \$113 million at Q3. Please provide the following:
 - a. The key drivers resulting in the change in the unrecognized yield enhancement in Q4, 2017.
 - b. The basis for the increase in the annual average EBITDA to \$59M and the risk adjusted discount rate to 24.1% used in the determination of the Company's Q4, 2017 Unrecognized Yield Enhancement. Please disaggregate annual average EBITDA by core operations and growth operations and provide an explanation as to the nature of business included in each.

3. The Q4, 2017 FLI Disclosure excludes: i) the specific assumption of the deployment of 7,000 slot machines to a large diversified gaming company, ii) the assumption that a royalty agreement is entered into in early 2018 with a large diversified gaming company, iii) several specific risk factors related to the deployment of 7,000 slot machines, iv) significant future events/milestone assumptions (e.g. regulatory approval) in relation to the deployment of 7,000 slot machines, iv) the March 30, 2017 letter setting forth the mutual understanding to sell 7,000 slot machines before December 31, 2019 and v) the anticipated timing of when the unrecognized yield enhancement would be realized. Please provide the following:
 - a. An explanation as to why the above disclosure was excluded in the Q4, 2017 FLI Disclosure.
 - b. Whether the Q4, 2017 Unrecognized Yield Enhancement includes the deployment of 7,000 slot machines to the large diversified gaming company. If so, provide the specific assumptions.
 - c. The status and key terms of agreements and negotiations with the large diversified gaming company to deploy slot machines. In this regard, please provide any written correspondence from October 1, 2017 to the current date.
 - d. The status and key terms of the royalty agreement with the large diversified gaming company. We note that the Q4, 2017 FLI Disclosure states that "negotiations on the royalty agreement between Bluberi and a gaming company were completed". What was the outcome of the negotiation and how is this reflected in the Company's Q4, 2017 Unrecognized Yield Enhancement?
 - e. An update on the regulatory approval process in Ontario, British Columbia and Alberta to deploy slot machines.
 - f. The time period used in arriving at the Q4, 2017 Unrecognized Yield Enhancement. When is the Q4, 2017 Unrecognized Yield Enhancement anticipated to be realized?

4. The Q4, 2017 FLI Disclosure includes the following future event/milestone assumption: "a targeted South American country legislates and creates a regulatory framework for the gaming industry by 2019 and Bluberi is able to achieve forecasted results in the region". Please provide the following:
 - a. The quantitative impact of this assumption on the annual average EBITDA of \$59.1 million and the Q4, 2017 Unrecognized Yield Enhancement. What are the forecasted results in the targeted South American country (e.g. revenues, EBITDA, # of slot machines to be deployed)? Please disaggregate by year.
 - b. The support as to why the Company has a reasonable basis for this assumption as required by Part 4A.2 of National Instrument 51-102 *Continuous Obligations*.
 - c. Whether the Company has entered into negotiations or agreements in relation to sales in the South American country. If not, how were forecasted results developed?
 - d. The status of legislative and regulatory developments in the South American country.

Q4, 2017 Provision for Loan Loss

5. In Q4, 2017 the Company recorded a provision for loan loss of \$131.9 million on one specific loan concentrated in the energy sector (the **Q4, 2017 Energy Loan Loss Provision**). Page 5 of the Company's MD&A for the year ended December 31, 2017 disclosed certain events resulting in the Q4, 2017 Energy Loan Loss Provision. Please provide the following:
 - a. External valuation reports in relation to the energy loan and determination of collateral value/enterprise value as at September 30, 2017 and December 31, 2017.
 - b. Documentation provided to the Board of Directors and/or Audit and Risk Committee in relation to the business of the underlying borrower and/or the valuation of the energy loan from July 1, 2017 to the current date.
 - c. The Company's analysis as to how it determined that the Q4, 2017 Energy Loan Loss Provision was associated only with events and conditions that occurred in Q4, 2017 and not earlier periods.
 - d. A chronology and timeline of the events that led to the Q4, 2017 Energy Loan Loss Provision.

IFRS 9 Financial Instruments (IFRS 9)

6. Upon review of the Company's disclosure in its financial statements for the year ended December 31, 2017, we request the Company provide the following information to further understand the impact to the Company in relation to the adoption of IFRS 9:
 - a. Presentations, reports, memos, and any other documentation provided to the Audit and Risk Committee from October 1, 2017 in relation to IFRS 9, including but not limited to the analysis of the impact of IFRS 9 on the Company. Please include documentation provided by your auditor.
 - b. IFRS 9 related documentation, including but not limited to memos and other written analysis (e.g., IFRS 9 transition analysis), provided to your auditor since October 1, 2017.
 - c. A summary, by loan outstanding as of January 1, 2018, of the transitional impact of adopting IFRS 9 (if not already provided above). In the summary, please ensure the classification of each loan (e.g., amortized cost, fair value through profit or loss etc.) is clearly stated including the supporting basis for such classification.

Other

7. The Company's MD&A for the year ended December 31, 2017 disclosed a material weakness in the Company's internal control over financial reporting relating to the financial close process of two newly acquired operating subsidiaries. These control deficiencies resulted in material errors in the consolidated results that were corrected before the release of the Company's consolidated financial statements. Please discuss how the Company has assessed that the material weakness did not impact the Company's financial statements prior to December 31, 2017.
8. Note 20(c) to the Company's financial statements for the year ended December 31, 2017 states that the Catalyst Funds agreed to advance up to US \$150 million if required to fund potential future advances to a borrower. Please provide the name of the borrower and under what terms the Company would provide advances to the borrower. Does the Company have a commitment to provide such amounts?

Please email your response to the undersigned **by May 7, 2018**. Please forward promptly to each member of the Company's audit committee a copy of this letter. Please also forward to each member of the Audit and Risk Committee a copy of the Company's response. We also request that a copy of this

letter and the Company's response be forwarded to the Company's auditors. Please confirm specifically in your response that this has been done.

Note that we may have additional questions on the information you provide or upon further consideration of the information reviewed to date. After we have reviewed your response, we will write again with supplemental questions or confirm the completion of our review.

If you are considering filing a prospectus in the near term, please inform the writer at the earliest opportunity. Please note that the issues raised in this letter will be taken into consideration when determining whether a receipt should be issued. Consequently, unresolved issues may delay the prospectus receipt.

If you have any questions relating to the above, please contact the writers.

Yours truly,

"Jodie Hancock"

Senior Accountant
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"Michael Tang"

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TAB 2H



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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July 16, 2018

Mr. Dan Nohdomi
Vice President & Chief Financial Officer
Callidus Capital Corporation
4620 – 181 Bay Street, P.O. Box 792
Bay Wellington Tower, Brookfield Place
Toronto, Ontario
M5J 2T3

Dear Mr. Nohdomi,

Thank you for your response letter dated May 25, 2018 (the **May 25, 2018 Response Letter**). Our comments are set out below.

PART A

Q4, 2017 and Q1, 2018 Unrecognized Yield Enhancements

1. While the Company has provided amended disclosure in relation to Unrecognized Yield Enhancements in its Q1, 2018 filing, we are of the view that the Company has not provided us with sufficient information, as requested, to support that:
 - the Company had a reasonable basis for disclosing the Q4, 2017 and Q1, 2018 Unrecognized Yield Enhancements as required by Paragraph 4A.2 of NI 51-102; and
 - the Q4, 2017 and Q1, 2018 Unrecognized Yield Enhancements are based on assumptions that are reasonable in the circumstances as required by Paragraph 4B.2 of NI 51-102.

Our view is based on the following combined factors:

- a) Paragraph 4B.2(2)(a) of NI 51-102 requires a reporting issuer to limit forward-looking information to a period for which the information can be reasonably estimated. Section 4A.8 of NI 51-102CP states that in many cases that time period will not go beyond the end of the reporting issuer's next fiscal period. Section 4A.8 of NI 51-102CP also states that the reporting issuer should consider its ability to make appropriate assumptions in determining the time period. We do not believe the Company has limited the Q4, 2017 and Q1, 2018 Unrecognized Yield Enhancements to a period that can be reasonably estimated for all of the following reasons:
 - the Company's time period to determine the Q4, 2017 and Q1, 2018 Unrecognized Yield Enhancements is 5 years; the length of which alone significantly increases the potential unreliability of the estimate;
 - the most significant increase in EBITDA contributing to the Q4, 2017 and Q1, 2018 Unrecognized Yield Enhancements is forecasted in fiscal 2020 and fiscal 2021 which we

believe increases its uncertainty because the forecast is not supported by historical performance or future agreements and because the increase in EBITDA is based on inherently less reliable forecasts two and three years in the future; and

- there is additional uncertainty created by the Company's recent amendments to its forward-looking information to exclude its previously disclosed significant assumption that 7,000 machines will be deployed to Gateway.
- b) The Q4, 2017 and Q1, 2018 Unrecognized Yield Enhancements are largely based on the Company achieving significant forecasted sales in Brazil (the **Brazil Opportunity**) where there is significant uncertainty, gambling is not approved and for which there is no regulatory framework. While the Company has stated that there are a number of positive factors or momentum for legislation to proceed, the Company has not provided evidence that there is a definitive timeline for the legalization of gambling in Brazil, that there is certainty regarding the regulatory framework, or other facts that would support forecasted sales anticipated from the Brazil Opportunity.
- c) Bluberi's net income for the year ended December 31, 2017 (since the acquisition date) was \$.8M. This compares to a forecasted annual average EBITDA of \$59M which has not been supported by commitments or agreements. It is unclear how strength in order book, further development of key relationships in North and South American markets and Ambra quantitatively supports such a significant increase in EBITDA in the absence of commitments or agreements (response 5(e) of the May 25, 2018 Response Letter). We are also concerned with the Company continuing to disclose unrecognized yield enhancements for Bluberi without commitments or agreements. In this regard, we note that the Company did not have a firm commitment or an agreement to deploy 7,000 machines to Gateway and recently amended its forward-looking information disclosure to exclude this deployment.
- d) We understand that the purpose of the PwC valuation of Bluberi dated October 27, 2017 (the **October 2017 PwC Report**) was to support the carrying value of Bluberi on the Company's statement of financial position as at September 30, 2017. We also understand from the Company's response letter dated May 7, 2018 that an external valuation report was not prepared for December 31, 2017 in the absence of any material changes. While the Company has stated that a third party valuation review was not performed on the excess amount, we note that PwC did consider management's assumptions (including the Brazil Opportunity) in assessing management's conclusion of an enterprise value of \$231.5M at the Valuation Date and concluded on a materially lower enterprise value of \$103.4M to \$125.6M. We believe that the October 2017 PwC Report raises concerns regarding the reasonableness of the Company's assumptions in determining Q4, 2017 and Q1, 2018 Unrecognized Yield Enhancement for the following reasons:
- PwC adjusted management's forecast for several items (page 36 of the October 2017 PwC Report), including the Brazil Opportunity as "...there is insufficient evidence at the Valuation Date that gambling will be approved in Brazil and, if it is approved, what the regulatory framework will look like".
 - PwC's determination of enterprise value of \$103.4M to \$125.6M supported the carrying value of Bluberi (\$125.6M) as reported on the Company's statement of financial position only at the highest end of the range determined by PwC. PwC's calculation of enterprise value to support the carrying value of Bluberi (including a significant goodwill balance of \$87M) was based on many estimates and assumptions including, further growth and forecasted cash flows, and did not yield any excess in enterprise value above the carrying value of the Bluberi investment.

- Response 5(e) to the May 25, 2018 Response Letter states that expansion of the rollout of the Company's successful b.POD product launch and the AGS royalty agreement (amongst other items) provides a reasonable basis to disclose the Q4, 2017 and Q1, 2018 Unrecognized Yield Enhancements. This appears inconsistent with the October 2017 PWC Report which incorporates these factors to support the carrying value of the Bluberi investment on the Company's statement of financial position (versus an excess amount above the carrying value of the investment).

Based on the information provided to date we do not believe that the Company has met the underlying requirements in Paragraphs 4A.2 and 4B.2 of NI 51-102 and, as such, the disclosures may be misleading in a material respect. Unless the Company can satisfactorily demonstrate and provide written support and records that it had a reasonable basis for the unrecognized yield enhancements at the time they were disclosed, we believe the Company should issue a news release to withdraw its Q4, 2017 and Q1, 2018 Unrecognized Yield Enhancement. Please respond.

Refilings and Errors List

If the Company chooses to amend its disclosure as requested above, or if the Commission orders that the Company amend its continuous disclosure record, the Company will be placed on the Refilings and Errors List for a period of three years from the date of refiling. The list is available on the Commission's website at: http://www.osc.gov.on.ca/en/Investors_refilings-errors-list.htm. For more information, please refer to OSC Staff Notice 51-711 (Revised) *Refilings and Corrections of Errors*.

This would be the fourth time since May 3, 2017 that the Company will have been placed on the Refilings and Errors List for refiling its continuous disclosure and the third time since August 10, 2017 that the Company will have been placed on the Refilings and Errors List in connection with its disclosure of forward-looking information. The frequency and nature of the Company's refilings are concerning and may suggest a culture of non-compliance. The continuing failure by an issuer to meet its underlying continuous disclosure obligations calls into question the commitment of its directors and/or its executive officers to act in good faith in the preparation of the required regulatory filings and whether this continuing course of conduct may be contrary to the public interest. We may refer the most recent breaches of NI 51-102 to Staff of the Enforcement Branch for further regulatory action.

News Release

The news release must be authorized by an executive officer and disclose the reason for the amendment and state that the change was at the request by staff at the Ontario Securities Commission in connection with a staff review. Please provide a draft of the news release for our review, before filing on SEDAR.

Your response

The requested disclosure and correction referred to in this letter is based on Staff's review of the Company's continuous disclosure record and review of certain information provided by the Company to Staff to date. There may be other regulatory concerns that have not been identified. We emphasize that responsibility for complying with Ontario securities law remains with issuers and their directors and officers.

PART B**Q1, 2018 MD&A Disclosure of Collateral Value Coverage**

2. Page 16 of the Company's Q1, 2018 MD&A provides a breakdown of collateral to arrive at the 116% estimated collateral coverage and states "*In instances where enterprise valuation is used in determining collateral values, significant estimations and critical judgments are used including assumptions over and not limited to future cash flows, interest rates, execution risk and company-specific risks...As a general practice, the Company obtains third-party reviews of enterprise valuations at least annually*". Please provide the collateral coverage for Bluberi used in the Company's Q1, 2018 MD&A disclosure. If the Company's disclosure of collateral coverage for Bluberi is based on management's determination of enterprise value that is materially different from a third party review (ie. PwC), and given the issues noted in 1. above, we are concerned that the Company's disclosure infers that a third party review has been performed and that it should be revised. Please respond.

Horizontal Wells

3. Please confirm that the Company has provided in its response letter dated May 7, 2018 (the **May 7, 2018 Response Letter**) and the May 25, 2018 Response Letter, all documentation provided to the Board of Directors and / or the Audit and Risk Committee in relation to the business of Horizontal Wells and the valuation of the loan to Horizontal Wells from July 1, 2017 as requested in comment 5b. to our letter dated April 23, 2018. We note certain schedules in Appendix E to the May 7, 2018 Response Letter include "TBD".
4. The external valuation report prepared by PwC as at December 31, 2017 provided to us appears to be missing information. For example, pages 29, 31, 32 and page 34 have incomplete statements. Please respond. If the valuation report provided is not final, please provide us with the final report.

Please email your response to the undersigned **by July 24, 2018**. Please forward promptly to each member of the Company's audit committee a copy of this letter. Please also forward to each member of the audit committee a copy of the Company's response. We also request that a copy of this letter and the Company's response be forwarded to the Company's auditors. Please confirm specifically in your response that this has been done.

We may have additional questions on the information you provide or upon further consideration of the information reviewed to date. After we have reviewed your response, we will write again with supplemental questions or confirm the completion of our review.

If you are considering filing a prospectus in the near term, please inform the writers at the earliest opportunity. Please note that the issues raised in this letter will be taken into consideration when determining whether a receipt should be issued. Consequently, unresolved issues may delay the prospectus receipt.

If you have any questions relating to the above, please contact the writers.

Yours truly,

"Jodie Hancock"

Senior Accountant
Tel: (416) 593-2316
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"Michael Tang"

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TAB 2I

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CONFIDENTIAL TREATMENT REQUESTED

March 15, 2018

ELECTRONIC SUBMISSION VIA ACCELLION

Maryellen Maurer
Securities Compliance Examiner
Office of Compliance Inspections and Examinations
Private Funds Unit
U.S. Securities and Exchange Commission
33 Arch Street, 24th Floor
Boston, MA 02110

Re: *Examination of The Catalyst Capital Group Inc. (File No. 802-73114)*

Dear Ms. Maurer:

Our client, The Catalyst Capital Group Inc. (“Catalyst”), has asked us to respond to Additional Request No. 9, dated February 27, 2018, and to submit the attached production of documents, Bates No. CAT0083452 to CAT0083995, responsive to certain requests for documents and information contained in Additional Request No. 9. For your convenience, we are uploading the documents in folders by request number, and we include below an index noting the response to which each document relates.

In the course of this examination, which is in its seventh month, the exam team from the Office of Compliance Inspection and Examination (“OCIE”) of the Securities and Exchange Commission (“SEC”) has issued ten written requests for documents with 144 separate requests, many of which have numerous sub-requests, some of which are duplicative, and has emailed or verbally communicated additional requests for documents and information. Catalyst representatives have made themselves available in person, with little notice and despite other pressing personal and business commitments, during the exam team’s on-site visit over 4 months ago, and have met in person with members of the exam team in the SEC’s Boston office. Catalyst representatives also have conducted several telephonic meetings with the exam team. In response to the SEC’s requests, Catalyst already has compiled, reviewed, and produced – at great expense and time – over 100,000 pages of documents.

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Catalyst has been, and intends to remain, diligently cooperative with the SEC during this examination. Our client, however, is increasingly alarmed by recent comments by members of the exam team, and the duration, scale, varying scope, and depth of this examination. This examination has imposed heavy burdens on Catalyst, a Canadian exempt reporting adviser undergoing its very first exam by the SEC, in terms of direct outlays and immense opportunity costs that threaten to materially impact Catalyst's ability to perform its fiduciary obligations to its investors.

At the outset, the exam team informed Catalyst that the examination constituted "routine" requests for the exempt reporting adviser's books and records, with additional follow-up questions as needed for clarification. The requests have subsequently become more expansive and profoundly burdensome. The exam team has, for instance, asked Catalyst to produce tens of thousands of emails to or from a senior Catalyst executive – with no parameters. Producing these emails, which necessarily entailed employing licensed attorneys to perform a review for matters that may be subject to the attorney-client privilege, has caused Catalyst to incur over **Redacted** in expenses for email review alone. Total direct out-of-pocket costs relating to this exam are already well in excess of **Redacted**. After our appeals to reasonableness, the exam team narrowed its prior request for emails and, despite the great cost, Catalyst timely complied. The exam staff appears unwilling to extend that courtesy any further, as Additional Request No. 9, Item 136, seeks over 36,000 emails (thousands of which have attachments) to be reviewed and produced within two weeks. This request contains no parameters or search terms and is unreasonable in terms of both required effort and cost.

We have handled numerous exams and enforcement actions for clients, and these requests stand out in terms of both breadth and depth, particularly for an entity undergoing its first exam and that is an exempt reporting adviser. While several of the exam team's inquiries have been sweeping and meandering in scope, many have also been quite picayune, but nonetheless burdensome. To be clear, Catalyst has continued to cooperate.

Catalyst has endeavored to produce every document and meet every deadline imposed by the exam team. Catalyst is committed to, and understands the importance of, regulation. Investor protection is a paramount priority at Catalyst – just as it is for the SEC. Our client welcomes an inquiry into its business and would appreciate recommendations to improve that may arise out of an examination. The interminable search, however, is threatening Catalyst's ability to continue its business in a focused and orderly way. In our experience, the SEC often measures the need for information to achieve its mandate efficiently, and affords regulated entities – like Catalyst – regulatory clarity.

If the exam team requires additional information from Catalyst to conclude its examination, Catalyst has asked us to reiterate its continued commitment to provide the information. During the meeting requested by Catalyst herein, Catalyst would appreciate the identification of topics on which we can provide supplemental documents and information. The most efficacious way to facilitate the timely conclusion of this process would be for the SEC staff to tell Catalyst, with particularity, about any additional areas of inquiry and provide a

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comprehensive request of documents. Once we understand the information needed, Catalyst will provide it as completely and quickly as possible. Our client does not believe that an interminable set of inquiries (without formal due process protections)¹ is the most efficient path to satisfactory resolution for either the SEC or Catalyst.

In order to discuss the goals of the examination and the prerequisites for bringing this process to an expeditious conclusion, we respectfully request an in-person meeting with the exam team; Director Peter Driscoll; Daniel Kahl, Chief Counsel; Jen McCarthy, Assistant Director. In particular, our client feels it is necessary to identify the SEC's area(s) of focus to enable Catalyst to be more productive in providing the necessary documents and information.

We look forward to discussing these concerns with the SEC staff at your soonest availability.

Table of Documents Produced

No.	Request	Document Title(s)	Bates Range	
			Starting Number CAT-	Ending Number CAT-
121	For the Awards & Recognition listed on www.catcapital.com and for the "Deal of the Year" and "Firm of the Year" award and nomination, respectively, referenced on page 21 of the 2016 General Observations FINAL presentation in Item 6a, provide the following: <ol style="list-style-type: none"> all communications from the entity providing the award regarding the award granted to Catalyst; and all documents submitted to the entity, as applicable, by Catalyst in connection with being considered for the award or recognition. 	121 Communications with the M&A Advisor Communications the Turnaround Management Association	0083452	0083545
122	For the annual meeting held in April of 2017, a list of attendees and their related firm, as applicable, other than existing LPs, Catalyst and Callidus personnel or Fund service provider personnel. Note whether any attendees on that list are prospective investors.	Redacted	0083546	0083546
123	For Therapure, Gateway and Advantage, the following: <ol style="list-style-type: none"> Items 26 and 27 updated for 2017 Item 6Aiii. updated through the present. If not yet available, please provide when they	Redacted	0083547	0083639

¹ Relatedly, Catalyst was alarmed that exam team criticized the company during a recent teleconference for retaining counsel during this examination, as is Catalyst's right. The examination staff enjoys the benefit of consultation with the Chief Counsel's office, and Catalyst appropriately sought the same benefit.

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 BY CATALYST CAPITAL GROUP INC.

No.	Request	Document Title(s)	Bates Range	
			Starting Number CAT-	Ending Number CAT-
	expect to be available and provide once available.	Redacted		
124	The staff notes in an email from Steven Rostowsky to Gabriel DeAlba (among others) dated October 20, 2017 with subject "Tax Update" that certain Catalyst employees were contemplating using "NMRC losses" "in the Therapure amalgamation" and potentially compensating "Fund III for its share of the NMRC losses used in the Therapure amalgamation." Please provide additional details on the nature of the NMRC transaction contemplated in this email as well as its status, including any current plans to present to any Advisory Panels. To the extent that the transaction is no longer being contemplated, provide details as to why.	Redacted	0083640	0083642
125	With regard to the Therapure CDMO sale closing: <ol style="list-style-type: none"> a. A statement as to whether client consent has been obtained from LFB; and b. A statement as to the status of the discussions with Investment Canada regarding the Therapure deal with 3S Bio. 	125	0083643	0083643
126	With regard to the attached emails titled fund payment of bonus and fund payment of bonus 2, provide the following: <ol style="list-style-type: none"> a. Whether any Catalyst Fund paid Nick Green's 2013 bonus and if so: <ol style="list-style-type: none"> i. the specific source within the offering/governing documents or management advisory agreements for permitting the Fund(s) to pay the bonus. ii. Support for the amount paid by the respective Fund(s) and the date; and iii. Evidence of the reimbursement by Therapure for the payment. b. An explanation of what was referred to on the bonus 2 email: "FYI, in the past Fund II has paid this however all amounts advanced/capitalized were converted to equity as part of the prep for the IPO." 	Redacted	0083644	0083645

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 BY CATALYST CAPITAL GROUP INC.

No.	Request	Document Title(s)	Bates Range	
			Starting Number CAT-	Ending Number CAT-
127	<p>With regard to Item 116, the following:</p> <ol style="list-style-type: none"> a. Confirmation of whether hotel invoices are required to be submitted and approved as part of the expense approval process for expenses covered by the Catalyst Funds. b. The time period covered by each of the 12.08.14 and 12.09.14 hotel stays shown in the May 31, 2015 Item 1 and the reason why those stays were not split between the fund and the portfolio company. c. For the May 31, 2015 Item 1, the invoices supporting the following line numbers: i. 1, 2, 39, 79, 87 and 92 d. A listing of all passengers for each of the flights listed on the May 31, 2015 – Items 2 and 3, July 31, 2015 – Item 1, December 31 2015B – Items 1-5 responses and confirmation that all passengers for which the fee was paid were part of any investment due diligence, investment oversight or fundraising process on behalf of the Catalyst Funds. e. A listing of all passengers for each of the flights listed on the February 29, 2016 – Item 1 responses and confirmation that all passengers for which the fee was paid were part of any investment due diligence, investment oversight or fundraising process on behalf of the Catalyst Funds. Indicate the reason why the invoice does not show an approval as well as the significance of the single and double dots next to each expense. f. The work L. Creighton was conducting for Advantage in connection with the May 31, 2015 Items 4 and 5 expenses. g. Alan Riles role with respect to Project Commonwealth and the name of the portfolio company, if any ultimately, associated with that project name – see reference on the May 31, 2015 Item 6 document. Indicate whether the expenses on this item were allocated to Fund IV or to the management company (as noted in the approval box). h. An explanation of how the issue with Mr. Higgins investment related to Fund II was discovered, including when and by whom. Detail when his investment was sent to Fund 	Redacted	0083646	0083675

No.	Request	Document Title(s)	Bates Range	
			Starting Number CAT-	Ending Number CAT-
	<p>II, how, and the reason for the lapse in time from the investment to the correction.</p> <p>i. Confirmation of whether any D&O insurance has been paid for by the Adviser and the basis upon which the premiums have been allocated to the respective Catalyst Funds, and to the extent applicable, to the Adviser. An explanation of the difference between the Excess D&O and the D&O (Private) coverage.</p> <p>j. The basis upon which the premiums for SS&C expenses have been allocated to the respective Catalyst Funds.</p>	Redacted		
128	Confirmation that OPERS did not ask the Adviser to complete a 2016 annual monitoring questionnaire.	Redacted	0083676	0083676
129	Confirmation of compliance with all side letters during the period January 1, 2015 to the present and a detailed description of the process for monitoring and confirming compliance with such letters. Include references to the individual responsible for the overall oversight of this compliance and the individuals who are involved in the process.	Redacted	0083677	0083677
130	Copies of the reports provided to limited partners in compliance with paragraph 8 of the Anne Ray Charitable Trust and the Margaret A. Cargill Foundation side letters.	Redacted	0083678	0083684
131	Confirmation of whether during the period January 1, 2014 through the present, the events contemplated by paragraph 5 (c) of the June 29, 2012 Royal Institution for the Advancement of Learning/McGill University side letter occurred. If so, provide details and actions taken.	Redacted	0083685	0083685
132	Confirmation of the folder layout of the system shown as a screen shot it Item 65 are files used in the due diligence process only and whether a separate file structure and location is used once an investment has been made that is outside the due diligence files.	Redacted	0083686	0083686
133	The audited financial statements for each client for each fiscal year ended in 2013 and 2014.	133 133. Audited Financials – 2013 and 2014	0083687	0083967

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No.	Request	Document Title(s)	Bates Range	
			Starting Number CAT-	Ending Number CAT-
134	In various communications to investors in the client funds there is discussion of a take private transaction of CBL. Provide a summary of the current status of such plans including parties that Catalyst (or its affiliates) have been in discussion with to purchase outstanding public shares, the range of exit prices that have been discussed, the extent to which your clients funds would participate either through the acquisition or divestiture of shares. To the extent that plans of a take private transaction have been put on hold, provide a summary of the previous plans including the parties that Catalyst (or its affiliates) were in discussion with, the range of exit prices that were discussed, the extent to which your clients funds would have participated through the acquisition or divestiture of shares, and the rationale for plans being put on hold.	134	0083968	0083968
135	A list of all parties that Catalyst (or its affiliates) have entered into an NDA with to discuss a take private transaction of CBL.	135	0083969	0083969
137	The "Disclosure Letter" referenced in the Debenture Repayment Agreement dated as of April 23, 2014.	137 Debenture Repayment Agreement	0083970	0083987
138	The adviser's calculation of the percentage of partnership assets invested in CBL for purposes of determining compliance with the Concentration Limit as defined in the respective partnership agreements as of June 30, 2017 for each of Catalyst Fund Limited Partnership III, Catalyst Fund Limited Partnership IV, and Catalyst Fund IV Parallel Limited Partnership. Provide the components of the numerator and denominator as of the date of the most recent investment in CBL prior to June 30, 2017 for each of the respective partnerships.	Redacted	0083988	0083989
139	Section 7.2(c) of the Debenture Repayment Agreement states: "The Credit Committee, when approving or renewing a loan, or enforcing its rights under Section 7.2(a), will act in the best interest of the Corporation and in the event of a conflict of interest between the Corporation and a Catalyst Fund, such conflict will be reviewed and determined by an independent committee."	139	0083990	0083990

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CONFIDENTIAL TREATMENT REQUESTED
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No.	Request	Document Title(s)	Bates Range	
			Starting Number CAT-	Ending Number CAT-
	Confirm whether an independent committee reviewed and determined the contents or fairness of the terms of the "Clarifying Document" dated Feb 16 2015. Also confirm whether an independent committee reviewed the determination as to the amount guaranteed by the respective Catalyst Funds in connection with the Exchange Technology Group loans.			
140	<p>The Catalyst Fund Limited Partnership IV audited financial statements include the following: "Additionally, in March 2016, Callidus required payment by the Fund, along with Catalyst Fund Limited Partnership III, of their guarantees on one of Callidus' loan assets (Xchange Technology Group LLC) in an amount equal to the total outstanding principal, plus accrued and unpaid interest. The Fund, along with Catalyst Fund Limited Partnership III, acquired the loan plus equity for an amount equal to the guarantee in question and are now the owners of the business."</p> <p>Explain why under the guarantee Catalyst Fund Limited Partnership III and / or Catalyst Fund Limited Partnership IV were required to pay for outstanding interest when the Clarifying Document stated:</p> <p>"For greater clarity, subject to the agreement in the first point above in respect of the guarantee by Fund III and Fund IV of losses in relation to the \$18.3 million amount referred to above, the term "advance" in the definition of "Loan Loss" in the Debenture Repayment Agreement excludes (i) any advances to the borrower made to fund interest and fees and (ii) any interest and fees that are accrued and unpaid (including PIK interest and fees), and any amounts received as repayment of such amounts referred to in (i) and (ii), including as proceeds of realization, shall be excluded from clause (B) of the definition of "Loan Loss."</p>	140	0083991	0083991

Maryellen Maurer
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 March 15, 2018
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CONFIDENTIAL TREATMENT REQUESTED
 BY CATALYST CAPITAL GROUP INC.

No.	Request	Document Title(s)	Bates Range	
			Starting Number CAT-	Ending Number CAT-
141	Explain why Catalyst did not seek consent from the Catalyst Fund Limited Partnership III Advisory Panel when entering into the bridge facility with CBL or in connection with amendments to the same. In your response, explain whether or not you believe that 18.1(b) of the limited partnership agreement requires such approval.	141	0083992	0083992
142	Explain why Catalyst did not seek consent from the Catalyst Fund Limited Partnership III Advisory Panel when acquiring Exchange Technology Group from Callidus Capital Corporation. In your response, explain whether or not you believe that 18.1(b) of the limited partnership agreement requires such approval.	142	0083993	0083993
143	Explain why Catalyst did not seek the consultation of the Catalyst Fund Limited Partnership IV Advisory Panel in connection with the entering into the bridge facility with CBL or in connection with the acquisition of XTG from CBL, as required by 18.1(b). To the extent you believe that 18.(b) was not applicable to these transactions, explain why.	143	0083994	0083994
144	Explain why conflicts associated with the entering into the bridge facility and the acquisition of XTG from CBL were not submitted to the Advisory Panel for their consideration, as required by 18.1(c). To the extent you believe that 18.(c) was not applicable to these transactions, explain why.	144	0083995	0083995

* * *

We request that confidential treatment under the Freedom of Information Act (“FOIA”) be accorded to this letter and the information contained herein, along with the documents attached, as well as any memoranda, notes, transcripts or writings of any kind that incorporate, include or relate to any of the matters contained or referred to herein or in any conference, meeting or telephone conversation between you and either Catalyst or counsel to Catalyst. Pursuant to 17 C.F.R. § 200.83, Catalyst designates this letter and the information contained herein, including the documents attached, as confidential business information protected from disclosure by, among other exemptions, the exemption contained in 5 U.S.C. § 552(b)(4) (referred to as FOIA “Exemption 4”). This letter and the documents enclosed herewith, have been marked with the legend “*Confidential Treatment Requested by The Catalyst Capital Group Inc.*” In the event that a FOIA request is received pursuant to which this letter or the documents enclosed herewith, or the information contained herein could be deemed responsive, we request

Maryellen Maurer
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March 15, 2018
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CONFIDENTIAL TREATMENT REQUESTED
BY CATALYST CAPITAL GROUP INC.

that we be furnished with a copy of all written materials pertaining to such request and be given a reasonable opportunity to respond prior to any determination that this letter or the documents enclosed herewith, or the information contained herein, will be produced.

Pursuant to the terms of the applicable regulation and as noted below, we are providing the Office of Freedom of Information and Privacy Act Operations with a copy of this letter so that it has notice of our client's request for confidential treatment.

The foregoing request for confidentiality is without prejudice to any other rights, objections or arguments that Catalyst may have with respect to the confidential nature, and any production to third parties, of this letter or the information contained herein. By sending this letter, Catalyst does not intend to waive any applicable privileges.

If you have any questions regarding the above, please contact me at 202-661-7178.

Very truly yours,



Marlon Q. Paz

Cc: Steven Rostowsky, The Catalyst Capital Group Inc.

TAB 2J



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
OFFICE OF COMPLIANCE INSPECTIONS AND EXAMINATIONS
100 F STREET, NE
WASHINGTON, DC 20549-7041B

May 11, 2018

SENT VIA SECURE E-MAIL

Newton Glassman
Managing Partner
nglassman@catcapital.com

Steven Rostowsky
Chief Compliance Officer and Chief Financial Officer
srostowsky@catcapital.com

The Catalyst Capital Group Inc.
181 Bay Street, Suite 4700
Bay Wellington Tower, Brookfield Place
Toronto, Canada M5J2T3

Re: Examination of:
The Catalyst Capital Group Inc. ("the Adviser")
SEC File No. 802-73114

Dear Mr. Glassman and Mr. Rostowsky:

The staff conducted an examination of the Adviser, which evaluated compliance with certain provisions of the federal securities laws or other applicable rules and regulations (together, "federal securities laws"). The examination identified the deficiencies that are described in Exhibit A and which the staff discussed during an exit interview on May 9, 2018.

The staff is bringing these findings to your attention for immediate corrective action, without regard to any other action(s) that may result from the examination. The findings are based on the staff's examination and are not findings or conclusions of, or binding on, the U.S. Securities and Exchange Commission ("the SEC" or "the Commission") or any of its divisions or offices. You should not conclude that any of the firm's activities not discussed in Exhibit A are in full compliance with the federal securities laws. Nor should you conclude that Exhibit A sets forth an exhaustive list of the ways in which the firm's activities do not comply with the federal securities laws. Neither the staff's findings or its communications during the course of the examination nor any remedial actions undertaken in response to such findings or communications foreclose the Commission from taking any action, including but not limited to an enforcement action, with respect to the firm.

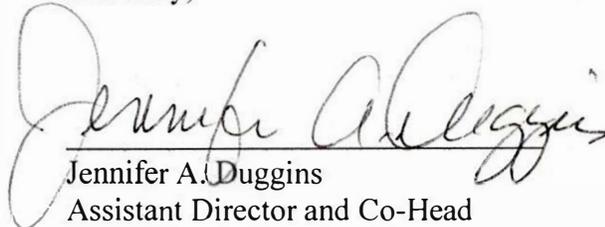
The descriptions of the federal securities laws and related interpretations in Exhibit A may be paraphrased or abbreviated. Please visit our website at <http://www.sec.gov/divisions.shtml> for

complete information related to these regulatory requirements.

Please respond in writing to each of the matters described in Exhibit A by June 11, 2018, describing any steps you have taken or intend to take with respect to each finding identified.

You should respond directly to me using your already established secure email account at: dugginsj@sec.gov. Thank you for your cooperation. If you have any questions, please contact me at (202) 551-5661 or Stephen M. Latin at (617) 573-8808.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer A. Duggins".

Jennifer A. Duggins
Assistant Director and Co-Head
OCIE - Private Funds Unit

Attachment: Exhibit A

Exhibit A
The Catalyst Capital Group Inc.
SEC File No. 802-73114

The examination staff (“staff”) identified the following deficiencies during the examination:

I. Section 206 of the Investment Advisers Act of 1940 and Rule 206(4)-8(a)

Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”) prohibit an investment adviser from employing a device, scheme or artifice to defraud any client or prospective client, or otherwise engaging in a transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client. Additionally, Rule 206(4)-8(a) prohibits investment advisers to pooled investment vehicles from (1) making untrue statements of material facts or omitting to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading statements to investors or prospective investors in those pools or (2) otherwise engaging in any act, practice, or course of business that is fraudulent with respect to those investors or prospective investors.

Based on the staff’s review, it appears that various statements by and practices of the Adviser may constitute violations of Sections 206(1), 206(2) and Rule 206(4)-8(a), details of which are provided in the succeeding paragraphs.

As background, the Adviser serves as the manager to six pooled investment vehicles with collective net assets of approximately \$3.3 billion.¹ The six pooled investment vehicles (collectively, “the Funds”) are Catalyst Fund Limited Partnership II, Catalyst Fund II Parallel Limited Partnership (with Catalyst Fund Limited Partnership II, “Fund II”), Catalyst Fund Limited Partnership III (“Fund III”), Catalyst Fund Limited Partnership IV, Catalyst Fund IV Parallel Limited Partnership (with Catalyst Fund Limited Partnership IV, “Fund IV”), and Catalyst Fund Limited Partnership V (“Fund V”). Each of the Funds is structured as a Canadian Limited Partnership. The Adviser has been retained by the Funds to provide certain investment management and advisory services.

A. Undisclosed Conflicts Relating to Callidus Capital Corporation (“Callidus”)

The examination revealed numerous contractual relationships and business practices which appear to raise conflicts of interest that were not adequately disclosed to investors in the Funds.² The Adviser’s failure to adequately disclose such contractual relationships and business practices, along with the related conflicts, may constitute violations of Rule 206(4)-8(a), as described below.

¹ All amounts are denominated in United States Dollars unless otherwise indicated.

² Under its authority pursuant to Section 204(a) of the Advisers Act, the staff has requested records of the Adviser, including certain email of the Adviser’s Managing Partner. After discussion with the Adviser’s personnel and in an effort to reduce the burden of production, the staff agreed to amend its original request for email by excluding emails sent to or received from certain email domains. The Adviser appears to have instead produced a sample of emails using keywords, such that a portion (but not all) of the requested email records was produced. Accordingly, it appears that the Adviser has not fully responded to the staff’s request for records. The Adviser should produce, as soon as practicable, any additional records that are responsive to the staff’s request Items 148 and 149, absent a valid assertion of privilege.

Exhibit A
The Catalyst Capital Group Inc.
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Callidus is a Canadian domiciled company. Its founder and Chief Executive Officer (“CEO”) since January 1, 2013, Newton Glassman, is also the Managing Partner of the Adviser. It was organized to provide asset-based loans and lending services to companies based in Canada and the United States. The Adviser and its affiliates (including four of the six Funds) owned 71.1% of the outstanding shares of Callidus as of December 31, 2017. Since Fund II initially acquired stock in 2006, the Funds and the Adviser have also entered into various other financial arrangements with Callidus.

The financial arrangements that the Funds entered into with Callidus have included loans to Callidus, guarantees of loans that Callidus has made to its borrowers, participation agreements, asset purchases and service agreements. For example, as of December 31, 2017 Fund III and Fund IV have provided bridge loans to Callidus in the amount of approximately \$210 million. Fund III and Fund IV also purchased a portfolio company, Xchange Technology Group (“XTG”), from Callidus for approximately \$73 million, which equaled the total amount of principal and interest outstanding on a loan that had been extended by Callidus to XTG. Additionally, certain of these transactions have required subsequent amendments and clarifications, as described below.

Although since the inception of the Funds the Adviser included disclosures to investors regarding the potential for transactions between related parties, these disclosures appear to be inadequate. Specifically, these disclosures do not describe the extent of the potential conflicts, and they do not disclose that the Adviser would adopt a practice of resolving some conflicts in favor of Callidus. It appears that there are at least three categories of conflicts that arise in connection with the Funds’ transactions with Callidus, as follows:

1. ***Conflicts between the various Funds relating to their different participation in the Callidus capital structure and the different economic incentives that each fund has in relation to these investments*** - The Funds invest in different parts of the capital structure of Callidus and, sometimes, in the same parts of the capital structure but in different proportions. The potential conflicts that may arise in connection with cross-fund investments in the same issuer are further complicated by the fact that the Funds invest in and divest from Callidus at different times. For example, Fund II has been able to realize a significantly larger profit on its investments in Callidus than Fund III or Fund IV. Specifically, based on its 2017 audited financial statements, Fund II has realized gains of approximately \$106 million on its investment in the common shares of Callidus. This compares with no realized gains for Fund III and Fund IV. In fact, Fund IV has unrealized losses of approximately \$54 million on its investment, whereas Fund II and Fund III both have unrealized gains. The valuation of the common shares appears to be significantly impacted by the Funds’ capital activity in Callidus. For example, Fund II’s interest benefitted from both the equity and debt financing provided by the subsequent Funds’ investments, and as a result, Fund II exited its investments at a substantial profit.
2. ***Conflicts between the Adviser and the Funds as a result of the Callidus transactions*** – The various transactions with Callidus create potential conflicts of interest between the Adviser and the Funds. For example, its 2017 audited financial statements indicate that

Exhibit A
The Catalyst Capital Group Inc.
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Fund II has realized approximately \$106 million in profits from its investment in the common shares of Callidus ahead of any future sales by Fund III and Fund IV. The realization crystallizes these profits for purposes of determining the amount of incentive compensation that Catalyst Fund General Partner II Inc. and Catalyst Fund II Parallel General Partner Inc., each affiliates of the Adviser, are due from Fund II. Additionally, the Funds' investments in Callidus and the subsequent initial public offering ("IPO") of Callidus in April 2014 would create a more permanent pool of capital that the Adviser and its affiliates, including the CEO and other officers of Callidus, could continue to manage after the Funds are liquidated, assuming that Callidus remains a going concern and the Funds are able to liquidate their respective interests. That is, affiliates of the Adviser can continue to make investment decisions with respect to the capital of Callidus even after all of the Funds have liquidated their positions. As a result, the Adviser appears to have had an incentive to, first, direct the Funds to make investments into Callidus, and then, to direct successor Funds to also make investments in the same company.

3. ***Conflicts between Callidus and the Funds*** - Although the Funds have significant investments in Callidus, which may mitigate the conflicts to some degree, there are still conflicts that remain between the Funds on the one hand and Callidus on the other. These conflicts are further exacerbated by the fact that the Funds own different proportional investments in the capital structure of Callidus, as described above. In fact, in Callidus' third quarter 2015 earnings investor presentation, Callidus acknowledged the existence of conflicts when it stated "[b]ecause Callidus is so essential to Catalyst's strategy, conflicts resolved in favour of the public investor."

In this regard, the examination identified several instances where it appears that there were conflicts resolved in favor of Callidus, potentially to the detriment of some of the Funds. For example, in February 2015, the Adviser and its affiliates, including Callidus and the general partners of Fund III and Fund IV, entered into a letter agreement that "clarifies" the terms of the guarantees. This "clarification" resulted in Fund III and Fund IV guaranteeing principal advances made to borrowers, even after the IPO.³ The clarification also created a priority of payments for cash flows from underlying borrowers. Pursuant to this priority of payments, cash received from the borrower would be used to pay accrued interest to Callidus first, which reduced Callidus' credit risk exposure, while increasing the credit risk exposure of Fund III and Fund IV to these companies. That is, after the "clarification," the Funds bore all of the credit risk, including the additional risk that resulted from extending additional principal to these borrowers, but the Funds did not receive the benefit of additional interest charged on larger principal balances because the interest payments were made to Callidus. Accordingly, for certain guaranteed loans, Callidus would be incentivized to keep the debt outstanding, increasing principal balances to increase its own income from guaranteed loans, even at potentially below-market lending terms.⁴

³ Based on the staff's review of the letter agreement, it appears that the changes made to the guarantees through the letter agreement appear to be material changes rather than a clarification.

⁴ The staff discusses disclosures to investors about the guarantees in greater detail below.

Exhibit A
The Catalyst Capital Group Inc.
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It appears that the Adviser failed to adequately disclose to investors the extent and nature of the conflicts described above. In some instances, the transactions or agreements were disclosed to investors, but only after their occurrence, and generally without disclosing the conflicts that were associated with the agreements or transactions. The staff did not identify any disclosures to Fund investors relating to conflicts being resolved in favor of the public investors of Callidus, whether at the time they invested or subsequently.

The Adviser's failure to disclose conflicts associated with transactions between the Funds and Callidus to investors may constitute a violation of Rule 206(4)-8. Additionally, the adoption of a practice of resolving conflicts of interest in favor of affiliated parties to the potential detriment of the Adviser's clients may constitute a violation of Section 206(1) and Section 206(2) of the Advisers Act.

In response to this letter, the Adviser should describe any steps that it intends to take to address the issues described above, including identifying any related, pre-existing disclosures made to investors.

B. Conflict Consent Requirements

Based on the staff's review, it appears that the Adviser or its affiliates failed to comply with the requirements of the limited partnership agreements ("LPAs" or "LPA," as applicable) of Fund III and Fund IV with respect to conflicts of interest. The Adviser's failure to satisfy the conflict consent requirements of the Fund III and Fund IV LPAs may constitute a violation of Rule 206(4)-8. Additionally, it appears the Adviser directed the Funds to invest in Callidus without disclosing or mitigating the conflicts associated with such investment. This conduct may constitute a violation of Section 206(1) and Section 206(2), as described below.

Section 18.1(b) of the Fund III Second Amended and Restated Limited Partnership Agreement dated June 22, 2010 ("Fund III LPA") includes the following provision:

Transactions with Related Entities. The Partnership shall not enter into any transaction with the General Partner, the Manager, a Portfolio Company or any of their respective Affiliates unless such transactions have been approved by the Advisory Panel, are in the ordinary course of business and are on terms and conditions no less favourable to the Partnership than those that could be obtained from an unaffiliated third party [emphasis added].

Similarly, section 18.1(b) of the Fund IV Limited Partnership Agreement dated June 25, 2012 ("Fund IV LPA") contains a similar provision, as follows:

Transactions with Related Entities. The Partnership shall not enter into any transaction with the General Partner, the Manager, a Portfolio Company or any of their respective Affiliates unless there has first been consultation with the Advisory Panel, such transaction is in the ordinary course of business and such transaction is on terms and

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conditions no less favourable to the Partnership than those that could be obtained from an unaffiliated third party [emphasis added].

The staff's review found that there have been several transactions between Callidus and the Funds that were not brought to the Advisory Panel for approval or consultation. Among these transactions were the Funds' acquisition of XTG from Callidus, the extension and increases of the bridge loans from the Funds to Callidus, and the "clarification" of the guarantee provisions, as discussed above.

It also does not appear that these transactions were carried out in a manner that would ensure that the terms were "*no less favourable to the Partnership than those that could be obtained from an unaffiliated third party.*" The staff requested information related to how conflicts are resolved between the Adviser and Callidus, including the operation of a provision in the Debenture Repayment Agreement dated as of April 23, 2014 (the "Debenture Repayment Agreement"). Specifically, section 7.2(c) of the agreement states:

The Credit Committee, when approving or renewing a loan, or enforcing its rights under Section 7.2(a), will act in the best interest of the Corporation and in the event of a conflict of interest between the Corporation and a Catalyst Fund, such conflict will be reviewed and determined by an independent committee.

The staff requested confirmation of whether an "independent committee" reviewed the clarification of the guarantee provisions or the purchase of XTG by the Funds. In response, the Adviser stated that where there is any potential for conflict of interest with the Adviser, the independent directors of Callidus made the decisions. Based on this response, it appears that there was not a party representing the interests of the Funds in these transactions. Without a party representing the interests of the Funds, it seems that there could be no reasonable assurance that the terms of the transactions were on terms that were "*no less favourable to the Partnership than those that could be obtained from an unaffiliated third party.*"

Given that the transactions between Callidus and the Funds involve affiliates of the Adviser and may not be on terms as advantageous as those that could have been received from a third party, it appears that the Adviser failed to comply with the Fund III and Fund IV LPA requirements to bring such transactions to the Advisory Panel.

Section 18.1(c) of the Fund III and Fund IV LPAs also requires that all other material conflicts of interest (not otherwise provided for in the LPA) involving the Adviser's principals and the Funds be brought to the Advisory Panel. In this regard, given the amount of capital that has been invested in Callidus by multiple funds, the financial interest that the Adviser's principals have in the various Funds, and the principals' direct interest in Callidus, it appears that the Adviser would also have been required to bring the various Callidus transactions to the Advisory Panel.

The Adviser's failure to satisfy the Fund III and Fund IV LPA conflict consent requirements may constitute a violation of Section 206(1) and 206(2). Similarly, the Adviser's misstatements with regard to the manner in which certain conflicts would be resolved may violate Rule 206(4)-8.

Additionally, the Adviser's recommendation to invest in affiliated entities without disclosure of the conflicts with such investments may constitute a violation of Section 206(1) and Section 206(2).

In response to this letter, the Adviser should describe any steps that it intends to take to address the issues described above, including identifying any related, pre-existing disclosures made to investors.

C. Misleading Statements Regarding Portfolio Company Guarantees

The examination found that the Adviser's statements made to investors in the Funds relating to the operation of certain guarantees extended by the Funds and liabilities associated with them appear misleading. Such statements may constitute a violation of Rule 206(4)-8, as described below.

In connection with the Callidus IPO, the Funds entered into guarantees relating to the loans in which they had historically participated through a debenture commitment agreement. The provisions of the guarantees were initially provided for in the Debenture Repayment Agreement and were subsequently amended pursuant to a letter agreement dated February 16, 2015. Subsequent to the IPO, the Adviser included the following description of the guarantees in the notes to the 2014 Fund III audited financial statements:

*Prior to Callidus' Initial Public Offering (the "Offering"), the Fund directly or indirectly invested \$203,701,357 in Callidus managed loans. In connection with the Offering, the Fund exchanged these loan participations for shares in the Offering (at the Offering price) and at the time of the Offering, the Fund provided a guarantee with respect to possible losses of principal on those loan participations. **The purpose of these guarantees was to ensure that there is no inappropriate transfer of credit risk from the Fund to public shareholders while simultaneously ensuring the Fund had no increase in credit risk on the same loans as compared to prior to the Offering.** Accordingly, the guarantee applies: (i) in perpetuity for loans on Callidus' "watch list" at the time of the Offering, or (ii) all other loans outstanding at the time of the Offering, until their renewal (usually one year) in the ordinary course. The guarantee does not apply to any other amounts, such as advances to pay interest or fees [emphasis added].*

The estimated maximum obligation under the guarantees is \$4,079,105. As at December 31, 2014, no provision has been recorded with respect to guarantees, because as at that time management believed a full recovery on the amounts in question would occur.

This description of the Guarantees may be misleading because the guarantees did not in fact ensure that Fund III did not have an increase in credit risk on the same loans as compared to prior to the IPO. For example, as of December 31, 2014, Callidus had loaned approximately

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C\$70 million to XTG.⁵ By December 31, 2015, that amount had grown to approximately C\$101 million. Despite the Adviser's representation that the guarantees would not result in an increase in the credit risk of the Funds, Fund III and Fund IV were collectively required to pay the entire C\$101 million, C\$31 million more than at December 31, 2014.

The statement in the second paragraph of the excerpt above regarding the estimated maximum obligation also appears misleading. Specifically, it appears that this amount did not represent a maximum amount but rather the amount of the current loan loss reserves that Callidus had booked against the guaranteed loans at that time. The Fund III and Fund IV 2014 audited financial statements stated that the "estimated maximum obligation under the guarantees", when aggregated, total approximately \$11.4 million. This amount appears to have significantly understated the maximum total guarantee. According to their 2017 audited financial statements, Fund III and Fund IV have collectively paid approximately \$59.5 million pursuant to the guarantees (excluding the amounts paid under the guarantee for XTG). Including XTG, Fund III and Fund IV have collectively paid approximately \$129.5 million, \$118 million more than was represented as the "estimated maximum obligation under the guarantees" in 2014.

Furthermore, the description of the guarantees in the financial statements does not describe the inherent conflict associated with the mechanics of the guarantees, as implemented. Specifically, the description of the guarantees does not identify Callidus' incentive to extend loans that were on the watch list, increasing their balances. Callidus received all interest on the increased balances, but the loans were guaranteed in perpetuity by the Funds. It also does not appear that the Adviser adequately disclosed this conflict elsewhere.

In this regard, the Adviser's statements relating to the operation of the guarantees and liabilities associated with them appear misleading. As a result, such statements may constitute a violation of Rule 206(4)-8.

In response to this letter, the Adviser should describe any steps that it intends to take to address the issues described above, including identifying any related, pre-existing disclosures made to investors.

[REDACTED]

[REDACTED]

⁵ The staff requested loan balances as of the date of the Callidus IPO, as this was the date that the Funds would have become the guarantor of the loans. The Adviser indicated that it did not have these records because they were records of Callidus. It is unclear to the staff how the Adviser, as a fiduciary, could enter its clients into a guarantee arrangement without knowing the amount that it was guaranteeing.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

E. Misleading Statements to Investors Regarding Portfolio Company Performance

The examination identified certain statements and claims regarding the performance of one of Fund II's portfolio companies that may be misleading. Specifically, the Adviser's statements regarding the performance of Therapure Biopharma Inc. ("Therapure") and feedback from investors on the prospective IPO of Therapure appear to be misleading or omit material facts necessary to make such statements not misleading. Such statements and omissions may constitute a violation of Rule 206(4)-8, as described in more detail below.

As background, the Adviser includes the following description of the Therapure business in its quarterly letters:

Therapure Biopharma Inc. is a Canadian-based biopharmaceutical company committed to the development, manufacture, purification, and packaging of rare and complex biotherapeutics. Therapure operates under two businesses: (i) Contract Development and Manufacturing ("CDMO" or "Services"); and, (ii) Proprietary Products (a pipeline of plasma-derived therapeutic proteins and innovative biopharmaceuticals) ("Proprietary Products").

Fund II initially made an investment in Therapure (formerly Hemosol Corp.) in 2006. The Fund II 2017 Second Quarter Investor Letter notes total current capital invested was \$151 million, and the current value of investments reflected in Fund II financial statements as of June 30, 2017, was \$662 million, or 58.5% of the reflected current value of all investments.⁹ Fund II 2016 audited financial statements as of December 31, 2016 note that the Fund had received \$83,057 in dividend, fee, and interest income related to this investment and did not have any realized gains.¹⁰

The staff's review identified two areas where it appears that the Adviser made misleading statements about Therapure to investors: 1) The performance of the business, both generally and as it relates to its individual CDMO and Proprietary Products businesses, and 2) Feedback from potential IPO investors.

1) Performance of Therapure and its CDMO and Proprietary Products Businesses

The Adviser has consistently told its investors in quarterly letters and annual meeting materials that "[t]he business is performing above expectations," and the adviser has generally not disclosed to investors any material operational challenges during the period for either the CDMO business or the Proprietary Products business. However, the staff's examination has revealed

⁹ The staff notes that there is a discrepancy between the original cost of the investment as reflected in the Fund II audited financial statements relative to the records provided to the staff regarding current investments in response to the staff's request Item 12. The audited financial statements reflect an original cost of \$129 million as compared to the \$151 million reflected in Item 12 under the title "Total Investment Amount (Capital Invested)."

¹⁰ The Adviser's response to Item 12 indicates that Fund II realized approximately \$22 million as of August 31, 2017.

that there were events and operational issues that may have required disclosure to investors in light of the Adviser's regular statements regarding the business "performing above expectations." In fact, by several measures outlined below, it appears that the business was not performing above expectations. The operational issues that were not disclosed to the Fund's investors related to both the CDMO business and the Proprietary Products business.

Apparently Misleading Statements Regarding Performance of the CDMO Business

The Adviser's statements throughout 2016 and 2017 regarding the CDMO business indicate that the general investment thesis for the CDMO business was to increase production utilization through new contracts and increase revenue and earnings before interest, taxes, depreciation and amortization ("EBITDA"). For example, in the Fund II 2016 Third Quarter Investor Letter, the Adviser included the following statement:

"The Company continues to pursue new contracts in order to achieve full production utilization and has a valuable business development pipeline representing in excess of \$135MM in revenue over the next 12-18 months. The Company continues to grow at an accelerated pace and to date Therapure delivered on its 2015 budgeted revenue increases and experienced EBITDA growth."

The Adviser included similar statements to this one in each of the following two investor quarterly updates, particularly with reference to EBITDA growth. But the Adviser did not disclose that the company failed to meet targeted revenue or EBITDA, and it did not disclose issues with respect to specific customer contracts. The staff's review found that the company was failing to meet targeted revenue and EBITDA, and it was encountering certain customer specific contract issues that appear material to the CDMO business. For example, the staff's review identified a Therapure document titled "TBI 15 Performance vs Plan," which appeared in Catalyst's communications in an email from Therapure dated March 7, 2016, showing 2015 performance. The document shows that CDMO total revenue was 23% below management's forecasted revenue, and CDMO EBITDA (before research and development) was 69% below management's forecast. However, the Adviser made no disclosure to investors regarding the revenue and earnings shortfalls during this period. In fact, it appears inconsistent with the Adviser's statement that Therapure delivered its budgeted revenue increases.

Similarly, in 2016, the CDMO business continued to miss revenue and earnings projections. Based on revenue projections communicated by Therapure management to Catalyst,¹¹ the CDMO business was expected to generate C\$78 million in revenue. The actual revenue generated by Therapure, as reported in its 2016 audited financial statements, was only C\$62.6 million, 20% below forecasted revenues. Similarly, a presentation titled 2016 Board Presentation - December 2016 and appearing in the Adviser's email correspondence with Therapure dated January 6, 2017, shows 2016 Therapure EBITDA before research and development of C\$7.2 million, or 56% below management's forecast in the previously noted

¹¹ This revenue forecast appeared in a document titled 2016 Update Presentation dated February 5, 2016.

Exhibit A
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document dated February 5, 2016.¹² Despite Therapure's failure to meet revenue and EBITDA projections, the Adviser stated in its third quarter 2016 investor letter that "(t)he business is performing above expectations and all monetization paths are advancing."

Finally, it appears that in describing the sale of the CDMO business the Adviser has not disclosed to Fund investors that two conditions precedent for closing the sale as per an Asset Purchase Agreement had not been met. In particular, after over six months, the Adviser's written response to the staff's inquiry surrounding the sale indicates that the transaction still has not received regulatory approval from Investment Canada, and it has not received the required consent from one of the CDMO customers. With regard to the CDMO customer who had withheld consent, the Adviser had also not disclosed that, in June 2017, a US affiliate of that customer alleged a breach of contract by Therapure and demanded \$31.2 million for contractual costs to date and costs for materials made to date.¹³

On May 1, 2018, a joint venture between 3SBio Inc. and CPE Funds terminated its agreement to buy the CDMO business from Therapure. On the same date, a 3SBio Inc. press release noted that "...[a]s certain condition(s) precedent under the Asset Purchase Agreement were not satisfied or waived on or before the Long-stop Date of 30 April 2018, and the Buyer and the Seller have not agreed to a further extension of time, the Asset Purchase Agreement has lapsed and the Buyer has served a notice to the Seller in writing to terminate the Asset Purchase Agreement..."¹⁴

Apparently Misleading Statements Regarding Performance of the Proprietary Products Business

There were also issues that were arising with respect to the Proprietary Products component of the company that apparently were not communicated to investors. For example, the previously noted February 5, 2016 Therapure presentation included a section titled "Milestones & Objectives Summary – Plasma Proteins Program 2016." The first slide of that section is titled "Summary of Strategic Plan" and includes the following bullets:

¹² The staff notes that in a PWC valuation report dated March 27, 2017, the following sentence was included: "We note that unaudited results for 2016 indicate that revenue was CAD\$83.1 million versus forecasted 2016 revenue of CAD \$78.0 million." However, this may be misleading because this statement does not appear to account for the fact that there appears to be approximately CAD\$18 million in intercompany revenues relating to the Product's business included in the CAD\$83.1 million in revenues referenced. These amounts appear to not have been included in 2016 budgeted revenues. Also, these amounts were not included in the consolidated results as they appear in Therapure's 2016 audited financials, as they do not represent third party sales.

¹³ A document dated August 1, 2017 indicates that the dispute may have been subsequently resolved with Therapure agreeing to take certain steps and covering certain costs to remediate the issues identified in the demand letter. These costs included the cost of hiring a compliance consultant and the cost of certain materials and manufacturing supporting the compliance work plan.

¹⁴ 3S Bio Inc. announced in the same press release that it had entered into an exclusivity agreement with Therapure, CPE Fund II, CPE Fund IIA, Catalyst Fund General Partner II Inc., and Catalyst Fund Limited Partnership II in order to explore alternative business opportunities and arrangements with respect to the CDMO business. The exclusivity agreement has a one month initial term, which may be extended by mutual agreement.

Exhibit A
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- **Bring to Market Intravenous Immunoglobulin (IVIG) in 2018**
- Competitive product in - line with higher - tiered products (for US/CA market)
- Single Phase III trial approach – supported by FDA guidance document and meeting with regulators
- **Bring to Market Albumin in 2018**
- Competitive product (for US/CA market)
- Seek approval based on product specifications under Code of Federal Regulations
- Provide sufficient non - clinical data at meeting with regulators to support no clinical trial approach
- **Bring to Market Alpha - 1 Antitrypsin (AAT) in 2020**
- Competitive product (for US market)
- Provide sufficient non - clinical data at meeting with regulators to support single bioequivalence trial approach
- **Construct Commercial Facility by 2018**
- Initial build to support commercial IVIG and Albumin with additional footprint for other products
- Add - on facility for AAT to be built in 2019 for 2020 commercial launch
- **Leverage Technology by Developing Pipeline of Follow-on Products**
- Develop business case and programs for additional proteins
- Map additional proteins in manufacturing process to identify easily accessible value streams

It appears that there have been significant delays in Therapure achieving all of these goals. In particular, written responses to the staff's inquiries indicate that as of November/December 2017, almost 2 years after the above projections, all of the timelines identified above have been delayed between 2 and 3 years. Based on those current projections, IVIG and Albumin are further from being brought to market than they were 2 years ago. Similarly, construction related to expansion of Therapure's plant that is expected to manufacture IVIG for commercial sale has encountered significant delays and setbacks. The staff understands that the delays in the construction project are primarily the result of an inability to finance the project. It appears that this apparently material fact was also not disclosed to the Fund's investors.

2) *Feedback from Potential IPO Investors*

The examination has also identified certain statements that appear to be misleading regarding feedback received on the potential IPO. In particular, the Adviser has consistently stated to Fund investors that feedback received regarding Therapure from prospective investors during the IPO marketing process had been positive without disclosing negative feedback received. For example, the Adviser stated in a 2015 annual meeting presentation that "Therapure is performing above expectations and investor feedback during the IPO process about the quality of management and the company was very positive." The Adviser did not disclose that there was also negative feedback from potential investors regarding certain aspects of the company and the IPO itself. For example, the staff noted that GMP Securities presented a June 2016 slide deck which included a slide titled "IPO Feedback vs. Recent Achievements." The slide stated that "Therapure has mitigated some of the negative feedback received during the IPO marketing process, but it is unclear whether this will increase investors' appetite." The slide also included five negative feedback items received during the process, including "[l]arge execution risk on plasma business - not proven at commercial scale" and "Catalyst post-transaction percentage ownership and liquidity concerns." Each of these items may have been material to investors. Disclosure of these items may have been necessary to make the Adviser's statements regarding the feedback received during the IPO process not misleading.

The Adviser's statements regarding the performance and prospective IPO of Therapure appear to be misleading or omit material facts necessary to make such statements not misleading. Such statements and omissions may constitute a violation of Rule 206(4)-8.

[REDACTED]

II. Rule 21F-17(a) under the Securities Exchange Act of 1934 - Whistleblower Regulations

A. Language Inconsistent with the Commission’s Whistleblower Regulations

Rule 21F-17(a) under the Securities Exchange Act of 1934 prohibits any person from taking any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation.

The staff found that the confidentiality language in the Adviser’s Employment Agreement and Employee Handbook appears to be inconsistent with Rule 21F-17(a)¹⁸. For example, a template produced to the staff with the Adviser’s Employment Agreement language states:

You also agree that you shall not, at any time during the term of your employment with us or thereafter reveal, divulge or make known to any person, other than to [the Adviser] and our duly authorized employees or representatives or use for your own or any other's benefit, any Confidential Information, which during or as a result of your employment with us, has become known to you.

In addition, the Adviser’s Employee Handbook, last revised October, 2017, includes a Confidentiality Policy which states, among other things, that:

All Catalyst employees are required to keep confidential any Company information which has not been made public and to ensure it is not revealed to any outside source.

¹⁸ The confidentiality language in the Employment Agreement template is also referred to in a template of the Adviser’s Mutual Release, which appears to be signed by the Adviser’s personnel upon termination.

Exhibit A
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You understand that, in your capacity as an employee, you will acquire information about certain matters and things which are confidential to the Company ("Confidential Information") . . .

At all times during and subsequent to the employee's employment with the Company, the employee will not disclose Confidential Information to any person without first obtaining the Company's consent, and the employee will take all reasonable precautions to prevent inadvertent disclosure of any confidential information.

The language in these documents may impede existing and future employees from communicating with the SEC and, accordingly, may be inconsistent with Rule 21F-17(a).

In response to this letter, the Adviser should describe any corrective actions it intends to take regarding this matter, including and any steps it will take to ensure that the Adviser's current and former employees are apprised of any such changes.

TAB 2K

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CONFIDENTIAL TREATMENT REQUESTED

June 11, 2018

VIA ELECTRONIC SUBMISSION VIA ACCELLION

Jennifer A. Duggins
Assistant Director and Co-Head OCIE – Private Funds Unit
Office of Compliance Inspections and Examinations
U.S. Securities and Exchange Commission
33 Arch Street, 24th Floor
Boston, MA 02110

Re: Examination of The Catalyst Capital Group Inc. (File No. 802-73114)

Dear Ms. Duggins:

On behalf of our client, The Catalyst Capital Group Inc. (“Catalyst”), we hereby submit this response to your letter dated May 11, 2018 (the “Exit Letter”), with respect to the examination of Catalyst by the Office of Compliance Inspections and Examinations (“OCIE”) of the U.S. Securities and Exchange Commissions (“SEC”), which identified certain deficiencies found by the OCIE staff (the “Staff”) during the examination.

Catalyst appreciates the opportunity presented by this examination to identify areas in which it might strengthen its procedures. To that end, Catalyst cooperated fully with OCIE staff for a period of nine months and timely produced well over 100,000 pages of records in response to 149 multi-part items contained in 13 separate written requests, including many onerous requests issued months after the onsite meeting, incurring nearly a million dollars in direct costs and large sums in opportunity costs. Your letter states that Catalyst has not fully responded to the staff’s requests for records in Items 148 and 149 of Additional Request No. 12. Catalyst’s response to Items 148 and 149 was submitted to OCIE staff on May 7, 2018. Catalyst reviewed and produced documents in response to these extremely onerous requests using expansive search terms that were reasonably calculated to produce all documents related to areas under examination. As noted in the production letter, to the extent the staff desires to review additional documents, all documents have been preserved and Catalyst would incur the expense required to review and produce these documents after an opportunity to consult with the SEC to reasonably limit the costs and scope of the inquiry. To the extent that the Staff has identified areas for improvement, Catalyst commits to taking the necessary corrective steps as quickly as possible. Catalyst welcomes constructive and thoughtful suggestions on how to implement best practices.

Catalyst is, always has been, and always will be, committed to its investors. Catalyst's relationship with, and reputation among, its investors is the lifeblood of the company. Accordingly, Catalyst takes very seriously any suggestion that it could have possibly confused its investors in any way. Catalyst and its investors have endured a multi-year, highly sophisticated systematic campaign of defamation and economic interference from its competitors and others. If the staff so desires, Catalyst can provide evidence or proof of such, including how the SEC may have been manipulated unwittingly as a part of that campaign.

Catalyst is proud of its record and has been very transparent. To that end, throughout very thorough examinations by the SEC (and the Ontario Securities Commission), Catalyst provided to the Staff documents, information and several in person meetings at great personal cost to Catalyst employees. Catalyst strongly believes that Catalyst has not omitted or misrepresented any material fact to investors. In an effort to improve, however, Catalyst commits to immediately addressing your recommendations to ensure the primacy of investor protection in every aspect of Catalyst's operation.

With respect to the individual points identified in the Exit Letter, we have set out the item below (in bold), followed by the firm's responses, for your convenience.

I. Section 206 of the Investment Advisers Act of 1940 and Rule 206(4)-8(a)

Catalyst understands its fiduciary duty under Section 206 of the Investment Advisers Act of 1940 (the "Act") and its obligations under Rule 206(4)-8(a) of the Act.¹ Catalyst adheres to a standard of behavior typified in the words of Justice Cardozo, who noted that, "a fiduciary is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior."²

Catalyst is not aware of, nor has OCIE pointed to, any undisclosed conflict of interest that "might incline an investment adviser – consciously or unconsciously – to render advice that was not disinterested."³ In recognition of the fundamental precepts of fiduciary relationships in the investment adviser context, we note that in *SEC v. Capital Gains Research Bureau, Inc.*, the seminal decision on the fiduciary duties of an adviser under the Act, the Supreme Court stated that, "[t]he Advisers Act of 1940 reflects a congressional recognition of the delicate fiduciary nature of an investment advisory relationship as well as a congressional intent to eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested."⁴ Mindful of its obligation of utmost good faith and full and fair disclosure of material facts to clients, which flow from its

¹ In adopting Rule 206(4)-8, the SEC explained that Rule 206(4)-8 does not create a fiduciary duty to investors or prospective investors in a pooled investment vehicle not otherwise imposed by law, nor does it alter any duty or obligation an adviser has under the Advisers Act, or any state law or requirement to investors in a pooled vehicle. See *Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles*, Advisers Act Rel. No. 2628 (Aug. 3, 2007).

² *Meinhard v. Salmon*, 164 N.E. 545, 546 (N.Y. 1928).

³ *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191-92 (1963).

⁴ *Capital Gains Research Bureau, Inc.*, 375 U.S. at 189, 191-92.

duty to clients, Catalyst strongly believes that it has disclosed all material facts related to conflicts or potential conflicts of interest.

As a Canadian entity, Catalyst's duties are defined by Canadian fiduciary law. The leading decision on corporate fiduciary duties in Canada is *BCE Inc. v 1976 Debentureholders*, [2008] 3 SCR 560. As described by the Supreme Court of Canada in the *BCE* case, directors of Canadian corporations owe a duty to the corporation, with due regard for all relevant stakeholders. The fiduciary duty is a duty to act in the best interests of the corporation. While the interests of shareholders and stakeholders may be co-extensive with the interests of the corporation, where such interests conflict, the directors' duty is clear — it is owed to the corporation. The Supreme Court of Canada explained the standard as follows:

Where conflicting interests arise, it falls to the directors of the corporation to resolve them in accordance with their fiduciary duty to act in the best interests of the corporation. The cases ... confirm that this duty comprehends a duty to treat individual stakeholders affected by corporate actions equitably and fairly. There are no absolute rules and no principle that one set of interests should prevail over another. In each case, the question is whether, in all the circumstances, the directors acted in the best interests of the corporation, having regard to all relevant considerations, including — but not confined to — the need to treat affected stakeholders in a fair manner, commensurate with the corporation's duties as a responsible corporate citizen.

Canadian law, as interpreted by the Supreme Court of Canada in the *BCE Inc.* case, imposes on corporate directors a tripartite fiduciary duty composed of (1) an overarching duty to the corporation, which contains (2) a duty to protect shareholder interests from harm, and (3) a procedural duty of "fair treatment" for relevant stakeholder interests. This duty of fair treatment acknowledges the need to ensure that a contemplated action considers the reasonable expectations of stakeholders and is not oppressive. The same is true of private equity and portfolio managers, such as Catalyst, under Canadian law.

There can be no doubt that Catalyst has at all times comported with its legal duties in, at minimum, fulfilling the reasonable expectations of stakeholders. For example, although not discussed in the SEC's letter, there are numerous examples of Catalyst deferring its management or other fees—sometimes for years—for the benefit of its investors. Below, we address OCIE's findings with a view toward addressing the issues raised.

A. Undisclosed Conflicts Relating to Callidus Capital Corporation ("Callidus")

In the Exit Letter, OCIE Staff states that, "Although since the inception of the Funds the Adviser included disclosures to investors regarding the potential for transactions between related parties, these disclosures appear to be inadequate." The categories listed below are identified as the apparent deficiencies. Catalyst appreciates that OCIE Staff have highlighted certain

disclosures in which additional information could have been beneficial to investors, and is committed to providing such additional information on a prospective basis.

OCIE staff noted three categories of conflicts that arise in connection with the Funds' transactions with Callidus, each of which we address below.

1. **Conflicts between the various Funds relating to their different participation in the Callidus capital structure and the different economic incentives that each fund has in relation to these investments.**
2. **Conflicts between the Adviser and the Funds as a result of the Callidus transactions.**
3. **Conflicts between Callidus and the Funds.**

In the Exit Letter, OCIE staff cites three types of conflicts (quoted above). The conflict rules applicable to any fiduciary rest on two fundamental precepts, namely (1) the conflict rule (which protects the integrity of the relationship between the fiduciary and the beneficiary); and (2) the discretionary decision-making authority of the fiduciary. The conflict rule prohibits the fiduciary, among other things, from taking an opportunity for itself which may be available to a beneficiary. No Fund nor the Manager has taken an opportunity belonging to another. The decision-making power is circumscribed by the scope of discretion delegated to the fiduciary, by a beneficiary's expectations, and in some cases, by operation of law.⁵

1. Conflicts Relating to Funds' Participation in the Callidus Capital Structure

In analyzing these potential conflicts, it is appropriate to consider the investment posture in each Fund in April 2014, when Callidus went public. Catalyst Fund Limited Partnership II ("Fund II") was in its realization period and the expectations of the relevant Limited Partners ("LPs") were to receive a return of capital. Fund II was therefore not permitted, by contractual agreement, without a waiver from its investors (which it knew it would not get) to make further investment and had no remaining available capital, as it was technically over 100% "committed" (that is why the Manager deferred management fees owed to it in order to help Fund II's liquidity). The Callidus offering permitted a substantial realization of Fund II's interest as it was contractually required to pursue given its stage in its life cycle; it currently holds only a very small amount of its original investment.

Prior to the public offering of Callidus, Catalyst Fund Limited Partnership III ("Fund III") and Catalyst Fund Limited Partnership IV ("Fund IV") held shares of Callidus and funded loans originated by Callidus. Funds III and IV acquired shares in connection with the public offering in exact proportion to their interests in those loans. Fund III was at the end of its investment period. Fund IV entered into a participation agreement at the time of the offering

⁵ See *BCE*, [2008] 3 SCR 560.

while it was in its investment period as it was entitled to do so and as disclosed in its offering memorandum to prospective investors. That participation was subsequently reacquired by Callidus as contemplated by and required under the Participation Agreement. Catalyst Fund Limited Partnership Fund V (“Fund V”) had a right to participate in new Callidus loans based on a formula agreed to at the time of the public offering. These documents were complied with by Catalyst and were disclosed and remain available to the OCIE Staff, all Catalyst Fund investors and to the public shareholders (in the prospectus and in the SEDAR database).

Funds II, III, and IV at all material times controlled approximately 62% to two-thirds or more of Callidus’ shares. Funds III and IV subsequently made the bridge loan to Callidus in order to support their existing investment in Callidus—a substantially different fact from “new loans.” A review of each Fund’s documents shows that a Fund is allowed to make “follow-up” investments to any existing portfolio company (such as Callidus) post “Investment Period.” Participation in a new loan originated by Callidus is likely not permissible.

At all times, Mr. Glassman and Mr. Riley appropriately disclosed their role in the Funds and at Callidus in the public offering documents and as required by the applicable corporate fiduciary duty. Mr. Glassman and Mr. Riley were not previously paid for their roles at Callidus; in part, as disclosed in the public documents, both have been paid the nominal sum of \$1 a year - ever since Callidus was public – for their roles at Callidus.

In analyzing whether the above-described economic interests created a conflict of interest between the Funds managed by Catalyst, it is important to keep in mind the discretionary decision-making authority of Catalyst, which delineates the duties it owes. In this light, it is clear that none of the economic interests described above created a conflict of interest that affected the integrity of the relationship between the Funds.

First, Fund II was in its realization period and quickly approaching its contractual wind-up when Callidus went public, and the expectation of the LPs was that Fund II’s investments would be realized. Second, Funds III and IV were not only still in their investment periods, but had a minimum of 4 years remaining in their life and had amounts invested in Callidus’ loans. Those investments were disclosed in every Funds’ annual meetings to the Fund investors as well as in the offering memoranda and other offering materials as part of the Funds’ investment strategy for mitigating the “J Curve” for each of Fund III and Fund IV. The LPs in each Fund had an expectation that investments were to be made in Callidus. Third, Fund IV’s investment in the Callidus loan participation was fully disclosed to both the Fund’s investors and in the public offering documents. Similar disclosures were made in Fund V’s offering document and often discussed in Fund investor due diligence meetings. In part, this J-Curve mitigation strategy was discussed and disclosed as a Fund V competitive advantage. There was no expectation of any other participation in the Callidus capital structure by Fund V’s LPs. Each of these different participations was disclosed appropriately in the applicable offering materials and was made in proportion to the capital available in each Fund at the relevant time.

Accordingly, the Exit Letter's characterization, that disclosures to investors "do not describe the extent of [...] potential conflicts, and they do not disclose that [Catalyst] would adopt a practice of resolving some conflicts in favor of Callidus," lacks basis in fact. The documents and information provided by Catalyst clearly indicate that (1) it did properly disclose to investors all potential conflicts of interest, and (2) it implemented non-discretionary controls to manage and narrow the scope of such potential conflicts of interest.

For example, the Fund IV Subscription Agreement states in relevant part:

There may be a conflict of interest in the allocation of investment opportunities between Fund IV and any other investment partnerships managed by Catalyst. Catalyst will attempt to allocate investment opportunities in a manner that is in the best interest of all the entities involved in light of the circumstances prevailing at that time as well as having regard to the cash available in a particular entity at the time for investment. However, there can be no assurance that an investment opportunity that comes to the attention of Catalyst will not be allocated (i) wholly or primarily to another partnership, with the Fund being unable to participate in such investment opportunity or participating only on a limited basis, or (ii) wholly or primarily to the Fund, with any other partnership not sharing the risks of such investment.

The Subscription Agreements for Funds III and V contain substantially identical language, clearly disclosing to investors that conflicts may exist and how Catalyst agreed to manage such conflicts.

Likewise, for example, the Fund V Limited Partnership Agreement ("LPA") provides:

In allocating investment opportunities among funds . . . the General Partner and the Manager will use their good faith efforts to ensure that the Partnership has access to and participates in, to the largest degree possible, those opportunities that are within the investment strategy of the Partnership . . . Any investment opportunity . . . shall be allocated between the Partnership and such other investment vehicles such that the percentage participation of the Partnership in such opportunity shall not be less than the percentage that the Partnership's Unfunded Commitments . . . net of amount committed by or on behalf of the Partnership in relation of investments of or to be acquired by the Partnership, bear to the aggregate anticipated unfunded commitments of all such investment vehicles as of their respective final closings (including the Partnership), also net of amounts committed by or on behalf of

such partnerships in relation to investments of or to be acquired by such partnerships respectively.

The LPAs for Funds III and IV contain substantially identical language, clearly disclosing how Catalyst must allocate investments between Funds. This is how Catalyst did it in every instance, to its knowledge. Any assertion that Catalyst made untrue statements of material fact or omitted material facts, or that it otherwise engaged in an inappropriate course of conduct, is without merit and lacks any support.

2. Conflicts Between the Adviser and the Funds

As noted above, the investment scope for Catalyst was determined by the relationship established by the relevant LPA and Management Advisory Agreement. Catalyst had no economic interest in the Funds (other than a two percent interest as disclosed in the offering document) at the relevant time. Catalyst's only interest in Callidus was the carried interest it could earn indirectly via the performance realized by each Fund in their Callidus investment. Furthermore, no Catalyst employee ever received any economic benefit from Callidus for their investment there. Further, that carried interest would be earned on a so-called European basis, meaning it is only earned after the investments are realized and the LPs receive a return of capital (which includes a return of amounts incurred as expenses by or on behalf of the Funds), as well as and a priority return of eight percent (post all expenses). This structure aligns Catalyst's and the LPs' interests and ensures that there is no conflict.

Because there was no conflict between Catalyst's interests and the interests of the LPs, the only remaining fiduciary principle in question is Catalyst's exercise of its decision-making power. Catalyst's decisions were made in good faith, in the best interest of the LPs, and according to the reasonable expectations of the LPs. Pursuant to the requirements set forth by the Supreme Court of Canada in the *BCE* case, Catalyst faithfully discharged its fiduciary duties.

3. Conflicts Between Callidus and the Funds

Pursuant to the *BCE* case, Callidus directors owe a duty to the corporation, which requires the Callidus directors to protect shareholder interests from harm and give "fair treatment" to all relevant interests.

Catalyst believes that the only transaction that could have potentially given rise to a perceived conflict between Callidus and the Funds was the bridge loan. However, the bridge loan was negotiated between the independent directors of Callidus, on the one hand, and Catalyst on behalf of the Funds, on the other hand. Mr. Glassman and Mr. Riley did not participate in the discussion as directors of Callidus, and their conflict arising from their roles as directors of Callidus and partners of Catalyst was fully disclosed.⁶

⁶ Minutes from Callidus Board of Directors meetings provide documentary support.

The Exit Letter further states that after the February 2015 letter agreement between Catalyst, Callidus, and the general partners of Funds III and IV, “the Funds bore all of the credit risk, including the additional risk that resulted from extending additional principal to these borrowers, but the Funds did not receive the benefit of additional interest charged on larger principal balances because the interest payments were made to Callidus.” To the contrary, the credit risk situation was materially more advantageous to the Funds than characterized, and that conflicts were not resolved in favor of Callidus to the detriment of the Funds. For example, the cost of capital, administrative costs, and interest risk were all borne by Callidus, rather than the Funds. Furthermore, the loan was intended to be of short duration although external events made repayment impossible. As a result, the Funds were paid a market rate of interest. That rate of interest was confirmed to be market by both “comparables” and negotiations with the arm’s length Callidus directors.

To the extent that Catalyst’s disclosures could have been clearer or made more prominently to investors, Catalyst will seek opportunities for enhancement to ensure greater investor clarity. However, the Exit Letter uses conclusory language that we believe is inappropriate in light of the disclosures Catalyst provided to investors.

In order to improve its disclosure of potential conflicts of interest, Catalyst commits to the following action plan:

Action Item	Completion Timeline	Responsible Party
In conjunction with outside counsel, perform a thorough review of relevant disclosures with a goal of determining enhancements to disclosures.	3Q 2018	
Enhance disclosures identified in the review to ensure clear and complete disclosures of any potential conflicts of interest.	4Q 2018	

B. Conflict Consent Requirements

- 1. The Adviser’s failure to satisfy the conflict consent requirements of the Fund III and Fund IV LPAs may constitute a violation of Rule 206(4)-8.**
- 2. The Adviser directed the Funds to invest in Callidus and affiliated entities without disclosing or mitigating the conflicts associated with such investment. This conduct may constitute a violation of Section 206(1) and Section 206(2).**

Catalyst understands that under the LPAs, certain transactions require either consultation with, or approval by, the relevant Fund’s Advisory Panel. Catalyst management is very much attuned to these requirements, and Catalyst believes it has always acted in accordance with the relevant provisions of the various LPAs. However, Catalyst acknowledges that it has not always

reduced its compliance to a formal document. Catalyst is committed to improving its documentation of the process for presenting matters to the Funds' Advisory Panels, including the decision-making process, by routinizing and preserving the documentation necessary to evidence the process and resolution of the matters.

Information provided to OCIE staff demonstrates that the Funds' acquisition of the Xchange Technology Group ("XTG") loan, the extension of the bridge loans from the Funds to Callidus, and the clarification of the guarantee of Callidus loans were not undisclosed conflicts of interest that were required to be presented to the Funds' Advisory Panels pursuant to the LPAs. The bridge loan was a credit facility provided by the Funds to enable Callidus to perform its business activities and is an ordinary course practice which is not a "transaction" within the meaning of the LPAs—and is a follow-up investment to existing Funds' positions (Callidus) and did not require approval.

Likewise, the Funds acquired the XTG loan by virtue of Callidus' demand for payment under the guarantee issued by the Funds; this acquisition was not required to be presented to the Advisory Panels and was a contractual Fund obligation under the Participation Agreement. The XTG loan was acquired pursuant to Callidus' exercise of its guarantee rights pursuant to terms agreed to, and a requirement of the public offering. The acquisition of the XTG loan was the result of an existing contractual obligation of the Funds, and was essentially an automatic result that did not require Advisory Panel consultation because it was not a "transaction" within the meaning of the LPAs.

The clarification of the payment of interest from assets available to borrowers was likewise appropriate. As is a standard asset-based lending practice, all borrower funds were held by Callidus in a "lock-box" system and swept to Callidus. Those swept funds were the only funds available to the borrower to pay interest. The clarification provided that, to the extent that funds were available, those funds were to be used to pay interest first rather than principal. That clarification is consistent with customary banking arrangements where payments are applied to interest first and only applied to the principal or other amounts after all of the interest owing has been paid. There can be no conflict where a transaction is carried out pursuant to a previously agreed upon contractual arrangement.

All Callidus activities as they relate to the Funds were fully disclosed to, and discussed with, each relevant Advisory Panel, including the bridge loan and the guarantee (and the concomitant acquisition of the XTG loan). They were also referenced in each set of annual financial statements and disclosed at each AGM. Moreover, Callidus is a publicly traded company whose interests are protected by its Board of Directors, which owes a fiduciary duty to stakeholders pursuant to *BCE*; the Funds' interests are likewise represented by Catalyst, which owes a fiduciary duty to its investors.

Catalyst appreciates the opportunity to improve its processes regarding presentation of information to Advisory Panels for consultation. While the SEC has not provided guidance on

how exempt reporting advisers must structure their affairs in this respect, Catalyst commits to the following action plan:

Action Item	Completion Timeline	Responsible Party
In conjunction with outside counsel, perform a thorough review of Advisory Panel process.	3Q 2018	
Enhance Advisory Panel process to include, at minimum, formalized escalation procedures, documentation of materials presented to members, and memorializing decisions and action items.	3Q 2018	

C. Misleading Statements Regarding Portfolio Company Guarantees

- 1. The Adviser's statements made to investors in the Funds relating to the operation of certain guarantees extended by the Funds and liabilities associated with them appear misleading. Such statements may constitute a violation of Rule 206(4)-8.**

Catalyst has always sought to provide full and accurate disclosures in all respects, including disclosures relating to the guarantees issued by some of the Funds in favor of Callidus and associated liabilities. To the extent that such disclosures can be improved, Catalyst is committed to ensuring that all disclosures involving related issues are improved going forward.

Catalyst respectfully disagrees with the Exit Letter's statements that:

- “[T]he guarantees did not in fact ensure that Fund III did not have an increase in credit risk on the same loans as compared to prior to the IPO”;
- “[I]t appears that this amount did not represent a maximum amount but rather the amount of the current loan loss reserves that Callidus had booked against the guaranteed loans at that time;” and
- “[T]he description of the guarantees does not identify Callidus’ incentive to extend loans that were on the watch list, increasing their balances.”

It is essential to start with the first principles applicable to the Callidus’ loans at the time as has been explained to OCIE Staff and as has been noted to investors in public disclosures.

As outlined to OCIE Staff and in public disclosures as well as the IPO documentation itself including the Participation Agreement, the loans in existence at the time of the Callidus public offering had guarantees of varying duration. Any loan on Callidus’ “watchlist” was guaranteed in full until repayment. All remaining loans were guaranteed only to the point of their next renewal in the ordinary course. If a loan was renewed, the guarantee ceased, and the credit risk passed from the Funds to Callidus on the outstanding principal and any subsequent increase. The theory was that such reflected the credit risk at the time of the IPO; for example,

had “watchlist” loans—such as XTG—not been guaranteed in full until the time of repayment, the Funds would have in effect improperly transferred real and potentially substantial pre-existing credit risks to unknowing public shareholders at their expense and for the improper benefit of the Funds. The alternative to the Funds guaranteeing the loans was for the Funds to retain the loans on their books and manage those loans. In such an arrangement, the Funds would have retained the benefits and risks of the relevant loans, but would have had the burden of actively managing them directly—resources not at Catalyst but at Callidus.

The Funds did not guarantee interest payments – only principal. Accordingly, the Funds did not receive the benefit of the interest payments. The benefit to the Funds of providing the guarantee was twofold: (a) the Funds were able to conclude a successful public offering at a price that valued the loan book at a multiple of two, and (b) liquidity was provided (and which was needed at Fund II and III at that time). The Funds also had no funding or administrative costs thereby saving substantial costs. Therefore, Catalyst strongly believes that the transaction structure was appropriate.

The loan guarantees reflect the risk that the Funds had at the time of the initial public offering. The clarification of the guarantee was consistent with the original guarantee arrangements. At the time of the initial public offering, Callidus had commitments to make loans subject to certain conditions. The credit process (prior to the offering) required approval of each advance by the Callidus Credit Committee following an assessment that the conditions were satisfied. The Credit Committee had the same membership both before and after the offering.

While the principal amount of a troubled loan could increase, the Funds’ obligations under the loans were subject to a good faith determination by the Credit Committee to make advances and a written submission by the Callidus credit group for each new advance. If the public offering had not been consummated, the Funds (as the shareholders of Callidus) would have ultimately borne the obligation to make and fund those advances in any event.

As explained in the Notes to the Audited Financial Statements, the guarantee applied in perpetuity for loans on Callidus’s watchlist at the time of the public offering. The loans were guaranteed without any value being fixed in relation thereto. To the extent that the principal of any of the loans was increased (or decreased or was repaid), the guarantee would apply to such amount until the loan was repaid in full. As correctly stated in the Exit Letter, the disclosure of the amounts of the “estimated remaining obligation under the guarantees” represents the amount provided by Callidus as a loan loss provision at the relevant date. This disclosure is in accordance with the applicable accounting standards and was reviewed and approved by the Funds’ auditors, KPMG. For the 2017 Audited Financial Statements, Catalyst added a sentence (for greater clarity) that the guaranteed amount includes any subsequent advances on such loans.

If the principal amount of a troubled loan could not increase, Catalyst and Callidus were told by the underwriters the public offering could not have been consummated because the underwriters of the offering would not have accepted that risk in connection with such offering.

None of the “troubled” loans would have been transferred and would have either been brought to collections proceedings or would have otherwise needed to be worked out by the Funds (which would have included advancing additional amounts). The Funds needed to extend the guarantees for a successful offering. Moreover, based on Callidus’ recovery success, Catalyst – in advising the Funds – was confident, based on the information available at that time, that the Funds would recover on substantially all of the credit at risk.

Whether Callidus had an “incentive” to extend loans on the watchlist is irrelevant. Any decision to advance further amounts was determined by first the credit department and ultimately the Callidus Credit Committee. Credit Committee decisions must be made unanimously. Two of the Credit Committee members at the relevant time were Fund nominees, and no amount could have been advanced on any guaranteed or other loans which were not guaranteed, without their approval.

Catalyst believes that the description of the guarantee arrangement was correct in all material respects and reflected a business arrangement satisfactory to the Funds and the underwriters in connection with a public offering.

Notwithstanding the preceding discussion, Catalyst commits to the following action plan to ensure that related disclosures are made as clear as possible going forward:

Action Item	Completion Timeline	Responsible Party
Enhance financial statement disclosures related to loan guarantees.	Complete	
In conjunction with outside counsel, perform a thorough review of disclosures related to Fund guarantees and related issues.	3Q 2018	

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E. Misleading Statements to Investors Regarding Portfolio Company Performance

1. The Adviser's statements regarding the performance of Therapure Biopharma Inc. ("Therapure") and feedback from investors on the prospective IPO of Therapure appear to be misleading or omit material facts necessary to make such statements not misleading. Such statements and omissions may constitute a violation of Rule 206(4)-8. The staff's review identified two areas where it appears that the Adviser made misleading statements about Therapure to investors:

- 1) Performance of Therapure and its CDMO and Proprietary Products Businesses
- 2) Feedback from Potential IPO Investors

Catalyst understands and appreciates the Staff's position that certain statements to investors regarding the performance of Therapure Biopharma Inc. ("Therapure") were at times too limited. Catalyst has already committed to providing investors with more fulsome descriptions of both the successes and the challenges to Therapure's business to improve clarity, and will actively review ways to further improve its disclosures going forward.

We believe that it is important to note that Catalyst, which is one of Canada's largest active distressed investors, has an investment philosophy to acquire interests in struggling companies. Indeed, Catalyst would not advise the Funds to acquire interests in any of the portfolio companies *unless* the company suffered from operational challenges. The LPs of the Funds, all of whom are large, sophisticated, institutional investors, or are ultra-high net worth individuals, fully understand Catalyst's business model and the value proposition of active distressed investments. None of this is hidden from, or misunderstood by, investors. Simply put, all Catalyst investors understand what active distressed private equity is and how it operates.

In addition, while Catalyst strives to provide accurate and relevant information to LPs pertaining to the activities of the various portfolio companies, no LP can transact based on that information. However, as recent experience demonstrates, excess information can and has been misused by some LPs at the expense of others. Please see the recent newspaper article where an LP leaked certain confidential information during the pendency of an "F-1" filing and Catalyst's attempt to seek an injunction, which attempt was unsuccessful.

Nonetheless, to improve disclosures regarding portfolio company performance, Catalyst commits to the following action plan:

Action Item	Completion Timeline	Responsible Party
Provide updated disclosures to investors regarding Therapure risk factors identified by OCIE staff in the examination.	3Q 2018	
In conjunction with outside counsel, perform a thorough review of disclosures related to portfolio company performance and the process for developing and reviewing such disclosures prior to sending to investors.	3Q 2018	
If appropriate, issue new, clarified disclosures to investors.	3Q 2018	

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II. Rule 21F-17(a) under the Securities Exchange Act of 1934 – Whistleblower Regulations

A. Language Inconsistent with the Commission’s Whistleblower Regulations

1. **The staff found that the confidentiality language in the Adviser’s Employment Agreement and Employee Handbook appears to be inconsistent with Rule 21F-17(a).**

Catalyst understands the obligations imposed by Rule 21F-17(a) under the Exchange Act to refrain from taking any action to impede an individual from communicating directly with the SEC’s staff about a possible securities law violation. To the extent Catalyst enters into any employment agreement, separation agreement or other agreement with provisions similar to those identified by the Staff, Catalyst will include a clarifying provision indicating that nothing in the agreement should be construed as preventing the employee, former employee or other person from providing information to the SEC relating to possible violations of the U.S. federal securities laws. In addition, Catalyst will send a written communication to all parties to existing employment agreements and separation agreements that contain provisions similar to these identified by the Staff. The written communication will contain language similar to the clarifying provision described above.

The language identified by the OCIE staff in Catalyst’s Employment Agreement and Employee Handbook is designed solely to address the *illegal* disclosure of confidential information. Other provisions of both documents make clear to employees that whistleblowing is a permissible activity. Nonetheless, Catalyst agrees with the SEC on the importance of making clear to employees that whistleblowing is always permitted. To that end, Catalyst will revise both documents on a go-forward basis, clarify them in an email or internal communication to existing employees, to make the whistleblower exceptions more prominent and closer in proximity to the confidentiality provisions and commits to the following action plan.

Action Item	Completion Timeline	Responsible Party
Revise Employment Agreements, Separation Agreements entered into after Catalyst became an exempt reporting adviser,	3Q 2018	

and Employee Handbook to clarify that whistleblowing is excepted from the confidentiality provisions.		
Send communications to parties to existing Employment Agreements and Separation Agreements entered into after Catalyst became an exempt reporting adviser containing similar clarifications.	3Q 2018	

* * *

We request that confidential treatment under the Freedom of Information Act (“FOIA”) be accorded to this letter and the information contained herein, as well as any memoranda, notes, transcripts or writings of any kind that incorporate, include or relate to any of the matters contained or referred to herein or in any conference, meeting or telephone conversation between you and either Catalyst or counsel to Catalyst. Pursuant to 17 C.F.R. § 200.83, Catalyst designates this letter and the information contained herein as confidential business information protected from disclosure by, among other exemptions, the exemption contained in 5 U.S.C. § 552(b)(4) (referred to as FOIA “Exemption 4”). This letter has been marked with the legend “*Confidential Treatment Requested by The Catalyst Capital Group Inc.*” In the event that a FOIA request is received pursuant to which this letter or the information contained herein could be deemed responsive, we request that we be furnished with a copy of all written materials pertaining to such request and be given a reasonable opportunity to respond prior to any determination that this letter or the information contained herein will be produced.

Pursuant to the terms of the applicable regulation and as noted below, we are providing the Office of Freedom of Information and Privacy Act Operations with a copy of this letter so that it has notice of our client’s request for confidential treatment.

The foregoing request for confidentiality is without prejudice to any other rights, objections or arguments that Catalyst may have with respect to the confidential nature, and any production to third parties, of this letter or the information contained herein. By sending this letter, Catalyst does not intend to waive any applicable privileges.

If you have any questions regarding the above, please contact me at 202-661-7178.

Very truly yours,



Marlon Q. Paz

THE CATALYST CAPITAL GROUP INC., et al.
Plaintiffs

and

WEST FACE CAPITAL INC., et al.
Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto.

**BRIEF OF TRANSCRIPTS AND
ANSWERS TO UNDERTAKINGS OF THE
DEFENDANTS / MOVING PARTIES,
NATHAN ANDERSON AND
CLARITYSPRING INC.
(Motion Pursuant to s. 137(1) of The
Courts of Justice Act)**

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