

**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

and

CANACCORD GENUITY CORP.

Third Party

A N D B E T W E E N:

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

and

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

Defendants to the Counterclaim

AND BETWEEN:

BRUCE LANGSTAFF

Plaintiff by Counterclaim

and

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION

Defendants to the Counterclaim

**SECOND SUPPLEMENTARY MOTION RECORD
OF WEST FACE CAPITAL INC. AND GREGORY BOLAND**

(RE: Defendants' Anti-SLAPP Motions returnable May 17-21, 2021)

VOLUME 3 of 4

May 5, 2021

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Defendants to the Counterclaim

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Defendants to the Counterclaim

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Catalyst v West Face et al.

Greg Boland
on Wednesday, December 9, 2020



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1 second-highest dollar return.

2 41 Q. All right. And the portfolio, you
3 mean both High Conviction Constructed Portfolio I
4 and High Conviction Constructed Portfolio II,
5 right?

6 A. Correct.

7 42 Q. All right. So then below that you
8 have a list under the High Conviction Constructed
9 Portfolio II sub total, and it says "Equity
10 Long/Short (Non-Energy)"; do you see that?

11 A. I do.

12 43 Q. All right. And as part of your
13 business, you short stocks?

14 A. Occasionally. It is a very small
15 portion of our business.

16 44 Q. But do you engage in naked
17 short-selling?

18 A. Can you define "naked
19 short-selling"?

20 45 Q. Well, can you define "naked
21 short-selling"? I thought it was a term in your
22 industry.

23 A. I am not a -- I know it is a term
24 that I have read in the press. I am not exactly
25 sure if there is a legal definition of that, so I

1 would feel uncomfortable defining it.

2 46 Q. Okay. Well, you tell me how you
3 short sell, and I will tell you what naked
4 short-selling is. Go ahead, what is short-selling?

5 A. We would borrow shares. We would
6 sell the shares short. And that is a short sell.

7 47 Q. And you would borrow the shares
8 prior to selling the shares short; is that correct?

9 A. Of course, yes. I think it -- I
10 don't think it is technically possible in this day
11 and age to do anything to the contrary.

12 48 Q. But is it possible to actually not
13 borrow the shares at the time you do the short sell
14 but --

15 A. If you didn't borrow the shares --
16 my understanding is you have to make a declaration
17 that you have borrowed the shares, but more
18 importantly, if you didn't borrow the shares, when
19 you shorted the shares, you would immediately fail
20 on the transaction and the counter-party would know
21 that you didn't have the shares and then you would
22 be put into default and then the counter-party
23 would go into the market, repurchase the shares and
24 charge you for the difference between where they
25 thought they were going to buy them from you and

1 where they would buy them in the market.

2 So you would have an instantaneous
3 default scenario that would typically be quite
4 catastrophic to a short seller who didn't have the
5 shares borrowed, notwithstanding the fact that they
6 would be making a false declaration on the time of
7 the transaction.

8 49 Q. And have you ever defaulted on a
9 short transaction?

10 A. Not to my knowledge.

11 50 Q. All right. Could you inquire of
12 the rest of your team to see if they have?

13 U/A MR. MILNE-SMITH: We'll take that under
14 advisement.

15 BY MR. CALLAGHAN:

16 51 Q. All right. And are you familiar
17 at all with the literature that short-selling does
18 happen in Canada?

19 A. That is a very broad question. I
20 wouldn't know how to answer that.

21 52 Q. So you have never -- that is
22 nothing you have heard about?

23 A. Well, if -- which literature? Do
24 you have a specific piece of literature that you
25 want me to be aware of?

1 question?

2 117 Q. In the fall of 2014, you set out
3 to harm the reputation of Mr. Glassman; true or
4 false?

5 A. I don't agree with that
6 characterization. No, I don't agree with that
7 characterization.

8 118 Q. In the fall of 2014, you went out
9 to destroy the public company of which Mr. Glassman
10 was associated, being Callidus; correct?

11 A. I don't agree with that
12 characterization of what happened in the fall of
13 2014.

14 119 Q. In fact, you only started to short
15 Callidus after they sued you on the Wind
16 transaction; correct?

17 A. If you are trying to link the
18 short sales to the Wind transaction, you are wrong.
19 The short sales were driven by the timing of the
20 IPO and the direction of the share price, and the
21 share price reached the zenith of its valuation,
22 and we completed -- or completed enough of our work
23 at that time to be confident that the shares were
24 overvalued. In fact, history has shown that not
25 only were we correct in our assessment, but the

1 situation was ten times worse, literally
2 numerically ten times worse. We predicted that
3 they were going to lose up to 10 percent of the
4 book value of their equity, and they ended up
5 losing 100 percent of the book value of their
6 equity due to entirely poorly managed financial
7 condition of extending loans to uncreditworthy
8 counter-parties.

9 We identified --

10 120 Q. But --

11 A. So when the company went public,
12 we did our research. As the share price went up
13 and our research became good enough, we knew enough
14 relative to the valuation, the share price was
15 trading for almost three times the book value of
16 equity, and we considered that to be an exorbitant
17 share price given what we learned about the company
18 through our research. That drove the
19 short-selling.

20 I would also point out that in no way
21 did our minor amount of short-selling in the
22 context of the overall situation have any impact on
23 Callidus or Mr. Glassman or Catalyst whatsoever.
24 We didn't tell anybody we were short. I don't
25 think anybody knew we were short, to our knowledge.

1 And so our short-selling in and of itself had no
2 material impact on Mr. Glassman and certainly was
3 not intended to have any impact and was not done
4 out of malice at all.

5 121 Q. All right. So you are saying it
6 is complete coincidence that you started your short
7 accumulation on October 23rd, after you were sued
8 and after the October 10th date was adjourned to
9 October 27th, in that period? That is a
10 coincidence, correct? Is that what you are saying?

11 A. I am saying the coincidence is the
12 fact that the share price reached its zenith in and
13 around that period, or certainly shortly before,
14 and that is the coincidence. As I just said --

15 122 Q. And you --

16 A. As I just said, our short-selling
17 the shares had zero impact and nobody has made any
18 allegations to the contrary and certainly hadn't
19 proven any allegations to the contrary. Our
20 short-selling had zero impact on anybody. The
21 shares didn't collapse. We didn't do anything to
22 the shares or displace the shares. In fact, we
23 were probably, as we usually are, quite careful not
24 to displace the share price so that we can maximize
25 our profit.

1 So we shorted the shares. The timing
2 of that was driven entirely by the fact that the
3 share was trading at a grossly overstated value.
4 Had the stock been at \$7.00 or \$5.00, we wouldn't
5 have shorted the shares at all.

6 And I would also point out to you that
7 it would be a gross -- it would be gross misconduct
8 to use our client's capital in a way to seek a
9 vendetta, and this is something I take very
10 seriously, our fiduciary responsibilities, and to
11 suggest that I would take other people's capital
12 and use that in a vendetta against Glassman is not
13 a characterization I will ever accept.

14 123 Q. So you prepared your short thesis
15 deck, did you?

16 A. Our -- we prepared it when?

17 124 Q. You prepared it -- well, I am
18 saying you had a short thesis deck; correct?

19 A. We had done research sort of
20 continuously since the IPO, and then -- and my
21 analyst had assembled that into one document, if
22 that is what you are referring to.

23 125 Q. In your Statement of Defence, you
24 say it was prepared for your own account and for
25 internal purposes; is that correct?

1 A. That is -- primarily, that is
2 correct.

3 126 Q. Well, primarily? In fact, you
4 prepared it to circulate it to the media and the
5 public; correct?

6 A. No, that is entirely incorrect.

7 127 Q. In fairness, that is what
8 happened? That is exactly what you did; correct?

9 A. That is entirely incorrect.

10 128 Q. In fact, you did it --

11 A. Sorry, sorry, let me --

12 129 Q. -- to stay anonymous --

13 A. Sorry, let me rephrase that. We
14 did circulate a copy to Jacquie McNish as part of
15 our research effort, but we did not widely
16 circulate it, and we also -- we also requested that
17 she not circulate it.

18 And I also encrypted it and put a
19 password on it and watermarked it to discourage her
20 from circulating it.

21 130 Q. And I suggest to you, sir, that
22 you actually prepared the document specifically for
23 the purpose of public dissemination; correct?

24 A. Not specifically, no.

25 131 Q. All right. I am going to take you

1 to tab 5.

2 MR. MILNE-SMITH: And, Mr. Callaghan, I
3 just want to register here for the record that this
4 document was produced in the Veritas action, that
5 we have taken the position that the use of this
6 document in this whistleblower litigation is in
7 breach of the deemed undertaking rule. I think
8 this entire cross-examination on this issue is
9 irrelevant to the issues in dispute, but I am not
10 going to stop you from the examination because --
11 well, I won't say why. I am going to let you go
12 ahead, but I don't want that to be taken as waiving
13 the position that this is all irrelevant and that
14 any documents with a "WFV" production number are in
15 breach of the deemed undertaking rule.

16 So go ahead. I just want that on the
17 record.

18 BY MR. CALLAGHAN:

19 132 Q. All right. So this is an email
20 from Mr. Griffin of November 11, 2014; do you see
21 that?

22 A. I do.

23 133 Q. And it is to you?

24 A. It appears to be to myself, Peter
25 Fraser, and Tom Dea.

1 134 Q. Right, and this is the day after
2 Justice Lederer has released his decision; correct?

3 A. I will take that as a given,
4 unless somebody has -- I don't remember the -- what
5 is the -- if you tell me the Lederer decision was
6 November 11th, then yes.

7 135 Q. Okay. It doesn't matter, if you
8 say you can't verify it. It says:

9 "Here is a first draft of a
10 memo for more public dissemination."

11 A. Correct.

12 136 Q. And the memo is all about
13 Callidus; correct?

14 A. Can you bring up the attachment?
15 [Witness reviews document.]

16 Yes, so as I said, when we publish
17 research, we have to be incredibly careful because
18 when we put it into our investor letter -- and by
19 "publish", I mean put it in our investor letters,
20 we have the understanding that these could be
21 quasi-public documents. And so we treat anything
22 that we might put into our investor letters as
23 potentially sensitive, and in the case of Callidus,
24 we were carefully considering whether or not to
25 include it into our investor letters and run the

1 risk of it becoming public or quasi-public.

2 And in that context, we were being very
3 careful in how we worded our research, and our
4 internal correspondence was talking about how we
5 wanted to -- if we published it in our letter, how
6 we would want to position it.

7 I would note that we ultimately, due to
8 libel chill and the threat of potential litigation,
9 chose not to publish it, but we did contemplate
10 putting it in our investor letter, and we did
11 review the construction of our research in the
12 context of it being potentially public.

13 We did not do the research primarily to
14 become public. In fact, we chose not to publish it
15 because we felt it would be inflammatory and would
16 expose us to litigation.

17 137 Q. Well, let me say, sir, isn't it
18 the case that you had no intention of publicly
19 disseminating under West Face's name the research
20 on Callidus? Rather, you intended to do it
21 anonymously; isn't that correct?

22 A. That is incorrect.

23 138 Q. Let's go to the next tab. And
24 these are a string of emails. And if we go to the
25 back. This is an email. It starts from Aland Wang

1 to yourself -- do you see that -- dated November
2 13, 2014, at 5:16 p.m.?

3 A. I do.

4 139 Q. All right. And he is forwarding
5 you an update of the Callidus memo?

6 A. I see that.

7 140 Q. And the "CBL", just for the
8 record, that is the trading symbol of Callidus;
9 correct?

10 A. Correct.

11 141 Q. So if we go to your response, and
12 you say -- and this is a response at November 14th
13 at 8:58 a.m.:

14 "This is factually ok but not
15 very user friendly at all and fails
16 to make impactful investment case to
17 a reader who is new/uninformed."

18 Do you see that?

19 A. I do.

20 142 Q. Right, and you weren't trying to
21 reach your investors. You were trying to reach
22 investors who were new and uninformed; correct?

23 A. Well, our investors would have
24 been new and uninformed to the situation, so --

25 143 Q. I see.

1 A. -- we -- so in the context of
2 doing our research, we have considered our
3 primary -- if we did publish this, the primary way
4 of publishing this would have been through our
5 investor letters. I think at one point it was
6 suggested and rejected that there might be other
7 ways to publish it. That is not something we have
8 traditionally in fact ever done to my knowledge, to
9 the best of my recollection, anyway.

10 But again, we have published things,
11 and we know that they become quasi-public. They
12 end up in the press. They end up in Callidus's
13 hands. I mean, Callidus has a whole trove of
14 confidential information that they have received
15 from individuals that we have no way of controlling
16 and not from productions in this action.

17 And we knew when we publish things,
18 they do become public. And so we said, Look, we
19 have assembled this deck, assembled this research.
20 We are going to short the stock. We are going to
21 make money on our short. Now, do we -- let's talk
22 about whether we want to publish it and how we
23 would publish it. And typically that is through
24 our investor deck.

25 Now, if a piece of research is going to

1 end up in our investor deck, we want to make sure
2 it is worded properly and is interesting for our
3 investors to read.

4 144 Q. Okay. So is that why you say you
5 needed to be "graphic and punchy" in the next
6 sentence?

7 A. I just find it is more interesting
8 to read when you put something in a way that is
9 user friendly. I mean, a lot of our investors are,
10 you know, not financial professionals necessarily,
11 and it is -- you know, there is a way of describing
12 things.

13 I will note that, to the best of my
14 knowledge, everything we said in our deck was a
15 hundred percent true and is not -- nothing has been
16 said to the contrary, so I felt at the time that it
17 was good faith and a hundred percent true research.
18 I felt that it would be interesting for our
19 investors to read about it because it was -- I am
20 quite proud of our research. I mean, we were able
21 to discern a lot about this company that was
22 diametrically opposed to its public disclosure, and
23 I thought that describing that in a punchy, simple
24 way that didn't get into the weeds would benefit
25 our investors and make the story easy to

1 understand. And by extension, it would convince
2 our investors that we were doing high quality,
3 differentiated research in a way that would be
4 flattering to West Face.

5 145 Q. And what is the minimum investment
6 to get into a West Face fund?

7 A. To get into a West Face fund?

8 146 Q. Yeah.

9 A. There is no minimum investor. As
10 you can see from our list that you pointed to me
11 before, there is -- some things are very small and
12 some things are very large.

13 147 Q. No, no, but your investors, there
14 is a minimum requirement to invest with a West Face
15 portfolio fund?

16 A. You are talking what I invest in
17 the funds or an investor coming into my funds?

18 148 Q. I'm talking about your third party
19 investors in the West Face investors funds, the
20 ones who you are sending this slide deck to. What
21 is the minimum investment?

22 A. I believe it is a thousand
23 dollars.

24 149 Q. And do you have people coming in
25 at a thousand dollars in your funds?

1 A. Hundreds, yes.

2 150 Q. So if you go over to the next
3 page, and you give further instructions:

4 "Open with conclusion slide to
5 draw reader to the same. I find it
6 best to anchor reader to end
7 conclusion."

8 And is your conclusion:

9 "Short Callidus Capital - Not
10 your average lender"?

11 That is your conclusion?

12 A. That was our conclusion at the
13 time, yes, we shorted Callidus because we
14 believed --

15 151 Q. No, no, but you are telling your
16 readers to short Callidus?

17 A. No, that was our investment -- it
18 was the name of our investment thesis.

19 152 Q. I see. And if you go to the next
20 email from Mr. Dea, and he says:

21 "The deck needs to be
22 punchier."

23 So were you working on making the deck
24 punchier?

25 A. I think what Mr. Dea is getting to

1 is the same thing that I was getting to. You know,
2 Mr. Griffin is an extraordinarily intelligent and
3 detailed individual. Unfortunately, when he puts
4 his thoughts into writing, they become quite dense
5 and quite difficult to read, even for somebody who
6 has known him for a long time.

7 So I think what we were doing and what
8 Tom is doing here is trying to take out some of the
9 dense detail and make it punchier in the sense
10 that, when you are reading an investor letter, you
11 don't want to read 300 pages of research. I don't
12 think it was ever 300 pages, but you don't want to
13 read voluminous, arcane, esoteric, you know,
14 numbers. What you want is something you can read
15 quite quickly because our investors, certainly the
16 institutional investors, will get hundreds of these
17 and probably don't read beyond page 3.

18 So we were trying to make our
19 investment thesis simple and communicate it clearly
20 to our investors. And I think that is what he
21 meant by "punchier".

22 153 Q. All right. And it says in the
23 third bullet down:

24 "In terms of layout, because
25 this is for public consumption, we

1 have to be careful of saying things
2 that could attract litigation."

3 Correct?

4 A. Exactly. We were drafting this in
5 the context of it potentially becoming a public
6 document, but elected not to for that very reason.
7 We were concerned about the chilling effect of
8 potential litigation.

9 154 Q. So let's go to the email from Tony
10 Griffin, which you -- and you have reviewed this
11 email before, I assume, of December 3rd, 9:31 a.m.?
12 Have you seen this email before?

13 A. I do. Tony was putting up various
14 options for disseminating it, and these were all
15 rejected.

16 155 Q. Let's take:

17 "Do we want to send this off to
18 Davies [...]"

19 So did you send it off to Davies?

20 R/F MR. MILNE-SMITH: Don't answer that
21 question.

22 BY MR. CALLAGHAN:

23 156 Q. All right. And then it says --
24 the(b) says:

25 "What is the best way to

1 disseminate this piece - some ideas
2 would be i) anonymous on seeking
3 alpha or harvest."

4 Do you see that?

5 A. I do see that.

6 157 Q. And those are blogs, Seeking Alpha
7 and Harvest?

8 A. I'm aware of Seeking Alpha. I am
9 not aware of what Harvest is.

10 158 Q. And are you aware that short
11 sellers post things on Seeking Alpha?

12 A. I have rarely frequented Seeking
13 Alpha. My understanding is it is a general
14 investment website where people can post research
15 of all types. I don't think it is particularly
16 geared to short-selling.

17 159 Q. But it is anonymous, right? That
18 was the key that Mr. Griffin was talking about,
19 correct, anonymous?

20 A. It can be anonymous. It is not
21 always anonymous. But to be clear, Mr. Griffin was
22 blue-skying various ways to disseminate the
23 research potentially, and this was rejected by
24 myself and Peter Fraser. There was no further
25 discussion of this -- well, I am not aware of any

1 after this, but we rejected publishing it
2 anonymously or in our investor letters.

3 160 Q. And then sub-numeral "ii":

4 "Give it to someone like
5 Hedgeye that would wrap it as their
6 own research."

7 Do you see that?

8 A. I do.

9 161 Q. And Hedgeye is what? A research
10 firm?

11 A. I don't know what Hedgeye is.

12 162 Q. But "wrap it as their own
13 research" would be give them your deck and have
14 Hedgeye do their own research using your deck; is
15 that what that is intended to convey?

16 A. I am not sure -- well, I can read
17 it like you do. I think -- yeah, I think that is
18 probably what Tony was hypothetically putting
19 forward as a possible cause of action.

20 163 Q. And then sub-paragraph "iii":

21 "Veritas could put out a piece
22 on it using our work as a basis."

23 Do you see that?

24 A. I do.

25 164 Q. And is that the same thing, that

1 you would give your research to Veritas, and they
2 would put it out as their own work? Is that what
3 the suggestion is?

4 A. I can only read what Tony put in
5 the sentence. As I said, we didn't follow up on
6 any -- you know, we weren't pursuing these avenues.
7 I think what Tony is saying here is -- I can just
8 read the sentence as it is stated.

9 165 Q. Right, but you did end up going to
10 Veritas. We'll talk about that. Correct? But you
11 did go to Veritas?

12 A. We had meetings with Veritas, but
13 we did not give them our deck and -- to work on as
14 a basis.

15 166 Q. All right. And then if we could
16 go to the next document. So this is an email from
17 Aland Wang to you dated December 5, 2014, at 7:05
18 p.m.; do you see that?

19 A. I do.

20 MR. MILNE-SMITH: I just want to note
21 that the last document and this one, again, are in
22 breach of the deemed undertaking rule. You are
23 covering ground that is squarely within the Veritas
24 action, which strikes me as abuse of process, a law
25 which you are, of course, familiar with,

1 Mr. Callaghan, but go ahead. You go ahead.

2 BY MR. CALLAGHAN:

3 167 Q. Let me just -- because you so
4 inappropriately called it abuse of process, let me
5 say that it is not abuse of process, that these
6 documents are relevant to this action, and they
7 ought to have been produced, and we'll obviously
8 sort this out in front of the judge.

9 So you can take it your objection is
10 noted.

11 So this is the deck that is being sent
12 to you by Aland Wang; correct?

13 A. I assume so, yes.

14 168 Q. Now, if I could just take you --
15 the deck is inside the document. There you go.
16 You see this deck? Now, this is a deck. It is
17 dated December 2014; do you see that?

18 A. I do.

19 169 Q. All right. And it doesn't have
20 your logo on it, does it?

21 A. No, it doesn't at this point.

22 170 Q. And if we could go to -- now,
23 there is an affidavit by Mr. Griffin, who describes
24 how he put the deck together, and do you recall
25 that affidavit? It is in March of 2015.

1 A. I do.

2 171 Q. All right. Just one second.

3 And he described in that affidavit that
4 you used proprietary tools by West Face in order to
5 do the research; is that consistent with your
6 understanding?

7 A. If you could take me to that part
8 of his affidavit, please.

9 172 Q. All right. We were at tab 24 at
10 paragraph 122, and it says in the middle of the
11 paragraph:

12 "While some of our research
13 tools were proprietary and
14 confidential to West Face, they all
15 relied on public sources [...]"

16 Do you see that?

17 A. I do see that.

18 173 Q. All right. So you used what you
19 called proprietary and confidential research tools,
20 right? That is what Mr. Griffin is telling the
21 Court?

22 A. I can see that. I don't remember
23 exactly what he was referring to, but yes, I can
24 see that.

25 174 Q. All right. But you don't doubt

1 that he used whatever your proprietary -- and I am
2 not asking you what your proprietary and
3 confidential tools are, but he used them; correct?

4 A. Yes, I assume so.

5 175 Q. All right. Paragraph 123:

6 "West Face's research
7 methodology was based on its own
8 internal methods, but none of it was
9 based on confidential information of
10 Callidus or anyone else."

11 Do you see that?

12 A. I do.

13 176 Q. Right. So he was using your own
14 methodologies, correct; that is, the methodologies
15 proprietary to West Face?

16 A. Sorry, could you rephrase that
17 question?

18 177 Q. Well, those internal methods, are
19 those considered proprietary to West Face?

20 A. I think he says we used a blend of
21 techniques. I think, with respect to -- are you
22 talking about paragraph 124?

23 178 Q. Right. Well, I am talking
24 generally. I am just trying to understand. As I
25 read that affidavit, I understood that there was

1 skill, knowledge, and proprietary research tools
2 used by Mr. Griffin and those at West Face who
3 prepared this deck. Am I correct to assume that to
4 be the case, based on the affidavit?

5 A. Sorry, I am just looking at your
6 question in the transcript. So you are saying
7 paragraph 123 is what you asked me to explain. I
8 think what he is saying is --

9 179 Q. I --

10 A. Sorry, I think you asked me in the
11 context of paragraph 123. If this is a new
12 question, we can move on to it. But paragraph 123,
13 I think Tony is saying that all of our research was
14 based on information we generated internally
15 through our research and was not based on
16 proprietary information from Callidus.

17 180 Q. "[...] some of our research tools
18 were proprietary and confidential to
19 West Face [...]"

20 I assume that whatever he does there is
21 a proprietary portion as to how he does it that
22 belongs to West Face; is that correct or not?

23 A. I am not trying to be pedantic on
24 this, but saying that everything he does is
25 proprietary in every instance, that is a bit of a

1 broad generalization. But if you are talking about
2 what happened here in the paragraphs that you have
3 taken me to, there was a blend of proprietary and
4 non-proprietary analysis, and he was describing
5 that in the context of Callidus proprietary
6 information and saying that the conclusions we
7 reached with respect to Callidus were based on a
8 blend of our proprietary tools and other public
9 sources.

10 181 Q. I am not sure the question is that
11 complicated. I'm just trying to understand whether
12 he used, as he says, tools that are proprietary to
13 West Face to do its research or not, or is there
14 nothing proprietary about your research?

15 R/F MR. MILNE-SMITH: He has given the
16 answer, Mr. Callaghan. I am going to refuse any
17 further rephrasings.

18 BY MR. CALLAGHAN:

19 182 Q. It is a simple question. I don't
20 know why there is no simple answer.

21 But let's go back to the slide deck.

22 MR. MILNE-SMITH: Well, just for the
23 record, you are asking Mr. Boland about an
24 affidavit of Mr. Griffin on which Mr. Griffin was
25 cross-examined five years ago and which findings

1 were made by Justice Glustein. So --

2 MR. CALLAGHAN: Well, I am not asking
3 about the findings by Mr. Glustein. I am asking to
4 understand this witness's understanding of his
5 business, but that is fine. We can debate that
6 later.

7 MR. MILNE-SMITH: He has given his
8 answer.

9 BY MR. CALLAGHAN:

10 183 Q. So you'll recall, Mr. Boland, that
11 when Callidus did their IPO, they didn't disclose
12 who their borrowers were; correct?

13 A. To the best of my recollection,
14 that is correct.

15 184 Q. And a fair bit of work was done by
16 West Face to unpack who the actual borrowers were;
17 correct?

18 A. Some of the borrowers. We weren't
19 able to identify all of them because our tools fell
20 short in certain circumstances.

21 185 Q. And if you go to the slide deck we
22 were looking at, and if we go to page 14, and I
23 take it that slide 14 is what your extensive
24 research turned up in terms of what loans were made
25 by Callidus?

1 A. Yes.

2 186 Q. And the same thing with page 15,
3 it is by segment industry; correct?

4 A. Yes, that is mapping -- that is a
5 reproduction -- I believe that is a reproduction of
6 a table from the IPO prospectus or marketing
7 documents where we attempt to cross-reference the
8 loans we discovered with the anonymized list in the
9 prospectus.

10 187 Q. So this slide deck, if we go back
11 to the front page -- sorry, if I could, at the very
12 back of it, you will see that there is an Xchange
13 Technology section. And go down, right at the
14 back, at the end. Do you see that? "Xchange
15 Technology"?

16 A. Yes.

17 188 Q. "This Loan Represented [...]"
18 Okay. So with that, if we can go back to the front
19 page of this document. Okay. So, again, this is
20 an email from Aland Wang to yourself on December
21 25th, 2014, and it says:

22 "Greg, I've also attached the
23 Xchange Technology pdf. Just an
24 fyi, the pdf still has our meta data
25 imbedded in it, so [I am] not sure

1 if you want to disseminate this
2 version. I can have it pdf'd
3 outside of our office if we want it
4 to be completely anonymous."

5 Do you see that?

6 A. I do see that.

7 189 Q. Right, and do you know what meta
8 data is?

9 A. I do.

10 190 Q. Right, and I take it he is asking
11 you if you want to leave an electronic footprint to
12 trace back the Xchange Technology PDF. Is that
13 what he is asking you?

14 A. He is asking me this, but this is
15 not something that I asked him to evaluate. Aland
16 Wang was a young analyst, and I don't think he
17 really -- you know, he was postulating on various,
18 you know, ways of disseminating it.

19 To be clear, I rejected all of those
20 suggestions, and yes, he was making that
21 suggestion, and it was rejected.

22 191 Q. And so he is making the same
23 suggestion Mr. Griffin was two days earlier,
24 correct, to go and stay anonymous?

25 A. Yes, Mr. Griffin and Mr. Wang were

1 doing the primary research. I was not involved in
2 the day-to-day research, and so, you know, what
3 they were discussing between themselves, I would
4 get, you know, snippets of formulated ideas and
5 intermediate research product.

6 But both -- and I think they were
7 contemplating whether it made sense to publish this
8 in various ways, as they have articulated, but that
9 is not something we have done, to my knowledge, and
10 it is not something that I condoned or would
11 recommend, although I don't know that it is
12 illegal, frankly, but I don't think -- I don't see
13 it being -- it was something that I rejected.

14 My focus was in the context of
15 producing a document for investor letters, and --

16 192 Q. I see.

17 A. -- you know, they made comments
18 like this, and I think I ignored them, unless you
19 can find something to the contrary, but to the best
20 of my recollection, I ignored them.

21 193 Q. So your investor letter would
22 contain a 49-page or 50-page slide deck?

23 A. It has. Yes, it has.

24 194 Q. And did this one get produced to
25 your investors?

1 A. No, it did not.

2 195 Q. If we can go to -- how are you
3 doing, Mr. Boland? Do you want a break now or --

4 A. I am fine, if you want to keep
5 going.

6 196 Q. Madam Reporter, are you okay?

7 (DISCUSSION OFF THE RECORD.)

8 -- RECESSED AT 11:19 A.M.

9 -- RESUMED AT 11:35 A.M.

10 BY MR. CALLAGHAN:

11 197 Q. If we could go to tab 15, this is
12 an email from you to Ms. McNish on December 12th,
13 2014; do you see that?

14 A. I do.

15 198 Q. Yes, and you know Ms. McNish?

16 A. Yes, I do.

17 199 Q. How well do you know her?

18 A. Not well. It would be a
19 professional relationship. She calls me from time
20 to time over the years. I don't know when I first
21 ran into her, but she calls me from time to time
22 when she is researching a story, and I contact her
23 from time to time when I am researching a
24 situation, along with other journalists as well,
25 but not only Ms. McNish.

1 200 Q. So you email her to say:

2 "Shorts are circling around
3 this and the stock has come off
4 sharply."

5 Do you see that?

6 A. I do.

7 201 Q. Aside from you, did you know other
8 people shorting Callidus?

9 A. I don't recall the context of this
10 comment, frankly.

11 202 Q. All right. And it says:

12 "Of particular interest is the
13 loans they had in the book at time
14 of IPO last year.

15 Two of them we highlighted in the
16 deck were held at par or close to
17 par.

18 At the time of IPO they were in
19 middle of restructuring and this
20 wasn't disclosed."

21 Do you see that?

22 A. So this is the email that had the
23 deck attached to it with the passwords and
24 watermarks that I sent to Mrs. McNish; is that
25 correct?

1 203 Q. We'll get to that.

2 A. I am just trying to understand the
3 context of this email.

4 204 Q. What I am asking is that -- what I
5 just read to you, right, are you suggesting there
6 was non-disclosure in the IPO of Callidus? Isn't
7 that what you are suggesting?

8 A. Let me see. Let me just re-read
9 this.

10 [Witness reviews document.]

11 I am suggesting that there was
12 potentially misleading disclosure, yes.

13 205 Q. And that would be a violation of
14 securities laws?

15 A. Well, it is not clear. There is a
16 spectrum between misleading and violation of
17 securities laws, so it is hard to say.

18 206 Q. Within that spectrum, an officer
19 and director could be held responsible; correct?

20 A. I wouldn't speculate on how
21 serious this disclosure would be. I can't do that.

22 207 Q. I am going to suggest to you that
23 throughout you are trying to get people to write
24 that there was a misdisclosure in the IPO so as to
25 cause harm to both Callidus and to Mr. Glassman; am

1 I correct?

2 A. I don't agree with that
3 characterization.

4 208 Q. So you sent this deck
5 password-protected; correct?

6 A. Yes, apparently.

7 209 Q. And you sent information regarding
8 XTG and Arthon as well in the "re" line?

9 A. You would have to page me through
10 the deck to remember what we sent, but I am happy
11 to comment on anything you want to point out.

12 210 Q. All right. Well, I am just trying
13 to sort out what you say. You say:

14 "Please do not distribute the
15 deck. Password is mcnish."

16 So there is the deck and then there are
17 two URLs, "www.duffandphelps.com" and
18 "www.alvarezandmarsal.com". Do you remember
19 sending those two sites to her as well?

20 A. I remember the concept of sending
21 this email, and I am now reading the email as you
22 put it to me, so I have no reason to believe this
23 is not the email I sent.

24 211 Q. But I'm assuming you read this in
25 preparation for coming here today, didn't you?

1 A. Yes.

2 212 Q. All right. And so you will see
3 that it sort of blends into an affidavit of Craig
4 Boyer; do you see that?

5 A. I do.

6 213 Q. All right. And if you turn the
7 page, you will see it talks about XTG?

8 A. I do.

9 214 Q. And in this deck, if you go to tab
10 2 -- or page 2, you will see at the bottom of that
11 you raise the prospects of a potential for conflict
12 of interest with its largest shareholder Catalyst;
13 do you see that?

14 A. I do.

15 215 Q. And that was one of your concerns
16 with respect to Callidus; is that correct?

17 A. That is a concern that was flagged
18 in our research as a potential, as it is stated
19 there, "potential for conflicts".

20 216 Q. And that was because Catalyst
21 owned approximately 60 percent of Callidus?

22 A. I don't remember exactly how my
23 analyst framed the potential for conflict. I think
24 it resided in the fact that there was a split
25 fiduciary responsibility between the duty to the

1 public shareholders on the one hand and the duty to
2 fund investors on the other hand in the capacity of
3 the same management team --

4 217 Q. Well, the --

5 A. The same management team
6 controlling the Credit Committee and controlling
7 the board of Callidus. I can't remember if that
8 was the only conflict, but if memory serves me
9 correctly, that was one flagged by my analyst.

10 218 Q. If I could turn you to page 36 of
11 that deck, and it says in the middle of that:

12 "Two of the three in the Credit
13 Committee are employed by both
14 Callidus and Catalyst with Glassman
15 in positions of authority in both.

16 This creates the possibility of a
17 strong conflict of interest, which
18 Glassman has stated is addressed by
19 the presence of an Independent
20 Committee.

21 It is not clear how effective the
22 Independent Committee will be,
23 considering the amounts of influence
24 that Glassman has at Catalyst and
25 Callidus."

1 Do you see that?

2 A. I do.

3 219 Q. And is that what you were talking
4 about, or is there more?

5 A. Yes, I think that is what I was
6 paraphrasing.

7 220 Q. Bear with me one second, please.

8 And if you could go -- if we take you
9 to page 27, and this is an Xchange Technology piece
10 that you did; do you see that? It is two pages.
11 If you just scroll to the next page, you'll see
12 that it is two pages.

13 A. I do see that.

14 221 Q. All right. And is this what Aland
15 was talking about when we last spoke before the
16 break? Was this -- this was a PDF that he was
17 talking about, correct, stand-alone?

18 A. Is this a stand-alone PDF you are
19 showing me or the entire deck?

20 222 Q. This is in the deck. It was sort
21 of a stand-alone piece, I think, in the production,
22 the last production. You will see -- you'll recall
23 that he said XTG PDF. Are you --

24 A. I don't recall what he was
25 specifically referring to, but I don't think there

1 is much difference in our XTG material throughout
2 this, so...

3 223 Q. So did you speak to Ms. McNish in
4 or about December 12th when you sent this?

5 A. I don't recall. You know, my
6 intention was to see if Ms. McNish wanted to
7 participate in the research process, and therefore
8 that is the reason I pointed her to some of the
9 public information that she may find interesting.

10 My recollection -- and I don't remember
11 when I spoke to her, when, but my recollection is
12 she didn't have any interest, and this didn't
13 really go anywhere.

14 224 Q. Research, so she is part of your
15 research team?

16 A. No, she is not, but we talk to
17 other people who are smart and have research
18 capabilities, including journalists. So if we are
19 trying to find and get to the bottom of a
20 situation, we may speak to other parties who may
21 have information or may be able to find
22 information.

23 225 Q. Well, it is fair to say that
24 Jacquie McNish at the time was with the Globe and
25 Mail and the Report on Business; correct?

1 A. That's correct.

2 226 Q. Right, and so she would be
3 interested in companies that might have misstated
4 the company's position in an IPO from a reporting
5 perspective?

6 A. She could. In this case, she
7 didn't.

8 227 Q. All right. And if you go to tab
9 26, this is --

10 MR. MILNE-SMITH: So, Mr. Callaghan,
11 this will be the last time I do this particular
12 objection. The last document and this one, again,
13 these are West Face, Veritas productions. Their
14 use is in breach we say of the deemed undertaking
15 rule.

16 Take it there is a blanket objection
17 and a blanket statement that we do not waive any
18 objection to the breach of the deemed undertaking
19 rule by your use of these documents. I won't state
20 it again every time you bring up something from the
21 Veritas case. Just take it for the record that we
22 do not waive and we do rely on the deemed
23 undertaking rule, and we object to the use of these
24 documents on that basis. But go ahead.

25 BY MR. CALLAGHAN:

1 228 Q. Well, you've just said that three
2 times. I will take that to be the last time.
3 Thank you.

4 So if we go to tab 26, and it is an
5 email from Ms. McNish to you of January 5th at
6 12:47. So did you talk to her? Her email says:

7 "I finally had a chance to look
8 at this. You available to talk?"

9 A. I don't recall a conversation at
10 that time.

11 229 Q. All right. Did you talk to her at
12 any other time regarding the slide deck?

13 A. I don't recall any specific dates
14 or communications around the deck, except at some
15 point she communicated to me that she had no
16 interest. Either she communicated she had no
17 interest or she didn't follow up, but I don't
18 remember which.

19 230 Q. Did you take any notes of any
20 communication with Ms. McNish?

21 A. No, I didn't.

22 231 Q. Did anybody else attend any of the
23 calls with Ms. McNish?

24 A. I am not even sure there were any
25 calls, but certainly not, no.

1 232 Q. And you were at her testimony;
2 correct?

3 A. No, I wasn't.

4 233 Q. Did you read her transcript, did
5 you say?

6 A. I think I might have opened -- I
7 certainly didn't read the whole thing. I am not
8 even sure I read it. I am trying to remember the
9 context of this preparation. I read part -- a part
10 of it, but not the whole thing. I find them very
11 difficult to follow.

12 234 Q. And so can you tell us -- so you
13 have no recollection of any further conversation
14 with Ms. McNish about the slide deck?

15 A. Unless there is something in my
16 affidavit that I don't recall that you can point me
17 to, I don't have any specific recollection sitting
18 here now. I just came away with the impression
19 that she did not want to participate in the
20 research project, and we ceased discussing it for
21 the time being.

22 235 Q. So then you also went to
23 Mr. Dummett of the Wall Street Journal?

24 A. Mr. Dummett? Yes, I did.

25 236 Q. Dummett. Okay. My apologies.

1 Tab 8, and this is a -- Mr. Dummett is also a
2 researcher for you?

3 A. I wouldn't characterize either of
4 these journalists as researchers for us, but we
5 have collaborated on trying to get to the bottom of
6 situations. You know, a journalist would have an
7 interest in pursuing the truth, and we would have
8 the interest in pursuing the truth. And to the
9 extent that we travelled in different circles and
10 had different research methods, it is not uncommon
11 for investors to partner with investigative
12 researchers to try to understand the situation.

13 237 Q. All right. And you sent him on
14 this date a password-protected PDF Xchange
15 Technologies; do you see that?

16 A. If you could take me to the
17 attachment? Yes, I see that.

18 238 Q. All right. And do you have the
19 meta data associated with this document?

20 A. I don't know.

21 239 Q. Well, could you produce? Could
22 you inquire and produce the meta data associated
23 with the documents, and could you --

24 A. I think the --

25 [Court Reporter intervenes

1 for clarification.]

2 240 Q. What I asked for was a copy of any
3 drafts and any meta data associated with the drafts
4 for this document itself.

5 U/A MR. MILNE-SMITH: We'll take that under
6 advisement.

7 MR. CALLAGHAN: All right.

8 MR. MILNE-SMITH: And, John, my
9 understanding of meta data is far from complete,
10 but I think it covers an awful lot of things. Is
11 there anything in particular that you are
12 interested in?

13 MR. CALLAGHAN: Well, I mean, as you
14 know, this is the document that had reference to
15 meta data in the earlier email. I think -- my
16 understanding is meta data is fairly confined, and
17 if you look into it, you can see who made changes,
18 what kind of changes, and it will show the identity
19 of the sender and the author and those types of
20 changes.

21 But, I mean, we could take offline
22 exactly what it is, if that is helpful. I don't
23 think we need to junk up the transcript. Okay?

24 BY MR. CALLAGHAN:

25 241 Q. All right. And so this is the

1 document you send to Mr. Dummett. Why didn't you
2 send him the full deck?

3 A. I didn't feel comfortable
4 circulating the entire deck. You know, we were --
5 you know, I think we had determined that we weren't
6 going to publish it by this point, I am guessing,
7 but I was sending him, I guess, what I thought was
8 one of the more obvious and easy to understand
9 situations in the portfolio and to see if that
10 whetted his appetite for pursuing a broader
11 project.

12 242 Q. A "broader project" as in that he
13 would report on it; correct?

14 A. No, it was to get to the bottom of
15 what was -- to further our research.

16 243 Q. Sorry, is Mr. Dummett a freelance
17 good guy, or is he a reporter for The Wall Street
18 Journal?

19 A. As I previously said, we have
20 historically joint-ventured research projects with
21 investigative journalists because they have an
22 interest in determining the truth in a situation,
23 as do we, and they have different techniques and
24 circles for determining information, and it is
25 sometimes fruitful.

1 244 Q. What projects have you worked with
2 Mr. Dummett on?

3 A. I don't recall off the top of my
4 head, but I have spoken to Mr. Dummett, you know,
5 similar to Ms. McNish, over the years. I would
6 have to think about -- I don't recall off the top
7 of my head.

8 245 Q. Okay. So these are your points on
9 the XTG file; correct?

10 A. Correct.

11 246 Q. And if I go to page number 11 --

12 MR. MILNE-SMITH: While you pause
13 there, Mr. Callaghan, I am just going to answer one
14 of the advisements. All of our productions were
15 done in native format with all available meta data,
16 so there is nothing more to be produced. You have
17 everything we have.

18 MR. CALLAGHAN: I am not sure that is
19 quite right, but we can debate that offline. We
20 couldn't access your meta data, so I may be --
21 well, without concurring, I'll seek better advice
22 from better people than me and get back to you.

23 MR. MILNE-SMITH: Okay.

24 BY MR. CALLAGHAN:

25 247 Q. Okay. So if you go to the second

1 page, it says, 11:

2 "In April 2014, Callidus
3 completed its IPO which was led by
4 Canaccord Genuity."

5 And then bold, it says:

6 "Recall that Canaccord also led
7 the 2nd refinancing process in May
8 2013 and yet no disclosure was made
9 regarding this loan, which made up
10 10% of the loan book at the time."

11 And what were you trying to convey on
12 that?

13 A. It has been awhile, so I don't
14 remember exactly what the context of the statement
15 was, but my understanding was that if you look at
16 the loan book as presented in the IPO prospectus
17 and the surrounding disclosure, the company
18 described itself as having a performing loan
19 portfolio that was securitized by liquid hard
20 collateral as an asset-based lender.

21 And when we cross-referenced the loans
22 that we had discovered, such as this one, to the
23 contemporaneous court filings and, for example,
24 Mr. Boyer's affidavit in support of the
25 restructuring motion with -- restructuring file on

1 XTG, the disclosure seemed to be diametrically
2 opposed to each other.

3 So on the one hand, Callidus said we
4 have a loan book with no non-performing loans. In
5 fact, they did this for quite a long time
6 afterwards, and I think the situation got worse.
7 We have -- all our loans are performing. We have
8 no -- we have hard collateral underlying all of our
9 loan book that is well in excess of the value of
10 the loan book and, I guess, led the reader to
11 believe that this was a very low risk loan book and
12 also led the reader to believe that the management
13 team was highly skilled in making loans.

14 When we looked at the XTG loan and,
15 working from memory -- and, you know, excuse me for
16 any minor inaccuracies with the record, but I am
17 going from memory -- XTG, first of all, had very
18 little to no hard collateral, which sort of
19 violated the first disclosure in the IPO prospectus
20 of being an ABL lender. They tried to sell the
21 asset twice, and Canaccord Genuity was the agent on
22 at least one of them, and were unable to find any
23 purchasers even close to the carrying value of the
24 loan, which is the definition of fair market value
25 from a securities law standpoint.

1 And so we -- and Callidus also stated,
2 if I remember from Mr. Boyer's affidavit correctly,
3 that there was a severe impairment of value related
4 to this loan, and they were unlikely to get their
5 loan back.

6 And then finally -- or maybe not
7 finally, but the last thing I can remember is that
8 the company had no ability to pay the interest on
9 the loan except for advances from Callidus that
10 were in turn paid back to Callidus, creating a
11 situation where you had a bankrupt borrower that
12 had no hard assets, that had no ability to repay
13 the loan, where an impairment of principal was
14 highly likely, and where it couldn't even make the
15 interest payments on the loan but for further
16 advances where Callidus would lend it more money
17 and then pay itself back and lend it more money and
18 pay itself back, which not only inflated the value
19 of the loan principal but inflated the income
20 received from the loan.

21 And so the reason XTG comes up so
22 often, notwithstanding the loan guarantee, is it
23 illustrates a number of things about the loan
24 portfolio that seemed to be at odds with the
25 disclosure in the prospectus and the continuous

1 disclosure of the company in its quarterly reports
2 and certainly the verbal reports by Mr. Glassman to
3 investors at the shareholder meetings on a
4 quarterly basis.

5 And so the reason we focussed on XTG,
6 it seemed to be a very obvious and easy to
7 understand discrepancy between the public
8 disclosure and the contemporaneous documentation at
9 the time, and I would just say specifically it
10 showed that contrary to the assertion that the loan
11 book was performing, this seemed to be from all
12 indications to be a non-performing loan. I believe
13 there was a footnote to that effect. But certainly
14 the loan did not have hard collateral anywhere
15 close to the loan value, and I think history has
16 proven that to be correct because they ended up
17 writing off the value of the loan in the end.

18 248 Q. Right, and just to be clear, you
19 make reference to the quarterly call at point 14;
20 that is what you just referred to?

21 A. Well, I am speaking in the future
22 now. You know, Mr. Glassman would make that --
23 statements to that effect on almost every quarterly
24 call, that all loans were performing and also that
25 all of the loans were backed by hard collateral.

1 They subsequently revised that
2 disclosure, I suspect at the behest of the OSC, but
3 for quite a long period of time after this, for
4 years, they described the loan book as being highly
5 collateralized by liquid collateral, which I think
6 is misleading. Certainly in this case there was no
7 liquid collateral, and most of the loans that we
8 identified had no liquid collateral.

9 249 Q. So I take it -- did you explain
10 all that to Mr. Dummett?

11 A. I don't think we ever got that far
12 because, again, Mr. Dummett didn't appear at the
13 time anyway to have, from my recollection, much of
14 an interest. We talked from time to time on this,
15 but his interest seemed to be casual, if anything,
16 but I don't know if there is any other
17 correspondence we can point to, but --

18 250 Q. There is.

19 A. Okay.

20 251 Q. Could I suggest to you that what
21 you were trying to do is get Mr. Dummett to write
22 an article to suggest that Callidus and in
23 particular Mr. Glassman had misrepresented the
24 state of affairs of XTG in its financial statements
25 and in its filings for the purpose of having

1 publicity about it?

2 A. I don't think that was
3 specifically -- I think that is far too specific.
4 I think we had flagged a number of concerns, had
5 communicated those concerns, and then expected to
6 research these and get to the bottom of it. And
7 if, you know, Mr. Dummett had called the company,
8 which was something that we weren't able to do, and
9 got a contrary explanation from the company that
10 refuted this, then I would fully expect that -- you
11 know, that this would have been refuted.

12 252 Q. And you expect Mr. Dummett to
13 share his research with you; is that what you
14 expected?

15 A. I don't know. Possibly, in some
16 circumstances, but, you know, we were --

17 253 Q. Did Mr. --

18 A. We were describing -- we described
19 the situation as we saw it, and then, you know, if
20 Mr. Dummett or Jacquie McNish for that matter chose
21 to pursue this, they would have verified the
22 information and made sure it was accurate and true
23 and not taken our word for it.

24 254 Q. All right. And you would expect
25 that if it was true for them to write an article

1 about it; correct?

2 A. I wouldn't expect it. It is a
3 possibility, yes. So --

4 255 Q. I see.

5 A. -- if our research was correct,
6 and if it was verified, and it is possible they
7 would have written an article. It is also possible
8 they would have come back to us with information
9 refuting our position, which would have been very
10 helpful in our investment process. You know, it
11 is -- you have to recognize here that we had -- our
12 interest is finding out the truth. Haphazardly
13 making investments on false pretenses is not a very
14 successful thing to do.

15 And so if we could get a third party to
16 verify all of our information as being true, that
17 is helpful. And if we can get a third party to
18 refute some of our conclusions, then that is
19 equally helpful.

20 256 Q. And if we can go to tab 9. So
21 this is on December 10th, and you will see that --
22 if you see the email, you are talking about the
23 IPO; do you see that, in the bottom portion? And
24 then you respond:

25 "Yes that's the loan. The lack

1 of disclosure related to the
2 potential impairment and that no
3 loan is impaired and all are
4 current."

5 Do you see that?

6 A. I do.

7 257 Q. That is your -- and this is what
8 you were talking about, was the lack of disclosure
9 in your longer answer a moment ago?

10 A. In a -- it is part of that, yes.

11 258 Q. And then if you go over to tab 14
12 on that same day. In fact, I think it is a little
13 earlier, and you will see the email at December
14 10th, 2014, at 1:36 p.m. If we could go to that
15 one, please. So Aland Wang sends you a transcript
16 it looks like, and you will see that attached, and
17 it refers to the "bottom of page 9", and in that is
18 the comment by Mr. Glassman, if you want to just
19 take a look at that. Do you see the bottom of page
20 9?

21 A. Yes.

22 259 Q. Okay. Now, if you go back, and
23 this is the comment that we don't have a single
24 loan in our book that is non-performing, and you
25 direct Mr. Dummett's attention to that, and you

1 say:

2 "In you[r] view, is it
3 misleading to describe all loans as
4 performing?"

5 Were you trying to direct Mr. Dummett's
6 attention to your view that that was a
7 misstatement?

8 A. I felt it was a misleading
9 statement, and yes, I brought Mr. Dummett's
10 attention to it.

11 260 Q. And then you send him further
12 documents, and there is one at December 10th, 2014,
13 at 4:55. I am just going to show it to you. I
14 don't need to ask you questions. And then the next
15 document is December 10th, 2014, at 5:02, and under
16 the subject line "This is important as well", you
17 advise that the other investor in your view of XTG
18 had marked it to zero, and I take it that is the
19 "important as well" part? And I appreciate it is
20 not spelled right in the "re" line. Is that what
21 you are getting at, that --

22 A. Yes, that was part of the
23 disclosure that we found to be inconsistent.

24 261 Q. All right. And on December 11th
25 at tab 12, and it says in the "re" line -- I don't

1 know if we are in the right document. Tab 12,
2 dated December 11, 2014. We'll just take a minute
3 here. We are having technical difficulties.

4 We'll go back to that, I'm afraid.

5 So we can go to tab 10. And so this is
6 an email from you to Mr. Dummett of December 11th,
7 2014. You say "Call this guy", and it is the
8 contact information for Mr. McFarlane. Had you
9 spoken to Mr. McFarlane by this time?

10 A. I don't recall off the top of my
11 head when I first spoke to Mr. McFarlane. If you
12 have a document you can take me to, that would be
13 helpful.

14 262 Q. I don't have one in this time
15 frame. That is why I'm asking. Do you recall
16 whether you spoke to him before or after you
17 directed him to Mr. Dummett?

18 A. I don't recall.

19 263 Q. And do you recall whether you
20 spoke to him in 2014 when you --

21 A. I have spoken to Mr. McFarlane. I
22 don't remember where the first point of contact is.
23 I think it might be in my affidavit, but off the
24 top of my head, I can't remember.

25 264 Q. Do you recall whether you

1 communicated with him when you were developing and
2 writing up the deck?

3 A. I do not.

4 265 Q. As in you don't recall?

5 A. I do not recall, yes.

6 266 Q. Okay. And eventually Mr. Dummett
7 does write an article; correct?

8 A. Can you take me to the article?

9 267 Q. Okay. I'll take you to an email
10 that is at tab 27, and it is an email from
11 Mr. Dummett on May 12th, 2015, at 7:14 a.m. Okay.
12 Do you see that?

13 A. I see that, yes.

14 268 Q. And he says:

15 "Here's the copy that appeared
16 on WSJ.com. It also appeared Page
17 C3 in WSJ this morning."

18 Do you see that?

19 A. I do see that.

20 269 Q. All right. And do you get The
21 Wall Street Journal?

22 A. I believe -- do I get The Wall
23 Street Journal? I believe we have a subscription,
24 yes.

25 270 Q. All right. Well, do you read The

1 Wall Street Journal?

2 A. Occasionally I do, yes.

3 271 Q. And did you recall reading it on
4 this occasion?

5 A. I believe I did.

6 272 Q. And do you accept The Wall Street
7 Journal's self-proclamation to be the Leader in
8 business news?

9 A. That is pretty subjective, and I
10 don't really have the subscriber statistics to back
11 that up.

12 273 Q. Okay. And in this article --
13 let's just take a look -- it starts with "Manager
14 Feels Heat on IPO"; do you see that?

15 A. I do.

16 274 Q. And the manager he is referring to
17 is Mr. Glassman; right?

18 A. It is.

19 275 Q. And it says in the second
20 paragraph:

21 "Mr. Glassman is fending off
22 criticism from investors in Callidus
23 Capital Corp., the alternative
24 lender taken public by Catalyst last
25 year in the firm's first foray into

1 public equity markets."

2 Do you see that?

3 A. I do.

4 276 Q. And you were an investor in
5 Callidus? You had taken a short position; correct?

6 A. I did at one point. I don't know
7 if we had a short position in this point --

8 [Court Reporter intervenes for
9 clarification.]

10 BY MR. CALLAGHAN:

11 277 Q. What I was pointing out to you,
12 Mr. Boland, was that you closed your short
13 positions eventually ending in June of 2015. That
14 is what is in your pleading, so I assume it to be
15 correct.

16 A. If that is in my pleading, then
17 that is correct.

18 278 Q. All right. So you would be an
19 investor as of May 11, 2015?

20 A. Yes.

21 279 Q. All right. And then the next line
22 says:

23 "Some Callidus investors say
24 they are worried about potential
25 conflicts created by the companies'

1 shared management team."

2 Do you see that?

3 A. I do see that.

4 280 Q. "Some Callidus investors", well,
5 you were one of them, right, and you had that
6 worry? That is in your deck?

7 A. I do not believe that we
8 communicated our short position with Mr. Dummett,
9 or anybody for that matter, so I don't think we
10 would have been identified as an investor by
11 anybody. To my knowledge, I don't think there is
12 any public disclosure of us being an investor,
13 first of all.

14 Secondly, this conflict that you are
15 pointing out here was -- I believe it is actually
16 articulated in the IPO prospectus as a conflict in
17 the risks and uncertainties, if I remember
18 correctly. If not, it should have been. But I am
19 reasonably certain it was.

20 So -- and then finally, I don't think
21 Mr. Glassman was fending off any criticism from us
22 because we had not made any public criticism of his
23 company. So to the extent there was criticism in
24 the marketplace, it was not ours.

25 281 Q. Well, let me suggest to you that

1 you did a short thesis, and you agreed with me that
2 you were worried about the potential conflicts
3 created by the company's shared... [inaudible].

4 [Court Reporter intervenes for
5 clarification.]

6 BY MR. CALLAGHAN:

7 282 Q. What I was saying is you, West
8 Face, as of May 11 was an investor in Callidus;
9 correct? I just want to go over this. Correct?

10 A. We had a short position in
11 Callidus. We weren't an investor in Callidus. We
12 had a short position in Callidus. But this was
13 unknown to anybody, to my knowledge.

14 283 Q. Okay. And you had expressed in
15 your slide deck that you were worried about
16 potential conflicts created by the company's shared
17 management team; that is correct?

18 A. Yes, that is correct.

19 284 Q. All right. And if you go down, it
20 says:

21 "Some also say the companies'
22 intermingled lending practices also
23 could put minority shareholders'
24 interests at risk and say there
25 isn't enough disclosure about

1 Callidus's loans and a Catalyst
2 guarantee to back some of those
3 loans."

4 Do you see that?

5 A. I do see that.

6 285 Q. And that was one of your concerns;
7 correct?

8 A. I don't believe that was. If you
9 could take me to where you think we said that.

10 286 Q. Well, I thought you said that in
11 your long piece that you just prattled --

12 A. I said there was potential for
13 conflict. That was flagged in the IPO prospectus,
14 if I recall correctly, but I don't think we ever
15 said that it would put minority shareholders'
16 interests at risk.

17 287 Q. Well, it is fair to say in terms
18 of the disclosure about Callidus's loans that was
19 one of your criticisms; correct?

20 A. We said there was a potential for
21 conflict of interest, yes.

22 288 Q. No, but on disclosure of the
23 loans, you -- we talked about your proprietary
24 research techniques that Mr. Griffin used that
25 produced the document that showed who the borrowers

1 were. Was that not an issue, was the disclosure of
2 those loans? That is one of the reasons -- that is
3 one of the activities you undertook; correct?

4 A. Sorry, you are asking if we
5 unearthed the identity of some of the loans?

6 289 Q. Yes.

7 A. Yes. Yes, we have determined
8 that, yes.

9 290 Q. Right, and you also said -- you
10 also talked to us a moment ago about Catalyst's
11 guarantees and your concerns about that; correct?

12 A. We said there was -- yes, we were
13 concerned about the disclosure about exactly what
14 that meant.

15 291 Q. Right, and this is what it says:

16 "[...] there isn't enough
17 disclosure about Callidus's loans
18 and a Catalyst guarantee [...]"

19 Right? That is what he is saying, just
20 as you just said, not enough disclosure; correct?

21 A. That is what he is saying, yes.

22 292 Q. And that is what you had said a
23 moment ago; correct?

24 A. I was paraphrasing what you are
25 pointing me to, but yes, that is what I said.

1 293 Q. All right. Just to be clear, you
2 had the same view that this paragraph expresses;
3 correct?

4 A. More or less. I am not sure that,
5 you know, this is mapping directly to the
6 information -- what I am struggling is whether this
7 maps directly to the document we provided Ben, but,
8 you know, these were -- you know, my understanding
9 was these concerns were widely shared by the
10 investment community at this time, including
11 ourselves. And you see things like XTG and
12 Callidus loans and conflicts of interest come up
13 over and over and over again because these are the
14 first things people come to when they analyze the
15 company.

16 So I know that -- for example, if you
17 go through the transcripts of the investor calls,
18 you'll see investment analysts trying to figure out
19 what the loan guarantees mean and whether they
20 exist or don't exist and which loans are covered by
21 the guarantee and what current and not current
22 means. And, you know, these, I think, concerns
23 were quite widely shared by ourselves and others,
24 and it was pretty easy to independently come to
25 that conclusion by even a casual observation of the

1 company's disclosure.

2 So yes, this is largely consistent with
3 the concerns we had, but we were by far not the
4 only individuals that had these concerns.

5 294 Q. All right. Well, these are -- all
6 right. So let's go to the last page here, and it
7 says:

8 "As an example of the company's
9 limited disclosure, some point to
10 Xchange Technology Group LLC. The
11 Xchange loan represented about 10%
12 of Callidus's portfolio at the time
13 of the IPO, but [...] to refinance
14 the loans at discounted values prior
15 to the IPO [...]"

16 Pardon me, let me start again, Madam
17 Reporter.

18 "As an example of the company's
19 limited disclosure, some point to
20 Xchange Technology Group LLC. The
21 Xchange loan represented about 10%
22 of Callidus's portfolio at the time
23 of the IPO, but the IPO filing
24 didn't disclose Xchange's identity
25 or that Callidus had rejected two

1 tentative offers to refinance the
2 loans at discounted values prior to
3 the IPO as outlined in
4 bankruptcy-court protection
5 filings."

6 Do you see that?

7 A. I do see that.

8 295 Q. And those facts come out of the
9 information you gave to Mr. Dummett; correct?

10 A. Those are facts. They come out of
11 Callidus's public disclosure of the IPO --

12 296 Q. No, but --

13 A. Well, no, they don't necessarily
14 come from our document. These are facts that are
15 independent of our document. So --

16 297 Q. But those are facts that you
17 highlighted to Mr. Dummett; correct?

18 A. Those are facts that I highlighted
19 to Mr. Dummett.

20 298 Q. Right, and so when it says "some
21 point" in that paragraph, we could say Mr. Boland
22 pointed to it, right? You pointed to it; correct?

23 MR. MILNE-SMITH: No, we are not going
24 to guess about what Mr. Dummett meant --

25 MR. CALLAGHAN: I am not asking him to

1 guess. I am asking him if he would constitute
2 himself as "some point".

3 MR. MILNE-SMITH: Well, let me state my
4 objection, Mr. Callaghan. We are not going to
5 speculate about what was intended by Mr. Dummett
6 and/or Ms. Cherney as to who they were referring to
7 when they say "some" point to Xchange Technology
8 Group.

9 MR. CALLAGHAN: All right. So you are
10 not willing to answer that question?

11 R/F MR. MILNE-SMITH: No, we are not going
12 to answer that question.

13 MR. CALLAGHAN: I see. Okay.

14 MR. MILNE-SMITH: It is an improper
15 question and --

16 MR. CALLAGHAN: So if we go back --

17 MR. MILNE-SMITH: Well, let me finish
18 my objection, Mr. Callaghan.

19 MR. CALLAGHAN: Sorry, Mr. Milne-Smith.
20 Mr. Milne-Smith, tone down. I didn't hear you.
21 I'll let you finish. Go right ahead.

22 MR. MILNE-SMITH: Right. Well, it is
23 becoming a repeating pattern here, so please just
24 listen.

25 It calls for improper speculation as to

1 the state of mind of the author of the document,
2 who is not a witness here and who you have chosen
3 not to call, so yes, I am refusing the question.

4 BY MR. CALLAGHAN:

5 299 Q. Thank you. If we can go back to
6 the next page, you will see that there is reference
7 in the third paragraph to your litigation with
8 Newton Glassman; do you see that?

9 "Mr. Glassman, Callidus and
10 Catalyst haven't been accused of any
11 wrongdoing. Mr. Glassman said he is
12 a victim of an 'attack' by short
13 sellers that he said was spearheaded
14 by well-known Canadian hedge-fund
15 investor West Face Capital Inc. He
16 said criticism of Callidus's
17 disclosure and of its relationship
18 with Catalyst is ill-founded and
19 said West Face is retaliating for a
20 court challenge Mr. Glassman
21 launched against West Face after
22 West Face hired a Catalyst analyst."
23 Do you see that?

24 A. I do see that.

25 300 Q. And then it says:

1 "Greg Boland, West Face's chief
2 executive, declined to comment on
3 Mr. Glassman's comments."

4 Do you see that?

5 A. I do.

6 301 Q. And so did Mr. Dummett speak to
7 you about that comment?

8 A. Presumably, although I have no
9 recollection of that.

10 302 Q. And did you tell him -- you didn't
11 tell him that you were short, correct, in Callidus
12 stock?

13 A. I have no recollection of what was
14 said or not said.

15 303 Q. So when he put it to you that it
16 was Mr. Glassman's view that he was subject to a
17 short attack by West Face, you didn't confirm it;
18 correct?

19 A. Reading the text at face value, it
20 appears that I declined to comment at all.

21 304 Q. And --

22 MR. MILNE-SMITH: Hang on,
23 Mr. Callaghan.

24 MR. CALLAGHAN:

25 305 Q. -- as for the rest of the --

1 MR. MILNE-SMITH: Hang on,
2 Mr. Callaghan. Just as a factual matter, the
3 premise of your question was that West Face was
4 short at the time, and my review of the trading
5 records indicates that West Face had closed its
6 short position by April 30th, 2015, and so that at
7 the time -- there was a subsequent small trade in
8 June, but at the time of this article, which I
9 believe was May of 2015, West Face was not in fact
10 short Callidus.

11 MR. CALLAGHAN: Well, my recollection
12 is that is not your pleading, which I put on the
13 record earlier. Your pleading says you were short
14 until June -- you didn't close out your positions
15 until June 23rd, 2015, and --

16 MR. MILNE-SMITH: That was the close of
17 the last position. We have produced the trading
18 records, which you have and you have referred to,
19 and they pretty clearly indicate that the short
20 position was zeroed out on April 30th of 2015, and
21 then a new position was opened on June 4 of 2015.
22 So at the time of this article, contrary to the
23 premise of your last question to Mr. Boland, West
24 Face was not short Callidus.

25 BY MR. CALLAGHAN:

1 306 Q. All right. Do you recall when
2 Mr. -- you don't recall when Mr. Dummett confronted
3 you with Mr. Glassman's statement, do you?

4 A. I have no recollection of this at
5 all.

6 307 Q. And throughout this article, we
7 have been through the fact that there are a number
8 of paragraphs here that are consistent with your
9 short thesis, and yet you are not quoted anywhere.
10 Did you ask Mr. Dummett not to quote you?

11 A. Can you take me to what you are
12 referring to?

13 308 Q. Well, we just went through it a
14 moment ago. We went through the third paragraph,
15 we went through the fourth paragraph, and we went
16 through the XTG paragraph.

17 A. So those are the only paragraphs
18 you are referring to?

19 309 Q. At the moment.

20 A. Right.

21 310 Q. But do you --

22 A. I don't recall having any specific
23 conversations about Mr. Dummett on this topic, but
24 I can say a lot of these views were widely held in
25 the investment community. So I think it is

1 difficult to ascertain exactly what the sources of
2 Mr. Dummett's information are.

3 311 Q. So it is fair to say that you got
4 your short thesis out through this article
5 anonymously; correct?

6 A. I don't think that is fair. I
7 think this is -- you know, would be a very small
8 subset of the research we did, obviously, and I
9 don't know that you can say that it is completely
10 attributable to us, although a lot of it does
11 correspond with the conclusions that we reached, as
12 well as other members of the investment community.

13 I can say that this is incorrect in the
14 sense that we didn't disclose that we were short
15 and certainly weren't spearheading a short
16 campaign. We didn't publish our research or
17 cooperate with other short sellers, contrary to
18 Mr. Glassman's claim, which is highly defamatory.
19 And we did express concerns about the disclosure on
20 the XTG loan to Mr. Dummett, but you have seen the
21 extent of that communication.

22 312 Q. So you also contacted Veritas, did
23 you not?

24 A. We did.

25 313 Q. All right. If I could take you to

1 document 13. So you reached out on December 11th
2 by voicemail then to Veritas, is that --

3 A. Yes, and --

4 314 Q. If you could scroll down. There
5 is a voicemail server December 11th, 2014; do you
6 see that?

7 A. I would feel more comfortable if
8 we could bring up my Veritas affidavit because I
9 wasn't anticipating this line of questioning, given
10 its lack of relevance to this motion. Could I just
11 get the -- I would just -- I have all my -- I think
12 I have access to my stuff here.

13 315 Q. Are you alone in your room, or are
14 you with somebody?

15 A. No, I am alone in my room. I
16 would just like to get a copy of my affidavit so I
17 can refresh my memory, unless you want to keep
18 bringing it up for me. I am happy to do that too.

19 316 Q. Well, no, you don't recall whether
20 you contacted them or they contacted you?

21 A. Off the top of my head, I don't
22 recall.

23 317 Q. All right. Would they ordinarily
24 contact you about research?

25 A. Occasionally, yes.

1 318 Q. Did they know you were working on
2 Callidus research?

3 A. After our meeting, they did, but
4 not -- I don't think they knew about it before
5 that.

6 319 Q. And if I could take you to tab 17,
7 this is a transcription of an email, I take it,
8 from -- or a transcription of a voicemail, sorry,
9 by Anthony Scilipoti. Am I pronouncing that right,
10 S-c-i-l-i --

11 A. I think it is Scilipoti.

12 320 Q. Okay. And you knew Mr. Scilipoti?

13 A. Not very well. I mean, I have
14 interacted with him a handful of times over the
15 years, always had a high respect for his research
16 and investment acumen.

17 321 Q. And was he the person you were
18 reaching out to at Veritas?

19 A. I don't recall how the meeting was
20 initiated sitting here now.

21 322 Q. And it says -- it refers to a
22 meeting. Did you set out your thesis about
23 Callidus in your meeting of December 17th?

24 A. Not specifically. My recollection
25 of the meeting -- and again, if anything is

1 inconsistent with my affidavit, please point it out
2 because I hadn't reviewed it, and it has been quite
3 a long time obviously from six years ago.

4 But my recollection of the meeting was
5 we discussed a number of investment ideas that they
6 were working on, and they asked what we were
7 working on, and we told them that we were
8 researching Callidus. They expressed some interest
9 in pursuing it. We said we had put together some
10 research and could get into our thesis a little bit
11 more.

12 And then Anthony -- quite strangely I
13 thought at the time -- said that he didn't want to
14 hear about our research at all. They would do
15 their own research, and if they came -- and I am
16 paraphrasing this and any subsequent meetings, if
17 they came to any conclusions or were going to
18 publish anything, they weren't going to work with
19 us or incorporate any of our thoughts into it, and
20 they weren't even going to keep us apprised of any
21 research until it was published.

22 They did ask us for the publicly
23 available lenders' list that we had put together
24 because this was just factual information that was
25 just to save them some time. And my understanding

1 is, you know, we had about an hour meeting. We
2 didn't provide them with our deck. And I think our
3 discussions were primarily around just giving them
4 the loan list.

5 323 Q. So let me just take you to
6 supplementary document tab 19. Okay. So these are
7 your phone logs to Veritas, and we have some back
8 in July with Mr. Brimm. That doesn't relate to
9 this, I take it; correct?

10 A. I don't know.

11 324 Q. Okay. You don't know whether
12 Mr. Brimm would have been involved in doing
13 Callidus work back in July or January 2014?

14 A. Yeah, I don't think Mr. Brimm
15 would have been involved.

16 325 Q. So on December 9th, 2014, there is
17 a call out from you -- your office to Veritas.
18 Would that be you calling to reach Veritas?

19 A. On December 9th? I don't know
20 what number. That is the switchboard number, so it
21 is the general number.

22 326 Q. And then there is a call coming in
23 to you from Veritas; do you see that? Is that them
24 responding on December 9th?

25 A. I don't know what these are. Like

1 it is impossible for me to remember, obviously,
2 or --

3 327 Q. Right, but you can see that there
4 are a number of calls to and from between December
5 9th and December 17th when you had the meeting;
6 correct?

7 A. The meeting date was when?

8 328 Q. I think you had said December
9 17th.

10 A. Right.

11 329 Q. So you had a number of calls with
12 them beforehand; correct?

13 A. I don't recall having a number of
14 calls specifically. My name on this chart --

15 330 Q. December --

16 A. It appears I have had some calls
17 with them. I don't recall the substance of those
18 calls.

19 331 Q. All right. Well, some of them
20 are -- December 9th, it is over 16 minutes,
21 December 12th is 14 minutes; do you see that?

22 A. I do see that.

23 332 Q. And then December 12th you have a
24 51-minute, so a long call; correct? Did they call
25 you --

1 MR. MILNE-SMITH: Mr. Callaghan, that
2 is 51 seconds.

3 MR. CALLAGHAN: Is that 51 seconds?

4 MR. MILNE-SMITH: That is my
5 understanding of these records, is where there
6 is -- where it is over a minute, you get minutes
7 and seconds. So the majority of these calls are
8 one or two minutes or less.

9 BY MR. CALLAGHAN:

10 333 Q. All right. Well, there you go.
11 That is that then. It is 51 seconds.

12 All right. So if you go to tab 20,
13 this is the password-protected document that was
14 provided, as I understand it, by you to Veritas.
15 We are just logging in the password to get at it.
16 I am told to ask to give you a minute because it is
17 a bit like "Get Smart" around here trying to work
18 out security.

19 MR. MILNE-SMITH: That's impressive
20 security on the document, Mr. Callaghan.

21 MR. CALLAGHAN: I think this is your
22 security. It is not ours. This is how it was
23 given to us.

24 MR. MILNE-SMITH: I think it is West
25 Face's security.

1 BY MR. CALLAGHAN:

2 334 Q. Well, let's say that West Face's
3 security can certainly defeat any of the lawyers,
4 at least on this side of the phone call.

5 Okay. So we have broken the code,
6 Mr. Boland. I think the empire is now exposed.

7 MR. MILNE-SMITH: Black Cube aren't
8 there, are they?

9 MR. CALLAGHAN: I'm sorry, I
10 interrupted. Sorry?

11 MR. MILNE-SMITH: Black Cube aren't
12 there, are they?

13 BY MR. CALLAGHAN:

14 335 Q. Well, that I won't dignify.

15 So if you go to this document, this is
16 the portion of the slide deck we looked at earlier
17 and spoke about where I believe it was Mr. Griffin
18 had used your proprietary tools and the research
19 and identified the borrowers of Callidus; correct?

20 A. It appears to be the list that we
21 constructed, and again, I am not sure what the
22 import of "proprietary" is, but I think Mr. Griffin
23 testified that the majority of these things were
24 discoverable in public databases.

25 336 Q. I meant his research tools. I

1 think he said it was public -- it was whatever he
2 said his research tools were.

3 And so you provided that to Veritas;
4 correct?

5 A. Correct.

6 337 Q. Right, and did you provide this
7 with Veritas with the understanding that they would
8 do research regarding Callidus and publish a
9 report?

10 A. No. To paraphrase what Anthony
11 said, he said it sounds interesting. Give us the
12 loan list. We'll go away, and we may or may not do
13 anything with it. And he seemed to be quite
14 focussed on coming to their own conclusions and
15 starting from a raw data set.

16 And so we provided --

17 338 Q. And --

18 A. Sorry?

19 339 Q. Sorry, go ahead, I --

20 A. Oh, we provided him the raw list,
21 and that was -- you know, I think there was a
22 couple of follow-up calls around the lenders, but
23 that was about it.

24 340 Q. Right, and as it were, Veritas had
25 put out its own piece using that work you gave

1 them; correct?

2 A. This work didn't have any
3 conclusions in it. This was a database of publicly
4 available loans, and they would take these loans.
5 They could have found this themselves and come to
6 their own conclusions based on this list of loans.

7 341 Q. Sorry, that list was publicly
8 available. Did you publish it somewhere, because
9 this is what Mr. Griffin --

10 A. We didn't publish it, but I
11 believe if you go to Mr. Griffin's affidavit -- and
12 it has been awhile since I reviewed it -- he
13 outlines in great detail the public places that we
14 found each of these loans, and my understanding is
15 most of them came through Google searches and/or
16 public security lien databases and websites of
17 receivers.

18 So all of the information in here was
19 from publicly available sources and could be
20 ascertained by anybody using simple web-based
21 search tools, and we did not publish this loan --
22 this list, but we did give it to Veritas because
23 they said they wanted to look into the situation,
24 and we felt it would be useful to see if they
25 corroborated our information or disputed it, which

1 would have been equally as interesting to us.

2 342 Q. Well, it is pretty clear that
3 Mr. Griffin went to a lot of effort to create that
4 list, and that work product was given to Veritas, I
5 suggest, to entice them to do a report on Callidus;
6 correct?

7 MR. MILNE-SMITH: He has already
8 answered the question, Mr. Callaghan. I am not
9 going to let you --

10 BY MR. CALLAGHAN:

11 343 Q. I haven't asked that question, so
12 may I have an answer?

13 A. No, I disagree with the
14 characterization of "entice". Just to be clear,
15 they were going to take this list and come to their
16 own conclusions, and if they came back to us and
17 said, We don't believe you are right for the
18 following reasons, that would have been very useful
19 information to us as well.

20 So we weren't trying to entice anybody
21 to do anything. We were in pursuit of the truth,
22 and Veritas expressed that they were also
23 interested in pursuing the truth. And we didn't
24 see any of their work product until it came out and
25 had no input into it.

1 344 Q. So if we go back to tab 19 of the
2 supplementary brief, the phone log. You
3 continued -- well, back again. You will see that
4 you continued to communicate with Veritas through
5 December, all the way to April 22nd, 2015; do you
6 see that?

7 A. Well, you are talking about me or
8 West Face?

9 345 Q. Well, a lot of them are you, but I
10 assume some of it might be somebody else. Tony
11 Griffin, for example.

12 A. Yes, we did have some
13 communications. I recall at the time that Anthony
14 was also pitching me on other ideas and/or
15 purchasing some other research product, so --

16 346 Q. So none of these communications --
17 sorry, go ahead.

18 A. I suspect that -- in fact, I would
19 almost -- to the best of my recollection, the
20 communications between myself and Anthony related
21 to broader other topics. A lot of these are
22 obviously -- you know, the timing of these things
23 are so short they look like missed calls. But the
24 calls between myself and Anthony I believe all
25 related to either subscribing to their research

1 product, getting a pricing proposal, or talking
2 about how much it cost, talking about what other
3 things they were working on that might be of
4 interest to us.

5 I do not recall any conversations with
6 Anthony about this file. To best of my
7 recollection, I didn't have any conversations with
8 Anthony.

9 347 Q. All right. Well, let's just take
10 you then to tab 25. Now, I take it you don't
11 have -- just before I go there, you don't have any
12 notes of any of these conversations; correct?

13 A. I don't.

14 348 Q. And we have no notes from Veritas.
15 Are you aware that Veritas hasn't filed an
16 affidavit of documents in this proceeding?

17 A. Are you talking to me or --

18 349 Q. I am talking to you.

19 A. My understanding is this case has
20 not moved forward for quite some time.

21 350 Q. Right. So you don't -- you are
22 aware that we don't have Veritas's documents;
23 correct?

24 A. I am not -- it is news to me, but
25 yes.

1 351 Q. Have you talked to Veritas about
2 this litigation since December 1st, 2015?

3 A. I have no recollection of having
4 any discussions with them since the start of this
5 litigation.

6 352 Q. So what we do have is one
7 voicemail on April 21st, and it says:

8 "Tom from Veritas. Just wanted
9 to introduce you to two new Callidus
10 borrowers, to put on your radar in
11 case you haven't come across the
12 names. Le Groupe Inter-Cite and
13 Arxium. Last 60 days. No amounts.
14long voicemail if you want to
15 take a listen. I can write out full
16 message...but I want you to grab
17 your lunch first."

18 Do you see that?

19 A. I do see it.

20 353 Q. All right. And so as of late as
21 April 21st, they are introducing you to new
22 borrowers of interest at Callidus; correct?

23 A. That appears to be the case, yes.

24 354 Q. So if we go to -- so did you --
25 sorry, let me stop there. You continued to work on

1 this slide deck, did you?

2 A. I don't -- we continued to monitor
3 the situation. When you wrap it in the word "slide
4 deck", I am not sure really what was happening at
5 this time, but we -- you know, we would listen to
6 every quarterly call. We would continue to gather
7 information. We would talk to borrowers and
8 anybody that had information. I mean, you know, we
9 shortly after became embroiled in litigation, so we
10 also had another goal, to defend ourselves.

11 So we were, I would say, almost
12 continually doing research, but that is not
13 unusual. That is pretty normal for an investment
14 that we have held. There may be another
15 opportunity to re-engage with the issuer, and
16 certainly in this case to defend ourselves from
17 litigation.

18 355 Q. So I am clear, the slide deck
19 never was forwarded to your investors; correct?

20 A. That is correct.

21 356 Q. And you will recall that it was
22 attached to Mr. Griffin's affidavit in March of
23 2015, and if I could take you to tab 23, page 38,
24 and it says:

25 "Even if the independent

1 committee is effective, the question
2 shareholders should ask is why bear
3 the risk of these conflicts of
4 interest when there are numerous
5 other investment opportunities in
6 the financial sector that do not
7 have the same conflicts?"

8 Do you see that?

9 A. I do.

10 357 Q. Do you know when that was added to
11 the slide deck?

12 A. I do not.

13 358 Q. Okay. We didn't see it when we
14 looked at the one you had sent Ms. McNish, so this
15 slide deck was filed on March 15th by Mr. Griffin;
16 do you recall that? We saw that. It is on the
17 front.

18 A. I recall the affidavit, yes, and I
19 assume this is correct.

20 359 Q. And do you recall that Bloomberg
21 picked it up and wrote about it in an article?

22 A. I don't recall Bloomberg picking
23 it up, but if you have something to take me to, I
24 can look at it.

25 360 Q. I do, but I am not sure -- is

1 it -- do we have that?

2 A. Oh, yes, I remember this. I got
3 confused. It was BNN. I forgot that BNN was part
4 of Bloomberg.

5 361 Q. Okay. And did you talk to Amber
6 Kanwar?

7 A. I have no recollection of talking
8 to Amber, no.

9 362 Q. Do you know who she is?

10 A. Well, she appears to be the
11 journalist that wrote the article.

12 363 Q. I know that. Aside from what is
13 on the face of the article, had you ever heard of
14 her before?

15 A. I don't know that I have. I don't
16 know. I certainly don't know her, but whether I
17 knew of her existence before this article is
18 something I can't say.

19 364 Q. Did anyone, to your knowledge --
20 did you know whether anyone at West Face dealt with
21 her?

22 A. I do not know that.

23 365 Q. Do you know whether anybody on
24 behalf of West Face provided her with either the
25 slide deck or information how she might get the

1 slide deck?

2 A. To the best of my knowledge --
3 well, I have no recollection of anything. I don't
4 recall anybody interacting with her. I certainly
5 have no recollection of it, and I can tell you I
6 did not send her a deck, and I am reasonably
7 certain nobody else did either, and --

8 366 Q. And if you go down, and it says --
9 on the second page, it says right there, I think:

10 "Now, Boland is striking out at
11 one of Glassman's core businesses."

12 Did you agree that is what you were
13 doing?

14 A. No, I don't.

15 367 Q. And do you know whether you or
16 anybody else made comments to her in respect of
17 this article?

18 A. I don't believe so. I don't see
19 any comments in the article.

20 368 Q. Well, can you undertake to let us
21 know if anybody commented?

22 U/A MR. MILNE-SMITH: We'll take that under
23 advisement.

24 MR. CALLAGHAN: I am not sure I heard
25 that, but I'll --

1 MR. MILNE-SMITH: We will take that
2 under advisement.

3 BY MR. CALLAGHAN:

4 369 Q. Okay. So I am curious, was the
5 slide deck modified prior to it being filed in
6 court?

7 MR. MILNE-SMITH: What do you mean by
8 "modified"? It was -- he has told you --

9 BY MR. CALLAGHAN:

10 370 Q. Well, we saw at page 38:

11 "[...] the question
12 shareholders should ask is why bear
13 the risk [...]"

14 You can't tell me when that was added?

15 A. No, I can't. This was quite a
16 long time ago. I think the research that we
17 provided is the complete research we had at the
18 time obviously, and I don't know when a sentence
19 was in the report or not.

20 371 Q. Can you undertake to produce to me
21 all the drafts and the meta data behind all the
22 drafts of this slide deck?

23 U/A MR. MILNE-SMITH: We'll take that under
24 advisement.

25 MR. CALLAGHAN: Why don't we break and

1 exemptions?

2 A. All of those funds feed into a
3 Master Fund, so Callidus shorts would have been
4 in -- ultimately in either -- well, sorry, let me
5 back up. The Callidus shorts would have been in
6 either each of the individual funds or a Master
7 Fund, but the transactions that we disclosed to you
8 already are the sum total of all the transactions
9 across all the funds combined.

10 378 Q. Unless it is in there, in the
11 record, and if it is, then perhaps someone could
12 point to it, but could you produce the offering
13 memorandums?

14 U/A MR. MILNE-SMITH: We'll take that under
15 advisement.

16 BY MR. CALLAGHAN:

17 379 Q. All right. So when we talked, you
18 had mentioned Mr. McFarlane, and I am not quite
19 sure, did you talk to Mr. McFarlane, say, between
20 December 2014 and March of 2015 when the slide deck
21 was produced, or do you recall?

22 A. I don't recall. I would have to
23 go back to my affidavit where we recorded the dates
24 of our first meetings. I believe there is evidence
25 that we produced of correspondence or something

1 along those lines, but off the top of my head, I
2 don't know the exact date.

3 380 Q. All right. And we looked at the
4 affidavits, and we weren't able to find a reference
5 to that, so --

6 A. Okay. I don't remember when I
7 first had a conversation with Mr. McFarlane.

8 381 Q. All right. And you would have
9 communicated to him by phone?

10 A. I have communicated with him by
11 phone. Yes, I believe so.

12 382 Q. So can we get the phone records
13 between Mr. Boland and Mr. McFarlane, please?

14 U/A MR. MILNE-SMITH: We'll take it under
15 advisement. I am not sure if the phone records go
16 back -- I don't know -- put it this way. I don't
17 know how far back available phone records would go.

18 BY MR. CALLAGHAN:

19 383 Q. But, Matt, rather than do this
20 every time, I would have thought we need them back
21 to 2014, and I am going to ask -- and I might as
22 well just ask now -- for all the phone records with
23 the Defendants. I am sure you are going to take it
24 under advisement, but so it is on the record. Do
25 you have that?

1 U/A MR. MILNE-SMITH: I will take that
2 under advisement, and just to make sure I have it,
3 the time frame is back to the beginning of 2014 you
4 are asking for?

5 BY MR. CALLAGHAN:

6 384 Q. Yeah, I think so. Yeah, I mean,
7 that seems reasonable to me, but let me -- you
8 know, if someone here comes up with a better idea,
9 I'll let you know, but for now let's take the
10 beginning of 2014.

11 U/A MR. MILNE-SMITH: All right. We'll
12 take that under advisement for each of the
13 Defendants.

14 BY MR. CALLAGHAN:

15 385 Q. Right, and then what about instant
16 messages? I think I saw some instant messages that
17 Mr. Langstaff produced. Did you use instant
18 messages, Mr. Boland?

19 A. Have I used instant messages?

20 386 Q. As a means of communication.

21 A. Ever, to anyone?

22 387 Q. Well, I guess that is the first
23 question, anyone, ever, anywhere?

24 A. That is a little bit broad. If
25 you could narrow that down, you know, I --

1 388 Q. Well, we know, if I could -- I
2 think we had -- bear with me for a second.

3 MR. MILNE-SMITH: Just so I am clear,
4 by instant messages, do you mean text messages
5 generally?

6 BY MR. CALLAGHAN:

7 389 Q. Yeah, let me -- I am not the best
8 at this, but yeah, let me just go through it. Text
9 messages. I can't put my finger on it now,
10 Mr. Boland, but I know there are text messages that
11 you had with Mr. Langstaff that Mr. Langstaff
12 produced, and you -- in fact, as I recall, you
13 invited him to the farm in Markdale. I know that
14 doesn't help you probably.

15 But what I am asking for is your
16 instant messages, text messages, WhatsApp, whatever
17 communications devices you would have with any of
18 the Defendants. Mr. Milne-Smith, the same period?

19 U/A MR. MILNE-SMITH: Yes. I mean, we'll
20 take that under advisement. But I happen to know
21 that -- because we have looked into this, I happen
22 to know that Mr. Boland doesn't have text messages
23 going back to the period sort of -- or sorry, the
24 period 2017 and earlier is my understanding, just
25 because of, you know, changes in phones and passage

1 of time.

2 BY MR. CALLAGHAN:

3 390 Q. All right. Well, then if
4 Mr. Boland would be kind enough to tell us with
5 whom he thinks he had text messages that no longer
6 exist, that would be fine too.

7 U/A MR. MILNE-SMITH: Well, we'll take that
8 under advisement.

9 BY MR. CALLAGHAN:

10 391 Q. And just so -- because they are
11 not Defendants, I would ask for Mr. Levy and
12 Mr. Jaross.

13 MR. MILNE-SMITH: So you are asking --

14 BY MR. CALLAGHAN:

15 392 Q. Right, and then while we are on
16 this topic, just to do it once, Ms. McNish,
17 Mr. Dummett, Mr. Tilak, Mr. Delevingne,
18 Mr. Copeland -- oh, Mr. Copeland is a Defendant, so
19 that doesn't count. And Langstaff is a Defendant,
20 so -- isn't Langstaff -- Langstaff is the
21 Defendant. I am being told he isn't, but he is.

22 May I have that undertaking or under
23 advisement?

24 MR. MILNE-SMITH: Okay. So it is text
25 messages for all of those people back to 2014,

1 whether we have them or whether he remembers them?

2 MR. CALLAGHAN: Text messages, phone
3 messages, WhatsApp, however he communicated, if he
4 did by some level of medium.

5 U/A MR. MILNE-SMITH: Okay. We'll take
6 that all under advisement.

7 BY MR. CALLAGHAN:

8 393 Q. All right. I understand. And did
9 you ever communicate by Confide, Mr. Boland?

10 A. No, I have never.

11 394 Q. And have you ever communicated by
12 any other app that would destroy the message or
13 somehow not have it be apparent anymore?

14 A. To the best of my recollection, I
15 have never used one of those apps in the period in
16 question.

17 395 Q. And Mr. Panet talked about Signal,
18 I think, yesterday. Have you ever used Signal?

19 A. Not in the period in question, no.

20 396 Q. So you would have used it in 2018?
21 I am just trying to figure out the period in
22 question. I think I said 2013 to 2018, but you are
23 saying after 2018, 2019, you might have used it?

24 A. I would have to -- I don't
25 remember exactly when I used it. I remember using

1 it a couple of times shortly after we became
2 paranoid about Black Cube, but that was well after
3 the period in question. But I did not communicate
4 with anybody in the period in question using
5 Signal.

6 397 Q. I see. So would you -- all right.
7 And do you know whether you would have -- I take it
8 what you are saying is you would have communicated
9 on Signal with respect to some of the matters in
10 the litigation because they dealt with Black Cube;
11 is that right?

12 A. We were concerned that our phones
13 and computers were bugged for a period of time, and
14 during the what I call peak paranoia, we tried --
15 or I tried, you know, Signal for a little bit, but
16 things sort of reverted to normal after awhile.

17 398 Q. Right, and I'll expand my
18 question, Mr. Milne-Smith, to any communications
19 even afterwards, if there were communications on
20 Black Cube or such matters, and I appreciate that
21 they are -- and I am not asking for privileged
22 communications, okay? So even up to the present
23 date, if that is possible, and you can take that
24 under advisement.

25 U/A MR. MILNE-SMITH: I'll take it under

1 advisement, but I don't think we are going to be
2 producing things after the litigation started
3 communicating about the litigation, and your guys
4 haven't -- I spoke about this with Mr. Moore
5 yesterday on the record, and we agreed that there
6 was sort of an understanding that after the
7 litigation starts, you know, we are not producing
8 particularized Schedule Bs of every litigation
9 privileged communication because they would go to
10 the millions between the two of us.

11 BY MR. CALLAGHAN:

12 399 Q. No, I wasn't -- I think I prefaced
13 it not privileged, but that is fine. I mean, we
14 can deal with that. We don't have to junk up the
15 transcript for it.

16 So dealing with the borrowers of
17 Callidus, who was the first borrower you remember
18 speaking with?

19 A. I don't recall specifically the
20 chronology of who came first. You know, the
21 research we were doing was in the context of many,
22 many research projects and, you know, interspersed
23 with lots of calls about lots of different topics,
24 so it is a bit of a blur, especially given the
25 passage of time. So, you know, there may be

1 documents that help us piece this together, but off
2 the top of my head, I have really no way of
3 remembering the sequence of events.

4 400 Q. So I am not sure all that we have
5 is -- all the communications are recorded in some
6 fashion, so I think we are going to have to piece
7 this together the best we can when we get your
8 phone records.

9 But if I could take you to
10 supplementary document number 20. So this is an
11 email dated August 14, 2015, from Mr. Levy. So if
12 we could go to item 23 in the list and then the
13 second page of that.

14 So by August of 2015, do you have any
15 recollection of talking to Mr. Levy or not?

16 A. What is the date of this document?

17 401 Q. August 14th.

18 A. Yes, I remember having a
19 conversation with Mr. Levy. The first conversation
20 I think was the longest, which may be this one.

21 402 Q. And he was an owner of a company
22 called Esco Marine; correct?

23 A. I don't know if he was the owner,
24 but I know he was involved in it.

25 403 Q. But Esco Marine was a borrower of

1 Callidus; correct?

2 A. I believe so, yes.

3 404 Q. All right. And what do you recall
4 of your first conversation with Mr. Levy?

5 A. We were in the process or I was in
6 the process of trying to gather as much information
7 as possible on Callidus. Obviously we were
8 involved in litigation by this point. And I had
9 reached out to Mr. Levy primarily because his name
10 appeared in some U.S.-based litigation. And so I
11 called him to ask him about his litigation and his
12 view about the situation.

13 405 Q. So if we go down in the middle of
14 this paragraph that we have there, I am just going
15 to direct your attention to a part of the paragraph
16 which I'll read to you, and he says:

17 "In addition, the firm Voorheis
18 & Company in Canada is after
19 Callidus. Wes Voorheis worked with
20 Newton Glassman (CEO of Callidus and
21 also its parent Catalyst Capital) 10
22 years ago when Glassman was the
23 primary motivating force in taking
24 down Conrad Black. Voorheis was put
25 in charge of Hollinger when Black

1 was removed. Apparently Voorheis
2 has come to hate Callidus and has
3 hired the firm Mosaic (Mr. Bruce
4 Livesey [...])", and there is a
5 phone number, "to investigate
6 Callidus and all of its loans."

7 Do you see that?

8 A. I do.

9 406 Q. All right. Do you know
10 Mr. Voorheis?

11 A. I have met him once in -- I am
12 trying to remember the exact date, but I am
13 guessing it would have been 2011, on another file.
14 I think that is the one and only time I have met
15 him or spoken to him.

16 407 Q. All right. And did you
17 communicate with him in any way?

18 A. No, I didn't.

19 408 Q. And --

20 A. Not to the best of my knowledge.
21 I have no recollection of speaking to him.

22 409 Q. Were you aware that he had come to
23 hate Callidus?

24 A. I don't think I was. I vaguely
25 remember something in the press going back to the

1 Hollinger days where -- and I can't remember
2 whether it was Glassman speaking disparagingly of
3 Voorheis or the other way around, but I remember
4 back in the day some dispute. But it is certainly
5 not top of mind.

6 410 Q. Okay. And now you know -- you got
7 to know Mr. Bruce Livesey, according to your
8 affidavit; correct?

9 A. He interviewed me for an article
10 that he was considering writing.

11 411 Q. But that was September of 2016,
12 correct? Isn't that what your affidavit says?

13 A. Yes, we have the date recorded in
14 my affidavit, so...

15 412 Q. Did you know that Mr. Livesey had
16 an investigation firm called Mosaic?

17 A. No, I didn't. I don't think I
18 did, and I don't think I have ever seen the firm
19 Mosaic. It is not a company name that sounds
20 familiar to me, but certainly at the time I didn't
21 have -- I don't believe I had any understanding
22 that he had a firm called Mosaic.

23 413 Q. And I take it in the conversations
24 you had with him, were you aware that he was doing
25 investigations into Callidus on behalf of

1 Mr. Voorheis or anybody else?

2 A. I don't believe that came up.

3 414 Q. When you say you "don't believe",
4 you don't recall?

5 A. Well, I don't have a recollection
6 of that coming up, no. My recollection is he
7 called and introduced himself and said that he was
8 writing an article about the dispute between myself
9 and Mr. Glassman. It wasn't clear to me what the
10 focus of his article was. I am not sure if it was
11 clear to him at the time. And that was the extent
12 of the background prior to the interview.

13 415 Q. But were you aware that
14 Mr. Livesey had an investigation firm by any other
15 name?

16 A. No, my understanding was
17 Mr. Livesey was a freelance journalist. When I
18 Googled his name after he called me, I think I just
19 got some articles that came up that he had written
20 in the past, so the only -- my assumption was he
21 was just a sort of run-of-the-mill freelance
22 journalist.

23 416 Q. Then it goes on to say:
24 "West Face Capital (Greg
25 Bolland and Philip Parnet [...])",

1 and there is a phone number, "are
2 also in litigation with Callidus.
3 West Face has produced a 52 page
4 memorandum stating why Callidus (now
5 a public company) is a good short."
6 Do you see that?

7 A. I do see that.

8 417 Q. Would you have discussed your
9 short thesis with Mr. Levy?

10 A. I don't believe we did. We
11 certainly didn't provide him a copy of it. By this
12 point it was obviously in the public domain. This
13 memo that you are pointing me to seems to be a bit
14 of a stream of consciousness, so, you know, most of
15 this doesn't relate back to any conversation I had
16 with Mr. Levy. Mr. Levy obviously has a sworn
17 witness statement that describes their
18 conversation, but we did not produce the document
19 to him. My conversation was really on a
20 fact-finding conversation, not a fact-giving
21 conversation at that point, and I asked Mr. Levy
22 about his views of the company, and he went on for
23 about an hour on how he thought this was a massive
24 fraud and the company that was undertaking very
25 unscrupulous business practices. So he gave me

1 quite an earful.

2 418 Q. And it goes on to say:

3 "We are also in touch with
4 their lawyers. West Face's lawyer,
5 Matthew Milne-Smith of Davies Ward
6 in Toronto [...]", and there is a
7 phone number, "is more than happy to
8 work with us."

9 Were you aware that he had been in
10 touch with Mr. Milne-Smith?

11 A. I don't know what he is referring
12 to here. I don't know if I was aware at the time
13 of this. I don't know what it relates to.

14 419 Q. All right. In your affidavit you
15 refer to not being aware of Mr. Milne-Smith
16 assisting the Defendants or some of the Defendants
17 with a RICO action in 2016. Were you aware of
18 communications between Mr. Levy and your lawyers in
19 2015?

20 A. I am only aware of what we
21 disclosed. We have disclosed everything that I was
22 copied on or informed of, so that is my complete
23 recollection.

24 420 Q. And have you disclosed all the
25 communication between your lawyers and the

1 Defendants --

2 A. Have I --

3 421 Q. -- either in Schedule A or
4 Schedule B; do you know?

5 A. I don't think I would be privy to
6 that disclosure, but I assume we have made all the
7 relevant disclosure in some form, yes.

8 422 Q. Well, I would ask you to inquire
9 of Davies for communications between Davies and the
10 Defendants, and if they are privileged, then by all
11 means tell me they are privileged, and we'll go
12 down that route.

13 R/F MR. MILNE-SMITH: If you are talking
14 after the litigation started, then no, we are not
15 disclosing that.

16 U/A If you are talking before the
17 litigation started, then we'll take it under
18 advisement, but I suspect it is all privileged
19 because recall that by this time Catalyst had
20 already sued West Face in respect of Callidus in
21 the Veritas action in -- what was it -- June or
22 July of 2015. And so any communications that
23 Davies would have had with Callidus borrowers would
24 have been in respect of defending that litigation
25 and therefore privileged.

1 MR. CALLAGHAN: Okay. I am looking for
2 any communications that you had, so if you could
3 either -- we'll either have to get a Schedule B in
4 respect of that or the documents, and we can
5 discuss that later.

6 MR. MILNE-SMITH: Well, we can discuss
7 it later, but I have told you our position, which I
8 had taken Mr. Moore to agree with, with respect to
9 communications after the litigation started, so I
10 think you can take that as a refusal.

11 BY MR. CALLAGHAN:

12 423 Q. And then it goes a little further
13 down and says:

14 "In addition, the Toronto
15 Bureau of the Wall Street Journal is
16 following the entire Callidus saga.
17 Callidus has been accused of
18 manipulating its stock by failing to
19 disclose that a number of its loans
20 are seriously underwater and taking
21 proper charges against its earnings.
22 The fellow at the Wall Street
23 Journal is Ben Dummett [...]", and
24 there is a number. "He has already
25 written one article about Callidus

1 and is clearly following the story."

2 Do you see that?

3 A. Yes, I do.

4 424 Q. All right. And did you tell him
5 about your discussions with Ben Dummett?

6 A. I don't recall doing so, but if
7 there is a document you have, please take me to it.

8 425 Q. Well, this would be the document.
9 Do you recall talking to him or not?

10 A. I don't recall. Again, I think
11 this is a stream of a number of different lines of
12 thought, and no, I don't recall having that
13 conversation.

14 426 Q. And then it goes on to say:

15 "I would expect the Ontario
16 Securities Commission to ultimately
17 get involved with the Callidus
18 filings."

19 Do you see that?

20 A. I do.

21 427 Q. All right. And did you discuss
22 with Mr. Levy about the Ontario Securities
23 Commission getting involved with the Callidus
24 filings?

25 A. I don't recall speaking about the

1 Ontario Securities Commission. I do recall him
2 saying that he suspected that the company was
3 committing fraud and that somehow breaking
4 securities laws, or something along those lines,
5 and that it might be of interest to the SEC. But I
6 don't recall, because the investors -- some of the
7 investors were based in the U.S., but I don't
8 recall speaking about the Ontario Securities
9 Commission.

10 428 Q. All right. By "investors", do you
11 mean investors in Callidus or Catalyst or both?

12 A. Catalyst.

13 429 Q. Catalyst?

14 A. Catalyst.

15 430 Q. I'm sorry, I didn't catch --

16 A. Catalyst Funds.

17 431 Q. Okay. And then it goes on to say:

18 "There is also talk of a class
19 action against Callidus for
20 misreporting loan losses by
21 shareholders who have watched the
22 stock drop."

23 Do you see that?

24 A. I do.

25 432 Q. Did he discuss the possibility of

1 a class action with you?

2 A. Not to the best of my
3 recollection, no.

4 433 Q. And we don't have a lot of
5 communication in text form with the borrowers until
6 a bit later in 2016. Do you recall keeping
7 constant communication, or was it sporadic?

8 A. It was very sporadic. I mean, I
9 reached out to whoever I could, and not just the
10 borrowers but also other borrowers who didn't
11 return my phone call, and it was to determine what
12 the status of their legal proceedings. I mean, it
13 was the easiest information to find on the company
14 in the conduct of researching our legal defences,
15 were through court filings. So in the case of
16 Mr. Levy, I contacted him because I identified him
17 in a court finding, and I think that goes for most
18 of my other borrower co-Defendants.

19 So I would have an initial conversation
20 with them. They would tell me their side of the
21 story, which almost universally corroborated what I
22 had divined from the public information in the
23 court documents and financial disclosure, and then,
24 you know, usually ended the call with, if anything
25 happens on your file, give me a call, and I will

1 keep you posted. We had sort of a common adversary
2 in most cases with a lot of overlapping facts, and
3 we were, you know, keeping each other apprised of
4 our legal proceedings largely.

5 And so most of the follow-up
6 conversations would be, you know, if something
7 popped up that was of interest. You know, Mr. Levy
8 I think in this conversation mentioned a bunch of
9 actions where he had evidence of something, I
10 wasn't clear what, and that would be filed in the
11 U.S. And I said, Well, you know, when you get
12 around to filing this stuff, could you send it to
13 me. But I think in the end he was unable to do
14 that.

15 434 Q. If you go to tab 47, please. So
16 this is -- not on the screen. There it is. So
17 this is an email of March 4th, 2016, from
18 Mr. McFarlane to you, but it seems to be preceded
19 by an earlier email on March 4th, and it says:

20 "Greg, let me know if you've
21 got 5 minutes to catch up and
22 compare notes on Friday."

23 And then he gives a phone number.

24 And then you say:

25 "Just out of town but I will

1 try to call you."

2 Do you recall what this email is about?

3 A. No, I don't.

4 435 Q. If I can go to tab 55. In this
5 email from Mr. McFarlane, he asks if you happen --:

6 "If you happen to know the
7 analyst from Canaccord who put the
8 accrued interest to Glassman, I may
9 reach out to him at some point."

10 Did you give Mr. McFarlane the name of
11 the people at Canaccord?

12 A. I really don't have a lot of
13 recollection of these conversations. They were so
14 far ago and weren't very notable given, you know,
15 we never dreamt that any of these proceedings will
16 be undertaken.

17 So unfortunately I don't have specific
18 knowledge of this or what my response was. I am
19 pretty sure this was sort of a random, unsolicited,
20 in-bound email that he sent when he took it upon
21 himself to analyze the 2015 earnings report. It is
22 not something I asked for. We -- you know,
23 occasionally some of the borrowers would just send
24 us stuff, and I think that is what this was. But I
25 don't remember the whole conversation at all.

1 436 Q. And did you recall putting him in
2 touch with Canaccord at all at any time?

3 A. I don't recall. I think he is
4 just asking for the name of the analyst, which
5 would have been on the public record. I don't -- I
6 literally remember nothing about the follow-up
7 conversation, so I'm sorry I can't be more helpful.

8 437 Q. But at that time you were sharing
9 information with Mr. Langstaff on Callidus;
10 correct?

11 A. I don't know that we were -- well,
12 I mean, we were both following the public
13 disclosure, yes, and public company documents. I
14 mean, Mr. Langstaff's job was to keep me informed
15 about things that might be pertinent to my
16 investments or, in this case, in addition the
17 litigation. So yes, from time to time, if we came
18 across something, you know, it would be brought to
19 my attention.

20 438 Q. Did you connect Mr. Langstaff to
21 any of the borrowers?

22 A. I don't recall specifically
23 connecting him. It is possible. I think the
24 borrowers were all public -- you know, it was a
25 very transparent thing. I mean, all their names

1 were listed on a website and in lots of litigation,
2 so where Mr. Langstaff found each of the individual
3 borrowers is -- there may be something you can
4 point me to where I might have pointed him in the
5 direction of a borrower or not, but this was
6 certainly not secret information by any means.

7 439 Q. No, I am just asking you. I am
8 not sure I understand your answer. Are you saying
9 you did or you did not?

10 A. I don't recall introducing him to
11 anybody. It is possible, but I don't recall.

12 440 Q. All right. I'll just show you a
13 few of the documents. So tab 29, and this document
14 is from Mr. Griffin, and it contains a PDF relating
15 to Fortress, and it is the bankruptcy filing.
16 Fortress is Mr. Levitt's company or a company with
17 which he had an interest; correct?

18 A. I believe so, yes.

19 441 Q. All right. And so you are saying
20 that you had an agreement with Mr. Langstaff to
21 share information about Callidus borrowers with
22 him?

23 A. No, I am not saying we had an
24 agreement. Mr. Langstaff was researching the
25 company on his own behalf, as were we, and we

1 A. I don't recall if he ever said
2 that.

3 445 Q. I see. So there was then this
4 habit of Mr. Langstaff to blind copy members of
5 Callidus -- or pardon me, West Face. If I could go
6 to tab 41. Do you see that? It is --

7 A. Yes.

8 446 Q. Mr. Langstaff had undisclosed
9 recipients, and it blind copied Mr. Griffin; do you
10 see that?

11 A. I do.

12 447 Q. All right. And was there an
13 arrangement that Mr. Langstaff would blind copy
14 West Face employees with information he sent out to
15 others about --

16 A. No, and I don't understand the
17 controversy over this because this is a very normal
18 activity to send out -- in this case, a piece of
19 public research to a large distribution list
20 without identifying them. In fact, I get a weekly
21 blind copied legal review from Gowlings for some
22 reason, and I don't see any of the other recipients
23 on that either.

24 So in most industries the recipients of
25 research or distribution would be blind copied. So

1 451 Q. So it is not your understanding
2 that he has a recipient list that he identifies as
3 undisclosed and is just blind copying you?

4 A. No. Sorry, scroll back up? I am
5 not an expert in email protocol, but if you could
6 go up to the top here --

7 452 Q. You and me both.

8 A. Yeah, I think -- listen, I don't
9 know what that means, but when I look at this, what
10 I see is somebody distributing a piece of
11 quasi-public research to Canaccord's clients and
12 doing it in a way that protects the identity of
13 each client, and I suspect that, as I said, when I
14 get -- you know, every week I get a legal review
15 from Gowlings, and it is --

16 453 Q. Do you read it?

17 A. I started the first couple, but --

18 454 Q. Yeah, I hope we haven't written
19 about this case.

20 A. But I don't -- but I can tell you
21 I doubt somebody in Gowlings is sitting there
22 typing in each person and then sending and each
23 person and then sending and each person and then
24 sending. What they are doing is they have a list,
25 a subscriber list, and those subscriber lists are

Catalyst v West Face et al.

Greg Boland
on Thursday, December 10, 2020



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Toronto, Ontario M5K 1A1

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

2

3 GREG BOLAND; UNDER PRIOR AFFIRMATION.

4 THE DEPONENT: Just before I start, if
5 I may, I notice that I failed to finish a sentence
6 at the end of the day yesterday, which I think
7 created an erroneous record, so I was wondering if
8 I could address that before we continue.

9 CROSS-EXAMINATION BY MR. CALLAGHAN

10 (CONT'D):

11 573 Q. Just give me one second. I have a
12 rough copy of the transcript, so I'll just go right
13 to the -- so is it the last thing you said, or is
14 it something before the last thing you said?

15 A. I can give you the line number.
16 It is 166:20.

17 574 Q. 166?

18 A. 166:20.

19 575 Q. Oh, page 166.

20 A. I am just looking at the realtime
21 transcript, and there is little numbers on the
22 side, so it is referencing that. It will be very
23 easy. We don't even have to turn to it. I can
24 probably just repeat it.

25 576 Q. Okay. I am not turning it up. I

1 am not getting the reference. What was the
2 reference you gave us again, please?

3 A. We were speaking about Mr. Levy
4 recounting that he spoke to Mr. Voorheis, and you
5 asked if I recalled discussing Mr. Voorheis with
6 Mr. Levy, to which I responded:

7 "I don't know Mr. Voorheis. I
8 have never spoken to him. And I
9 have no visibility on him."

10 What I intended to say is I don't know
11 Mr. Voorheis and never spoken to him during the
12 period in question. As I said previously in the
13 transcript, I did meet Mr. Voorheis once in what I
14 believe to be 2011. It turns out it was 2010. But
15 I have never -- I did not speak to him during the
16 period in question, so I didn't mean to stop my
17 sentence where I did.

18 577 Q. Am I to take it from that answer
19 that you have spoken to him since 2017?

20 A. No, it is entirely the opposite.
21 I have not spoken to Mr. Voorheis since the initial
22 meeting in 2010.

23 578 Q. All right. And I think I asked
24 whether you had communicated with him by any means,
25 and I think that there is an undertaking to check,

1 but what was your answer to that?

2 A. We would have to go back and look,
3 but I have not spoken to Mr. Voorheis directly or
4 indirectly.

5 579 Q. But do you recall whether you
6 communicated with him through some other means,
7 email --

8 A. I have not communicated with
9 Mr. Voorheis. I have met him once in 2010, and I
10 have not spoken to him on this matter.

11 580 Q. All right. Well, that is a good
12 place to start today. So I was going to talk to
13 you about your meeting with Mr. Livesey, and in
14 your affidavit, you said he contacted you on
15 September 6th of 2016; is that -- have I got that
16 correct?

17 A. That is correct, I believe, yes.

18 581 Q. And if you don't recall, it will
19 stand as it is in your affidavit then. Should we
20 pull it up?

21 A. Well, if you could point me to my
22 affidavit, but whatever I said in my affidavit is
23 the correct date.

24 582 Q. All right. Well, that is what is
25 in your affidavit. So when you met Mr. Livesey,

1 at the time.

2 632 Q. I see. And if you go -- there is
3 also reference to lawsuits involving former
4 employees of Catalyst, and Mr. Weinczok,
5 W-e-i-n-c-z-o-k -- I am not pronouncing that right,
6 I am sure -- and Millicent Poon. Were you aware of
7 those lawsuits?

8 A. Yes, we had done an extensive
9 litigation search surrounding Callidus, Catalyst,
10 and Mr. Glassman in order to ascertain his
11 behaviour and past methodology. In particular,
12 some of these cases showed a history of using
13 private detectives to blackmail adversaries into
14 submission, and we found it particularly
15 interesting to our legal research.

16 633 Q. And I take it you -- sorry. So I
17 take it then that you thought it was interesting to
18 give it to the press; correct?

19 A. I don't believe I gave anything to
20 the press. If you could point me to evidence to
21 the contrary, but to the best of my knowledge, I
22 did not give this to the press.

23 634 Q. What about West Face? I mean, I
24 don't want to leave West Face off the equation.
25 You didn't give the earlier stuff Mr. Panet did.

1 Did West Face give those lawsuits? We see them in
2 the Veritas productions. Did you give them?

3 MR. MILNE-SMITH: To the best of our
4 knowledge, nobody at West Face gave the Michael
5 Weinczok or Millicent Poon lawsuits to Mr. Livesey.
6 You have all of our correspondence in that regard.

7 BY MR. CALLAGHAN:

8 635 Q. All right. And I take it you
9 spoke to Mr. Livesey about the loan book of
10 Callidus?

11 A. I don't recall speaking
12 specifically about the loan book. This was some
13 time ago. My impression of the meeting was that we
14 were talking more broadly about the dispute and the
15 legal dispute. That is the part that was most
16 memorable to me. I don't know if the loan book was
17 ever mentioned.

18 636 Q. If we could go, just as an
19 example, to page 360, and in the middle of that
20 page, it says:

21 "For instance, in November of
22 2014, Glassman told analysts during
23 a conference that 'we don't have a
24 single loan in the portfolio that's
25 not performing, and just to remind

1 again everybody, performing means
2 current in interest and all
3 obligations. So we don't have a
4 single loan in our book that is
5 nonperforming.'"

6 Do you see that?

7 A. I do.

8 637 Q. Is that not the same quote you
9 directed Mr. Dummett to?

10 A. It appears to be, yes.

11 638 Q. So did you direct Mr. Livesey to
12 that issue?

13 A. I don't have a recollection of the
14 specifics of the conversation, unfortunately. It
15 has been six years or five years.

16 639 Q. Right. So you could have, but you
17 can't recall; is that what that means?

18 A. I don't recall the specifics of
19 the conversation, no, but by this time, you know,
20 all of this information had been reported on and in
21 the public, so it is entirely possible it could
22 have come from other public sources as well.

23 640 Q. So you then were working on a
24 quote for his article, and if I could take you to
25 tab 74. And in this quote you are being asked to

1 summarize the current situation; do you see that?

2 A. Yes, I do.

3 641 Q. And you talk about the lawsuit,
4 and you say in the middle of that quote:

5 "In contrast, the courts have
6 made serious findings of credibility
7 against the principals of Catalyst.
8 Glassman is unable to accept his own
9 failures."

10 Do you see that?

11 A. Yes, I was paraphrasing the
12 Court's findings.

13 642 Q. "Accept his own failures" in
14 general, is that what that means? That is what it
15 reads.

16 A. I was paraphrasing the findings of
17 the Court. We could turn to that, but I was
18 paraphrasing what my understanding of the findings
19 of the Court were.

20 643 Q. Well, wasn't the finding of the
21 Court was there was no confidential information
22 relating to Wind given by Mr. Moyse?

23 A. I am talking about the findings of
24 credibility of Mr. Glassman by Justice Newbould.

25 644 Q. Right. So the current situation

1 is Mr. Glassman's credibility, as far as you are
2 concerned; correct? That is what the news -- that
3 is what Mr. Livesey was interested in?

4 A. I don't know what he was
5 interested in. I gave him -- he asked for a quote,
6 and I gave him this quote, and I tried to stick as
7 closely as possible to previous findings of the
8 Court, and that is what I did.

9 645 Q. And that Mr. "Glassman is unable
10 to accept his own failures", that is what you
11 wanted Mr. Livesey to write; correct?

12 A. I gave him a quote in its
13 entirety, and to the best of my recollection, that
14 sentence is -- mirrors the findings of Justice
15 Newbould.

16 646 Q. And I am going to suggest to you
17 that really what is going on is you wanted to get a
18 positive story out about West Face and a negative
19 story against Catalyst, Callidus, and Mr. Glassman;
20 that's correct, right?

21 A. To repeat, I didn't know what the
22 story was going to be, but I put my best foot
23 forward in terms of telling my side of the story,
24 and I assumed that there would be another side of
25 the story accounted for in the article. And I was

1 asked for a quote, and so in the quote I said that
2 we at all times acted ethically and legally, which
3 is a finding of Justice Newbould.

4 In contrast, the courts made findings
5 of credibility against the principals of Catalyst,
6 and I understand that to be true as per each of the
7 principals of Catalyst. I understand Justice
8 Newbould said that, you know, he found that
9 Glassman was unable to accept that he was
10 outsmarted by somebody else and failed as a result
11 of his own actions, so I understood that to be a
12 true finding.

13 And then the quote attributed to me,
14 that Mr. Glassman chose to lash out and cast
15 aspersions on ourselves and certainly continued to
16 do that all the way through Project Maple Tree, and
17 I would say quite maliciously attacked a young
18 former employee who was found by Justice Newbould
19 to have -- who was exonerated by Justice Newbould
20 in the proceedings.

21 And then finally, Mr. Glassman did make
22 a statement accusing the courts having strong
23 evidence of potential...[inaudible]

24 [Court Reporter intervenes for
25 clarification.]

1 I think we are okay up until -- so I'll
2 repeat. And then finally, Mr. Glassman made a
3 statement to the press accusing the Court of having
4 strong evidence of potential bias, so that is a
5 factual statement.

6 So in summary, Mr. Callaghan, I tried
7 to stick very closely to the facts. I was very
8 concerned about the litigation chill, libel chill,
9 that we were experiencing, and I was very careful
10 in my communications with Mr. Livesey as a result.

11 And this quote was meant to, as much as
12 possible, tell my side of the story while
13 retaining, I would say, the high ground and
14 sticking to the facts. And that is why I have
15 the --

16 647 Q. So to go back to my question, your
17 intention was to have a positive story about you
18 and West Face and a negative story against
19 Mr. Glassman, Catalyst, and Callidus; that's
20 correct, right? That is what you are telling us,
21 to be clear?

22 A. I had -- I disagree with the word
23 "intention". I am not trying to be difficult. I
24 was telling my side of the story to the press, and
25 I had no control over the article. I didn't know

1 advisement.

2 BY MR. CALLAGHAN:

3 669 Q. So was there some understanding
4 that you would share in a common interest privilege
5 with Mr. Levitt the same documents you would
6 provide to Mr. Livesey?

7 A. I am not aware of any agreement.
8 I would say almost most certainly not. We had no
9 agreements to share information with anybody. We
10 occasionally did with individuals, and certainly in
11 my case, I kept, for example, Mr. Levy apprised of
12 our litigation and vice versa. But we had no
13 agreements that I am aware of to share information
14 with anybody.

15 670 Q. All right. And yet you did;
16 correct? You did share information; correct?

17 A. We occasionally shared publicly
18 available information with individuals in which,
19 you know, we were locked in litigation with
20 Catalyst and Callidus, and we had overlapping
21 facts, and to the extent information was helpful to
22 our case, we attempted to collect it, and that is
23 what we were doing.

24 671 Q. So if I could take you to document
25 87. This is a message from Mr. McFarlane to

1 Mr. Nathan Anderson; do you see that?

2 A. I do.

3 672 Q. Okay. And here it is that
4 Mr. McFarlane is telling Mr. Anderson:

5 "[...] I will start building
6 out this data room for you. The
7 initial batch of documents are in
8 support of the Ontario Securities
9 Commission Whistleblower complaint
10 that was recently filed by myself."

11 Do you see that?

12 A. I do.

13 673 Q. All right. And did you have any
14 information about Mr. McFarlane's whistleblower
15 complaint?

16 A. Not to the best of my knowledge,
17 no.

18 674 Q. And did you have access to any
19 Dropbox that was relating to these borrowers?

20 A. No, I did not.

21 675 Q. What about a data room? Any data
22 room?

23 A. No, we had no access to any data
24 room or Dropbox or any other medium of sharing
25 files with any of our co-Defendants that I am aware

1 of. And by "medium of sharing files", I mean other
2 than the stuff that we have produced through
3 emails, but I am talking about Dropbox or any
4 equivalent of Dropbox.

5 MR. MILNE-SMITH: And just for the sake
6 of completeness, there was, of course, the publicly
7 available website containing court filings by all
8 parties that West Face maintained and still
9 maintains.

10 BY MR. CALLAGHAN:

11 676 Q. So, I'm sorry, I am not asking
12 you, Mr. Milne-Smith, but was that website -- the
13 Catalyst litigation website, was that a joint
14 website, Mr. Boland, or was that done by West Face
15 alone?

16 A. It was done by West Face alone.

17 677 Q. So if I could take you to tab 100,
18 and this is an email -- sorry, it is not up yet.
19 This is an email dated December 7th from
20 Mr. McFarlane to Mr. Levitt and Mr. Nathan
21 Anderson, and it says in the second line:

22 "Darryl, it might also be
23 helpful to connect Nathan with West
24 Face."

25 Do you see that?

1 A. I do.

2 678 Q. And did you get connected with
3 Nathan Anderson?

4 A. Nathan Anderson contacted me at
5 some point by telephone. I don't remember the
6 exact date or whether it corresponds to this email,
7 but he called on some date that I don't know if we
8 have a record of, but yes, he called me.

9 679 Q. Was it around December of 2016, or
10 was it later?

11 A. I don't remember when he actually
12 called -- contacted me.

13 680 Q. And how many times did he speak
14 with you?

15 A. I am guessing -- it is hard to say
16 for sure, but it was, you know, a small handful.
17 We didn't talk very much. He contacted me and
18 introduced himself, asked if I had, you know,
19 anything I could help him with, and I directed him
20 to the public record.

21 681 Q. So you understood him to be a
22 whistleblower and a short seller?

23 A. I don't think I understood him to
24 be a short seller. He introduced himself as a
25 forensic investigator who investigated frauds. I

1 don't know if he mentioned short-selling or not. I
2 don't recall him doing so. He said by way of
3 reference that he had recently investigated a
4 company called Platinum Partners and his attention
5 had been drawn to Callidus Capital, and it had a
6 lot of analogs to that situation, and he believed
7 it to be suspect in some way -- I don't know what
8 term he used -- and was investigating the situation
9 and asked if I had anything to -- you know, that
10 could assist him, or if I could point him in the
11 right direction I think is what he asked.

12 682 Q. So am I to understand that you
13 understood he was in the whistleblower business but
14 not the short-selling business; is that correct?

15 A. If my memory is correct, he
16 introduced himself as a professional whistleblower,
17 and I wasn't sure what that meant. I think he
18 described it to me as somebody who makes
19 whistleblower complaints and then is able to
20 collect some portion of a fine or something. I
21 think he was speaking largely within the U.S.
22 context, so I think he probably described a little
23 bit of that. I don't recall him ever mentioning
24 short-selling, at least I don't recall that.

25 683 Q. And by this time you understood

1 that the whistleblowing situation would be on
2 Callidus, correct, and Catalyst?

3 A. Yeah, it wasn't clear to me
4 actually what his -- I think he was talking about
5 Callidus and Catalyst combined, but, you know, I
6 can't remember exactly what the focus of the
7 introduction was.

8 684 Q. Well, we looked yesterday at
9 documents, including on your Schedule B, that would
10 suggest that you are aware that Mr. Levitt and his
11 group were going to address the OSC. Did you not
12 understand that that was part of what Mr. Nathan
13 Anderson was going to do, whistleblow on Callidus
14 to the OSC?

15 A. My understanding was that he was
16 investigating the situation. I don't know whether
17 that investigation would have terminated in
18 anything that he did for a living. My
19 understanding was that the only way that he could
20 get paid was to make bona fide, accurate
21 whistleblower complaints that ultimately culminated
22 in a regulatory action that produced a fine, and so
23 by definition could only profit from whistleblower
24 reports.

25 Whether or not he ever got to the

1 position where he felt that the threshold required
2 to file a report would have been met was not
3 something that I had any understanding on or
4 transparency on, and I think when he contacted me,
5 I think he indicated he was just starting, because
6 I think he called me to ask for orientation on the
7 matter. So I think it would have been quite a
8 stretch to presume that he was going to file
9 anything -- certainly file anything.

10 685 Q. And when he introduced himself,
11 did he tell you he was calling at the behest of
12 Mr. McFarlane or Mr. Levitt or both?

13 A. No, he didn't.

14 686 Q. Did you not understand that he was
15 associated with Mr. McFarlane and Mr. Anderson?

16 A. To the best of my recollection,
17 that never came up.

18 687 Q. It never came up that he was
19 associated with Mr. McFarlane or Mr. Levitt ever?

20 A. To the best of my recollection,
21 certainly in the initial conversation I don't
22 believe that anybody else's name came up. I think
23 my recollection of the conversation is he
24 introduced himself as a U.S. forensic investigator.
25 I think he mentioned that he did due diligence on

1 728 Q. So regarding Ms. McNish, in
2 paragraph 129 of your affidavit, you indicated that
3 you spoke with her sometime in early 2017, if I
4 understand --

5 MR. MILNE-SMITH: Which affidavit?

6 MR. CALLAGHAN: I'm sorry?

7 MR. MILNE-SMITH: Which affidavit?

8 MR. CALLAGHAN: I believe it is his
9 first affidavit.

10 MR. MILNE-SMITH: Okay.

11 THE DEPONENT: Could you pull that up
12 for me, please?

13 BY MR. CALLAGHAN:

14 729 Q. Do you want -- do you have yours
15 handy there, Mr. Boland, or not?

16 A. I could probably dig it up.

17 MR. MILNE-SMITH: It is the November 8,
18 2019, affidavit, Mr. Boland.

19 BY MR. CALLAGHAN:

20 730 Q. Correct. Paragraph 129, I believe
21 is --

22 A. Paragraph 129? Okay. Yes.

23 731 Q. Do you have any notes of this
24 meeting?

25 A. No, I do not.

1 732 Q. Or call? Is it a call or at a
2 meeting? Sorry, I should ask the question.

3 A. I was trying to remember which it
4 was. I believe it was a brief meeting.

5 733 Q. Was it at your office, or was it
6 at another location?

7 A. I believe so, yes. I believe it
8 was at my office.

9 734 Q. So she would have contacted you in
10 advance to set that up?

11 A. I presume so, yes.

12 735 Q. All right. And how long was the
13 meeting, to your recollection?

14 A. It was very short. My
15 recollection is -- I assume she contacted me by
16 telephone because we don't have an email record of
17 the meeting request, unless I am mistaken and it is
18 in the record, but she called and asked to attend
19 our office. She didn't say what about. And then
20 she asked whether I could corroborate the existence
21 of investigations by the OSC and Toronto Police
22 into Catalyst or Callidus, and I told her I could
23 not. And that was --

24 736 Q. And when you --

25 A. The meeting ended shortly

1 thereafter.

2 737 Q. So when did the meeting occur?

3 A. I don't know. It is -- early in
4 2017 is the best we could dig up for the affidavit.

5 738 Q. Would you have a log at your
6 office of booking a meeting room, by way of
7 example?

8 A. We have done our best to determine
9 the date, and this is the best that we could do.

10 739 Q. And you go on to say that:

11 "[...] neither I nor anyone at
12 West Face was a source for the
13 Article [...]"

14 Do you see that?

15 A. I do.

16 740 Q. All right. And you are
17 comfortable that nobody at West Face other than you
18 spoke to Ms. McNish?

19 A. I am comfortable -- I am
20 comfortable with that, certainly not around this
21 article.

22 741 Q. Well -- all right. So in 2017,
23 prior to the article, were you speaking to her
24 about other matters?

25 A. That is possible. I can't rule

1 that out, but I know when she started writing this
2 article, she was focussed on this whistleblower,
3 OSC, Toronto Police angle, and we had no knowledge
4 or anything that we could do to corroborate the
5 existence of those investigations. But whether she
6 called me on an unrelated situation is something I
7 can't rule out, but I don't have a record of.

8 742 Q. In her testimony, she said she
9 spoke to you June or July. Would that be wrong?

10 A. That could be, yes.

11 743 Q. That could be that it is June or
12 July, or she is wrong?

13 A. No, no, it -- I don't -- so all I
14 know is sometime early in 2017 was my recollection.
15 We don't have an independent record of when she
16 attended the office. If she has a record that says
17 it is June or July, then I have got no reason to
18 dispute that.

19 744 Q. Well, I would suggest to you by
20 June or July you would have been aware that they
21 had gone to see the OSC in December. You would
22 have been aware of the Toronto Police in April.
23 And I suspect you were also aware of the OSC filing
24 in May, were you not ?

25 A. I don't believe I was aware of --

1 specifically of anything. As I said, I had a vague
2 understanding that there might be some bona fide
3 concerns that may culminate in an approach to
4 somebody, whether it is a RICO action or OSC or
5 SEC.

6 But when a journalist asked me to
7 corroborate whether or not any of these things were
8 actually happening, I had no actual knowledge -- I
9 personally had no actual knowledge and refused to
10 corroborate the information.

11 745 Q. Were you on the record or off the
12 record?

13 A. I don't think I appeared in the
14 article at all, so --

15 746 Q. No, but when you spoke to her, did
16 you say -- were you speaking to her on the record,
17 or did you tell her it was off the record, or do
18 you recall?

19 A. I don't recall. I think the
20 understanding was -- I mean, she asked a question,
21 could I corroborate. I assume it was off the
22 record.

23 747 Q. Did she tell you that she had
24 spoken to any of the whistleblowers, like Mr.
25 Levitt or Mr. Levy or Mr. McFarlane?

1 A. My understanding of the
2 conversation was she attended our office, asked us
3 to corroborate the existence. We couldn't
4 corroborate it. We may have had some small talk
5 afterwards, but she left shortly thereafter. We
6 didn't delve into any of those topics.

7 748 Q. Okay. So when you say "we", is
8 that you? I just want to be clear.

9 A. Yes, me.

10 749 Q. Right. You alone?

11 A. I believe I was alone, yes.

12 750 Q. And so did you offer to provide
13 her any information?

14 A. No, I did not.

15 751 Q. Did you say -- did you not offer
16 to help her with her investigation in the same way
17 that you say she was going to help you with your
18 investigation in 2014 or you tried to get her to
19 help you with the investigation?

20 A. No, it seemed that her article --
21 and again, she is quite a professional journalist
22 and very careful about how she speaks and so
23 obviously was not -- or not obviously, but she
24 wasn't forthcoming with a direction, but her
25 questions indicated that she was very focussed on

1 an area which I had no information or anything to
2 add to, and so I did not offer to help her.

3 752 Q. And she has claimed that you are a
4 source and hasn't provided any clarity on her notes
5 as to where they are, but I am going to show you
6 one of her notes. I am not sure whether this is --
7 is this a new exhibit or is this a tab? This will
8 be a new exhibit, I think. I don't think we have
9 got it in our book. It is the notebook of, I
10 understand, Ms. McNish, and it is at page 53.

11 [Court Reporter intervenes for
12 clarification.]

13 BY MR. CALLAGHAN:

14 753 Q. I am being given a number that I
15 think corresponds to the productions. It is
16 DOW001020, so I think that we as a group can find
17 it. It will be added to Exhibit 1, so it will be
18 the back of Exhibit 1.

19 So I am just interested -- you will see
20 these notes, and it says "CanLII", "Glassman",
21 "Laura MacDonald". There is "Dewerth". It even
22 would appear to have the name "Kent" under the line
23 there. Did you talk to her about your research on
24 Mr. Glassman?

25 A. I don't believe I did.

1 754 Q. All right. Do you know if anybody
2 on behalf of West Face spoke to her about your
3 research?

4 A. I am not aware of any
5 communications to that effect.

6 755 Q. And just to confirm, did you have
7 any communication with Mr. Copeland?

8 A. No, I did not.

9 756 Q. And to your knowledge did
10 anybody -- or can you confirm, I should say,
11 whether anybody at West Face did?

12 A. I am not aware of it. I am not
13 aware of any communication from Mr. Copeland.

14 757 Q. But as a West Face representative,
15 are you able to tell us that the only communication
16 between West Face personnel and The Wall Street
17 Journal was your communication with Ms. McNish that
18 you just told me about?

19 A. That is the only communication
20 that I am aware of, and we did -- obviously
21 interviewed individuals and did very in-depth
22 document searches, and we uncovered no
23 communication with Mr. Copeland.

24 758 Q. But you have spoken to Mr. Griffin
25 and Mr. Dea and your other partners as to what --

1 A. Yes.

2 759 Q. Okay. So I just want to talk
3 about Mr. Langstaff again. So if we could go to
4 tab 101, and this is you providing Bruce Langstaff
5 with a Dropbox; do you see that?

6 A. I do.

7 760 Q. All right. And this has to do
8 with, I assume, documents from Esco Marine?

9 A. I can't -- oh, okay. It says
10 "Esco". Yes, I see that now. It looks like --
11 yes, it looks like some of the court documents that
12 were on the public court record.

13 761 Q. All right. And did you -- I am
14 going to show you, back to your Schedule B, a
15 document -- oh, I'm sorry. My apologies.
16 WFC032587. Now, this is an email that is
17 purportedly from Mr. Levitt to Mr. Milne-Smith and
18 Mr. Panet enclosing a court document, "Esco
19 Callidus opposition". And you will see -- the next
20 day you will see another one, a document from
21 Mr. Panet, and it would appear to have you as one
22 of the recipients. I don't know if that is the
23 totality, and then it says --

24 MR. MILNE-SMITH: Where is the --

25 MR. CALLAGHAN: -- the Esco --

1 821 Q. All right. And you also gave
2 evidence partway through the day yesterday about
3 fiduciary duties to your LPs, and you were quite
4 adamant at rejecting any suggestion that LP assets
5 or investor assets were being used in any way to
6 fight the battle, if I can put it that way, with
7 Mr. Glassman. Do you recall you were giving
8 evidence to that effect?

9 A. Yeah, I think my evidence was that
10 the short-selling we did was entirely for
11 investment purposes and not part of a vendetta, and
12 we take our fiduciary responsibility in that
13 respect seriously.

14 822 Q. I understood your evidence to go
15 on to say that you weren't incurring any costs or
16 exhausting or using any LP or investor assets for
17 the purposes of any private dispute with
18 Mr. Glassman. That is what I understood your
19 evidence to include as well?

20 A. My evidence was -- if we can go
21 back to the transcript, maybe we can review what it
22 is you think I said.

23 MR. MILNE-SMITH: The transcript will
24 say what it says, Mr. Moore. What is your
25 question?

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

**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

and

CANACCORD GENUITY CORP.

Third Party

A N D B E T W E E N:

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

- 2 -

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

A N D B E T W E E N:

BRUCE LANGSTAFF

Plaintiff by Counterclaim

and

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION
Defendants to the Counterclaim

UNDERTAKINGS, QUESTIONS TAKEN UNDER ADVISEMENT, AND REFUSALS
given at the Cross-Examination of Greg Boland held December 9 and 10, 2020
(cross-examination by counsel to the Catalyst Parties)

Table 1: From the Cross-Examination of Gregory Boland held on Wednesday, December 9, 2020

No.	Page	Question(s)	Category (ADV/REF/UT)	Specific Question	Answer or Precise Basis for Refusal	Catalyst Parties' Position Asserted Friday, February 5, 2021	West Face Parties' Supplemental Answers and Positions delivered Wednesday, February 10, 2021
1.	12	23	ADV	To advise of the nature of West Face's registrations with both the Ontario Securities Commission and the United States Securities and Exchange Commission.	<p>Information concerning West Face's Canadian securities registrations is publicly available, including at the website of the Canadian Securities Administrators (https://www.securities-administrators.ca/nrs/nrsearchprep.aspx).</p> <p>As shown on that website, West Face is registered in the Provinces of Ontario, Quebec, Alberta, British Columbia, and Manitoba as a portfolio manager, investment fund manager, and exempt market dealer.</p> <p>West Face is not registered as an adviser in the United States, but has status as a (foreign) exempt reporting adviser.</p>	n/a	n/a
2.	19	50	ADV	To advise if West Face has ever defaulted on a short transaction.	<p>To the best of West Face's knowledge, West Face has never defaulted on a short transaction.</p> <p>Furthermore, West Face has never engaged in a naked short transaction. West Face's operating procedure is that before issuing an instruction to an executing broker to engage in a short sale, it ensures that shares are available to borrow.</p>	n/a	n/a
3.	22	61-62	ADV	To advise whether the short transactions West Face engaged in pertaining to Callidus are listed in the Portfolio Track Record, October 1, 2007 to December 31, 2017 (Tab 1), and if so, to identify them.	West Face's short transactions of Callidus shares are listed as Equity (Inv# 238) on page 13 of the Portfolio Track Record.	n/a	n/a
4.	38	85	ADV	To advise whether Mr. Langstaff or Canaccord had any involvement in the transactions engaged in by West Face to short Callidus.	No, Mr. Langstaff and Canaccord had no involvement in West Face's transactions to short-sell shares of Callidus.	n/a	n/a

5.	54	155	REF	To advise whether West Face's deck concerning Callidus was ever sent to Davies for review.	<p>This question is not relevant to either the Wolfpack Action or to West Face's and Mr. Boland's Counterclaim in these proceedings. This question is relevant only to the Veritas Action (and to the concluded Moyse Action).</p> <p>Without prejudice to that position, and without in any way waiving or intending to waive solicitor-client and/or litigation privilege, West Face's deck concerning Callidus was provided to West Face's counsel at Davies in late 2014.</p> <p>West Face and Mr. Boland do not waive or intend to waive any privilege over the content of any legal advice they may have sought or received concerning West Face's deck concerning Callidus.</p>	n/a	n/a
6.	62	181	REF	To advise whether or not West Face used proprietary tools in conducting its research in Callidus.	<p>This question is not relevant to either the Wolfpack Action or to West Face's and Mr. Boland's Counterclaim in these proceedings. This question is relevant only to the Veritas Action (and to the concluded Moyse Action).</p> <p>In any event, this question was asked and answered by Mr. Boland.</p> <p>As first stated by Mr. Griffin in his Affidavit dated March 7, 2015 (which was first delivered by West Face in the context of the now-dismissed Moyse Action, and upon which Affidavit Mr. Griffin was cross-examined on May 8, 2015), "some of" (and therefore not all of) the research tools used by West Face to identify Callidus's borrowers were proprietary to West Face.</p> <p>As Mr. Boland explained in his own cross-examination when asked about this statement in Mr. Griffin's March 7, 2015 Affidavit, West Face used "a blend of proprietary and non-proprietary analysis."</p> <p>As further explained in Mr. Griffin's March 7, 2015 Affidavit, West Face used exclusively public sources of information for its analysis of Callidus. While West Face believes that some of its research tools are unique to it and therefore "proprietary", anyone was capable of conducting the very same research had they thought to do so.</p>	n/a	n/a
7.	79	240	ADV	To produce any drafts and any metadata associated with the attachment to the email to Mr.	This question is not relevant to either the Wolfpack Action or to West Face's and Mr. Boland's Counterclaim in these proceedings.	n/a	n/a

				Dummett of December 9, 2014 (Tab 8).	<p>This question is relevant only to the Veritas Action.</p> <p>In any event, West Face has produced (in the Veritas Action) all available metadata concerning this email and its attachment, including by producing the native version of the email Mr. Boland sent to Mr. Dummett.</p> <p>West Face has also produced (in the Veritas Action) all drafts of its research report concerning Callidus.</p>		
8.	101-102	298	REF	To advise whether the "some" referred to in Mr. Dummett's and Ms. Cherney's article (as contained in the email to Mr. Boland at Tab 60) refers to Mr. Boland.	<p>This question is not relevant to either the Wolfpack Action or to West Face's and Mr. Boland's Counterclaim in these proceedings. This question is relevant only to the Veritas Action.</p> <p>West Face and Mr. Boland have no knowledge whether the "some" referred to in Mr. Dummett's article of May 12, 2015 referred to Mr. Boland, or more generally what was intended or referred to by the word "some" in Mr. Dummett's and Ms. Cherney's article from five years ago.</p>	n/a	n/a
9.	124	368	ADV	To advise as to whether anyone at West Face provided any comments to Journalist Amber Kanwar in respect of the article published by BNN / Bloomberg on March 30, 2015.	<p>This question is not relevant to either the Wolfpack Action or to West Face's and Mr. Boland's Counterclaim in these proceedings.</p> <p>No one at West Face provided any comments to Ms. Kanwar in respect of the article published by BNN / Bloomberg on March 30, 2015.</p> <p>Notably, Mr. Riley attached a copy of Ms. Kanwar's article as Exhibit B to his Affidavit dated May 1, 2015 that he delivered in the context of the Moyse Action. Mr. Riley therefore effectively "re-published" this article himself, shortly after it was first published. Catalyst had an opportunity to cross-examine Mr. Griffin on that article at his cross-examination on May 8, 2015 and chose not to do so.</p>	n/a	n/a
10.	125	371	ADV	To produce all drafts and metadata associated with West Face's deck concerning Callidus.	This question is not relevant to either the Wolfpack Action or to West Face's and Mr. Boland's Counterclaim in these proceedings.	n/a	n/a

					<p>This question is relevant only to the Veritas Action (and to the Moyse Action).</p> <p>In any event, West Face has produced (in the Veritas Action) all such documents, including in their native form (and thus with any available metadata).</p>		
11.	128	378	ADV	To produce copies of the Offering Memorandums for the West Face funds.	West Face will produce copies of the Offering Memorandums concerning its funds provided that the Catalyst Parties agree to make the same production for each of their funds, in connection with the upcoming examination of Mr. Glassman.	n/a	n/a
12.	129	382-384	ADV	To produce copies of the telephone records between West Face and any of the Defendants from the beginning of 2014.	<p>Refused on the basis of irrelevance and disproportionality to the issues on the Anti-SLAPP Motions.</p> <p>West Face had tens if not hundreds of thousands of telephone calls over the 7-year period from the beginning of 2014 to present. It would take extensive time and effort to try to reconstruct which of these telephone records pertain to calls with the many Defendants to this action.</p> <p>Furthermore, West Face, Mr. Boland, and Mr. Panet have answered all questions concerning their communications with other Defendants, including concerning their telephone conversations with them, and Mr. Boland and Mr. Panet each advises that he does not believe his recollection of the content or substance of his telephone communications with the other Defendants, if any, will be refreshed by reference to any phone records that might exist.</p> <p>The Catalyst Parties have not disclosed or produced copies of any of their telephone records with each other or with the other parties to these proceedings. If West Face is compelled to produce such phone records, it will similarly expect the Catalyst Parties to produce complete telephone records with all Counterclaim Defendants from 2017 to 2020, in connection with the upcoming examination of Mr. Glassman.</p>	<p>Please provide West Face's telephone records from Nov 2016 to August 2017 with the following persons:</p> <ol style="list-style-type: none"> 1. whistleblowers (Anderson, Levitt); 2. Copeland and McNish; 3. other anti-SLAPP defendants; and 4. the defendants to the action. 	<p>The answer and position of the West Face Parties has not changed. The refusal is maintained on the basis of irrelevance and disproportionality to the issues on the Anti-SLAPP Motions.</p> <p>As previously advised, West Face, Mr. Boland, and Mr. Panet have answered all questions concerning their communications with other Defendants, including concerning their telephone conversations with them, and Mr. Boland and Mr. Panet each advises that he does not believe his recollection of the content or substance of his telephone communications with the other Defendants, if any, will be refreshed by reference to any phone records that might exist.</p> <p>The Catalyst Parties have not disclosed or produced copies of any of their telephone records with each other or with the other parties to these proceedings, including none of their phone records with:</p> <ol style="list-style-type: none"> 1. Virginia Jamieson; 2. Emmanuel Rosen; 3. Black Cube; 4. Psy Group; and 5. Yosef (Yossi) Tanuri and/or Tamara Global,

							including over the (narrower) time period from August 1, 2017 to December 29, 2017 (inclusive). The West Face Parties should only be compelled to produce the requested phone records once the Catalyst Parties (including each of Catalyst, Callidus, and Messrs. Glassman, Riley, and De Alba), produce their complete cell/mobile phone and other phone records with the above-noted parties during the (narrower) time period from August 1, 2017 to December 29, 2017.
13.	131-132	389-391	ADV	To produce copies of Mr. Boland's instant messages with any of the defendants, or with Mr. Levy and Mr. Jaross or, if Mr. Boland thinks he exchanged text messages with these individuals that no longer exist to advise of same.	Mr. Boland does not recall ever having exchanged any text messages with any of the Defendants, Mr. Levy and/or Mr. Jaross during the time period prior to the commencement of the Moyse Action. In any event, West Face and Mr. Boland do not have any such text messages in their possession, control or power.	The answer provided is not responsive to the question. The question was not restricted to the "time period prior to the commencement of the Moyse Action". Does Mr. Boland recall exchanging text messages with any of the defendants, or Mr. Levy and Mr. Jaross, prior to this action? To the extent that Mr. Boland had text exchanges with these individuals, which he no longer has, to advise of the circumstances under which he ceased to have possession of those documents.	The initial answer was meant to refer to the Wolfpack Action, not the Moyse Action. The correct answer is: Mr. Boland does not recall ever having exchanged any text messages with any of the Defendants, Mr. Levy and/or Mr. Jaross during the time period prior to the commencement of the Wolfpack Action. In any event, West Face and Mr. Boland do not have any such text messages in their possession, control or power.
14.	132-133	392	ADV	To produce copies of Mr. Boland's communications by any medium with Ms. McNish, Mr. Dummett, Mr. Tilak and Mr. Delevingne.	Mr. Boland's relevant written communications with Ms. McNish, Mr. Dummett, Mr. Tilak, and Mr. Delevingne, if any, have been produced. To be clear, the emails between Mr. Boland and Ms. McNish and between Mr. Boland and Mr. Dummett that were produced by West Face in the Veritas Action are relevant only to the Veritas Action and not to the Wolfpack Action or to West Face's and Mr. Boland's Counterclaim in these proceedings. Mr. Boland had no written communications with Mr. Tilak or Mr. Delevingne that are relevant to	n/a	n/a

					these proceedings (or to any other proceedings for that matter).		
15.	134-135	398	ADV	To produce copies of any (non-privileged) communications dealing with Black Cube or such matters.	<p>West Face and Mr. Boland have produced all of their relevant, non-privileged communications concerning Black Cube.</p> <p>As the Catalyst Parties are well-aware, from the moment West Face and Mr. Boland learned of Black Cube's involvement, they contemplated legal proceedings against the Catalyst Parties and/or Black Cube. In that regard, please see the letter from Mr. Milne-Smith dated November 10, 2017, which West Face and Mr. Boland produced as WF009312.</p>	n/a	n/a
16.	143	422	REF	To produce copies of or disclose any communications between Davies and any of the Defendants after the commencement of litigation.	<p>Refused to the extent such documents have not already been produced and/or disclosed on West Face's and Mr. Boland's Affidavit of Documents.</p> <p>Any communications between Davies and any of the Defendants that have not otherwise been produced were for the dominant purpose of litigation.</p> <p>The Catalyst Parties have not disclosed on their Affidavit of Documents any/all of the communications between any of their various law firms (including the Gowlings, Moore Barristers, Greenspan Humphrey Weinstein, Lax O'Sullivan, and Faskens law firms) and any of the Defendants to the Counterclaim.</p> <p>If West Face is required to make such production, West Face will demand reciprocal production of all communications between all of the Catalyst Parties' many law firms and any of the Counterclaim Defendants, in connection with the upcoming examination of Mr. Glassman.</p>	n/a	n/a
17.	143-144	422	ADV	To produce copies of or disclose any communications between Davies and any of the Defendants prior to the commencement of litigation.	<p>Refused to the extent such documents have not already been produced and/or disclosed on West Face's and Mr. Boland's Affidavit of Documents.</p> <p>Any communications between Davies and any of the Defendants that have not otherwise been</p>	n/a	n/a

					<p>produced were for the dominant purpose of litigation.</p> <p>The Catalyst Parties have not disclosed on their Affidavit of Documents any/all of the communications between any of their various law firms (including the Gowlings, Moore Barristers, Greenspan Humphrey Weinstein, Lax O'Sullivan, and Faskens law firms) and any of the Defendants to the Counterclaim.</p> <p>If West Face is required to make such production, West Face will demand reciprocal production of all communications between all of the Catalyst Parties' many law firms and any of the Counterclaim Defendants, in connection with the upcoming examination of Mr. Glassman.</p>		
18.	184	526	ADV	To advise as to the facts learned by West Face from Mr. Levitt regarding Mr. Levitt's meeting with the OSC.	<p>To the best of Mr. Boland's and Mr. Panet's recollections, they did not learn any facts from Mr. Levitt regarding any meetings he had with the OSC.</p> <p>Mr. Panet understood from emails sent to him by Mr. Levitt in or around November 2016 that Mr. Levitt was seeking to meet with representatives of the OSC (some time in late 2016) concerning Catalyst and/or Callidus. Mr. Panet also may have learned at some point that Mr. Levitt had met with representatives of the OSC. However, neither Mr. Boland nor Mr. Panet recall ever being informed by Mr. Levitt what was discussed by Mr. Levitt at any of his meetings with representatives of the OSC.</p> <p>Please also see the answers given by Mr. Panet on this matter.</p>	n/a	n/a
19.	184	527	REF	To produce copies of the documents listed as WFC032591, WFC032592, and WFC032593 in Schedule B to the Affidavit of Documents of West Face and Mr. Boland.	<p>Refused. These documents are subject to common interest privilege between West Face and Mr. Levitt.</p> <p>Please also see the answers given by Mr. Panet on this matter.</p>	n/a	n/a
20.	185-186	531	ADV	To advise whether anyone at West Face received the chart referenced in an email between Mr. Levitt and Mr. Hutchinson	No one from West Face received copies of any charts from Mr. Levitt relating to his email to Mr. Hutchinson dated November 26, 2016.	n/a	n/a

21.	190-193	540-541	UT	To advise as to the time that the email listed as WFC032618 in Schedule B to West Face's and Mr. Boland's Affidavit of Documents was received.	This email was received at 11:07 am on the morning of December 3, 2016.	n/a	n/a
22.	198	555	UT	To confirm whether the email listed as WFC032577 in Schedule B to West Face's and Mr. Boland's Affidavit of Documents (Tab 145) is the same email as the email of December 3, 2016 from Mr. Levitt to Mr. Levy (Tab 95).	Yes. The email disclosed by West Face on Schedule B to its Affidavit of Documents as document WFC032577 is the email that Mr. Panet sent to Mr. Levitt on December 3, 2016 and which Mr. Levitt apparently forwarded (without copying Mr. Panet and without his knowledge) to Mr. Levy, as reflected in a number of the documents produced by the Catalyst Parties, including CAT_C_00000609, CAT_C_00001489, CAT_C_00001504, and CAT_C_00001505.	n/a	n/a

Table 2: From the Cross-Examination of Gregory Boland held on Thursday, December 10, 2020

No.	Page	Question(s)	Category (ADV/REF/UT)	Specific Question	Answer or Precise Basis for Refusal	Catalyst Parties' Position Asserted Friday, February 5, 2021	West Face Parties' Supplemental Answers and Positions delivered Wednesday, February 10, 2021
23.	220-222	604-605	UT	To provide a list of all the documents provided to and communications with Mr. Livesey.	<p>All of West Face's and Mr. Boland's written communications with Mr. Livesey prior to the commencement of the Wolfpack Action were emails, and all of these emails (and any attachments to them) were listed in Schedule A to West Face's and Mr. Boland's Affidavit of Documents and were produced to the Catalyst Parties on December 31, 2019.</p> <p>While Mr. Panet believes he may have provided Mr. Livesey with public documents, such as court documents filed by West Face and Catalyst in the Moyse Action, he has no record of what specific documents he may have provided to Mr. Livesey and thus no ability to prepare a list of any documents he may have provided.</p> <p>However, Mr. Panet confirms that any documents that he or West Face provided to Mr. Livesey would have been publicly available documents.</p>	n/a	n/a

24.	242-243	668	ADV	To confirm whether the attachment to the email from Mr. Panet to Mr. Livesey (Tab 106) is the same as the document listed as WFC032575 in Schedule B to West Face's and Mr. Boland's Affidavit of Documents (Tab 145).	The document listed as WFC0032576 on the Schedule B to West Face's and Mr. Boland's Affidavit of Documents is (as is indicated in the Doctitle field of the Schedule B) the publicly filed Complaint by Callidus against Mar Farms LLC et.al. dated January 18, 2017. As is also indicated on West Face and Mr. Boland's Schedule B, this document was attached to the email listed as WFC0032575 from Mr. Panet to Mr. Levitt sent January 20, 2017.	n/a	n/a
25.	258	702	REF	To advise whether Mr. Boland or anyone else prepared a chronology or history of events when this lawsuit was started.	As Mr. Boland stated during his cross-examination, he had not prepared for himself a chronology or history of events (other than in his Affidavits). As was otherwise explained during Mr. Boland's cross-examination, any other chronology or history of events prepared by anyone else (such as West Face's and Mr. Boland's counsel at Davies) was prepared for the dominant purpose of litigation and/or for the purpose and as part of the seeking or giving of legal advice. Thus, any such chronology would be privileged. In any event, West Face has disclosed all documents that would have been used in creating any such chronologies, and has answered questions regarding any relevant events.	n/a	n/a
26.	270	725	REF	To advise whether the Defendants sharing information amongst themselves that was provided by Mr. Boland is an example of Mr. Boland acting anonymously to get his story out about Callidus.	Mr. Boland answered this question during his cross-examination. As stated by Mr. Boland: "No, that is not what was going on".	n/a	n/a
27.	280 to 283	761 and 762	UT	To advise who the common interests are with in respect of the documents listed as WFC032587/ WFC032588 , WFC032560/ WFC032561, WFC032563/WFC032564, and WFC032565/WFC032566 in West Face's Schedule B Listing (Tab 145)	As disclosed on Schedule B to the Affidavit of Documents of West Face and Mr. Boland, WFC032587 is an email dated December 4, 2016 from Mr. Levitt to Mr. Panet and Mr. Milne-Smith the subject line: "Filed Friday". This email attached WFC032588. This email communication was subject to the common interest privilege between Mr. Levitt and West Face and its counsel, including to the terms of the written Common Interest Agreement among them and others.	n/a	n/a

					As is also apparent from the Schedule B, and as Mr. Milne-Smith explained during Mr. Boland's cross-examination, the other emails (WFC032560, WFC032563, and WFC032565) all have the same "Filed Friday" subject line and consisted of further emails exchanged between and among West Face and its internal and/or external counsel following receipt of Mr. Levitt's initial email. These emails are litigation and solicitor-client privileged and, because disclosing them would reveal Mr. Levitt's initial communication, are also subject to common interest privilege.		
28.	295 to 296 and 298 and 299	801 to 803 and 805	UA	To advise if West Face had any communications with the OSC or SEC regarding Callidus or Catalyst or any of their officers or directors and if so, to produce copies.	<p>West Face and/or Mr. Boland never made a formal "whistleblower" complaint to the OSC or to the SEC regarding any of the Catalyst Parties.</p> <p>West Face will produce its communications with the OSC and/or SEC regarding the Catalyst Parties, if any, if and only if the Catalyst Parties produce all of their communications with the OSC and/or SEC regarding West Face and/or Mr. Boland. To date the Catalyst Parties have refused to make such production.</p>	<p>The answer is not responsive to the question.</p> <p>Catalyst and Callidus have pleaded that the Defendants conspired to make allegations and file false complaints with the OSC and SEC alleging fraud and similar quasi-criminal misconduct.</p>	<p>The answer and position of the West Face Parties has not changed.</p> <p>Notably, Catalyst and Callidus did not allege in their Fresh as Amended Statement of Claim that the West Face Parties made a whistleblower complaint or any other type of complaint to the OSC or SEC in furtherance of the Alleged Wolfpack Conspiracy.</p> <p>In fact, in paragraph 70 of the Claim, Catalyst and Callidus expressly allege that the West Face Parties did not make complaints directly to the OSC or SEC. They plead that "[Mr.] Boland knew that neither he nor West Face could make complaints directly to the SEC (or to the OSC) because their involvement in litigation with Catalyst and Callidus would undermine the credibility of any complaints authored by them...".</p> <p>Moreover, the Catalyst Parties are unaware of whether the West Face Parties had any communications with or made any complaints to the OSC or SEC regarding them precisely because, to the best of West Face's and Mr. Boland's knowledge, no such communications or complaints, were ever "leaked" to the press or otherwise similarly circulated. Thus, such communications or complaints, if any, would be of no relevance to the Catalyst Parties' Alleged Wolfpack Conspiracy.</p> <p>Indeed, as set out in paragraphs 41 to 56 of the Endorsement of Justice Wilton-Siegel in <i>The Catalyst Capital Group Inc. v. West Face Capital Inc.</i>, 2019 ONSC 128, at the hearing of certain defendants' motion to strike the Catalyst Parties' claim on October 29, 2018, counsel to the Catalyst Parties' conceded in oral argument that the Catalyst Parties were not alleging defamation in respect of</p>

							<p>communications to the OSC (which Justice Wilton-Siegel had made clear during oral argument, and later confirmed in his subsequent written Endorsement, were subject to an absolute privilege and not actionable). Instead, the Catalyst Parties made clear that the substance/content of any complaints to the OSC was only relevant to the extent that the existence and/or content of the complaint was then communicated to third parties, such as Rob Copeland of the Wall Street Journal, Bruce Livesey, or Reuters. Counsel to the Catalyst Parties' then expressly advised His Honour that the Catalyst Parties would amend their pleading to make their pleading clearer. The Catalyst Parties then did so (multiple times), and the current pleading makes no reference to "non-whistleblower" complaints made by the West Face Parties to the OSC and/or SEC – and instead alleges precisely the opposite as set out above.</p> <p>Having failed to discover any evidence supportive of their claim against the West Face Parties, the Catalyst Parties are on a fishing expedition for documents that are inconsistent with their own allegations and representations to the Court.</p>
29.	299	806	UA	<p>To expand the above enquiry to communications with respect to Catalyst or Callidus involving IMET, JSOT or the Metro Police.</p>	<p>West Face and Mr. Boland had no communications with respect to Catalyst or Callidus (or any of their principals) with IMET, JSOT, or the Toronto police during the relevant time period (<i>i.e.</i>, prior to the publication of the WSJ Article on August 9, 2017).</p> <p>West Face and Mr. Boland understand that at some point <i>after</i> the publication of the WSJ Article, the Catalyst Parties sought to have IMET, JSOT and/or the Toronto Police investigate West Face and/or Mr. Boland, including by making false and unfounded complaints to those authorities that West Face and/or Mr. Boland. West Face and Mr. Boland had communications with the authorities in the course of responding to those false complaints.</p> <p>West Face will produce its communications with IMET, JSOT and/or the Toronto Police regarding the Catalyst Parties, if any, if and only if the Catalyst Parties produce all of their communications with IMET, JSOT and/or the Toronto Police regarding West Face and/or Mr. Boland. To date the Catalyst Parties have refused to make such production.</p>	See No. [28] above.	<p>The answer and position of the West Face Parties has not changed.</p> <p>To be clear, the West Face Parties' position is that none of their post-August 2017 communications with respect to Catalyst or Callidus (or any of their principals) with IMET, JSOT, or the Toronto police are relevant.</p> <p>However, West Face will produce such communications with IMET, JSOT and/or the Toronto Police regarding the Catalyst Parties, if any, if and only if the Catalyst Parties produce all of their communications with IMET, JSOT and/or the Toronto Police regarding West Face and/or Mr. Boland. To date the Catalyst Parties have refused to make such production.</p>

30.	303 to 305	814 and 815	UT	To advise who on behalf of West Face signed the common Interest and Confidentiality Agreement referred to in WFC032571/WFC032573 in West Face's Schedule B Listing (Tab 145)	Mr. Panet signed this agreement on behalf of West Face.	n/a	n/a
31.	305 to 307	816 and 817	UA	To provide the facts contained in any chronology, outline, recital of the history, or overall detailed factual summary of events prepared by West Face or Davies has prepared	West Face and Mr. Boland have and will continue to answer proper questions concerning specific facts and to produce all relevant documents. They have no obligation to prepare and provide to the Catalyst Parties a detailed factual chronology, outline, or summary of facts or events. In any event, any such chronologies would be privileged.	n/a	n/a
32.	308	819	UA	To advise of the SEC policy that required West Face to present its "track record" in the manner set out in the West Face Long Term Opportunities Fund Portfolio Track Record Document October 1, 2007 - December 31, 2017 (Tab 1) as referenced by Mr. Boland at Q. 33 of his cross-examination on December 9, 2020.	In asking this question, Mr. Moore mischaracterized Mr. Boland's evidence from the day before. As Mr. Boland explained to Mr. Moore during his cross-examination, he did not and was not referring to a "specific SEC policy" that required West Face to present its track record in the manner or form set out in the West Face Long Term Opportunities Fund Portfolio Track Record Document October 1, 2007 - December 31, 2017. It is more accurate to simply state that West Face presented its track record in a manner that, to the best of its knowledge, was not prohibited or prescribed by, and therefore complied with, <u>all</u> applicable SEC laws, regulations, policies, guidelines, etc.	Mr. Moore did not mischaracterize Mr. Boland's evidence. Mr. Boland's evidence at Question 33 of his examination was that: "...we decided that it would be best suited to do the things on a go forward basis that we did most successfully, <u>and so pursuant to SEC guidelines</u> , we produced a track record that was pertinent to a go-forward strategy that we were marking as part of the new fund as opposed to the consolidated portfolio record that we were not marketing. And so this is the subset of investments that we had done historically that would map to the new strategy. <u>So you are required by the SEC to market your track record in a fashion that is coherent with the product that you are marketing...</u> Please identify the specific policies or guidelines being referred to.	As previously advised, Mr. Boland was not referring to specific policies or guidelines. As a general matter, West Face's track record was presented in a manner consistent with all applicable SEC laws, regulations, policies and guidelines.
33.	310	824	UA	To advise if West Face has received any complaints from any of its LPs about anything related to this litigation.	None of Mr. Boland, Mr. Panet, nor Stephen Miller, West Face's Chief Compliance Officer, are aware of West Face having received or been the subject of any formal complaint by	n/a	n/a

					<p>any of its LPs about anything related to this litigation.</p> <p>This question is otherwise refused on the basis of irrelevance and disproportionality to the issues in the Anti-SLAPP Motions. Answering this question more fully would require West Face to engage in a fishing expedition of all of its communications from LPs over a more than six-year time period (i.e., since Catalyst first launched the Moyse Action against West Face in June 2014).</p> <p>If West Face is required to make such production, West Face will demand reciprocal production from the Catalyst Parties of all complaints from any of their respective investors, in connection with the upcoming examination of Mr. Glassman.</p>		
34.	310	827	UA	To advise whose handwriting is at the top of the page of the version of Catalyst's March Investor Letter that West Face and Mr. Boland produced as WF001268.	<p>West Face and Mr. Boland do not know whose handwriting is on the top of the version of the March Investor Letter that West Face produced as WF001268.</p> <p>The handwriting does not belong to anyone at West Face or Davies.</p>	n/a	n/a
35.	315 and 316	841	UA	To make specific inquiries and determine if Mr. Griffin and Mr. Dea had any discussion with Mr. Brimm about the contents of his Affidavit sworn December 21, 2017.	<p>Mr. Griffin and Mr. Dea have confirmed that they had no discussions with Mr. Brimm about the contents of his Affidavit sworn December 31, 2017.</p> <p>Please also see the Affidavit of Philip Panet dated December 16, 2020.</p>	n/a	n/a
36.	316	842	RF	To advise who is funding the West Face counterclaim.	<p>Refused. This question is irrelevant to the issues on the Anti-SLAPP Motion.</p> <p>If West Face is required to answer this question, West Face will demand that the Catalyst Parties advise who is funding their litigation, in connection with the upcoming examination of Mr. Glassman.</p>	n/a	n/a
37.	316	842	RF	To advise who is funding any aspect of this action.	<p>Refused. This question is irrelevant to the issues on the Anti-SLAPP Motion.</p> <p>If West Face is required to answer this question, West Face will demand that the Catalyst Parties advise who is funding their litigation, in connection with the upcoming examination of Mr. Glassman.</p>	n/a	n/a
38.	323 and 324	855	RF	To advise if Mr. Boland would receive reports from individuals at West Face if important facts came to light or important events occurred during this litigation.	<p>As Mr. Boland explained during his cross-examination, "in certain cases [Mr. Boland] would be kept apprised and informed and in other cases [he] would not be".</p>	n/a	n/a

					Please also see the response to question no. 34 below.		
39.	324 and 325	856 and 857	RF	To advise of whether there was a process for Mr. Boland to receive regular reports about this litigation.	There was (and is) no formal reporting process by which Mr. Boland receives regular reports about the litigation. Members of Davies and/or Mr. Panet communicate with Mr. Boland about the litigation for various reasons at various times, on an ad-hoc basis. Please also see the response to question no. 33 above.	n/a	n/a
40.	325	858 and 859	UA	Other than the investigator retained in connection with the London events in November 2017, to advise if there were other investigators retained by West Face during the course of this litigation.	Please see the response to question no. 41 below.	n/a	n/a
41.	326	860	UA	To advise whether investigators were retained and if so, who were they and when they were retained in connection with issues that arose in this litigation	The conduct of investigators retained by West Face, if any, is not a matter in issue in these proceedings. No investigator retained by West Face is alleged to have committed any tort or to have otherwise done anything wrongful. No investigator retained by West Face met with or is alleged to have met with any current or former employee of Catalyst and/or Callidus on any basis, and certainly not on any "pretext", false pretences, lies or deceit. No investigator retained by West Face met with or is alleged to have met with any judges or members of the judiciary on any basis, and certainly not on any "pretext", false pretences, lies or deceit. If West Face is required to answer this question, West Face will demand similar production with respect to Due Diligence Consulting, Nardello, and any other private investigators retained by the Catalyst Parties. West Face will forego such production if Catalyst foregoes pursuing this question.	n/a	n/a
42.	326-327	861	REF	To advise whether Ira Gluskin is an investor in any of the West Face funds.	The identity of West Face's investors is confidential and cannot be disclosed without their express consent. Moreover, the identity of West Face's investors has no relevance to the pleaded issues or to the issues in the Anti-SLAPP Motions. If the Catalyst Parties succeed in compelling disclosure of the identity of West Face's investors, then West Face will seek reciprocal disclosure, in connection with the upcoming examination of Mr. Glassman.	n/a	n/a

Catalyst v West Face et al.

Greg Boland
on Tuesday, April 20, 2021



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1 MR. MILNE-SMITH: He has given the
2 answer, Mr. Moore.

3 MR. MOORE: No, he hasn't given the
4 answer. He is dancing around the answer. You
5 know, what is so complicated about saying yes, I
6 was aware or not aware that we provided Mr. Livesey
7 with a substantial number of documents?

8 MR. MILNE-SMITH: You want a black or
9 white answer. He is providing you with the nuanced
10 answer which is the truthful answer. You can like
11 it or not, but I am not going to have you badger
12 him and repeatedly ask him to answer something he
13 has already answered. So I'll refuse that question
14 from here on.

15 BY MR. MOORE:

16 904 Q. No, he hasn't answered it. And it
17 is not nuanced. It is bobbing and weaving. Let's
18 move on.

19 So I want to ask you about your
20 contacts with Ms. McNish, and obviously the focus
21 is on the contacts that were proximate to or relate
22 to The Wall Street Journal article that was
23 published on August 9th, 2017.

24 And so my question is what is your
25 recollection of the first contact with Ms. McNish

1 regarding the subject -- regarding the writing of
2 this article? How did that happen?

3 And just let's refer to some of the
4 documents we just received. We see that there was
5 a conversation with McNish, and these are based
6 upon outgoing calls, not incoming calls, because
7 the latter aren't available.

8 But if we go to the phone records that
9 we received, there is a reference to a call with
10 Ms. McNish on May 1st, 2017, just a one-minute call
11 it looks like on May 1st.

12 MR. MILNE-SMITH: And just to be clear
13 in terms of how these are prepared, Mr. Moore, the
14 numbers round up, so that could be a one-second
15 call. That means it is anywhere from one second to
16 one minute.

17 MR. MOORE: That is fine.

18 MR. MILNE-SMITH: The first substantial
19 call I see is May 16 there was an up to 15-minute
20 call.

21 BY MR. MOORE:

22 905 Q. That's right. I'm just drawing
23 the witness's attention to those references, and
24 I'm guessing, Mr. Boland, that you are not able
25 to -- that you don't distinctly remember May 16th

1 as opposed to May 15th, but that is the approximate
2 time of what appears to be the first more
3 substantive conversation. What can you remember
4 about that?

5 A. So I speak to and have spoken to
6 Jacquie periodically for years.

7 906 Q. Yes.

8 A. And so I can't say those
9 conversations related to any specific topic. I
10 don't remember these conversations because they
11 were quite a long time ago, obviously. But I spoke
12 to Ms. McNish on lots of matters over the years.
13 So you know, I don't know that any of these
14 conversations were specifically about Callidus or
15 Catalyst.

16 What I do remember, as I outlined in my
17 prior testimony, was through the course of that
18 year having a few conversations with Jacquie where
19 she would try to understand attributes of the
20 company. It wasn't clear to me if she was just
21 keeping up to speed on the matter or whether she
22 was writing an article. But towards the end of the
23 period, she called me with something specific in
24 the context of actually writing an article, which I
25 presumed was writing an article, and she asked if I

1 could confirm that there were regulatory
2 investigations going on at Callidus and I said I
3 had no information on the topic and could not
4 confirm that.

5 I was not a source for the article and
6 none of the information in the article came from me
7 that I am aware of. I didn't speak to her about
8 any regulatory investigations or whistleblower
9 reports.

10 So I can't speak to the individual
11 phone calls, but I can speak to the substance of
12 them.

13 907 Q. And when was it that she was
14 asking you to confirm anything or say anything that
15 might be germane to an article that she was
16 writing? Was that in the period or can you help at
17 all with that?

18 A. I can't -- I believe it was
19 towards the end, I think it was, but I can't
20 remember for sure.

21 908 Q. All right. So you had been aware,
22 we saw from the transcript with Mr. Livesey, of the
23 reference to the whistleblower complaint in that
24 transcript apparently prepared by Mr. Anderson. So
25 you were aware of that, I take it, at the time you

1 spoke with Ms. McNish?

2 A. Not in -- not specifically. As I
3 said in my prior testimony, Mr. Anderson called me
4 unsolicited and introduced himself as a
5 professional whistleblower and indicated that he
6 was doing research for a potential whistleblower
7 type complaint, and it wasn't clear to me what that
8 meant.

9 And so I wasn't aware of specific -- I
10 have never seen the whistleblower complaint prior
11 to this action, and you know, I was aware of the
12 possibility but I wasn't aware of anything
13 specific.

14 909 Q. You were aware, though --

15 MR. MILNE-SMITH: Sorry, Mr. Moore,
16 hang on. I let him answer the question because I
17 didn't want to interfere, but have we established
18 when that Bruce Livesey transcript occurred and
19 whether it happened before the conversation with
20 Ms. McNish we are talking about?

21 BY MR. MOORE:

22 910 Q. Well, but the witness indicated he
23 thought he knew when the date was, but subject to
24 this being verified, when do you believe the
25 date -- what is the date of that short transcript

1 between yourself and Mr. Livesey that I was asking
2 you about before?

3 A. I don't -- I never said I knew the
4 date. It was my recollection that it was the
5 second of the two transcripts, so the other
6 transcript predated this one. That was my only
7 recollection.

8 911 Q. Well, you did say you knew the
9 date. In your preparation for this you said you
10 understood the dates had been established, so if
11 you want to correct that, that is fine, but that is
12 what you said before.

13 A. Well --

14 912 Q. Do you have any information or
15 belief right now for the purpose of this
16 questioning what the date of that was?

17 A. Mr. Moore, you have
18 mischaracterized what I said previously. I said
19 that in my preparation, my understanding was that
20 the dates had been established, although I can't
21 remember what they were, and that the transcript in
22 question was the second of the two transcripts.

23 913 Q. All right, well, we'll see
24 whether --

25 A. I do not know the date of the

1 transcript, but I think it is obviously something
2 we can determine.

3 914 Q. All right. In any event, whatever
4 that transcript was, you will agree that Mr.
5 Livesey was letting you know that there was a
6 whistleblower complaint, a report by Nathan
7 Anderson, right? That is at the top of page 2 or 3
8 of that transcript.

9 A. Yeah, I think I was just listening
10 to Mr. Livesey. I don't recall if I -- or how I
11 interpreted that comment at the time, but I do
12 see --

13 915 Q. What do you mean how you
14 interpreted the comment? He says there is a
15 whistleblower report. What is there to interpret?

16 A. It could have been a draft
17 whistleblower's report. I don't know what the
18 context of that comment was, and I didn't follow up
19 on it in the conversation.

20 916 Q. What do you mean context of the
21 comment? "You know, if you look at, for example,
22 Nathan Anderson's report", he is talking about
23 Nathan Anderson's whistleblower report. He said:

24 "[...] his whistleblower
25 report, you know, he's found all

1 sorts of -- many things wrong."

2 And you say,

3 "Right."

4 I don't know what the interpretation
5 is. I'm just simply asking you to confirm that
6 whatever the date of this transcript with Mr.
7 Livesey is, that as at that date, you were aware or
8 at least you had been told by Mr. Livesey that
9 there was a whistleblower complaint by
10 Mr. Anderson. It is not complicated.

11 A. And I am just trying to
12 differentiate between -- I did not think
13 specifically about what he was saying at the time,
14 but I am trying to -- it was possible that Mr.
15 Livesey could have seen a draft whistleblower's
16 report or he could have seen components of research
17 going towards a whistleblower complaint.

18 But where I'm stopping, and what I
19 think your question is, I did not conclude that a
20 whistleblower complaint had been filed with the
21 securities commissions as a result of my
22 conversation with Mr. Livesey. That I did not
23 conclude.

24 917 Q. I see.

25 A. So what I can say is Mr. Anderson

1 told me he was working on a whistleblower
2 complaint. Whether or not he actually filed it was
3 something that I didn't know. Mr. Livesey
4 referenced a whistleblower complaint, and it could
5 have been the work product of a potential
6 whistleblower complaint.

7 918 Q. All right. Sorry, let me know
8 when you are finished. I don't want to interrupt
9 you.

10 A. That's it.

11 919 Q. All right, good. So he didn't
12 refer to part of a whistleblower complaint or --

13 A. I'm sorry?

14 920 Q. -- a draft whistleblower complaint
15 or a potential whistleblower complaint, did he?

16 A. I was not under the impression
17 that the language was carefully chosen. It was
18 part of a conversation where he said whistleblower
19 complaint.

20 921 Q. All right.

21 A. But I did not know whether -- I
22 had no information whether a complaint had actually
23 been filed or not.

24 922 Q. I see. So you just said you
25 didn't conclude that one had been filed. Let me

1 ask you this. I take it from that answer that you
2 turned your mind to the question of whether one had
3 or had not been filed; is that right? Did you turn
4 your mind to that issue?

5 A. I don't understand the question.

6 923 Q. What don't you understand about
7 the question? Did you turn your mind to the
8 question of whether a whistleblower complaint had
9 been filed by Mr. Anderson? Did you consider that
10 in your mind? Did you turn your mind to that
11 issue?

12 A. At the time?

13 924 Q. Yes.

14 A. I don't think I really thought
15 about it. I knew Mr. Anderson was working on a
16 potential report. It was referenced by Mr.
17 Livesey. And I don't know if I turned my mind to
18 it.

19 925 Q. All right.

20 A. Obviously, we didn't talk about it
21 in the conversation. It was not very --

22 926 Q. Well, I don't know because the
23 transcript I have got is heavily redacted, but
24 whether the rest of it sheds any further light I
25 don't know.

1 But in any case, at the time when you
2 were speaking with Ms. McNish, was there any
3 discussion then about Mr. Anderson? And to be
4 clear, the time I'm talking about really, to be
5 fair, IS from May -- you know, in the calls that
6 happened, you know, the 15-minute call from May 16
7 or the subsequent calls which we'll look at, did
8 the topic of a whistleblower complaint from Mr.
9 Anderson come up, to your recollection?

10 A. My recollection of the call with
11 Jacquie or the inquiry from Jacquie was it was a
12 very short inquiry, Can you help me confirm
13 whether - and I am paraphrasing - whistleblower
14 complaints and/or a regulatory investigation has
15 commenced or is ongoing? And I said no, and that
16 was it.

17 927 Q. Okay, so, sorry, you are frozen on
18 the screen there now.

19 A. Can you hear me?

20 928 Q. Can you hear me?

21 A. I can now, yes. Can you hear me?

22 929 Q. Yes.

23 A. Okay. Did you hear my answer?

24 930 Q. Yes, I think I did, unless there
25 was something you continued with after you froze.

1 A. Okay, well, I'll repeat my
2 question -- or my answer, just so it is on the
3 record correctly.

4 Jacquie had a very simple question,
5 which is whether I could confirm regulatory
6 investigations and/or whistleblower complaints
7 being filed, and my answer was a simple no and that
8 I had no information to that effect or about the
9 call.

10 931 Q. So did you mention to her that
11 Livesey had mentioned to you the existence of an
12 Anderson whistleblower report?

13 A. I think the entire conversation or
14 at least the part about this was as I have just
15 outlined it. It was a simple question and a simple
16 answer. We did not have a conversation --

17 932 Q. Could you just then give a simple
18 answer to my simple question? The answer is no?

19 A. Which is --

20 933 Q. That is a simple answer. Did the
21 topic of Mr. Anderson having prepared a
22 whistleblower report, Mr. Anderson having prepared
23 a report, did that come up?

24 A. No, it did not.

25 934 Q. All right.

1 A. I think -- I said that my
2 answer -- I told you everything that was said. It
3 was a simple question and a simple answer, and we
4 did not speak about Anderson's whistleblower report
5 or Bruce Livesey for that matter.

6 MR. MILNE-SMITH: And, Mr. Moore, just
7 to help you so that you have this information now
8 rather than later, this is something we had agreed
9 to work on afterwards, but we have consulted with
10 the answers to undertakings that Mr. Livesey gave
11 and those answers to undertakings indicate that, to
12 the best of Mr. Livesey's recollection, the
13 telephonic interview of Mr. Boland took place in
14 January of 2018.

15 So this took place long after The Wall
16 Street Journal article came out, the transcript
17 that you have been referring to, and in fact after
18 the lawsuit had been filed.

19 BY MR. MOORE:

20 935 Q. And do you have any information
21 yourself independent of what Mr. Lascaris's client
22 may have said?

23 A. Sorry, is that directed at me?

24 936 Q. Yes.

25 A. Sorry, and who is his client?

1 MR. MILNE-SMITH: Livesey.

2 THE DEPONENT: Okay, and sorry, the
3 question was what again?

4 BY MR. MOORE:

5 937 Q. Do you have any information in
6 your own right, aside from what Mr. Livesey may or
7 may not have said about his belief about the date
8 of this call?

9 A. You are asking if I know the date
10 of this call? No, I have no independent
11 information about the date of the call, except
12 perhaps the phone records that we have may show
13 that date.

14 938 Q. They don't come up that far, and
15 that was not part of the period. So let me take
16 you to Appendix A to Exhibit 1 from earlier today.

17 A. Could you tell me what that
18 document is just in plain English?

19 939 Q. This is -- the document is the
20 order of Justice McEwen.

21 A. Okay, what page?

22 940 Q. And it is the order that has
23 several pages, and then there is an appendix with
24 tabs.

25 A. I have got the document. I have

1 got no tabs in mine. I just have the -- oh, I do
2 have tabs, okay, but I'll have to scroll through
3 them because they are not bookmarked.

4 941 Q. That is fine.

5 A. Oh, they are bookmarked. Okay,
6 what tab do you want me on?

7 942 Q. So as I understand your evidence,
8 it is that your conversations - and correct me if
9 I'm wrong because you had more than one
10 conversation - with Ms. McNish were simple and you
11 weren't able to and you told her that you weren't
12 able to corroborate or comment on any
13 investigations or whistleblower complaints; is that
14 right?

15 A. That is correct, and I think that
16 was her evidence as well.

17 943 Q. And you say that is the only thing
18 that you discussed?

19 A. No, I am not -- I said the
20 opposite. I said we have had lots of discussions
21 over the years.

22 944 Q. I'm not talking about over the
23 years, sir, please.

24 A. Let me finish.

25 945 Q. Well, then let's stick to the

1 point then.

2 A. Please let me finish my answer,
3 Mr. Moore.

4 946 Q. Go ahead.

5 A. So we have had lots of
6 conversations, and we have spoken about Callidus
7 and Catalyst and obviously that is in the record.
8 But when she narrowed in the topic of her article
9 which related to whistleblower complaints and
10 regulatory investigations, I had no information to
11 provide that was relevant or used in the article.

12 947 Q. And the conversations that you had
13 with her relative to the article would have been,
14 based on the phone records we received, as I
15 understand it, on or after May 2017; is that right?

16 A. I think --

17 948 Q. We saw the May 16th entry for an
18 outgoing call of 15 minutes on that day, and then
19 there was some additional calls after that.

20 A. Sorry, and what is your question?

21 949 Q. My question was the time frame
22 when you would have talked to her or had
23 conversations about her prospective article or her
24 inquiries would have been in that time frame, that
25 is, after early May up to the date of the article

1 or mid-May up to the date of the article; is that
2 right?

3 A. No. Listen, I don't think -- as I
4 said, her article was on a specific topic, and a
5 specific conversation about that specific topic, we
6 didn't have any conversations except I denied I had
7 any information that would help her in that
8 article. And so, you know, so I think --

9 950 Q. Okay.

10 A. Hang on. To go back and say that
11 every conversation I had with Jacquie was related
12 to the article is just false. She wrote --

13 951 Q. That wasn't my suggestion.

14 A. Well, you keep saying when you
15 started having conversations about the article, and
16 I am saying the conversation about the article was
17 the conversation where she asked me to corroborate
18 something that she had heard or was trying to prove
19 and I couldn't and didn't, and I was not a source
20 for the article.

21 952 Q. Okay.

22 A. And that is full stop. We have
23 had conversations in the past about Callidus, other
24 topics about Callidus unrelated to the article, and
25 as you know, those have been ongoing for years. We

1 had spoken, you know, a long time before. So as it
2 pertains to this article --

3 953 Q. Yes.

4 A. -- I denied that I had any
5 information that would help her.

6 954 Q. And how many conversations did you
7 have with her about this prospective article, one
8 or more than one?

9 A. I believe it was one, from memory.
10 I believe it was one where she attempted -- she
11 asked me to corroborate what she heard about
12 regulatory investigations and whistleblower
13 reports, and I said I had no information that could
14 help.

15 955 Q. All right. So would it be fair to
16 assume that would have been a pretty short phone
17 call, because you said earlier that that was all
18 that you talked about in that particular call?

19 A. It could have been short or it
20 could have been a short part of a longer phone
21 call. I can't remember.

22 956 Q. A short part of a longer phone
23 call. In the context of her writing an article or
24 asking you about an article that she was going to
25 be writing, did you ever express any negative

1 opinions or views about Catalyst or Callidus?

2 A. I was not a source for the
3 article.

4 957 Q. Please answer my question, sir.
5 Don't bob and weave and duck the answer.

6 A. If you want to point me --

7 958 Q. Did you ever express any --
8 whether you were a source for the article or not,
9 did you ever express any negative views about
10 Callidus or Catalyst in your conversations when she
11 and you were talking about the article; yes or no?

12 A. I am confused. You keep inserting
13 the word "in the article" in there. As I said, I
14 was not a source for the article and gave her no
15 information that was used in the article. We have
16 spoken about Callidus over the years. You know, if
17 we spoke about loan losses two years before, I
18 don't know if that is negative or not, but you
19 know, that is a very broad question and I think it
20 is going to be impossible for me to answer unless
21 you want to take me to something specific.

22 959 Q. Well, don't give me "take me to
23 something specific" again, okay. We have been down
24 that road. I am simply asking you an easy
25 question, what should be an easy question for you

1 to answer.

2 You have given evidence already that to
3 the best of your recollection that you had one
4 conversation with her when the topic of the article
5 came up and that in that conversation you were
6 asked to corroborate certain things, and you told
7 her you couldn't do so and that was it.

8 That is my understanding of what you
9 have said about conversations germane to the
10 article. And what I am asking you, to be clear, is
11 whether or not, in whatever conversations or
12 conversation you had germane to the article, did
13 you ever express any negative views about Catalyst
14 or Callidus?

15 A. What do you mean by "germane to
16 the article"?

17 960 Q. Relevant to the article.

18 MR. MILNE-SMITH: Do you mean in the --

19 BY MR. MOORE:

20 961 Q. When the topic of the article came
21 up for discussion, which you have said you think
22 was only one time, in that conversation or if there
23 was more than one conversation when the topic of
24 the article came up, did you ever express any
25 negative views about Callidus or Catalyst?

1 A. I do not believe so. I think the
2 conversation -- so Jacquie had been following the
3 situation for awhile, but it was only towards the
4 end, I believe, that she seemed to be focussing on
5 a specific topic for an article, and she asked me
6 to corroborate it and I said no. I didn't say "no,
7 but..." and a bunch of negative information. I
8 said no. I had no information about whistleblower
9 reports and I had no information about regulatory
10 investigations, period.

11 962 Q. Did you ever say anything to her
12 that would cause her to conclude or could
13 reasonably cause her to conclude that you were out
14 to get Callidus or Mr. Glassman?

15 MR. MILNE-SMITH: Ever?

16 BY MR. MOORE:

17 963 Q. Yeah.

18 A. That is a little inflammatory. I
19 don't know what you mean by "out to get". I don't
20 know how to answer that question.

21 964 Q. All right, well, let me take you
22 to something specific. Page 117, tab 29 of this
23 attachment.

24 A. Sorry, what tab?

25 965 Q. Tab 29.

1 A. Yes.

2 966 Q. Page 117 in the upper right-hand
3 corner.

4 A. At tab 29, I get page 58 in the
5 right-hand corner.

6 967 Q. It goes on for quite some time.

7 A. Okay, sorry, what page number?

8 968 Q. Page 117 in the upper right-hand
9 corner. This is a typed transcript that goes on at
10 some length.

11 A. At 117.

12 969 Q. It appears to be between her and
13 Rob Copeland, from what I can tell. You will see
14 Rob's --

15 A. Okay, so page --

16 970 Q. -- name mentioned from time to
17 time, so they are the ones who were talking.

18 A. Page 117, okay, that is in tab 30,
19 by the way.

20 971 Q. Sorry, have I got the tab wrong?

21 A. Okay, so I'm there. It starts
22 with the numbers 00:24:31, "Jacquie McNish: You
23 know, they put it all down to West Face"; is
24 that --

25 972 Q. Right, she is the first speaker on

1 that page, and the second speaker going down, you
2 will see there is a reference to "Rob"?

3 A. Yes.

4 973 Q. And back and forth?

5 A. Yeah.

6 974 Q. And they are the co-authors of the
7 article ultimately, and you see she expresses
8 the -- she makes the comment at the top of the
9 page, at the end of the first paragraph:

10 "And yes, we" - referring to
11 Rob, I presume - "we both know that
12 Greg Boland and West Face has got a
13 crusade against Glassman, but so be
14 it."

15 Do you see that?

16 A. I do.

17 975 Q. All right. So, okay, I'll change
18 the words from "out to get" Mr. Glassman. Did you
19 ever say anything, to your recollection, that would
20 reasonably cause Ms. McNish to conclude that you
21 and West Face had a crusade going against Mr.
22 Glassman?

23 A. No, those are her words, not mine,
24 and I --

25 976 Q. That is why I'm asking you. Did

1 you ever say anything that from your point of view
2 would reasonably have caused her to draw that
3 conclusion?

4 A. Mr. Moore, you keep interrupting
5 me when I am trying to answer, and I said no, and
6 those are her words, not mine. I did not give
7 her -- ever say that I had a crusade or any synonym
8 with "crusade" in any conversation that I had with
9 her.

10 977 Q. Well, let's not parse the words
11 and bob and weave, okay. Let's get to the
12 substance of it. I wasn't asking you to get out
13 your thesaurus and did you use the word "crusade"
14 or some replacement synonym.

15 I'm asking you - and you are a smart
16 man and you understand the questions perfectly
17 well - did you ever say anything to Ms. McNish that
18 would cause her to conclude that you and your
19 company had a crusade against Mr. Glassman? Not
20 that you used the word "crusade". Did you ever say
21 anything to her that would reasonably have caused
22 her to come to that conclusion, as far as you are
23 concerned?

24 MR. MILNE-SMITH: Okay, hang on, Greg.
25 Mr. Moore, I am going to object to the preamble to

1 that question which is I think a very unfair
2 characterization of Mr. Boland's evidence, which
3 has been very fair and very forthcoming for you.

4 And frankly, the way you phrased it, it
5 is, "Did you say anything that would cause her to
6 conclude there was a crusade", that is asking for
7 the state of mind of Ms. McNish. If you want to
8 ask what it really seems like you are getting at
9 here, which is has Greg Boland ever said anything
10 negative about Catalyst, if that is your case that
11 that is wrongful and that is tortious and that is
12 appropriate basis for a lawsuit, go ahead and ask
13 that question and he can answer it.

14 MR. MOORE: I'll ask my questions in
15 the way I think appropriate, having regard to what
16 the records indicate, and we can agree to disagree
17 about how forthright and helpful Mr. Boland is
18 trying to be. That is not for you to judge or me
19 to judge, and I am not purporting to do so.

20 I'm simply asking Mr. Boland to tell me
21 whether in his opinion he has ever said anything to
22 Ms. McNish that would reasonably have caused her to
23 conclude that he had a crusade against Mr.
24 Glassman. He may think that he said things that
25 would have supported that conclusion or he may not.

1 That is what I'm asking.

2 MR. MILNE-SMITH: And he has given you
3 an answer to that very question.

4 MR. MOORE: No, he has not given me an
5 answer. What he said was, I don't ever remember,
6 and I don't think I used the word "crusade". That
7 is not my question.

8 MR. MILNE-SMITH: He didn't say that or
9 said anything of the same meaning. And then you
10 just started talking about thesauruses and bobbing
11 and weaving. He very specifically tried to give
12 you a fair answer to the question, and you didn't
13 like it.

14 MR. MOORE: No, he didn't answer the
15 question.

16 MR. MILNE-SMITH: So ask him in a
17 different form --

18 BY MR. MOORE:

19 978 Q. Did you ever say anything, sir,
20 that would cause her to draw that conclusion, in
21 your opinion?

22 A. I --

23 R/F MR. MILNE-SMITH: I object to the
24 question. You can't ask him what would cause her
25 to come to a particular conclusion. We don't have

1 any insight into the mind of Ms. McNish. You can
2 ask him objectively what he said or what his
3 intentions were. I'm not going to let you ask
4 questions about what conclusions Ms. McNish might
5 draw. You can ask her that.

6 MR. MOORE: No, it is not a matter of
7 what conclusions Ms. McNish might draw. It is not
8 as if we have to speculate what her frame of mind
9 was. We see it in black and white on this page.
10 That is why I'm asking the witness the question, in
11 fairness, so that he can comment on it.

12 She is expressing what her state of
13 mind is. She is expressing what her belief is.
14 She is expressing that she knows and Mr. Copeland
15 knows, according to her, "that Greg Boland and West
16 Face has got a crusade against Glassman, but so be
17 it." That is her state of mind. There is no
18 speculation. There is no interpretation. That is
19 what she said. And I'm simply giving this witness
20 a chance to --

21 MR. MILNE-SMITH: And you have told --

22 MR. MOORE: Let me finish -- a chance
23 to comment on whether, from his standpoint, he ever
24 said anything that would reasonably have given rise
25 to that kind of impression.

1 MR. MILNE-SMITH: And he has told you
2 no.

3 BY MR. MOORE:

4 979 Q. No, he hasn't.

5 Is that your answer, sir, that you
6 never said anything that would give rise to that
7 impression?

8 A. I do not know what she meant by
9 that or what her impression is, but I never told
10 her I was on a crusade or anything to that effect.

11 980 Q. Well, there you go. There is
12 exactly the problem, Mr. Milne-Smith. That is not
13 an answer to my question. Someone else can judge
14 what to make of all of this.

15 Let's move on to tab 49.

16 A. Tab 49?

17 981 Q. Yes. This, as I understand it, is
18 a series of communications between Nate Anderson
19 whose statements are on the left and Mr. Copeland
20 whose statements are on the right, Mr. Anderson in
21 gray and Mr. Copeland in blue, okay. And halfway
22 down the page, you will see:

23 "I love how he's trying to
24 blame the sea lice on ex employee
25 Craig Boyer. Saying he screwed up

1 the underwriting."

2 And then the date follows, July 18th,
3 2017. Do you see where I'm at on the document?

4 A. Yes.

5 982 Q. All right. And then the next
6 statement coming from Mr. Anderson July 18, 2017,
7 at 5:14 p.m.:

8 "Greg Boland asked me", and
9 that is Mr. Anderson, "to give you",
10 and that is Rob Copeland, "docs to
11 then give Jacqui."

12 Do you see that?

13 A. I do.

14 983 Q. And did you ask Mr. Anderson to
15 give documents to Jacquie?

16 A. What is the -- can you pull up the
17 document?

18 984 Q. I don't have a document. Just
19 answer the question. Don't deflect the question.
20 Did you give -- did you have a conversation in
21 which you asked Mr. Anderson to give documents to
22 Jacquie, that you were going to give him documents
23 and that he was going to give them to Jacquie? Did
24 that happen or not?

25 A. My understanding -- I don't have a

1 specific recollection of that, and I am trying to
2 look at the document to help me with the answer,
3 but you say you don't have the document for me to
4 look at?

5 MR. MILNE-SMITH: Do you mean the text
6 messages, Greg?

7 THE DEPONENT: No, there is a document
8 that was attached to this, wasn't there?

9 MR. MOORE: No, there is no document
10 attached to this.

11 MR. MILNE-SMITH: No.

12 BY MR. MOORE:

13 985 Q. July 18, 2017, Mr. Anderson is
14 saying:

15 "Greg Boland asked me to give
16 you", Rob Copeland, "docs to then
17 give Jacquie", and that is Jacquie
18 McNish.

19 A. Right.

20 986 Q. And so did that conversation
21 between yourself and Mr. Anderson take place?

22 A. I don't remember a specific
23 conversation to that effect, but to the extent that
24 Nathan and I were having a conversation about a
25 topic that Jacquie might have been interested in, I

1 may have shared something with him and told him to
2 share it with her. That is possible.

3 987 Q. Well, did you ask Mr. Anderson to
4 give Mr. Copeland documents for the purpose of them
5 being provided to Jacquie McNish? Is that a
6 conversation that happened or not?

7 A. As I said, I don't remember
8 specifically a conversation to that effect, but to
9 the extent that Nathan and I were having a
10 conversation about something that Jacquie may have
11 inquired about, it is possible that I would have
12 told him to pass on the information to Jacquie. I
13 have never spoken to Rob Copeland, so I wouldn't
14 have told him to --

15 988 Q. Well, let's just look at your cell
16 phone records that we just got today and see if it
17 helps you with your recollection about any of this.

18 A. Okay, where is that?

19 989 Q. On July 18th, the same day, at
20 9:59 that morning you have a call for 26 minutes,
21 or between 25 and 26 minutes with Jacquie McNish;
22 do you see that?

23 A. Sorry, you didn't provide my phone
24 records for this examination.

25 990 Q. Well, I did. That was the last

1 thing that we circulated.

2 A. It was?

3 Matt, did we get that?

4 MR. MILNE-SMITH: Yeah, we have got it.
5 It is what we provided this morning. And just so
6 it is clear for the record, Mr. Moore, the reason
7 it happened this morning is because you weren't
8 ready to exchange until this morning. And so I
9 don't want there to be an inference that we --

10 MR. MOORE: Well, let's not get into we
11 are not ready and who is not ready. We have got
12 the documents, okay.

13 MR. MILNE-SMITH: Okay, I didn't want
14 there to be an inference that we had put you at a
15 disadvantage somehow, because that's not what
16 happened.

17 MR. MOORE: I'm not suggesting a
18 disadvantage. We got the documents and we are
19 doing the best we can with them. And I'm asking
20 about this document, and the intention was that
21 we -- and we circulated it earlier. It would have
22 been the last thing we circulated just as we were
23 starting, I think, this examination. So maybe it
24 didn't get to Mr. Boland.

25 MR. MILNE-SMITH: Well, I will email it

1 right now to Mr. Boland so it will be at the --
2 okay, Andrew just forwarded it to you, Greg.

3 BY MR. MOORE:

4 991 Q. All right. I thought Mr. Boland
5 had that when we were talking about the May date
6 for Jacquie McNish. Anyway, I don't want to go
7 back over that ground.

8 A. Okay, so just let me pull these
9 up.

10 Okay, so what is your question?

11 992 Q. So I'm drawing your attention to
12 the fact that on July 18th, the very same day as
13 this exchange of text messages that I was asking
14 you about at page 184, that morning you had a 26 or
15 25- to 26-minute call with Jacquie McNish at 9:59.
16 You had a short call or under a minute or a minute
17 or less at 11:13 that morning. And then you had a
18 third call with Ms. McNish again that morning at
19 11:49 of two minutes or less. And that doesn't
20 include whatever other calls, incoming calls you
21 may have had in the same time frame. You had at
22 least three calls with her that morning, one of
23 which was over 25 minutes, right?

24 A. Yeah, okay.

25 993 Q. Well, I mean, you don't have to

1 take my word for it. I'm just going by these
2 records.

3 A. And I said okay.

4 994 Q. All right. And then two minutes
5 after your cell phone call with McNish at 11:49,
6 you speak to Mr. Anderson and you place a call to
7 Mr. Anderson. Do you see that?

8 A. I do.

9 995 Q. And you talk to him for ten
10 minutes?

11 A. I see that.

12 996 Q. And all of that was on the same
13 day when Mr. Anderson exchanged these text messages
14 with Mr. Copeland in which he says that you asked
15 Anderson to give Copeland documents to then
16 transmit them to Jacquie; do you see that?

17 A. I see that, yes.

18 997 Q. All right. So that is all
19 happening on the same day, right?

20 A. Apparently, yes.

21 998 Q. Well, yes, apparently. So does
22 that assist you in your recollection of what was
23 being discussed and what was going on?

24 A. Again, I don't have a specific
25 recollection of a phone call from four years ago,

1 I'm sorry, and that is probably going to be the
2 case with most of these phone calls. However, as I
3 said, it is possible the document I was referring
4 to, I think that is actually in the text messages
5 on page 183, and I assume that is the document in
6 question, which is a link to -- it says "From Greg
7 to Jackie", and it is a link to a public report on
8 IFRS reporting. So that is why I was confused. I
9 think that is the document in question.

10 So what is probably happening here is,
11 you know, you see flurries of conversations around
12 events like company reporting, and this was a few
13 days after the annual report came out. So my
14 presumption is Jacquie had some questions about how
15 to interpret the annual report. I had a
16 conversation with Mr. Anderson on IFRS, or
17 something along those lines, and somehow Jacquie's
18 name came up and I told him to forward on the
19 information. That is speculation on my part
20 because I have no specific recollection of the
21 conversation, obviously.

22 999 Q. So are you saying with reference
23 to page 183 that you sent an email to Jacquie that
24 day?

25 A. No, I am saying there is a text

1 from Mr. Anderson saying "From Greg to Jackie"
2 which points to a document which is --

3 1000 Q. Yes, and so what are you
4 interpreting that as meaning?

5 A. Well, I'm assuming that that's the
6 document that is referred to previously.

7 1001 Q. And do you remember giving Mr.
8 Anderson a document or Jacquie a document on or
9 about that day?

10 A. I don't. What I am saying is I
11 believe the document in question is the one from a
12 couple of days later, because there was no other
13 document referenced in here. So I have no
14 recollection about what specifically happened here.
15 All I see is a text about a document, and then I
16 see a document being forwarded with a tag "From
17 Greg to Jackie". So my assumption reading these
18 messages was that that was the document in
19 question.

20 1002 Q. Well, why would you be asking Mr.
21 Anderson to give Mr. Copeland a document or
22 documents to give to Jacquie? Why would you do
23 that?

24 A. As I said -- so periodically we
25 would have conversations usually around, you know,

1 an event. So if something happened in court,
2 Jacquie would call and ask me about it. You know,
3 she was obviously following the situation I think
4 when she was trying to figure out what kind of --
5 if she was going to write an article, you know,
6 that had been following this for some time.

7 So you know, what I discerned from this
8 is I had a conversation with Jacquie and Mr.
9 Anderson on the same day, which was a few days
10 after the annual report was filed, so I'm guessing
11 it was around that and, you know, possibly Jacquie
12 asked me for some clarification on what IFRS
13 reporting issues were because, as we know, the
14 company had a lot of footnotes on IFRS. So I'm
15 guessing that she asked for some information, and I
16 had been speaking to Nate Anderson and I told him
17 to forward it on and maybe we had the same
18 conversation. I don't remember exactly what was
19 discussed as it relates to --

20 1003 Q. No, and you have made that clear
21 that you just don't remember much about anything of
22 this, or anything about this. This is the same Mr.
23 Anderson that you --

24 MR. MILNE-SMITH: Well, that is not
25 fair, Mr. Moore.

1 BY MR. MOORE:

2 1004 Q. It is fair. That is exactly what
3 he said. Well, the transcript will speak for
4 itself.

5 Now, this is the same Mr. Anderson who
6 I suggest you knew had prepared a whistleblower
7 report; correct?

8 A. It is -- okay, again, I'm going to
9 answer the question in the same way as last time,
10 which is when he initially contacted me, he said he
11 was working on potentially filing a whistleblower
12 report, and I don't know that he -- when or how he
13 actually filed one. And you have asked me this
14 already, and that is my same answer.

15 1005 Q. Well, are you telling me that you
16 never, in any of your contacts, asked whether Mr.
17 Anderson had actually filed a whistleblower report?
18 You never asked that of anybody?

19 A. I --

20 1006 Q. Is that what you are saying? I'm
21 just trying to understand what you're saying.

22 A. I had -- I deliberately tried to
23 stay out of that. I had no insight into who was
24 doing what when.

25 1007 Q. Well, I am going to suggest to you

1 that you weren't really staying out of it, sir.
2 You were quite interested in it.

3 A. No, I --

4 1008 Q. Did you ever ask Mr. Anderson or
5 anyone else, Mr. Anderson, did you actually file a
6 whistleblower complaint? Did you ever do that?

7 A. I don't think I ever did.

8 1009 Q. Okay, you don't think you ever
9 did. Mr. Copeland goes on -- well, my question
10 still remains, which I don't really have an answer
11 to. Why would you go through the circuitous route
12 of asking Mr. Anderson to give a document to
13 Mr. Copeland to then be transmitted to Jacquie?
14 Why would you intersperse, you know, two different
15 intermediaries in the conveyance of that document?
16 Why wouldn't you just give it to Jacquie directly?
17 You talked to her for over half an hour or half an
18 hour that morning. Why wouldn't you just give it
19 to her directly?

20 A. Again, I don't remember the
21 specifics, but the only explanation I could come up
22 with is that I had a conversation with Mr.
23 Anderson. Maybe he said he was going to be
24 speaking to Mr. Copeland, and I said, Oh, you know,
25 that reminds me, you know, send him something. I

1 don't recall exactly why it was done.

2 I don't know Mr. Copeland and I have
3 never spoken to him, so why he is even in there is
4 a mystery to me as well.

5 1010 Q. Well, that is why I'm asking these
6 questions. Now that we see the phone records and
7 the context and some of the unmasking of some of
8 these messages which sheds a little more light on
9 things, I'm going to suggest to you, sir, that you
10 did not want there to be a direct pathway between
11 you providing or suggesting documents to Ms. McNish
12 in the context of her writing this article. You
13 wanted there to be some intermediaries to give
14 yourself some cover and distance from the article;
15 isn't that right?

16 A. That is completely incorrect. As
17 I have stated numerous times, I provided Jacquie no
18 information for her article. Her article was on
19 whistleblower complaints and regulatory
20 investigations, and I did not -- I was not a source
21 and did not provide her information for that.

22 I don't know exactly what is referenced
23 here, but it appeared to be -- the document in
24 question appears to be a website of publicly
25 available information. It says "From Greg to

1 Jackie" from Nathan. Now, I don't recall why and
2 in what context I suggested that he forward it on,
3 but you know, but I did.

4 1011 Q. Well, so we -- sorry, let me know
5 when you are finished.

6 A. Sorry, did you have --

7 1012 Q. No, I don't want to -- finish your
8 answer. Go ahead. Or maybe you have?

9 A. So that is my answer. I provided
10 no information for Jacquie's article.

11 1013 Q. Okay, well, we know the context,
12 sir. The context is it is July 18th. Ms. McNish
13 is in the process of preparing an article that
14 became The Wall Street Journal article on August
15 9th. So that is the context.

16 And the context, to be more specific,
17 is you have three phone calls with her that very
18 morning adding up to about half an hour of time.
19 And the context, sir, is immediately followed by a
20 conversation, a 10-minute call between yourself and
21 Mr. Anderson, and that culminates in Mr. Anderson
22 telling Mr. Copeland that you, Greg Boland, had
23 asked Mr. Anderson to give certain documents, to
24 pass on certain documents to Jacquie.

25 Now, that is the context, sir, that we

1 now know from these documents. So, please, let's
2 not say that we don't know the context. We do know
3 the context. So I'm asking you to give whatever
4 explanation you can as to why you would be going
5 through this circuitous route of providing or
6 identifying documents for Ms. McNish in this
7 context other than to distance yourself from what
8 she was doing. What other explanation do you have?

9 A. I think I just gave you that
10 twice, but I'll do it a third time if it is
11 helpful. The only explanation that I can have is
12 that this conversation happened shortly after the
13 annual report was filed. I presumably had a
14 conversation with Jacquie about something. I had a
15 conversation with Mr. Anderson about something. In
16 the context of that conversation something came up
17 and I said, Why don't you pass that on to Jacquie.
18 Now, I don't remember why or what it was, but the
19 part that I am having trouble with is, you know, I
20 may have had conversations with Jacquie about, you
21 know, certain topics but they were not topics that
22 were reported on in the article.

23 1014 Q. I see.

24 A. And so if Jacquie and I talked
25 about the Callidus annual report, hypothetically,

1 and I don't remember what it was, but, you know,
2 that has nothing to do with the article. So I am
3 not passing secret information to Jacquie to
4 publish in the article. I don't know the exact --

5 1015 Q. I'm not asking you whether you
6 were passing secret information on. I was asking
7 you to give whatever explanation you can as to why
8 you apparently were following this circuitous route
9 of passing on documents to Ms. McNish.

10 MR. MILNE-SMITH: He has given you the
11 answer three times.

12 BY MR. MOORE:

13 1016 Q. But you have given your answer, so
14 I don't want to keep going over and around and
15 around in circles.

16 I want to ask you about what
17 Mr. Copeland then says on this page 184. So
18 Anderson says:

19 "Greg Boland asked me to give
20 you docs to then give Jacqui."

21 And Copeland says:

22 "K", which I take to be okay.

23 And then he says:

24 "The doc he pointed her to does
25 not say what he says it does."

1 Now the "he" there in my reading of
2 this is you, sir. In other words, what Copeland
3 says is "The doc [Boland] pointed her [McNish] to
4 does not say what [Boland] says it does". Now,
5 that is my reading of that answer, that component
6 of the message.

7 So what were you pointing McNish to
8 indirectly and what were you intending that it
9 said? We have the context. We now have these
10 notes and records. What is that all about?

11 A. I do not recall what this specific
12 document is or what I said it said, so
13 unfortunately, I have no further colour on it.

14 1017 Q. Well, were you pointing her to a
15 document and were you saying indirectly to her that
16 this document substantiates the potential story? I
17 suggest to you that is the proper interpretation of
18 what is going on here.

19 A. Mr. Moore, I am going to say this
20 one more time. I was not a source for The Wall
21 Street Journal article. Ms. McNish has verified
22 that. So to keep trying to tie conversations that
23 I have had in as source material is just wrong.

24 And so no, I did not provide her with
25 something to corroborate regulatory investigations

1 and whistleblower complaints or anything that was
2 published in the article.

3 1018 Q. I don't know that Ms. McNish has
4 said that in any way, shape or form, but you and I
5 shouldn't debate that. I'm asking you questions
6 about these records.

7 A. So I don't recall --

8 1019 Q. And I am saying to you and I am
9 suggesting to you, sir, that this chain of
10 communications suggests that you were pointing
11 indirectly Ms. McNish to documents that were
12 adverse to Callidus or Catalyst; isn't that right?

13 A. I don't know the document that I
14 was pointing her to, but whatever it was was
15 presumably a factual document.

16 1020 Q. I didn't ask whether it was
17 factual. Just answer my question, sir.

18 A. I have.

19 1021 Q. No, you haven't.

20 MR. MILNE-SMITH: No, sorry, Mr.

21 Moore --

22 BY MR. MOORE:

23 1022 Q. I didn't ask you whether it was a
24 factual document. I'm asking you to agree or
25 disagree whether you were pointing indirectly Ms.

1 McNish to documents that you were saying were
2 adverse to Callidus or Catalyst?

3 MR. MILNE-SMITH: You have got an
4 answer to your question, Mr. Moore. The fact that
5 you don't like the answer isn't grounds to accuse
6 the witness of not answering the question.

7 And I would just note that this whole
8 line, which I have allowed to go on for reasons
9 that escape me, is really quite unfair because you
10 never actually take him to the document that he has
11 told you was probably the one in question, which it
12 just so happens is a document about Callidus being
13 under continuous disclosure review.

14 So it would appear --

15 MR. MOORE: Well, I'm asking for his
16 recollection, not yours.

17 MR. MILNE-SMITH: Hang on. I'm talking
18 now. It is my turn.

19 MR. MOORE: Well, I don't want your
20 evidence. You can object if you want, but do not
21 clutter up the record with your take on what this
22 is.

23 MR. MILNE-SMITH: No, it is not
24 cluttering up --

25 MR. MOORE: I don't want your evidence.

1 I want his evidence.

2 MR. MILNE-SMITH: It is not cluttering
3 up the record when I am making sure that your
4 questions are fair to the witness, which they have
5 certainly not been.

6 If you want to talk about what document
7 he pointed her to, why don't we go to the document.
8 You have got the reference to it on page 183.

9 MR. MOORE: But the witness doesn't
10 know what documents he was pointing her to.

11 MR. MILNE-SMITH: He has told you his
12 best guess is that it is what was on page 183. We
13 can pull up the website right now, if you want.
14 Why don't you take him to that.

15 BY MR. MOORE:

16 1023 Q. Is that your evidence, sir? You
17 believe it was that document that you were pointing
18 McNish to?

19 A. I am guessing that is, because
20 that is --

21 1024 Q. All right.

22 A. It is the only document -- it is
23 the natural conclusion. It is the only document
24 that is present here. So they talk about
25 forwarding a document, and then he says "From Greg

1 to Jackie" and puts a document in this. So I'm
2 assuming from the context that that's the document.

3 Having said that, I don't know for
4 sure. I'm just taking him --

5 1025 Q. What I am asking you about is what
6 you said about that document. I'm asking you about
7 Mr. Copeland's response where he says:

8 "The doc he [Boland] pointed
9 her [McNish] to" - indirectly, as we
10 have seen - "does not say what
11 [Boland] says it does."

12 I'm asking you what your recollection
13 is about what you've said about the document.

14 A. Mr. Moore, I have said I don't
15 remember what the document was or what I said about
16 the document, and I think I have said that a few
17 times now.

18 MR. MOORE: All right, let's take a
19 ten-minute break and I will just go through my
20 notes, and if I'm not at the end, I'm very near the
21 end of my cross-examination.

22 MR. MILNE-SMITH: That is fine.

23 MR. MOORE: Thank you.

24 -- RECESSED AT 3:53 P.M.

25 -- RESUMED AT 4:04 P.M.

1 BY MR. MOORE:

2 1026 Q. So I just want to -- do you have
3 your phone record sheet in front of you, the last
4 two pages?

5 A. Yes, that is the one you sent
6 after this started, right? Okay, I do.

7 1027 Q. All right, so if you go over to
8 the page that starts with July 21st at the top?

9 A. Yes.

10 1028 Q. Do you see there is an outgoing
11 call to McNish on July 21st?

12 A. I do.

13 1029 Q. And then on July 24th and then on
14 August 9th, and that is the date of the article?

15 A. Yes.

16 1030 Q. And there was four more calls over
17 the rest of August.

18 A. Yes.

19 1031 Q. So the calls prior to August 9th,
20 like what were you calling her for?

21 A. As I said, Jacquie and I have
22 spoken regularly for years, so I can't say exactly
23 what these calls were about.

24 1032 Q. Well, weren't they about the
25 article?

1 A. Okay, I am going to say --

2 1033 Q. I mean, let's be realistic.

3 Weren't they about the article, sir?

4 A. I am going to say this one more
5 time. Jacquie has been following this situation
6 for years. We have had conversations about this
7 situation off and on, as you know, going back for
8 some time. When it came to the substance and topic
9 of her article, I had no assistance and provided
10 no assistance and was not a source for the
11 article, and Jacquie has said as much under
12 cross-examination. So --

13 1034 Q. Someone else can judge what
14 Jacquie said. I have read paragraph 126 and
15 onwards of your November 8th affidavit that goes on
16 and on and on and said that we weren't the source,
17 you know, sideways, backwards, A to Z, in any way,
18 shape or form. I have read all of that. I know
19 what your position is. I know what your evidence
20 is. I am trying to just explore what happened with
21 reference to these documents, sir. So I know what
22 your position is. I know what your evidence has
23 been. You don't have to keep repeating it in
24 answer to a different question.

25 My question is, are you saying that in

1 these calls in late July there is no discussion
2 about the article? Is that your evidence, sir?

3 A. If I said I was not a source for
4 the article, I don't know how much clearer I can be
5 than to say I did not have discussions with Jacquie
6 about the topic of her article. If I spoke to
7 Jacquie about something else that was unrelated to
8 her article, so be it. But when you keep, at the
9 end of every question, you keep saying "for the
10 article", "about the article", and I am not going
11 to say that I was having conversations about the
12 article.

13 1035 Q. Okay.

14 A. She asked me --

15 1036 Q. I'm just asking you to answer one
16 way or the other. And so your evidence, I take it,
17 is that these calls leading up to the article, none
18 of them broached the topic of the article. That is
19 your evidence, as I understand it.

20 A. Yes.

21 1037 Q. But I want to give you an
22 opportunity that, if I have got that wrong, correct
23 me.

24 A. Jacquie would call me from time to
25 time with questions about Callidus generally, and

1 then at some point she zeroed in on a topic for the
2 article, the one that is subject to this action,
3 and I had nothing to add or contribute to that.
4 That was not a topic that I had any knowledge of or
5 didn't share with her anything. So conversations
6 that we had that were not part of the article are
7 not conversations about the article, in my view.

8 1038 Q. And then I see on August the 9th
9 you called her at 4:15 that day, which was within
10 about half an hour of the quote/unquote article
11 going digital with the headline and all the rest of
12 it about fraud and this and that. So why did you
13 call her that -- was that about something
14 unconnected with the article? This was about half
15 an hour after the article was published, but was
16 that anything to do with the article?

17 A. It may have. I may have called
18 and said I read your article. I don't recall the
19 substance of these conversations.

20 1039 Q. Well, let me get this straight.
21 The article came out I think between 3:30 and 4
22 o'clock on that day, August 9th, and you place a
23 call to her at 4:15 for nine minutes and you just
24 can't -- you know, you can't say if we talked about
25 the article?

1 A. I am saying --

2 1040 Q. Like I want to give you a chance
3 to give your evidence so we understand what it is
4 or I understand what it is.

5 A. Mr. Moore, I don't remember
6 verbatim conversations from four or five years ago,
7 but I will say that --

8 1041 Q. I didn't ask you that. I'm not
9 asking you about --

10 A. Well, you are asking me my
11 recollection of the conversation, and I don't have
12 a recollection of the conversation. But it is
13 possible, you know, that with the timing of the
14 call that the article was mentioned in the call. I
15 will say yes, it is possible. But I don't have a
16 definite recollection of the topic of the
17 conversation, I'm sorry.

18 1042 Q. All right. Now, I just want to go
19 back to the prior page quickly. Of all of the
20 contacts -- well, let me ask you this. In terms of
21 Ms. McNish, would you say that she called you more
22 often than you called her, or you called her more
23 often, or about the same? Or can you offer a
24 comment on that, evidence on that?

25 A. I don't. I have no statistics on

1 that basis.

2 1043 Q. No, but I'm not looking for
3 statistics. I'm not looking for --

4 A. But you are asking me for --

5 1044 Q. Was it roughly the same that you
6 called her and she called you?

7 A. I have no idea.

8 1045 Q. You have no idea?

9 A. No. You are talking -- you are
10 asking me to summarize how many, ten years of
11 telephone conversations? I think that is
12 unreasonable.

13 1046 Q. Just in this time frame. No,
14 let's stick to this time frame.

15 A. Well, we have the phone records,
16 right, so why don't we look.

17 1047 Q. Well, we only have the outgoing
18 phone records, so that is why I'm asking.

19 A. Right. I would say, if I had to
20 guess, that she probably called me more often, if I
21 had to guess, but I don't -- I think that is a --

22 1048 Q. Okay, that is all I'm asking.

23 A. That is just a guess.

24 1049 Q. So let me take you quickly to June
25 22nd. And again, this is not going to take long,

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

**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

and

CANACCORD GENUITY CORP.

Third Party

A N D B E T W E E N:

WEST FACE CAPITAL INC. and GREGORY BOLAND

Plaintiffs by Counterclaim

- 2 -

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

AND BETWEEN:

BRUCE LANGSTAFF

Plaintiff by Counterclaim

and

THE CATALYST CAPITAL GROUP INC. and CALLIDUS CAPITAL CORPORATION
 Defendants to the Counterclaim

UNDERTAKINGS, QUESTIONS TAKEN UNDER ADVISEMENT, AND REFUSALS

given at the Cross-Examination of Gregory Boland held April 20, 2021

(cross-examination by counsel to the Catalyst Parties)

Table 1: From the Cross-Examination of Gregory Boland held on Tuesday, April 20, 2021

No.	Page(s)	Question(s)	Category	Specific Question	Documents Referenced in Transcript	Answer or Precise Basis for Refusal

- 3 -

1.	343-344	878	UT	To cooperate to pin down the dates of the two recorded calls and/or meetings between Mr. Boland and Mr. Livesey.	Exhibit 2 to the Cross-Examination of Greg Boland	The West Face Parties' believe Mr. Livesey's recorded in-person interview of Mr. Boland took place on September 6, 2016, and that Mr. Livesey's recorded telephone call with Mr. Boland took place in January 2018, after these proceedings had been commenced.
2.	350-351	885-886	UT	To advise if the West Face Parties are aware of any materials mistakes in the transcript of Mr. Livesey's recorded call with Mr. Boland that begins with the words "Upon commencing: GREG BOLAND: Oh, pretty good, pretty good..." (Exhibit 2 to the Cross-Examination of Greg Boland).	Exhibit 2 to the Cross-Examination of Greg Boland	The West Face Parties are not aware of any material mistakes in the version of the transcript that was actually put to Mr. Boland during his cross-examination.
3.	387	978	REF	To advise if, in Mr. Boland's opinion, he said anything to Ms. McNish that would cause her to draw the conclusion that Mr. Boland had a crusade against Mr. Glassman.		Mr. Boland's answer is "No".

Catalyst v West Face et al.

Newton Glassman
on Monday, May 3, 2021



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

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1 219 Q. Okay. Let me fast-forward in time
2 now to October 3. So on October 3, as these notes
3 foreshadowed, Brian Greenspan now meets with Snowdy
4 personally together with Ms. Lutes. And let me
5 take you to the notes of that meeting, and that is
6 at tab 135.

7 So here you'll have Ms. Lutes'
8 handwritten notes of this meeting on October 3rd,
9 and you will see the people who attend this meeting
10 are Snowdy, Brian Greenspan and Ms. Lutes. I take
11 it from these notes that, again, you were not at
12 this meeting?

13 A. I was not.

14 220 Q. And is it fair to say that before
15 this meeting occurred, you warned Danny Guy about
16 the need for Snowdy to be candid and forthright and
17 provide everything that he had concerning this
18 alleged scheme to short-sell Callidus?

19 A. I don't know if "warned" is the
20 right word, but I suspect, given the emails we have
21 just read, I suspect I continued to pound on the
22 fact that he has to prove his bona fides.

23 221 Q. So let's go back then to the texts
24 at tab 36 --

25 MR. MOORE: And I would just make --

1 sorry, I don't want to interrupt, but I would just
2 make this general observation. I mean, Mr.
3 Glassman is aware of these texts. He hasn't read
4 them all. They go on for I think 23 pages.

5 In this particular example, if there is
6 something in the text that in fact mirrors what you
7 just said, let's just take the witness to that and
8 we can go more smoothly in the chronology. But the
9 fact that he doesn't necessarily remember
10 extemporaneously that there is something in the
11 text that relates to your question, you know, let's
12 go through the texts if need be.

13 BY MR. THOMSON:

14 222 Q. So turn to page 23 of the texts --

15 A. Sorry, could I interrupt you for
16 one more second, Kent?

17 223 Q. Yes.

18 A. At some point I need some time to
19 go have lunch.

20 224 Q. Yes. Yes, we'll be done with
21 these texts shortly.

22 A. I have a condition where I can't
23 go very long without eating.

24 225 Q. Yes, understood. Thank you for
25 raising that. Look at page 23, and what I am

1 interested in is the substantive text at the top of
2 the page, your text at 10:24 where you say:

3 "Snowdy allegedly [meeting]
4 w[ith] [B]rian Greenspan today.
5 U/John Phillips better make it 100%
6 clear to snowdy that this is
7 literally his very last chance. Ask
8 Philips about who brian is; suffice
9 to say that brian has the ability to
10 pressure and speed up jsot and
11 others. Snowdy MUST be extremely
12 candid, forthright, provide
13 everything and no games. Otherwise
14 not only will we throw snowdy on the
15 trash heap, I am told so will
16 jsot/police/osc. Brian can either
17 help snowdy and his credibility or
18 decide we and everyone else has to
19 get as far away as humanly possible
20 from him. This is a favor to u and
21 snowdy. He better understand that
22 and fact he only gets this one shot.
23 NO GAMES OR BS. Direct snowdy to
24 give brian literally everything he
25 has. If brian is happy w[ith] such,

1 we will make sure snowy gets [paid]
2 properly etc. If not, he's done
3 forever on this stuff. Read
4 [between] the lines: we r not the
5 only people empowering brian in this
6 re snowy."

7 And so I take it from that that you are
8 sending a clear, unmistakable signal to Danny Guy,
9 which was to light a fire under Snowdy and have him
10 be forthcoming and candid and provide everything
11 that he had in that meeting with Brian Greenspan
12 later that day; is that fair enough?

13 A. Well, I think that is one element
14 of it, yes. I don't think it is the only element.

15 226 Q. And you also at the same time took
16 the opportunity to remind Danny Guy - and we'll
17 just go through this and then we'll stop for
18 lunch - but reminded Danny Guy that Snowdy's
19 previous meetings with Jim Riley have not gone
20 terribly well.

21 So if you look now at the same page,
22 page 23, and just it is really your next text. So
23 you say in your text at 10:29 on October 3:

24 "His conversations w[ith] jim
25 were disastrous."

1 And then below that you say:

2 "Danny, u r stubborn and not
3 listening. It was DISASTROUS w[ith]
4 jim. Period. Snowy clearly has no
5 self perception or self judgment.
6 Others find him to be both not
7 credible and likely double dealing.
8 Jstot and others refuse to rely on
9 ANYTHING he says and have proof as
10 to why he is not credible. They r
11 letting brian meet w[ith] him as a
12 favor and because they trust and
13 rely on brian. U need to stop
14 arguing w[ith] me, u don't know all
15 the facts, and I am trying to do YOU
16 a favor. FUCK!!!!!!" with I think
17 six or seven exclamation points.

18 And then at the top of the next page,
19 you tell him to -- you tell Danny Guy to stop being
20 so defensive and to be objective. You say:

21 "U r beyond pissing me off and
22 I have had it w[ith] u guys. You
23 literally don't know what the fuck u
24 r talking about on this now. Snowy
25 has his one last chance. If he

1 blows it, u r severely damaged
2 w[ith] him. Period. U linked
3 yourself far too intimately w[ith]
4 him. His resurrection is, in my
5 opinion, literally an imperative FOR
6 U AND YOUR CREDIBILITY. Fuck u r
7 thick!!!!"

8 So again, the same messages to Danny
9 Guy that the previous meetings had not gone well.
10 This meeting was crucial. And at this meeting
11 Danny Guy had -- sorry, Snowdy, rather, had one
12 last chance to make it right by delivering the
13 goods to Brian and to Naomi Lutes. Is that a fair
14 summary of what is there --

15 A. No, I don't think that is a fair
16 summary because they keep hanging out a carrot in
17 front of us. Read even the next bubble from Danny:

18 "Newton. What would u have me
19 do? He has two years of stuff.
20 Tapes emails etc. what's valuable
21 to you I don't know. Let him go
22 through it with Brian. Why don't u
23 tell me what's going on so I can
24 help.

25 U want to chat on this?"

1 They clearly believed and Danny in
2 particular believed that they had some very serious
3 material. It is now October. It started in
4 August. Have got more and more material and
5 evidence in the interim, and this guy doesn't pony
6 up. And we had met with JSOT obviously a number of
7 times. JSOT had a view. JSOT clearly -- and they
8 didn't say it directly in my memory, but they
9 clearly had some stuff from Mr. Guy and Mr. Snowdy
10 and were also frustrated that they weren't
11 producing more.

12 My view was if Danny Guy was paying
13 them, it is his property. And you can see I even
14 write it in the next paragraph. It's his job to
15 deliver it. I wanted to put as much pressure as
16 quickly as possible because we had a ton of
17 evidence already and Snowdy allegedly had
18 confirmatory evidence. It is very simple. These
19 guys were not producing it when they promised they
20 would.

21 227 Q. And there is just one passage in
22 the notes that I wanted to take you to before we
23 break. These are the notes now of the meeting of
24 October 3 of 2017 that Brian Greenspan and Naomi
25 Lutes attended with Snowdy. This is my tab 135.

1 And the part I want to take you to is page 33 of
2 the production, and you will see toward the bottom
3 of the page, after there is some reference to some
4 lawyer about to be disbarred, he says -- or the
5 note says:

6 "does not have much direct
7 intelligence on West Face but may
8 [after] this conference."

9 Was that portion of these notes brought
10 to your attention, that Snowdy had confirmed during
11 the meeting of October 3 of 2017 with Mr. Greenspan
12 and Ms. Lutes that he did not have much direct
13 intelligence concerning West Face?

14 A. I'm sorry, what is your question?

15 228 Q. Was that brought to your attention
16 following this meeting? Did Mr. Greenspan or Ms.
17 Lutes tell you that Snowdy had confirmed during the
18 meeting that he did not have much direct
19 intelligence concerning West Face?

20 A. What I remember vaguely is the
21 importance of the phrase, quote, "direct
22 intelligence" and people talking to me about the
23 difference between direct and indirect. I don't
24 think they used that language, but the same concept
25 of direct or indirect, et cetera. But I don't

1 remember reading that note, no.

2 229 Q. And just to finish the thought, if
3 we could then go back to the text messages one last
4 time before we break about this meeting, and this
5 is now my tab 36 and look at page 25. Toward the
6 bottom of the page there is a text from Danny Guy
7 at 15:56 where the question he puts is:

8 "Let me know your thoughts on
9 today's meetings."

10 And this is October 3, the same day as
11 the meeting we just looked at, where you write back
12 and say:

13 "Here is Brian's direct quote:
14 'Two and a half hours of interesting
15 but unusable bullshit - and two and
16 a half minutes of food for thought.'
17 Fucking blew it. U have no idea.
18 [Please] thank snowy for wasting
19 everyone's time and blowing his one
20 chance at redemption -- and putting
21 u on the soup. I warned u."

22 And you then go on to say:

23 "Brian was instructed to make
24 sure he gave snowy every imaginable
25 opportunity. He blew it big time."

1 Guy says:

2 "John spoke to Brian. You are
3 right he didn't do what we wanted
4 him to do. Now I am pissed off. He
5 was told to give him everything.
6 Why didn't he is the question."

7 And then you say at the top of the
8 page:

9 "He's playing both sides of the
10 street. And u have been suckered by
11 him."

12 So I took it that that meeting with
13 Brian Greenspan on October 3 of 2017 did not go
14 well and that Snowdy yet again failed to produce
15 the corroborating evidence that he maintained he
16 had; fair enough?

17 A. I don't think that is accurate. I
18 don't think that is accurate. Read the bubble.
19 There was two and a half minutes -- by his own
20 description to me, there was two and a half minutes
21 of, quote, "food for thought". I suspect that
22 there was some stuff, but we still needed and
23 wanted confirmatory evidence.

24 Our whole approach to Danny Guy and
25 Snowdy and Vincent Hanna was we know way more than

1 they thought we knew. We had way more evidence
2 than they thought we had both before talking to
3 them, during talking to them and after talking to
4 them, and we just wanted the confirmatory evidence,
5 period. It is not that -- I personally didn't
6 think it was that complicated.

7 230 Q. And your assessment was that
8 Snowdy "fucking blew it", to use your words, that
9 he wasted everybody's time and "He blew it big
10 time". That was your assessment as of October 3,
11 2017, at 21:51 and at 22:27; correct?

12 A. That is not quite accurate. That
13 is what I said to Danny Guy, hoping to put more
14 pressure on him. To this very day, I suspect that
15 if Snowdy has material, there is a chance that it
16 will come forward. We would love to get it.

17 231 Q. Well, here we are and it is now
18 May of 2021 and you still don't have it; correct?

19 A. That is true.

20 MR. THOMSON: All right. Could we
21 break there for lunch.

22 MR. MOORE: Yes.

23 [DISCUSSION OFF THE RECORD.]

24 -- RECESSED AT 1:09 P.M.

25 -- RESUMED AT 2:03 P.M.

Catalyst v West Face et al.

Jacquie McNish
on Thursday, November 12, 2020



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Toronto, Ontario M5K 1A1

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1 Police?

2 449 Q. Yeah.

3 A. So the Toronto Police spokeswoman
4 did tell me that they were making inquiries and
5 would not go beyond that.

6 450 Q. Right. Why not?

7 A. That was --

8 451 Q. Because it's not open to the
9 public?

10 A. She didn't tell me why. She just
11 said she would not go any further.

12 452 Q. Okay. So the whistleblower
13 program of the OSC, it is confidential, right?

14 A. That is my understanding, yes.

15 453 Q. I am switching topics now. You,
16 in your previous life at the Globe and Mail, had
17 communications with West Face Capital's CEO Greg
18 Boland regarding Xchange back in 2014; correct?

19 A. I had forgotten all about that
20 until I saw the productions, so yes, I did.

21 454 Q. Okay. And I am just going to take
22 you to -- sorry, Mr. Tunley, were you saying
23 something?

24 MR. TUNLEY: No, I was just having a
25 sip of water.

1 MR. MILNE-SMITH: Sorry, Mr. Dearden, I
2 am going to register an objection here, and I am
3 not going to stop the witness from answering the
4 question but --

5 MR. DEARDEN: You don't have the right
6 to make any objections whatsoever, Mr. Milne-Smith.

7 MR. MILNE-SMITH: Mr. Dearden, I am
8 going to put this on the record, and then you can
9 go as you please.

10 MR. DEARDEN: No, you are not. You are
11 not going to put this on the record. It is not for
12 everybody to start jumping in.

13 MR. MILNE-SMITH: You have our position
14 that these documents --

15 MR. DEARDEN: So I am --

16 MR. MILNE-SMITH: Mr. Dearden, please
17 let me register my objection, and then you can
18 conduct your examination.

19 MR. DEARDEN: No, you have no right to
20 make an objection.

21 MR. MILNE-SMITH: Yes, I do. You are
22 using documents in breach of the deemed undertaking
23 rule. I am registering that objection. Now,
24 please proceed.

25 BY MR. DEARDEN:

1 455 Q. Okay. Mr. Milne-Smith, had you
2 let me finish, I was going to read -- I am going to
3 read paragraph 330, 331, 333 of Jim Riley's
4 affidavit to this witness to have her confirm the
5 facts that are in there and that is all. I am not
6 taking her to any Veritas documents that you claim
7 are subject to a deemed undertaking breach. So
8 again, your objection shouldn't have been made.

9 But anyway, let's put up paragraph 330
10 of Jim Riley's libel action affidavit.

11 Is it true, Ms. McNish, that on
12 December 12th or thereabouts, 2014, Mr. Boland sent
13 his research to you with an encrypted password?

14 A. I only have a vague recollection
15 of this, but I do remember him sending me
16 something, and I take at face value what Mr. Riley
17 is saying here. Do you have a copy of the email?

18 456 Q. I do, but in light of the flurry
19 of exchange we just had, I -- if you really want
20 it, we can put it up, but all I want you to confirm
21 is that Mr. Boland sent you research with an
22 encrypted password on December 12th, 2014,
23 and --

24 MR. TUNLEY: So let me interject,
25 Mr. Dearden. I am concerned, based on the

1 interjection from Mr. Milne-Smith, that we may be
2 dealing with fruit of a forbidden tree here. I
3 don't believe it is appropriate for you to try and
4 engage Ms. McNish in an inquiry down forbidden
5 roads. If she has specific recollections of
6 dealings with Mr. Boland in this time frame,
7 December 12th, 2014, or thereabouts while at the
8 Globe and Mail, she'll tell you about them. But I
9 think we should get away from anything that is the
10 subject of Mr. Milne-Smith's objection, which I
11 don't particularly know --

12 MR. DEARDEN: This doesn't have
13 anything to do with --

14 MR. TUNLEY: Fine. Well, just -- you
15 hear my point. I just don't think you should be
16 involving Ms. McNish in any issues between
17 yourselves and West Face or Mr. Boland. Just ask
18 her about her memory of the events of 2014, and
19 let's leave it at that.

20 BY MR. DEARDEN:

21 457 Q. And what I am doing for my memory
22 is going off of what I wrote in my notes of these
23 paragraphs, and I am looking at them on the screen.
24 So, Ms. McNish, you have told me that you recalled
25 something about this research being sent to you in

1 2014 by Greg Boland.

2 MR. TUNLEY: She did not say that.
3 Mr. Dearden, she did not say that. Her answer is
4 on the record. Just ask your questions, please.

5 BY MR. DEARDEN:

6 458 Q. Did Greg Boland in December 12th,
7 2014, send you his research with an encrypted
8 password?

9 A. All I remember about this
10 communication, which I had totally forgotten about
11 until I read Mr. Riley's affidavit, was that
12 Mr. Boland did reach out to me about something
13 involving a company, and I remember looking at it,
14 and I was extremely busy on another totally
15 unrelated investigation at the time. And all I
16 recall is that it was just not something I had the
17 time or interest at that point in pursuing. And
18 that is all that I remember about it.

19 459 Q. Okay. And paragraph 333 of
20 Mr. Riley's affidavit indicates that you had
21 previously written about Mr. Boland in an article
22 entitled "How an Activist Investor Shook Up a
23 Canadian Brand"; do you remember that?

24 A. Yes, I do.

25 460 Q. And do you remember him emailing

1 you about short-circling around Callidus and the
2 stock has come off sharply?

3 A. What time was that? Do you have a
4 time for that?

5 461 Q. Do you have that exhibit, Marco?
6 December 12th, 2014. It is that -- it is the same
7 exhibit number.

8 A. It rings a bell, but beyond that,
9 I don't have much of a recollection.

10 462 Q. Okay. So what communications have
11 you had with Greg Boland in 2017 regarding the
12 research and reporting you did for the articles
13 that are in issue in these actions?

14 A. I am not sure I understand your
15 question. Sorry.

16 463 Q. So we are now talking about the
17 articles in issue in this action, the one published
18 August 9th and 10th of 2017, and I want to know
19 what communications you had with Greg Boland for
20 your research and for your reporting for those
21 articles?

22 MR. TUNLEY: Don't answer questions
23 about sources that are built into that question,
24 Ms. McNish.

25 MR. DEARDEN: Sorry, Phil, we couldn't

Catalyst v West Face et al.

Nathan Anderson
on Friday, November 20, 2020



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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

Catalyst v West Face et al.

Bruce Livesey
on Friday, December 18, 2020



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1 transcribe our conversation very well.

2 So in the context of what Mr. Voorheis
3 was asking me to do, and given that he, among the
4 things he does, is runs an investment firm, in this
5 type of work you don't necessarily call up other
6 investment firms to talk about an assignment for
7 another investment firm because you don't know
8 whether these investment firms might be in
9 competition or have conflicts of interest or that
10 your client doesn't necessarily want them to know
11 of the research you are doing.

12 So this is not -- this was not doing a
13 journalistic article where you call just about
14 everybody you can find. This was for a client
15 where you have to be more circumspect about who you
16 call, and especially in the investment world.

17 So I had the West Face report. I had
18 the Veritas report. And I was using those to
19 conduct -- to at least initiate my research and did
20 not think it was going to be appropriate to call
21 Mr. Boland, who at that point I also knew very
22 little about his dispute with Mr. Glassman.

23 311 Q. When did you first contact West
24 Face about any of the issues surrounding Callidus?

25 A. That is in my affidavit.

1 312 Q. No, I don't think it is clearly
2 expressed in your affidavit. I am asking --

3 A. It is extremely clear in my
4 affidavit. The date, you know, it is -- you
5 haven't been reading my affidavits very closely,
6 but it was after Canadian Business had assigned the
7 article, which would have been, I think, in August
8 of 2016. So sometime in late August or early
9 September -- it must have been probably August of
10 2016, did we -- I reach out to Mr. Boland or to
11 West Face.

12 313 Q. I think your affidavit indicates
13 when you spoke to Mr. -- just a moment.

14 A. Well, it indicates when I got
15 assigned the story, and it indicates the first
16 meeting of Mr. Boland. And therefore, somewhere
17 between when I got assigned to the first meeting, I
18 called them up, and he and I spoke. He was very,
19 very reluctant to do an article, but we agreed to
20 meet to discuss it.

21 314 Q. So you are referring to paragraphs
22 53 to 57 of your first affidavit -- I won't turn it
23 up right at this moment, but you are referring to
24 your first affidavit sworn in November 2019?

25 A. Yes.

1 to Mr. Gagnier, is it accurate, as is stated in
2 this paragraph 403, that you advised Mr. Gagnier
3 that the article was going to be a fair and
4 balanced piece, not taking sides as between Boland
5 and Glassman; is that fair?

6 A. I never said that to him, no.

7 616 Q. So you deny telling Mr. Gagnier
8 that you were going to write a fair and balanced
9 piece? You say you never said anything like that?

10 A. Well, not like -- again, you are
11 asking me about a conversation I had a long time
12 ago, but that is not the sort of language I would
13 use. The assumption, if you are calling someone up
14 as a reporter, is -- and again, the context of
15 this, it was not a secret that Mr. Boland and
16 Mr. Glassman were involved in a dispute which had
17 become public. It was well known in at least some
18 circles of Bay Street.

19 So I would never have said to him, I am
20 going to do a fair and balanced reporting. That is
21 assumed. It is I called them up and said, I am
22 doing this story, and I would like to speak to
23 Mr. Glassman, and would that be possible?

24 617 Q. And -- well, did you tell them
25 that the story was not just about Mr. Glassman but

1 also about Mr. Boland and the dispute that existed?

2 A. Yes.

3 618 Q. All right.

4 A. And that --

5 619 Q. And please don't get hung up on
6 the specific, you know, four words or five words in
7 the last line of paragraph 403. Did you convey in
8 one way or the other that you intended to write a
9 fair and balanced article, whether you used those
10 specific words or not?

11 A. I don't know how to answer that
12 question. Like I don't --

13 620 Q. What is the problem with answering
14 that question?

15 A. Well, because the way -- well,
16 because it is not the way these conversations go.
17 The conversations go where I say I am writing -- I
18 have been assigned an article by Canadian Business
19 magazine. In this case it was about Mr. Boland,
20 and part of it had to do with his dispute with
21 Mr. Glassman, and I would like to arrange an
22 interview with Mr. Glassman. Would that be okay?

23 And in that -- and you have got to
24 remember at this point, you know, I had spent about
25 three days working for Mr. Voorheis. I had done

1 A. [Witness reviews document.]

2 709 Q. Let me know when you are finished
3 reading this page.

4 A. Okay.

5 710 Q. And before you move further, I
6 have a question about the third-last bullet. It
7 says:

8 "We have noticed in court files
9 [...]"

10 Do you see that?

11 A. Yes.

12 711 Q. So did you take steps or did
13 someone else on your behalf take steps to search
14 court files?

15 A. I did a search, yes.

16 712 Q. Did anyone else? You had a
17 fact-checker as well, as I understand it?

18 A. She would have just reviewed the
19 material I produced. I don't think she
20 independently, as far as I know, didn't check the
21 court file.

22 713 Q. All right. And how did you review
23 the court ones?

24 A. I went down to -- well, it is
25 right beside your office, the courthouse. What is

1 the address again? I think it is the 10th floor or
2 whatever the floor is, 8th floor, and there is a
3 kiosk there, a computer kiosk, and you can punch in
4 people's names or companies and find out what
5 litigation has occurred, and that is what I did.

6 714 Q. And did you -- independent of
7 that, did you get court documents from any other
8 source?

9 A. Yes.

10 715 Q. What other sources for that?

11 A. Well, there was obviously the
12 court file involved in the Wind litigation, so I
13 went down into the bowels of -- I am forgetting all
14 these addresses, but the other courthouse where
15 they hold the records, I went through those. And I
16 think other people gave me some other court
17 documents.

18 716 Q. All right. Were some of the other
19 people, did that include West Face?

20 A. Yes.

21 717 Q. And as best you can -- this may be
22 covered by what I asked before, but in case it
23 isn't, can you identify, to the extent you can,
24 which court documents, or documents, for that
25 matter, you received from West Face?

1 A. I think most of it had to do with
2 the Wind litigation.

3 718 Q. Well, whatever most of it is,
4 Mr. Lascaris, will you make efforts to identify
5 what documents you obtained from West Face and let
6 me know, to the extent you can? Sorry, are you
7 going to take that under advisement, or what is the
8 position?

9 A. I think his microphone turned off.

10 719 Q. You are on mute.

11 U/A MR. LASCARIS: Oh, my apologies. Yes,
12 I said I would take that under advisement.

13 BY MR. MOORE:

14 720 Q. All right. And the fact-checker
15 you used, what was her name again?

16 A. Catherine -- hold on.

17 721 Q. It is in Mr. --

18 A. I always forget Catherine's last
19 name.

20 722 Q. -- Boland's reply affidavit. Was
21 that person at Dowling Research?

22 A. Yes, that's right.

23 723 Q. And do you have communications
24 with her in which you outline or identify the areas
25 that you want her to fact-check? How does that

List of Documents Bruce Livesey Received From WestFace

1. Callidus Capital Corporation (“**Callidus**”) Management’s Discussions and Analysis (“**MD&A**”) for the year ended December 31, 2017.
2. Emails between Newton Glassman and Paul Holden, dated April 1, 2016.
3. Email from Newton Glassman to Harris Fricker, Mark Mulroney and Daniel Daviau, dated September 24, 2015.
4. Report of Duff & Phelps Canada Restructuring Inc. as Proposed Receiver of Xchange Technology Group LLC and related companies, dated October 25, 2013.
5. Affidavit of Brandon Moyse, sworn July 7, 2014: *The Catalyst Capital Group Inc. v. Brandon Moyse et al*, court file # cv-14-507120 (ON SC).
6. Affidavit of James W. Hall, sworn April 15, 2016 (cover and backpage missing).
7. Photocopy of the March 1, 2017 *Globe and Mail Report on Business* section containing the article titled “Callidus hits back at former executive in legal dispute.”
8. Callidus MD&A for the three and six months ended June 30, 2015.
9. Easyhome Ltd. Q1 2015 Earnings Call Transcript, dated May 5, 2015.
10. Callidus Q3 2015 Earnings Call Transcript, dated November 6, 2015.
11. Callidus Q4 2015 Earnings Call Transcript, dated March 31, 2016.
12. Copy of Receiver’s Motion to Approve Sale of Assets (filed July 21, 2015) in *Callidus Capital Corporation v Harvey Industries LLC et al*, United States District Court for the Eastern District of Michigan, Case No. 2:15-cv-10616.
13. Callidus MD&A for the three months ended March 31, 2015.
14. Statement of Claim, issued April 14, 2010: *Millicent Poon v. Newton Glassman et al*, court file # cv-10401116 (ON SC).
15. Counterclaim, issued June 29, 2015: *Kevin Baumann v. Callidus Capital Corp. et al*, court file # 1501-05314 (AB QB).
16. Statement of Defence and Counterclaim, filed March 14, 2017: *Craig Boyer v. Callidus Capital Corp.*, court file # cv-17-569065 (ON SC).
17. Factum of the Applicant Mid-Bowline Group Corp., returnable January 25, 2016: *In the Matter of a proposed arrangement involving Mid-Bowline Group Corp., its shareholders and optionholders, Shaw Communications Inc., and 1503357 Alberta Ltd.* , court file # cv-15-11238-00CL (ON SC [Commercial List]).

18. Statement of Claim, issued February 6, 2017: Craig Boyer v. Callidus Capital Corp., court file # cv-17-569065 (ON SC).
19. Factum of the Defendant/Moving Party Brandon Moyses, filed January 9, 2015: *The Catalyst Capital Group Inc. v. Brandon Moyses et al*, court file # cv-14-507120 (ON SC).
20. Copy of GMP Securities LP's Research Report for Callidus, dated August 15, 2016.
21. Contestation of Callidus Capital Corporation (Petitioners' Petition for the Issuance of an Initial Order), dated November 16, 2015: *In the Matter of the Plan of Compromise or Arrangement of Bluberi Gaming Technologies Inc, Bluberi Group Inc. and Bluberi USA, Inc.*, court file # 405-11-002902-151 (QC SC [Commercial Division]).
22. Contestation of Callidus Capital Corporation (Petitioners' Petition for the Issuance of an Initial Order), dated November 16, 2015: *In the Matter of the Plan of Compromise or Arrangement of Bluberi Gaming Technologies Inc, Bluberi Group Inc. and Bluberi USA, Inc.*, court file # 405-11-002902-151 (QC SC [Commercial Division]).
23. Callidus MD&A for the three and nine months ended September 30, 2015.
24. Callidus MD&A for the year ended December 31, 2015.
25. First and Final Report of the Receiver MNP Limited (pursuant to Subsections 256(2) and 246(3) of the *Bankruptcy and Insolvency Act*), Re Leader Energy Services Ltd.- in Receivership.
26. Solicitation of Consents by Gateway Casinos & Entertainment Ltd. Relating to 8.250% Second Priority Senior Secured Notes Due 2024, dated February 26, 2018.
27. Solicitation of Consents by Gateway Casinos & Entertainment Ltd. Relating to 8.250% Second Priority Senior Secured Notes Due 2024, dated March 6, 2018.
28. CanLII printout of *Glassman and Glassman v. Glassman*, 1982 CanLII 1264 (ON CJ).
29. CanLII printout of *Glassman and Glassman v. Glassman*, 1983 CanLII 1141 (ON SC).

To: kdaniels@OSC.gov.on.ca[kdaniels@OSC.gov.on.ca]
From: - Greg Boland[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2D2132F27A5C4ECDB17080D2AD0F7B85-GREG]
Sent: Tue 12/9/2014 3:48:34 PM (UTC)
Subject: Follow up re Callidus
[Xchange Technology.pdf](#)

WF016002/001

851

Kathryn,

I understand you met my partner Tom Dea. We have been working on some short ideas and have been doing a deep dive on Callidus Capital.

I have previously reported to the OSC what I believed to be aggressive valuations in the Catalyst Capital private equity funds (which I still believe to be the case).

Catalyst is the sponsor of the recently IPO of Callidus capital. I think the prospectus disclosure is aggressive at best and certainly misleading.

More troubling is objective evidence of possible undisclosed portfolio write-downs or delays in recognition to facilitate the IPO.

Attached is one of the problem loans in question.

I am happy to discuss further.

Regards,
Greg Boland



Greg Boland - President and CEO | West Face Capital Inc.
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Tel: 647-724-8901
Email: greg.boland@westfacecapital.com
Nikol 647-724-8918 | nikol.markovic@westfacecapital.com

Xchange Technology – This Loan Represented 10% of the Loan Book at the Time of the IPO

Callidus is owed more than \$40 million. The best third-party bid received for the company was \$17 million, 57.5% lower than what Callidus is owed

1. Callidus advanced a 1-year loan in the amount of \$22 million to Xchange Technology (“XTG”) in October 2012. The loan has grown to more than \$40 million (details in appendix)
2. In February and May 2013 in advance of the maturity of the loan, XTG ran two separate processes with KPMG and Canaccord Genuity in an attempt to refinance the Callidus loan
3. The KPMG process failed
4. A total of 56 parties were contacted in the Canaccord process
 - Only one party performed due diligence and passed shortly after commencing due diligence
5. An LOI was received by the company’s founder, Jeff McFarlane, **to purchase XTG for total consideration of \$17 million.** The offer was rejected by Callidus
6. In October 2013, Callidus filed a receivership application with the Ontario Superior Court of Justice seeking to appoint Duff & Phelps as receiver and seeking approval of a sale order
7. Duff & Phelps performed a liquidation analysis which showed that **“Callidus would incur a substantial shortfall on its advances to the XTG Debtors should the XTG Debtors’ business and assets be liquidated”** (Page 18 of Application Record dated October 25, 2013)
8. A sale process was initiated by Duff & Phelps which ultimately yielded no bids

Xchange Technology Continued

Callidus credit bid XTG in November 2013. The transaction still has not closed. No disclosures have been made to shareholders regarding these events

9. Callidus served as the stalking horse bid and credit bid XTG in November 2013 to conclude the sale process. At the time of the credit bid, Callidus was owed \$38 million
10. Around December 2013, Triangle Capital, a second lien creditor to XTG in the amount of \$6.4 million, took a more conservative view and wrote down their investment to \$0 (2013 10-K)
11. In April 2014, Callidus completed its IPO which was led by Canaccord Genuity
 - **Recall that Canaccord also led the 2nd refinancing process in May 2013 and yet no disclosure was made regarding this loan, which made up 10% of the loan book at the time**
12. Amounts owing to Callidus have grown from \$38 million to at least \$40 million
 - Possible conclusions:
 - Callidus is advancing funds to pay interest
 - Callidus is accruing interest despite receivership
13. **The sale process still has not closed after more than a year**
 - The November 2014 receiver's report states: "The Receiver and its counsel have on numerous occasions since the Sale Approval Date inquired and discussed with Callidus its intentions to close the Transaction and the timing to do so."
 - **Why has Callidus delayed completing this transaction and converting their debt into equity?**
14. In Callidus' 2014 Q3 conference call, **Newton Glassman states that "we don't have a single loan in the portfolio that's not performing... performing means current in interest and all obligations."**
 - **It is puzzling how the loan could be performing in receivership despite possible impairment**

To: 'kdaniels@osc.gov.on.ca'[kdaniels@osc.gov.on.ca]
From: - Greg Boland[/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2d2132f27a5c4ecdb17080d2ad0f7b85-Greg]
Sent: Tue 12/9/2014 5:07:12 PM (UTC)
Subject: RE: Follow up re Callidus
[CBL Presentation - Katie Daniels.pdf](#)

WF016012/001

854

Attached is the full deck which includes other case studies. Obviously the opinion part you can ignore. I would read this in the context of company disclosure that "all loans are current" and prospectus statements including "no impairments have been realized on Callidus sourced loans".

The Duff and Phelps reports referenced can be viewed here: <http://www.duffandphelps.com/intl/en-ca/Pages/RestructuringCases.aspx?caseId=895>

The document password is "daniels"

Best,
Greg



Greg Boland - President and CEO | West Face Capital Inc.
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Tel: 647-724-8901
Email: greg.boland@westfacecapital.com
Nikol 647-724-8918 | nikol.markovic@westfacecapital.com

From: kdaniels@osc.gov.on.ca [mailto:kdaniels@osc.gov.on.ca]
Sent: Tuesday, December 09, 2014 10:51 AM
To: - Greg Boland
Subject: Re: Follow up re Callidus

Thanks for forwarding

Katie

Katie Daniels | Ontario Securities Commission | Deputy Director, Corporate Finance
20 Queen Street West, Suite 1903 | Toronto ON M5H 3S8
(416) 593-8093 | kdaniels@osc.gov.on.ca

From: "- Greg Boland" <greg.boland@westfacecapital.com>
To: "kdaniels@OSC.gov.on.ca" <kdaniels@OSC.gov.on.ca>,
Date: 09/12/2014 10:49 AM
Subject: Follow up re Callidus

Kathryn,

I understand you met my partner Tom Dea. We have been working on some short ideas and have been doing a deep dive on Callidus Capital. I have previously reported to the OSC what I believed to be aggressive valuations in the Catalyst Capital private equity funds (which I still believe to be the case).

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I am happy to discuss further.

Regards,
Greg Boland



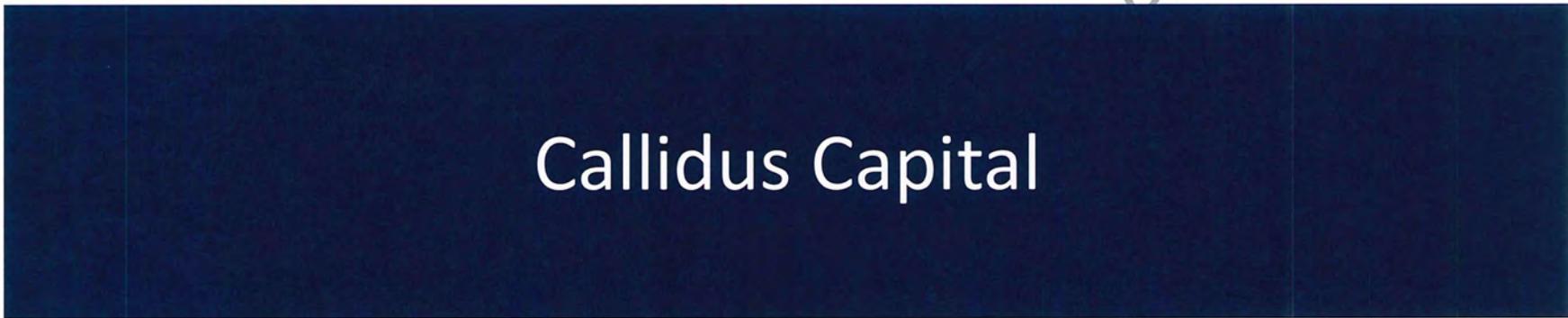
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Daniels



Callidus Capital

For the Exc

December 2014

Short Callidus Capital – Not Your Average Lender

- Callidus is a niche lender to distressed and, typically, private borrowers
- The company extends short-duration loans at gross yields of 20.0%
- Callidus trades at multiple of 2.7x book value, which implies that the current portfolio is being marked to a yield of ~11% **if there are no credit impairments**
- This premium valuation is unjustified when compared against more established lending groups with stronger origination channels, higher levels of portfolio diversification, longer portfolio durations, and lower risk of material loan impairments
- **If Callidus were to trade at comparable multiples to US Business Development Companies, it would trade at no more than book value, resulting in a share price decline of approximately 50.0%**
- An examination of the Callidus loan portfolio gives rise to specific areas of concern, most notably:
 - High portfolio concentration
 - Limited disclosure on its borrowers
 - A portfolio where improving credits are motivated to refinance, and deteriorating credits linger
 - An unpredictable earnings stream
 - Increasing financial leverage against the loan book
 - Loans against illiquid collateral such as undeveloped resource property and intellectual property
 - A portfolio that is very time consuming to monitor and challenging to scale
 - An underwriting record that is a cause for concern
 - Potential conflicts of interest with its largest shareholder, Catalyst Capital

Introduction to Callidus

Callidus Capital Background

Callidus Capital Corporation (“Callidus”) is a specialty lender based in Toronto and is 57.5% owned by Catalyst Capital Group Inc. (“Catalyst”)

- Callidus typically provides first lien loans with full collateralization and no financial covenants, which provides security for Callidus and flexibility for the borrower
- Until its IPO in April 2014, the Callidus loan book was funded by Catalyst through a participating debenture
- The typical borrower has limited to no access to capital markets or traditional lending institutions, which enables Callidus to lend at gross yields of 20.0%
- Loans are provided across a variety of sectors with two-thirds of the book comprised of Canadian domiciled companies and one-third of the book comprised of US domiciled companies
- As of December 2014, Callidus has a gross loan book of \$752 million with 31 loans outstanding
- The retained equity interest held by the Catalyst funds is no longer subject to a post-IPO lock-up

Capitalization

Callidus trades at a current P/E multiple of 20x and 2.7x P/B, making the cost of equity among the lowest in the industry

As of September 30, 2014

	<u>Balance</u>	<u>Maturity Date</u>	<u>Interest Rate</u>	
Cash	\$84.3			
Debt				
Revolving credit facility	\$173.9	10-Apr-18	Class A Loans: LIBOR + 3% Class B Loans: LIBOR + 5%	
Senior debt	\$41.2	31-Mar-17	8.419%	
Total	\$215.1			
Shares outstanding	48.7			
Share price	\$21.65			
Market capitalization	\$1,054.2			
Enterprise value	\$1,185.0			
	<u>Current</u>	<u>2014E</u>	<u>2015E</u>	<u>2016E</u>
EPS (1)	\$1.08	\$0.83	\$1.77	\$2.16
BVPS	\$8.13	\$8.46	\$10.41	\$12.70
P/E	20.0x	26.0x	12.2x	10.0x
P/B	2.7x	2.6x	2.1x	1.7x
P/E cash adjusted	18.4x	23.9x	11.3x	9.2x
P/B cash adjusted	3.1x	3.0x	2.3x	1.8x

(1) Current EPS is last quarter annualized

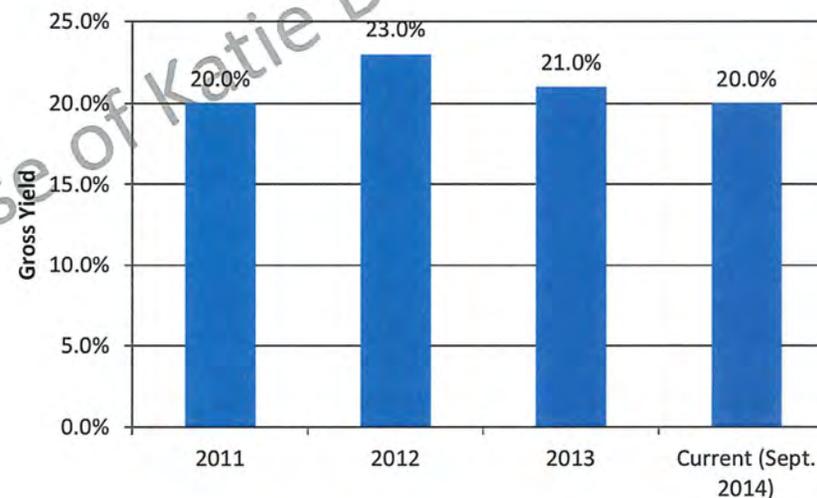
Callidus Has Experienced Tremendous Loan Book Growth

Gross loans receivable have grown by more than 4x
Gross yields have averaged more than 20% throughout this growth period

Gross Loans Receivable⁽¹⁾



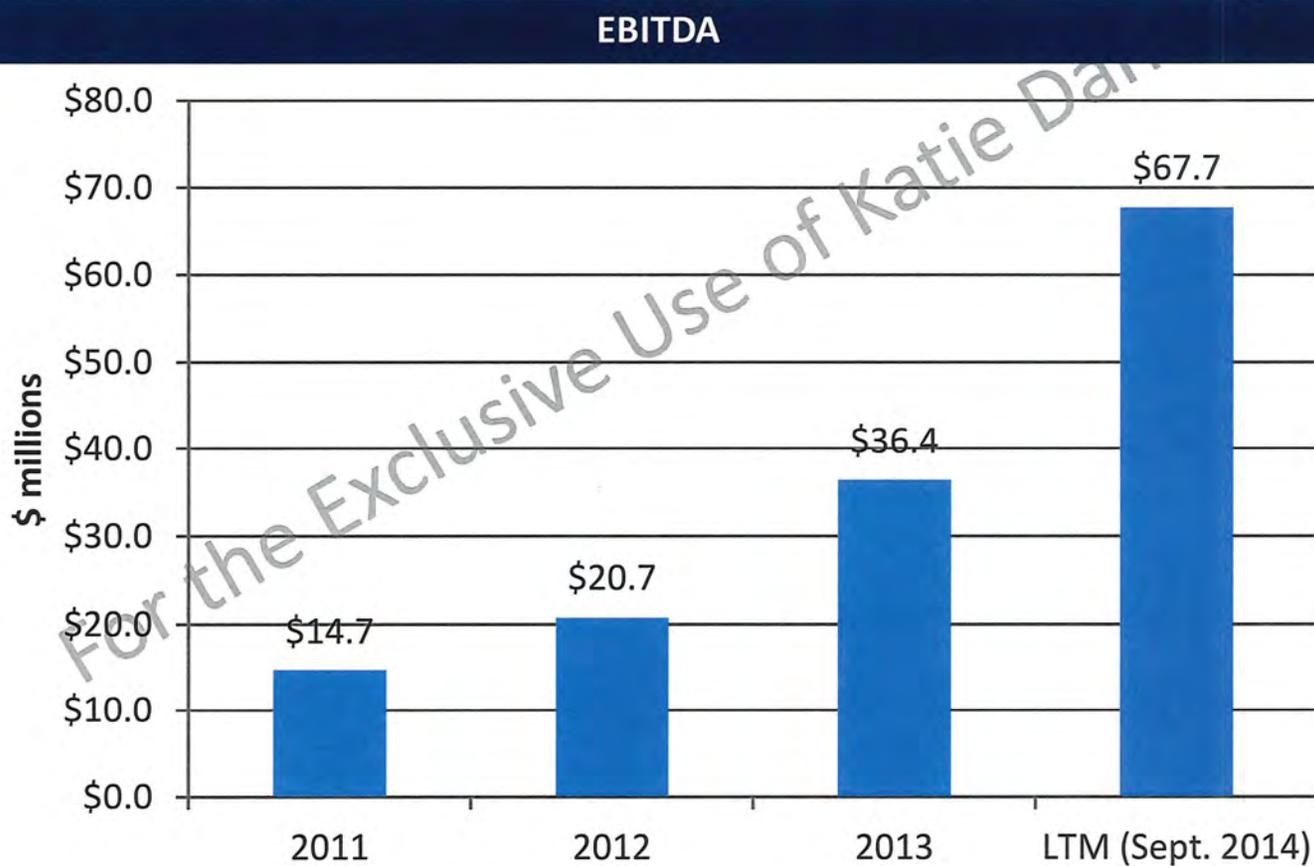
Gross Yield



1) Gross loans receivable before derecognition
Source: Company Reports

As a Result, EBITDA Has More Than Quadrupled

In addition to strong EBITDA growth, Callidus claims not to have “realized losses on principal on Callidus-originated loans”⁽¹⁾



1) Page 1 of IPO Prospectus
Source: Company Reports

Callidus Has a Guarantee From Catalyst

Loans made prior to the IPO date are effectively sheltered from principal losses until such time that loans are approved for renewal

- From the Debenture Repayment Agreement:

7.2 Indemnification for Loan Losses

- (a) If the Closing occurs each Catalyst Fund agrees severally, but not jointly or jointly and severally, to pay to the Corporation an amount equal to the Loan Loss incurred by the Corporation in connection with:
 - (i) the Specified Loans; and
 - (ii) any other Loan with respect to which Realization Proceedings have been initiated as of the Closing Time or are initiated prior to the Corporation's Credit Committee approving the renewal of such Loan. For greater certainty, if all final documentation with respect to the Renewed Loans are not completed and/or executed prior to Closing, such Renewed Loans will nevertheless be deemed to be renewed prior to Closing and this Section 7.2(a)(ii) will apply to any subsequent renewal of the Renewed Loans.

All this Has Led Analysts to Believe in the Continued Growth of the Callidus Loan Book

A combination of high loan book growth and high net interest margins have led analysts to believe in significant EPS and BPS growth. EPS growth of 100% through 2016. BPS growth of 56% through 2016.

GRAB

CBL CN Equity 99 Actions 90 Alert

Callidus Capital Corp

Measure **EPS Adjusted+**

Consensus Standard 28 Days Post Event Custom

Consensus	12/2015	12/2016	Historical Mean 12/2015 1.77	Historical Mean 12/2016 2.17
Mean Estimate	1.770	2.157		
Median Estimate	1.730	2.160		
High Estimate	1.910	2.410		
Low Estimate	1.620	1.960		
Standard Deviation	0.107	0.158		
4 Weeks Change	0.119	0.118		
4 Weeks Up/Down	6 / 1	5 / 1		
Number of Estimates	7 / 7	6 / 6		
P/E	12.203	10.014		

Firm	Analyst	Date
1) Canaccord Genuity Corp	Scott Chan	11/24/14
2) GMP	Stephen Boland	11/21/14
3) Cormark Securities Inc.	Jeff Fenwick	11/10/14
4) Dundee Securities Corp	Yashwant Sankpal	11/10/14
5) National Bank Financial	Shubha Rahman Kha	11/09/14
6) CIBC World Markets	Paul Holden	11/09/14
7) TD Securities	Lemar Persaud	11/07/14

GRAB

CBL CN Equity 99 Actions 90 Alert

Callidus Capital Corp

Measure **BPS**

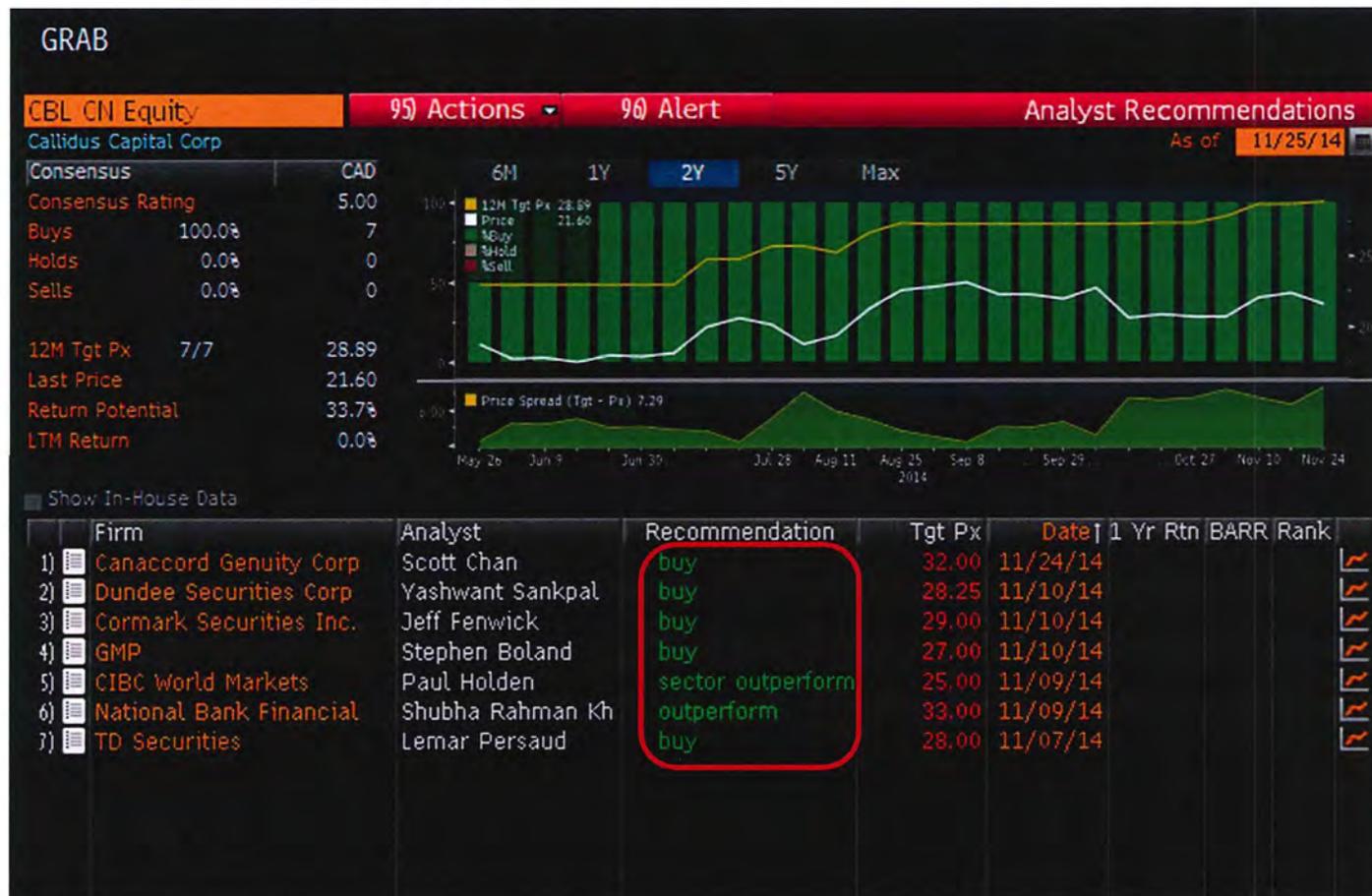
Consensus Standard 28 Days Post Event Custom

Consensus	12/2015	12/2016	Historical Mean 12/2015 10.41	Historical Mean 12/2016 12.70
Mean Estimate	10.410	12.704		
Median Estimate	10.375	12.650		
High Estimate	10.850	13.130		
Low Estimate	10.200	12.450		
Standard Deviation	0.227	0.270		
4 Weeks Change	-0.980	+0.633		
4 Weeks Up/Down	1 / 5	1 / 4		
Number of Estimates	6 / 7	5 / 6		
P/E	12.203	10.014		

Firm	Analyst	Date
1) Canaccord Genuity Corp	Scott Chan	11/24/14
2) GMP	Stephen Boland	11/10/14
3) Cormark Securities Inc.	Jeff Fenwick	11/10/14
4) Dundee Securities Corp	Yashwant Sankpal	11/10/14
5) National Bank Financial	Shubha Rahman Kha	11/09/14
6) CIBC World Markets	Paul Holden	11/09/14
7) TD Securities	Lemar Persaud	10/20/14

Conclusion: The Street Loves the Story

The average analyst target price is \$28.89 with 7/7 buy ratings

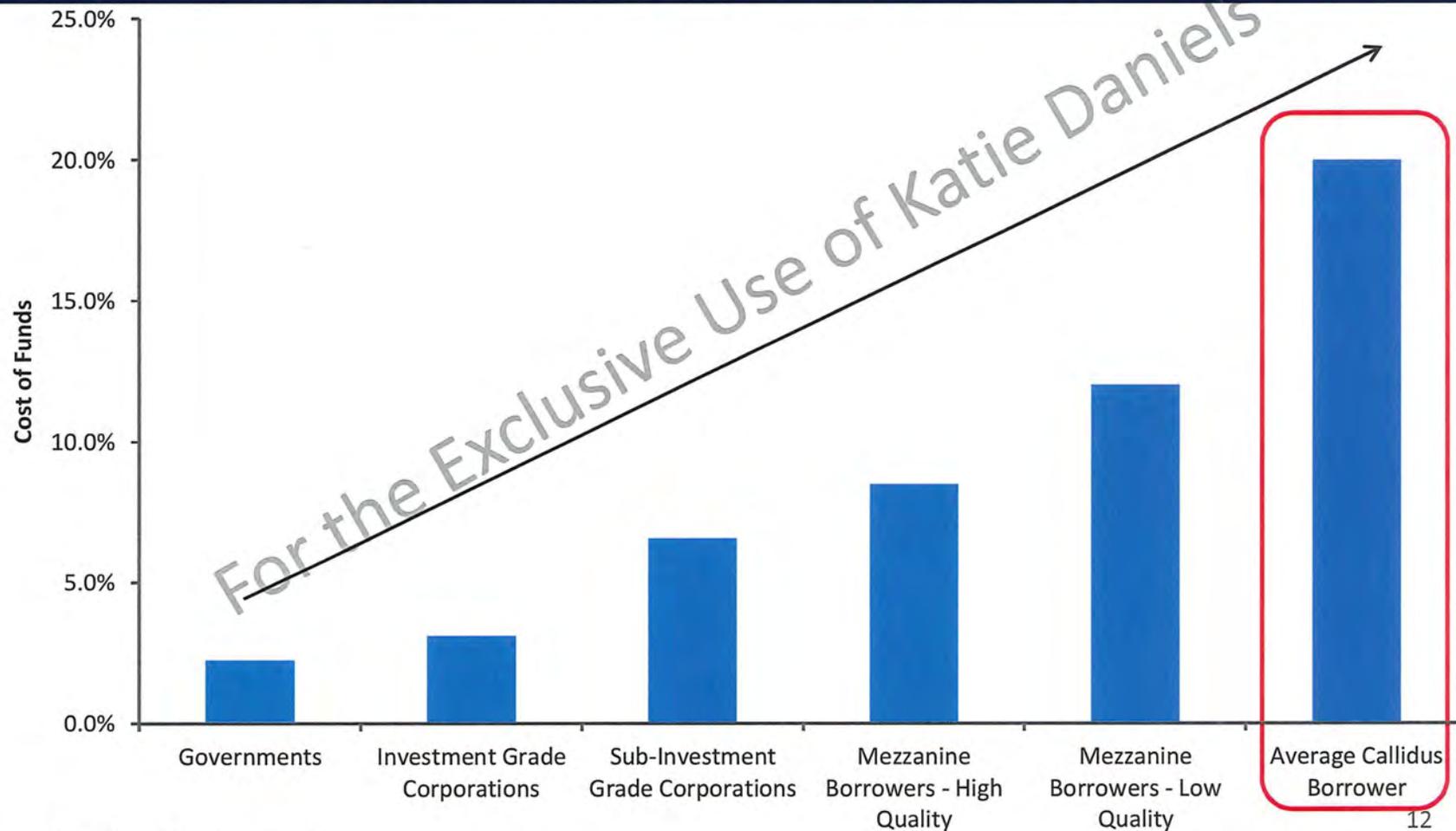


Source: Bloomberg

What is in the Callidus Loan Book?

Comparative Yields – Who Borrows at 20.0% Cost of Funds?

With average yields of 20.0% and no name specific disclosure, what is the quality of the underlying borrowers in the Callidus portfolio?



Source: Bloomberg, Company Reports

Callidus Loan Book Characteristics

Callidus loans are typically first lien securities with short durations, extended to stressed/distressed borrowers

Callidus Loan Book Characteristics	
Borrowers	• Typically private companies with stressed or distressed balance sheets
Size	• \$5 to \$50 million with average of \$20 million (largest commitment is US\$75 million)
Target Term	• Initial maturity of 12 months, but typically extended to 18-24 months
Target Rate	• Typical gross yields of 20%
Security	• Generally first lien, senior secured
Covenants	• Few to none, which enhances flexibility for borrower
Disclosure	• End borrowers not disclosed by name, only loan amounts and industry in which the companies operate

The Callidus Loan Book Partially Revealed

After extensive research, we have managed to compile a list of 36 Callidus loans, 10 of which are currently outstanding. A total of 13 involved either a bankruptcy proceeding or restructuring process

Company	Size of Facility (1)	Origination Date (1)	Termination Date (1)	Loan Identifier	Business Description	Bankruptcy or Restructuring Involved?
1. Triax Pharmaceuticals	\$56.0	19-Aug-05	26-Jul-07		Specialty pharmaceutical company focusing on dermatological products	
2. DEP Distribution Exclusive LTEE	n/a	11-Dec-07	n/a		Independent music and DVD distributor	
3. Total Security Management Services	n/a	21-Apr-08	n/a		Security management including protective, investigative, and screening services	
4. Entertainment World Holdings	n/a	05-May-08	n/a		Sells vending machines	
5. TPS Sports Group	\$0.5	31-Aug-08	05-Dec-11		Design and development of hockey products	Yes
6. King Koil Sleep Products (aka. Satpanth Capital Inc. fka. Bedford Furniture Industries Inc.)	n/a	01-Jan-09	05-Oct-11		Sells mattresses, box springs, and other furniture	
7. Magnussen International Corp.	n/a	22-Apr-09	03-Jun-10		Home furniture retailer	
8. Blockbuster Canada Co.	\$25.0	08-May-09	01-Oct-09		DVD and Blu-ray movie rentals	
9. Great Slave Helicopters (owned by Discovery Air)	\$25.0	27-May-09	01-Aug-12		Helicopter and aviation services	
10. Active Control Technology Inc.	\$2.3	17-Jun-09	n/a		Designs and manufactures wireless and fiber network solutions for the mining and access control industries	
11. Infinity Rubber (fka. Blitrite Industries)	n/a	07-Jul-09	n/a		Manufactures rubber products and compounds	Yes
12. Synergex	\$20.0	09-Sep-09	14-Jul-10		International logistics and supply chain management	
13. Encore Sales (fka. UWG Global Inc.)	\$16.0	15-Dec-09	20-Jan-12		General merchandiser	Yes
14. Roadtrek Motorhomes Inc.	n/a	29-Dec-09	15-Apr-11		Manufactures motor homes	Yes
15. Educator Supplies Ltd.	n/a	13-Aug-10	n/a		Sells children's toys, games, and educational supplies	
16. Terrace Bay Pulp	\$30.0	15-Sep-10	n/a		Pulp mill	Yes
17. Performance Sports Inc. (now T. Litzen Sports Limited)	n/a	29-Sep-10	15-Apr-11		Distributes sports equipment	
18. Tabi International (now On Ice Corp.)	\$5.0	04-Oct-10	n/a		Women's apparel	Yes
19. Cervelo (acquired by Pon Bicycle)	n/a	06-Oct-10	21-Dec-11		Designs and manufactures high-performance bicycles	
20. Forefront Innovative Technologies	\$4.0	15-Oct-10	n/a		Solar panel manufacturer	Yes
21. Sherwood Hockey Inc. (acquired by Sherwood Athletics Group which is owned by Gracious Living Corporation)	\$12.6	30-Jun-11	09-Sep-14	Company B	Manufacturer of hockey sticks and equipment	Yes
22. Kaptor Financial/CarCap	\$15.0	01-Sep-11	13-Mar-12		Sub-prime auto lender	Yes
23. Natura World (acquired by Spring Air Sommex)	\$5.1	27-Dec-11	Outstanding	Company D	Natural and organic bedding manufacturer	Yes
24. Steels Industrials Products	\$12.0	01-May-12	31-Jul-12		Provide steel products to the construction industry	Yes
25. Dynetek Industries Ltd. (acquired by Luxfer Holdings)	\$9.0	23-Mar-12	17-Sep-12		Manufactures compressed gas fuel storage systems	
26. Bluberi Gaming Technology	\$35.9	31-Aug-12	Outstanding	Company F	Designs and creates casino games	
27. Xchange Technology Group LLC	\$40.2	11-Oct-12	Outstanding	Company G	Computer rental and distributor of personal computers and server technology	Yes
28. Viceroy Homes Ltd.	\$5.6	21-Dec-12	10-Mar-14	Company K	Designs panelized and custom home packages	
29. St-Raymond Veneers	n/a	31-Dec-12	24-Dec-13		Manufacturer of veneers for hardwood plywood industry	
30. C&C Wood Products Ltd.	\$42.1	14-Feb-13	Outstanding	Company M	Wood panelling	
31. Leader Energy Services	\$11.4	06-Mar-13	Outstanding	Company O	Provides well completion and stimulation services for the oil and gas sector	
32. Quality One Wireless Inc.	\$48.8	07-Oct-13	Outstanding	Company Q	Distributor of wireless handsets and accessories	
33. Arthon	\$54.6	20-Dec-13	Outstanding	Company S	General contracting including underground servicing, excavation, and road building. Arthon also processes and supplies aggregate products and have the rights to operate a currently idled coal mine near Tulameen, BC	Yes
34. Smardt Inc.	n/a	31-Jan-14	Outstanding		Manufactures air-cooled and water-cooled chillers for HVAC systems	
35. North American Tungsten	\$11.0	15-May-14	Outstanding		Tungsten mining company	
36. Manor Resources, LLC	n/a	18-Aug-14	Outstanding		Online micro-lender	

- The 10 currently outstanding represents roughly 1/3 of the total number and amount of loans outstanding
- Of the 10 identified as outstanding, 3 have been, or are currently involved in, bankruptcy proceedings

(1) Approximate

The Callidus Loan Book

- Of the 10 identified as outstanding, 8 have been matched with the disclosure on page 26 of the IPO prospectus reproduced below (see previous slide under “Loan Identifier”):

Loan	Industry	Origination Date	Approximate Committed Facility (\$ thousand)	Period End Balance (\$ thousand)
Company A	Food Packaging ⁽¹⁾	26-Jul-07	11,016	11,016
Company B	Sports Supplies Manufacturing ⁽²⁾	30-Jun-11	20,000	11,336
Company C	Wireless Infrastructure Provider ⁽²⁾	29-Nov-11	19,506	16,542
Company D	Mattresses Manufacture ⁽²⁾	05-Dec-11	5,084	5,084
Company E	Aviation Services	25-May-12	3,606	3,114
Company F	Gaming Technology	31-Aug-12	41,018	35,935
Company G	Computers and Accessories	11-Oct-12	40,185	40,472
Company H	Financial Services	06-Nov-12	30,000	17,844
Company I	Tool and Mould Manufacturing	08-Nov-12	40,098	38,531
Company J	Natural Gas and Electrical Supplier	21-Dec-12	20,000	13,384
Company K	Custom Home Engineering and Manufacturer	21-Dec-12	5,576	5,576
Company L	Street Maintenance / Cleaners	24-Dec-12	5,289	4,586
Company M	Lumber Industry	24-Jan-13	42,500	42,148
Company N	Rubber supplier for Auto Industry	22-Feb-13	7,300	6,185
Company O	Coiled tubing and Nitrogen Services	06-Mar-13	16,000	15,175
Company P	Financial Services	17-Apr-13	5,000	4,977
Company Q	Wireless Service provider	08-Oct-13	75,000	48,768
Company R	Fisheries and Aquaculture Industry	12-Dec-13	27,522	10,300
Company S	Mining and Construction Industry	23-Dec-13	64,621	50,158

Notes:

(1) This loan has remained outstanding since 2007 due to the inability of the borrower to repay the principal amount (interest has been paid throughout).

(2) The loans outstanding since 2011 have been continuously renewed, on an annual basis since that time, and have been performing.

It Appears that Callidus has a Liberal Definition of “Asset Based Lending”

- Traditional ABL facilities are secured by accounts receivable and inventory and are used to bridge deficits in cash flow caused by timing differences in working capital
- These facilities typically do not exceed the value of collateral
- Even Callidus states on Page 31 of the IPO Prospectus, that ABL facilities are secured by “the most liquid assets of the borrower”
- **However, in Callidus’ case, working capital is often not enough to secure their loans which means that loans are then securitized by other assets, such as undeveloped mining assets or intangible intellectual property (more details to follow)**

Callidus “Asset Based Lending”

Select Borrowers	Potential Form of Security	Amount Outstanding
Arthon	• Undeveloped coal and natural aggregate assets	• \$54.6 million
Bluberi Gaming	• Intangible gaming intellectual property	• \$35.9 million
Leader Energy Services	• Oil field service equipment	• \$11.4 million
Natura World	• Mattresses	• \$5.1 million
North American Tungsten	• Undeveloped and end of life tungsten mine assets	• \$11 million
Xchange Technology	• Used computer rental inventory and intangible intellectual property	• \$40.2 million
Total		• \$158.2 million

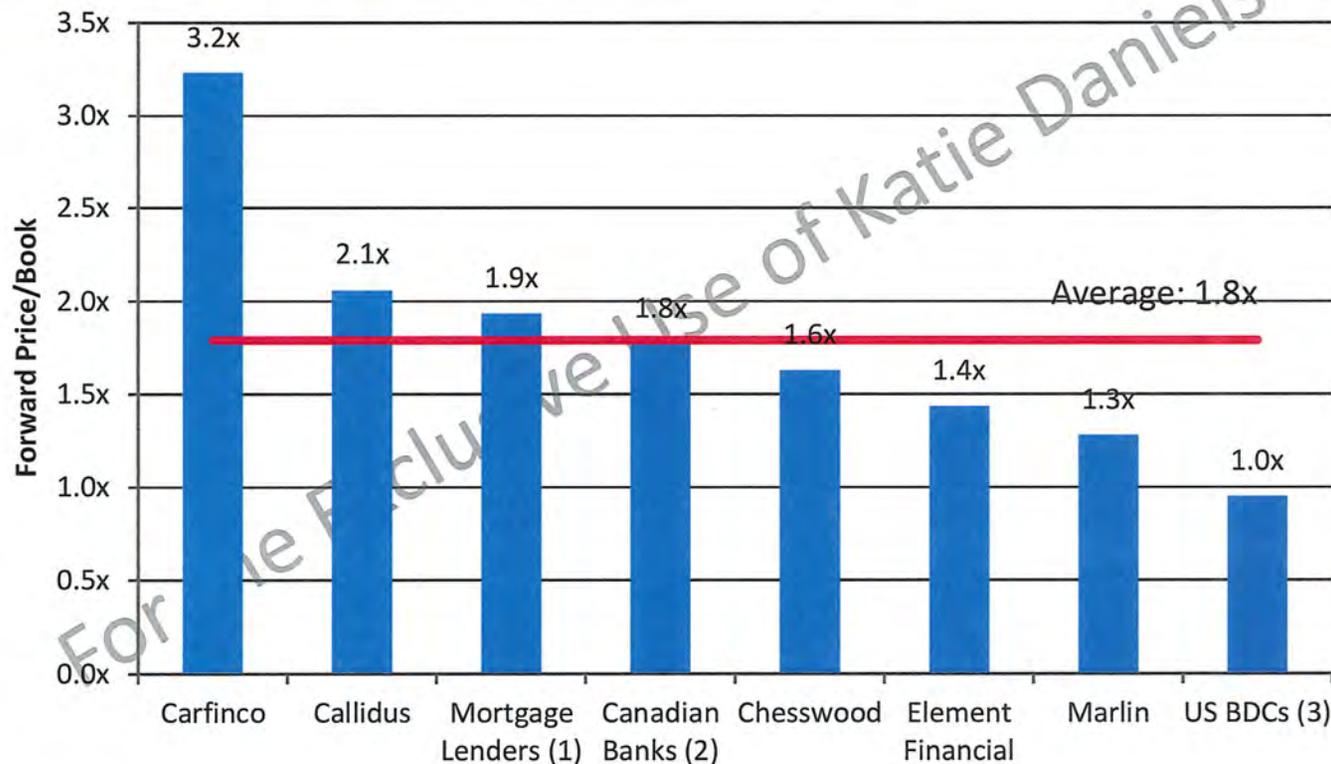
Should Callidus trade at a Premium to Book Value?

For the Exc

Daniels

Callidus Trading Multiple

Callidus trades at a premium to the Canadian banks, mortgage lenders, and specialty finance companies, in particular BDCs which are arguably its closest analog



(1) Includes Equitable Group, Equity Financial Holdings, First National Financial, and Home Capital Group

(2) Includes Bank of Montreal, Bank of Nova Scotia, Canadian Western Bank, CIBC, Laurentian Bank, National Bank, Royal Bank, and TD Bank

(3) US Business Development Companies include: American Capital, Apollo Investment Corporation, Ares Capital Corporation, BlackRock Kelso Capital, Fifth Street Finance, FS Investment Corporation, Prospect Capital, TPG Specialty Lending

Note: more details on comparables can be found in the appendix

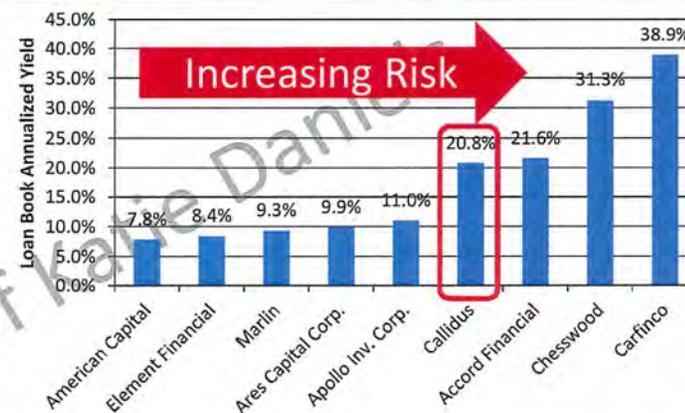
Source: Capital IQ, Bloomberg

Compared to Peers, Callidus Runs a Much Riskier and Concentrated Portfolio

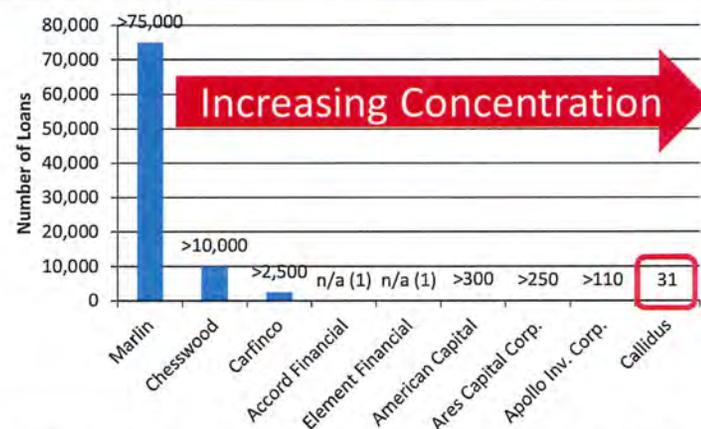
Callidus Loan Book Characteristics

- The average portfolio yield is high which is an indicator of financial stress within its portfolio companies
- The number of credits in the book is low (31)
- Comparables in the industry are significantly more diversified with loans numbering in the hundreds, if not thousands
 - Peers such as Accord Financial, Chesswood, and Carfinco have high portfolio yields, but have thousands of loans outstanding
 - With such a large number of loans, no single loan will have a material impact on the company
 - Furthermore, with such an extensive portfolio, these companies have collected a large enough set of data to be able to use statistical methods for underwriting and monitoring loans
- The identified problems in Callidus' loan book should be a concern for investors going forward. Because of Callidus' highly concentrated portfolio, impairments in any single credit would have meaningful impacts on earnings and book value

Loan Book Annualized Yields



Number of Loans



(1) Not specifically disclosed, but understood to be very large number
 Note: more details on comparables can be found in the appendix 19
 Source: Company filings

The Callidus Loan Book is Hidden from View Unlike Best in Class BDCs Who Trade at Book

- On a quarterly basis, US BDCs disclose a schedule of investments which outlines every investment and loan currently outstanding
- The disclosure includes the name of the borrower, interest rate, maturity date, industry, book value of the investment, and an estimate for fair value of the investment (see image to the right)
- This enables investors to parse through a US BDC's loan book and make informed judgments on loan book quality
- Callidus on the other hand, trades at 2.1x book value (2.7x on a current basis) and has an opaque loan book

Sample US BDC Disclosure

APOLLO INVESTMENT CORPORATION
SCHEDULE OF INVESTMENTS (unaudited)
September 30, 2014
(in thousands)

INVESTMENTS IN NON-CONTROLLED/NON-AFFILIATED INVESTMENTS—138.0% (18) CORPORATE DEBT—125.3% SECURED DEBT—95.1% 1st Lien Secured Debt—45.1%	Interest Rate	Maturity Date	Industry	Par Amount (12)	Cost	Fair Value (1)
Alion Science & Technology Corporation	11.00% (L+1000, 1.00% Floor)	8/16/19	Aerospace and Defense	\$ 32,164	\$ 31,110	\$ 31,842
Archroma (17)	9.50% (L+825, 1.25% Floor)	10/1/18	Chemicals	45,345	44,884	45,940
Avaya, Inc., (Revolver) (16)	2.90% L+275 Funded, 0.50% Unfunded	10/26/16	Telecommunications	16,553	16,553	15,208
Aventine Renewable Energy Holdings, Inc.	15.00% PIK (15.00% PIK or 10.50% Cash)	9/22/17	Chemicals	15,161	17,872	15,306
Aveta, Inc.	9.75% (L+825, 1.50% Floor)	12/12/17	Healthcare	56,623	55,437	56,588
Caza Petroleum, Inc.	12.00% (L+1000, 2.00% Floor)	5/23/17	Oil and Gas	45,000	43,795	44,145
Confie Seguros Holding II Co., (Revolver) (16)	6.75% (P+350, 3.25% Floor) Funded, 0.50% Unfunded	12/10/18	Insurance	1,110	1,110	1,110
Deep Gulf Energy II, LLC	11.50% ((11.50% or L+1000), 1.50% Floor) 16.00% (8.00% Cash) 8.00% PIK	3/31/17	Oil and Gas	25,000	25,000	24,500
Delta Educational Systems, Inc.	7.75% (L+675, 1.00% Floor)	12/11/16	Education	5,657	5,657	5,657
Energy & Exploration Partners, Inc.	9.50% (L+800, 1.50% Floor)	1/22/19	Oil and Gas	6,484	6,389	6,386
Evergreen Tank Solutions, Inc.	11.00%	9/28/18	Containers, Packaging, and Glass	40,657	40,208	40,556
Extraction Oil & Gas Holdings, LLC	9.50% (L+850, 1.00% Floor)	5/29/19	Oil and Gas	42,226	41,618	41,592
GenCorp, Inc. (17)	11.00%	4/18/22	Aerospace and Defense	44,500	44,500	44,500
Great Bear Petroleum Operating, LLC	12.00%	10/1/17	Oil and Gas	5,064	5,064	5,064
Hunt Companies, Inc. (11)	9.625%	3/1/21	Buildings and Real Estate	41,210	40,728	43,064
M&G Chemicals, S.A. (17)	8.73% (L+850)	3/28/16	Chemicals	5,000	5,000	5,000
Magnetation, LLC (11)	11.00%	5/15/18	Mining	38,454	40,074	39,079
Maxus Capital Carbon SPE I, LLC (Skyonic Corp.)	13.00%	9/18/19	Chemicals	79,046	79,046	79,046
Molycorp, Inc. (17)	10.00%	6/1/20	Diversified Natural Resources, Precious Metals and Minerals Business Services	50,424	50,003	35,150
My Alarm Center, LLC (16)	8.50% (L+750, 1.00% Floor)	1/9/18	Business Services	42,614	42,614	42,614
My Alarm Center, LLC (16)	8.50% (L+750, 1.00% Floor)	1/9/18	Business Services	6,738	6,738	6,738
Osage Exploration & Development, Inc. (11)(17)	13.00% (L+1100, 2.00% Floor)	4/27/16	Oil and Gas	25,000	24,637	24,250
Panda Sherman Power, LLC	9.00% (L+750, 1.50% Floor)	9/14/18	Energy	14,967	14,805	15,285

Callidus is Not a Flow Business

Callidus attracts a valuation comparable to that of a well-run, long tenured “flow business,” but is more of a specialized, niche transactional lender

	Flow Business Attributes	Callidus
Business Predictability	<ul style="list-style-type: none"> • Assets flow on and off balance sheet continuously • Predictable loan losses 	<ul style="list-style-type: none"> • Each asset has discrete maturity and recovery profile • Loan losses can vary widely from loan to loan
Scalability	<ul style="list-style-type: none"> • More scalable and can leverage good systems and distribution channels (rail car financing with customers that come to market regularly, auto loans from dedicated network of car dealerships, etc.) 	<ul style="list-style-type: none"> • Highly negotiated transactions which require significant ongoing monitoring • Labor-intensive work-outs are part of the business
Diversification	<ul style="list-style-type: none"> • Highly diversified with hundreds or thousands of loans 	<ul style="list-style-type: none"> • Highly Concentrated

Callidus is More Like a Business Development Company

Callidus is more like a US BDC but with much higher portfolio concentration, much less resources, much lower earnings visibility, much less disclosure, and no dividend

- Recall that US BDCs trade at no more than 1.0x book value while Callidus trades at 2.1x book value (2.7x on a current basis)
- There is no logical reason for this considering:

	US BDCs	Callidus
Portfolio Concentration	<ul style="list-style-type: none"> US BDCs have hundreds of portfolio companies, thereby providing an adequate amount of diversification 	<ul style="list-style-type: none"> Callidus has 31
Resources	<ul style="list-style-type: none"> US BDCs have hundreds of investment professionals monitoring the portfolio and underwriting new loans 	<ul style="list-style-type: none"> Callidus has 15
Earnings Visibility	<ul style="list-style-type: none"> US BDCs originate loans with 5-7 year maturities and standard call protection periods, thereby providing a business case for consistency in the earnings stream 	<ul style="list-style-type: none"> The “average” Callidus maturity is 18-24 months, but this represents a split between companies that refinance Callidus out within 12 months, and companies that are put into bankruptcy/restructuring where collectability is not only drawn out, but uncertain making earnings visibility opaque
Disclosure	<ul style="list-style-type: none"> US BDCs disclose every portfolio company’s identity, maturity date, coupon, and loan amount 	<ul style="list-style-type: none"> No name specific disclosure. Only borrower’s industry and loan amount outstanding are disclosed
Dividend Yield	<ul style="list-style-type: none"> Average 9.1% 	<ul style="list-style-type: none"> No dividends paid

- Callidus should trade at a discount to US BDCs and book value**

Callidus Has a Highly Concentrated Portfolio of Risky Loans and Should Trade at a Discount to Book like a Problem Closed End Bond Fund

- Callidus' underlying borrowers are low quality, unrated credits
- A significant number will experience some form of formal or informal restructuring (based on historical experience) where collateral recovery assumptions will be tested
- Actually earning the advertised yields of 20.0% is contingent on avoiding material credit impairments on collateral that is often illiquid
- Collecting an uninterrupted stream of income from this portfolio is challenging when the liquidity of the underlying businesses is so constrained and subject to credit events
- Certain restructurings may result in the nature of the investment changing from a contractual cash flow stream to back-end equity exposure
- With only 31 loans outstanding, material impairments in any one loan can have a significant impact on reported earnings and book value
- Over time, this is a loan book that will see improving credits refinance out and deteriorating credits comprise a larger component of the book
 - See footnote 1 on slide 15, which states that there is a loan that has **“remained outstanding since 2007 due to the inability of the borrower to repay the principal amount”**



Specific Loans of Concern

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Closer Inspection of the Callidus Loan Book

Analysts have completely overlooked the riskiness of the Callidus loan book and have not performed work on the underlying credits

- In fairness, the disclosure does not lend itself to this level of work, as unlike a BDC, borrower names are not provided and underlying financial details are seldom available, absent a bankruptcy filing or on the rare occasion that loans are made to public issuers
- Callidus touts a strong track record. From page 4 of IPO Prospectus:

Strong Track Record

Callidus is a successful asset-backed lender with a history of consistently generating significant returns. Callidus has a strong track record, as evidenced by, among other things, no realized losses on principal on Callidus-originated loans after consideration of liquidated collateral and costs to settle from 2011 until 2013. In aggregate, the Corporation's loans have had a Gross Yield⁽³⁾ on funds advanced of over 20% since 2010. The Corporation's Loan Portfolio grew at a compound annual growth rate of 57% from 2011 to 2013.

- What does "Callidus-originated loans" mean?
- Is it technically correct? Could be. Could it be misleading?

Xchange Technology

Callidus is owed more than \$40 million. The best third-party bid received for the company was \$17 million, 57.5% lower than what Callidus is owed

1. Callidus advanced a 1-year loan in the amount of \$22 million to Xchange Technology (“XTG”) in October 2012. The loan has grown to more than \$40 million (details in appendix)
2. In February and May 2013 in advance of the maturity of the loan, XTG ran two separate processes with KPMG and Canaccord Genuity in an attempt to refinance the Callidus loan
3. The KPMG process failed
4. A total of 56 parties were contacted in the Canaccord process
 - Only one party performed due diligence and passed shortly after commencing due diligence
5. An LOI was received by the company’s founder, Jeff McFarlane, **to purchase XTG for total consideration of \$17 million**. The offer was rejected by Callidus
6. In October 2013, Callidus filed a receivership application with the Ontario Superior Court of Justice seeking to appoint Duff & Phelps as receiver and seeking approval of a sale order
7. Duff & Phelps performed a liquidation analysis which showed that **“Callidus would incur a substantial shortfall on its advances to the XTG Debtors should the XTG Debtors’ business and assets be liquidated”** (Page 18 of Application Record dated October 25, 2013)
8. A sale process was initiated by Duff & Phelps which ultimately yielded no bids

Xchange Technology Continued

**Callidus credit bid XTG in November 2013. The transaction still has not closed.
No disclosures have been made to shareholders regarding these events**

9. Callidus served as the stalking horse bid and credit bid XTG in November 2013 to conclude the sale process. At the time of the credit bid, Callidus was owed \$38 million
10. Around December 2013, Triangle Capital, a second lien creditor to XTG in the amount of \$6.4 million, took a more conservative view and wrote down their investment to \$0 (2013 10-K)
11. In April 2014, Callidus completed its IPO which was led by Canaccord Genuity
 - **Recall that Canaccord also led the 2nd refinancing process in May 2013 and yet no disclosure was made regarding this loan, which made up 10% of the loan book at the time**
12. Amounts owing to Callidus have grown from \$38 million to at least \$40 million
 - Possible conclusions:
 - Callidus is advancing funds to pay interest
 - Callidus is accruing interest despite receivership
13. **The sale process still has not closed after more than a year**
 - The November 2014 receiver's report states: "The Receiver and its counsel have on numerous occasions since the Sale Approval Date inquired and discussed with Callidus its intentions to close the Transaction and the timing to do so."
 - **Why has Callidus delayed completing this transaction and converting their debt into equity?**
14. In Callidus' 2014 Q3 conference call, **Newton Glassman states that "we don't have a single loan in the portfolio that's not performing... performing means current in interest and all obligations."**
 - **It is puzzling how the loan could be performing in receivership despite possible impairment**

Arthon Industries

Callidus is owed \$55 million by Arthon, which has two remaining assets. The first asset failed to attract any firm bids. The second asset requires at least \$25 to \$30 million⁽¹⁾ in capital to complete.

1. In October 2013, HSBC served notice of its intention to enforce its security on Arthon Industries Limited and its various entities ("Arthon"). Additional details in the appendix
2. HSBC eventually assigned \$47 million in debt to Callidus
3. Arthon has 4 primary subsidiaries: 1.) Arthon Contractors, 2.) Arthon Equipment, 3.) Coalmont Energy, and 4.) Sandhill Materials
 - It was determined that Arthon Contractors had de minimis value
 - Arthon Equipment sold 28 out of 100 pieces of equipment for \$6 million which were used to partially repay the Callidus loan. Further equipment sales have largely been abandoned
 - Coalmont Energy, a development stage coal mine in Tulameen, BC, ran a sales process and failed to attract firm bids which may have had to do with an environmental spill that occurred on the property. Further development in the mine has halted
 - It is currently contemplated that Sandhill Materials, a development stage aggregates deposit in Kitimat, BC, will not be sold but will be developed to a commercially viable state. Capital investment is estimated to be \$25 to \$30 million⁽¹⁾
4. **Conclusion: Callidus currently has approximately \$55 million outstanding due from Arthon. The only assets Arthon currently has are two development stage projects, one of which failed to transact and has questionable asset value; and the other asset requires \$25 to \$30 million⁽¹⁾ in additional capital. Again, Callidus has not made any disclosures regarding impairment of this loan**

1) Capital investment estimate based on District of Kitimat Investment Summary 2012-2015

Leader Energy Services

Leader Energy has generated de minimis cash flow and EBITDA for the last several years. The company has defaulted on lease payments and is actively selling assets, putting its going concern status at risk.

1. Callidus advanced a one-year \$4 million revolving facility and a \$12 million term loan to Leader Energy Services ("Leader") in March 2013
2. In October 2013, Callidus provided an additional \$1 million non-revolving loan set to mature on January 31, 2014
3. Eventually, all loans were extended to mature on September 6, 2014. \$14.4 million is currently owed to Callidus
4. Leader is involved in well completion services in the Canadian energy sector and has no doubt been impacted by the significant decline in oil prices
5. From its 2014 Q2 release, **the company is now actively selling assets and has defaulted on a lease in an amount of \$7 million**
6. The company has barely generated any free cash flow since 2009 and ~\$1 million in EBITDA in the LTM period
7. **Leader is currently over-advanced on its revolving facility and the loan is already more than 2 months past its maturity date with no update from either Leader or Callidus**

Liquidation Analysis

As of September 30, 2014

	Net Book Value	Market Value Adjustments	Adj. Net Book Value
Cash	\$0.2	100.0%	\$0.2
Accounts receivable	\$3.1	90.0%	\$2.8
Inventory	\$1.2	90.0%	\$1.1
Property, plant, and equipment not subject to finance leases	\$12.0	50.0%	\$6.0
Total asset value	\$16.5		\$10.1
Callidus loan outstanding			\$14.4
Implied recovery			70.1%

Historically, oil field services equipment have traded at significant discounts to net book value under a liquidation. Applying a 50% discount to PP&E that is not currently subject to finance leases would result in a **29.9% impairment**

North American Tungsten

North American Tungsten has generated negative cash flow in each of the last 10 fiscal years. The company's only operating asset has a mine life that only runs until 2017-2018.

1. Callidus advanced an \$11 million loan to North American Tungsten ("NAT") in May 2014
2. NAT has a 100% interest in the Cantung and Mactung tungsten mines in the North West Territories and Yukon respectively
3. The Cantung mine currently produces 665 MTUs of tungsten per day. The most recent NI 43-101 report indicates that current mineral reserves support a mine life until 2017-2018
4. The Mactung mine is a pre-development asset with probable mineral reserves of 8 million MTUs
 - A feasibility study was completed in April 2009 with initial construction beginning in 2010 Q2
 - Numerous delays were experienced in the permitting and environmental assessment process
 - A special committee was assembled in 2011 Q2 to explore strategic alternatives for financing the project, which yielded no results
 - After more than 5 years, the project recently passed the environmental assessment from the Yukon Environmental and Socio-economic Assessment Board
 - The project had an estimated capital cost of over \$400 million based on the NI 43-101 report completed in April 2009. There has not been an updated feasibility study conducted since
5. NAT has historically not generated any free cash flow and continues to bleed cash flow. And with the estimated mine life of its only operating asset (Cantung) quickly approaching combined with no real capital plan put forth for the Mactung project, NAT's options are limited

Liquidation Analysis

As of June 30, 2014

	Net Book Value	Market Value Adjustments	Adj. Net Book Value
Cash	\$0.2	100.0%	\$0.2
Accounts receivable	\$6.6	75.0%	\$4.9
Inventory	\$11.0	90.0%	\$9.9
Buildings, equipment, and plant	\$20.7	25.0%	\$5.2
Mine infrastructure assets	\$1.4	0.0%	\$0.0
Tailings management	\$2.6	0.0%	\$0.0
Total asset value	\$42.4		\$20.2
Less: reclamation liabilities	\$8.5	100.0%	\$8.5
Remaining estate value	\$33.9		\$11.7
Callidus loan outstanding			\$13.1
Implied recovery			89.2%

Callidus' loan is secured by substantially all assets excluding certain accounts receivable (amount not disclosed) and all assets related to the Mactung mine. We have assumed a 90% recovery rate for the accounts receivable and that 15% of the accounts receivable does not secure the Callidus loan. Buildings, equipment, and plant mostly located in Whitehorse, YT would probably have a market value significantly below net book value. Mine infrastructure assets would likely have close to \$0 market value given the short remaining life of the Cantung mine. The company also has \$8.5 million in reclamation liabilities related to closure costs of the Cantung mine. **Callidus could be facing a >10% impairment.**

Kaptor Financial/CarCap

Material information was withheld during Callidus' due diligence of CarCap. This case study provides anecdotal evidence of the poor quality of borrowers that comprise the 20% yield market

1. On September 1, 2011 Callidus extended CarCap Inc. ("CarCap") and Cashland Financial ("Cashland") a \$15 million facility. \$8.4 million was drawn on day 1 (more details in appendix)
2. Both CarCap and Cashland were subsidiaries of Kaptor Group which was controlled by Eric Inspektor
3. Only three weeks later, it was discovered that Kaptor Group's bank accounts had been in an overdraft position with TD bank since August and that advances that Callidus made to CarCap and Cashland were being held by TD against those overdrafts
4. These facts were knowingly hidden from Callidus during their due diligence of the company
5. Eventually, CarCap was liquidated in bankruptcy and Callidus was able to fully recover all amounts owing
 - Later, the OSC accused Inspektor of improperly raising \$90 million in capital from investors, leaving investors with unrecovered funds in the amount of \$38 million
 - It was fortunate Callidus was able to recover their funds, but encountering dishonest borrowers such as these in such a risky universe of borrowers is almost a certainty. Callidus may not be so fortunate next time

These Problem Loans Amount to a Possible 10.0% Write-Down of Identified Loan Book

- Xchange, Arthon, and Leader were in the loan book at the time of IPO and yet Callidus made no mention of these problem loans. Impairments in these loans alone could have represented a 10.0% impairment of the loan book of \$471 million as at the IPO
- Any material write-downs in Xchange or Arthon would significantly impact earnings on a standalone basis. 50% impairments on both of these loans would more than wipe out 2014E net income estimate of approximately \$40 million on a standalone basis
- There are 21 other loans that are still unidentified, but given that they share similar pricing characteristics it is rational to assume that they will be of similar quality

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What About the Catalyst Guarantee?

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Callidus Should Be Viewed as a Standalone Business

Although loans made prior to IPO are covered by the Catalyst guarantee, the current problems in the loan portfolio should be a serious cause for concern for investors

- The Catalyst guarantee formed an important part of the marketing pitch under the IPO, but what exists today will not continue in perpetuity
- The Debenture Repayment Agreement provides Callidus an indemnification from Catalyst for **principal losses** in the loan portfolio as of the IPO date for:
 1. Certain specified loans (not disclosed)
 2. All other loans for which realization proceedings have been initiated prior to credit renewal approval
- Any new loans made subsequent to IPO, or current loans which are renewed by the Callidus credit committee, will not benefit from this guarantee
- Given the rapid growth in the book since the IPO, the value of this guarantee is diminishing
- **Callidus is increasingly becoming a standalone business which will bear the full impact of loan losses and credit risk assumed by its underwriting decisions**

Catalyst Has a Strong Influence on Which Loans Will Be Subject to the Guarantee

The apparent conflicts of interest between Callidus and Catalyst are being overlooked by investors

- Any loans that are approved for renewal prior to realization proceedings are not subject to the Catalyst guarantee
- The credit committee is responsible for approving renewals and is comprised of Newton Glassman, David Reese, and Jim Riley
 - Glassman is a managing partner at Catalyst and is also the CEO and chairman of Callidus
 - Riley is a managing director at Catalyst as well as a director and the secretary at Callidus
- Two of the three in the credit committee are employed by both Callidus and Catalyst with Glassman in positions of authority in both
- This creates a strong conflict of interest, which Glassman has stated is addressed by the presence of an independent committee
- The makeup of this independent committee has not been disclosed and it is not clear how effective the independent committee will be considering the amount of influence that Glassman has at both Callidus and Catalyst
- **Even if the independent committee is effective, the question shareholders should ask is why bear the risk of these conflicts of interest when there are numerous other investment opportunities in the financial sector that do not have the same conflicts?**

If Portfolio Issues Do Not Materialize, Will
the Stock Continue to Rise in the Meantime?

No, Implied Growth of the Business is Unsustainable and Will Likely Disappoint

- Callidus' historical loan book growth cannot be replicated
- Future loan growth estimated by analysts will be mathematically difficult to achieve
- Borrowers willing to accept 20.0% cost of funding are the exception, not the norm
- Callidus is planning to enter highly competitive markets in both Canada and the US and is already blending down yields with the "Callidus Lite" product
- Cost of debt funding will increase

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Analyst Estimates for Loan Book Growth Will Be Difficult to Achieve

- Analysts currently expect that Callidus will have approximately \$1.3 billion in loans receivable before derecognition by Q4 2016
- From gross loans receivable of \$655 million in Q3, this implies loan growth of \$70 million per quarter for the next 9 quarters net of loans that mature
- Callidus has stated that “the average period of time a loan and its renewal is outstanding typically ranges from 18 to 24 months” (Page 3 of IPO Prospectus)
- Assuming an average duration of 21 months, this implies that the entire loan book turns over every 1.75 years and every quarter approximately 14% of the loan book matures
- This creates an incredible rate at which new loans must be made
- If we assume that the average loan is \$20 million, 3.5 new loans must be made each quarter net of any loans that mature. **The number of gross new loans that must be made will steadily increase to an unsustainable rate, illustrated on the right**
- By Q4 2016, Callidus will need to make more than \$240 million or 12 gross new loans per quarter or almost 1 per week to keep up its pace of loan growth. This is more than 37% of the size of its current loan book**

Gross Amount of Originations per Quarter



Gross Number of Originations per Quarter



If This Is Such an Attractive Business, Competition Will Erode Yields

It is more likely the case however, that this is a line of business that other institutional lenders view as a poor risk-reward trade-off and subject to scale limitations

- Yields will decline as a consequence of either higher competition or transition to higher quality loans
- Callidus has stated that Callidus Lite, which makes loans with a target gross yield of 12-14%, is a growth area for the company
 - This space is much more competitive than the 20+% yield universe that Callidus' legacy loan book currently operates in
 - Therefore, not only will gross yields decline but loan book growth, as alluded to in the previous slide, will also decline because of increased competition
 - Part of the reason why Callidus has been able to grow its loan book significantly is because of its first-mover advantage in the 20+% yield universe that is seen as unscalable by industry participants
 - However, once Callidus begins to pursue loans in the 12-14% yield range, the amount of competition significantly increases which further impedes on Callidus' ability to grow its loan book
 - The table on the right points out a large but by no means comprehensive list of competitors that Callidus will be up against

List of Funds Providing Mezzanine Capital

Canadian

BMO Capital Partners
 Brookfield Asset Management
 Canada Pension Plan Investment Board
 CIBC Leveraged Finance
 EdgeStone Capital Partners
 K2 & Associates
 Kensington Capital Partners
 Ontario Teachers' Pension Plan
 RBC Capital Partners
 Roynat Capital
 TD Capital
 West Face Capital

US

Apollo Investment Corporation
 Ares Capital
 Babson Capital Management
 Blackstone Group
 Cerberus
 Credit Suisse Customized Fund Investment Group
 Fortress Investment Group
 Goldman Sachs Private Equity Group
 Golub Capital
 GSC Group
 KKR
 Lexington Partners
 Oaktree Capital Management
 TCW Group
 The Carlyle Group

Analyst Estimates for Loan Portfolio Yields Will Need to Be Reduced

- Analysts currently expect that Callidus will have a gross yield of approximately 19.4% in 2016
- Analysts underestimate the dilutive impact that competition and Callidus Lite will have on gross yields
- For reasons already elucidated, the traditional Callidus loan book is very difficult to monitor and scale; therefore, Callidus Lite will likely outpace growth in the traditional Callidus loan book and become a larger portion of the loan book
- The average Callidus Lite loan yields 12%-14% according to company disclosures
- Assuming an average yield of 13% for Callidus Lite loans, **analysts currently expect only 10% of the book to be comprised of Callidus Lite loans in 2016**
- **Callidus Lite grew from 2.4% of portfolio commitments to 7.3% from Q2 to Q3**

Analyst Estimates for Cost of Debt Will Increase

- Analysts currently expect that Callidus' cost of debt will remain at approximately 4.5%
- Callidus stated in their 2014 Q3 conference call that target leverage in the near to medium term will reach 60%.
 - This is well in excess of BDC leverage which averages 42% (see appendix for comps) and is a risk to the equity in and of itself
- Analysts are overestimating Callidus' ability to obtain cheap financing
- Callidus will unlikely be able to use its revolving credit facility to fund all growth and will need to resort to debt capital with a higher coupon and/or equity
- Callidus recently announced that Catalyst has advanced Callidus a US\$50 million subordinated bridge loan facility with total commitments of US\$200 million. Terms have not been disclosed yet, but according to the press release, terms **"will be consistent with terms applicable between arm's length parties for similar subordinated credit facilities"**
 - Prior to the Callidus IPO, the company financed loan growth by issuing Catalyst participating debentures which were secured by a subordinated security interest in Callidus assets. These participating debentures had a cost of debt of approximately 12% to 16%
- **Callidus' cost of funds will increase especially with the company's stated increase use of leverage**



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Valuation

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A More Realistic Look at Loan Growth

Based on stated target growth, the Callidus loan book can grow to **\$1.15 billion by Q4 2016**, approximately 12% below analyst estimates

- Callidus' stated loan book growth target is "doubling the book every 2 to 3 years" (2014 Q3 Conference Call)
- Assuming a doubling every 3 years implies \$55 million in net new loans each quarter, reaching \$1.15 billion by Q4 2016 and averaging \$1.07 billion for 2016 before derecognition
- Assuming all growth is funded through debt, Catalyst's participation interest should fall to 7.4% by Q4 2016

	2014		2015				2016			
	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Gross loans receivable, beginning		\$655.4	\$710.4	\$765.4	\$820.4	\$875.4	\$930.4	\$985.4	\$1,040.4	\$1,095.4
New Loans		\$148.6	\$156.5	\$164.3	\$172.2	\$180.1	\$187.9	\$195.8	\$203.6	\$211.5
Loans repaid		-\$93.6	-\$101.5	-\$109.3	-\$117.2	-\$125.1	-\$132.9	-\$140.8	-\$148.6	-\$156.5
Gross loans receivable, ending	\$655.4	\$710.4	\$765.4	\$820.4	\$875.4	\$930.4	\$985.4	\$1,040.4	\$1,095.4	\$1,150.4
Catalyst participation beginning	\$mm	\$85.0	\$85.0	\$85.0	\$85.0	\$85.0	\$85.0	\$85.0	\$85.0	\$85.0
Change	\$mm	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
Catalyst participation ending	\$mm	\$85.0	\$85.0	\$85.0	\$85.0	\$85.0	\$85.0	\$85.0	\$85.0	\$85.0
Catalyst participation rate beginning	%		13.0%	12.0%	11.1%	10.4%	9.7%	9.1%	8.6%	8.2%
Catalyst participation rate ending	%	13.0%	12.0%	11.1%	10.4%	9.7%	9.1%	8.6%	8.2%	7.8%
Callidus participation rate beginning	%		87.0%	88.0%	88.9%	89.6%	90.3%	90.9%	91.4%	91.8%
Callidus participation rate ending	%	87.0%	88.0%	88.9%	89.6%	90.3%	90.9%	91.4%	91.8%	92.2%
Loans receivable derecognized, beginning		\$570.4	\$625.4	\$680.4	\$735.4	\$790.4	\$845.4	\$900.4	\$955.4	\$1,010.4
New Loans		\$148.6	\$156.5	\$164.3	\$172.2	\$180.1	\$187.9	\$195.8	\$203.6	\$211.5
Loans repaid		-\$93.6	-\$101.5	-\$109.3	-\$117.2	-\$125.1	-\$132.9	-\$140.8	-\$148.6	-\$156.5
Loans receivable derecognized, ending		\$570.4	\$625.4	\$680.4	\$735.4	\$790.4	\$845.4	\$900.4	\$955.4	\$1,065.4

Reduced Gross Yields and Increased Cost of Debt will Impact Net Interest Margins

EPS and BVPS growth will be impacted by a reduction in net interest margins

- We believe Callidus Lite will comprise approximately 20% of the loan book by Q4 2016 and hence, the average portfolio yield drops to 18.6%
- We also believe Callidus' cost of debt will rise to approximately 7% in 2016
- The combination of declining portfolio yields in conjunction with increasing cost of debt has a considerable impact on earnings and book value per share growth

	2014		2015				2016				
	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	
Portfolio yield		20.00%	19.83%	19.65%	19.48%	19.30%	19.13%	18.95%	18.78%	18.60%	
Total revenue		\$34.1	\$36.6	\$39.0	\$41.3	\$43.6	\$45.8	\$48.0	\$50.1	\$52.2	
Total revenue after derecognition		\$29.9	\$32.4	\$34.8	\$37.1	\$39.5	\$41.7	\$44.0	\$46.1	\$48.3	
Interest expense		\$2.5	\$2.6	\$3.2	\$4.2	\$5.1	\$6.0	\$6.8	\$7.7	\$8.5	
Net interest income		\$27.4	\$29.7	\$31.6	\$33.0	\$34.4	\$35.8	\$37.1	\$38.5	\$39.8	
Provision for loan losses		\$2.7	\$2.9	\$3.2	\$3.4	\$3.7	\$3.9	\$4.2	\$4.4	\$4.7	
Participation fees		-\$0.6	-\$0.6	-\$0.6	-\$0.6	-\$0.6	-\$0.5	-\$0.5	-\$0.5	-\$0.5	
Salaries and wages		\$2.4	\$2.6	\$2.7	\$2.9	\$3.0	\$3.2	\$3.4	\$3.5	\$3.7	
Stock options expense		\$0.9	\$0.9	\$1.0	\$1.0	\$1.1	\$1.1	\$1.2	\$1.3	\$1.3	
General and administrative		\$1.4	\$1.5	\$1.6	\$1.7	\$1.7	\$1.8	\$1.9	\$2.0	\$2.1	
EBT		\$20.7	\$22.4	\$23.7	\$24.5	\$25.4	\$26.2	\$27.0	\$27.8	\$28.6	
Income taxes		\$6.2	\$6.7	\$7.1	\$7.4	\$7.6	\$7.9	\$8.1	\$8.3	\$8.6	
Net income		\$14.5	\$15.7	\$16.6	\$17.2	\$17.8	\$18.3	\$18.9	\$19.5	\$20.0	
Shares outstanding	48.7	48.7	48.7	48.7	48.7	48.7	48.7	48.7	48.7	48.7	
EPS		\$0.30	\$0.32	\$0.34	\$0.35	\$0.36	\$0.38	\$0.39	\$0.40	\$0.41	
Book value beginning		\$396.1	\$410.6	\$426.3	\$442.8	\$460.0	\$477.8	\$496.1	\$515.0	\$534.5	
Change		\$14.5	\$15.7	\$16.6	\$17.2	\$17.8	\$18.3	\$18.9	\$19.5	\$20.0	
Book value ending		\$396.1	\$410.6	\$426.3	\$442.8	\$460.0	\$477.8	\$496.1	\$515.0	\$534.5	
BVPS		\$8.13	\$8.43	\$8.75	\$9.09	\$9.45	\$9.81	\$10.19	\$10.58	\$10.98	\$11.39

Valuation: Highly Sensitive to Realized Loan Losses

Run rate EPS is overstated by analysts due to low provisions for loan losses relative to expected realized loan losses

- As previously mentioned, Callidus earnings visibility is opaque given the complexity and riskiness of the portfolio
- Analysts have estimated provisions for loan losses of 1.7%-1.8%
- However, analysts have not accounted for likely loan losses to be realized in the future. Recall, more than 10% of the identified loan book could be written down in the absence of the Catalyst guarantee which warrants scrutiny of Callidus' underwriting standards on a standalone basis
- We have adjusted our earnings estimates for realized loan losses over and above loan loss provisions, which we view as reasonable considering the number of problem loans we have already identified
- In addition to the riskiness of the portfolio, because of what we believe to be serious scalability issues in the loan book and business quality inferior to US BDCs, we believe Callidus should trade at a discount to book
- On a base case basis, we believe Callidus is worth \$9.69 to \$12.59, representing a 1-year return of -42% to -55%**

1-Year Target Price

	Bear	Base	Bull
Average gross loans receivable in 2016E	\$1,040.4	\$1,040.4	\$1,040.4
Average Catalyst participation interest	8.2%	8.2%	8.2%
Average loans receivable after derecognition	\$955.4	\$955.4	\$955.4
Average portfolio yield	18.8%	18.8%	18.8%
Total revenue	\$180.1	\$180.1	\$180.1
Less: interest expense	\$29.0	\$29.0	\$29.0
Less: provision for loan losses	\$17.2	\$17.2	\$17.2
Add: participation fees	\$2.2	\$2.2	\$2.2
Less: salaries and wages	\$13.7	\$13.7	\$13.7
Less: stock options expense	\$4.9	\$4.9	\$4.9
Less: general and administrative	\$7.8	\$7.8	\$7.8
EBT	\$109.6	\$109.6	\$109.6
Less: realized loan losses	\$60.0	\$30.0	\$0.0
Adjusted EBT	\$49.6	\$79.6	\$109.6
Less: income taxes	\$14.9	\$23.9	\$32.9
Net income	\$34.7	\$55.7	\$76.7
Shares outstanding	48.7	48.7	48.7
2016E EPS	\$0.71	\$1.14	\$1.58
PE ratio	11.0x	11.0x	11.0x
1-year target price	\$7.84	\$12.59	\$17.33
1-year return	-63.8%	-41.9%	-19.9%
Book value	\$494.5	\$524.5	\$554.5
2016E BVPS	\$10.16	\$10.77	\$11.39
PB ratio	0.8x	0.9x	1.0x
1-year target price	\$8.12	\$9.69	\$11.39
1-year return	-62.5%	-55.2%	-47.4%

Conclusions

- The Callidus book is comprised of a series of concentrated loans to distressed borrowers
- It will be very difficult to grow this loan book on the suggested basis without changing the nature of the loan portfolio – either growth slows or yields decline
- If this is truly an attractive line of business, competition will also erode net interest margins
 - It is more likely however, that lending institutions view this business as sub par with scalability issues
- Improving credits will refinance with other alternatives while deteriorating credits enter into protracted restructuring/bankruptcy processes, which creates a severe adverse selection bias in the loan portfolio
- Multiple, concurrent workouts will be difficult to manage
- The earnings stream of this business is inherently unpredictable
- The Catalyst guarantee should not be relied upon on a go-forward basis
- **Either way, the Callidus valuation is unwarranted – it should trade at a discount to book value like a problem closed end bond fund**



Daniels



Appendix

For the Exc

Xchange Technology

Timeline of Events	
Company Description	<ul style="list-style-type: none"> Xchange Technology LLC ("XTG") is a provider of information technology products as well as a provider of IT rental asset services and programs that include servers, storage devices, laptop and desktop computers
October 2012	<ul style="list-style-type: none"> Callidus advances \$22 million in loans in October 2012
February 2013	<ul style="list-style-type: none"> KPMG hired by the company to conduct a refinancing solicitation process One term sheet was submitted under the KPMG process This party passed after it performed due diligence; process was terminated in June 2013
May 2013	<ul style="list-style-type: none"> Canaccord Genuity was hired to conduct a refinancing solicitation process for XTG 56 parties were contacted and resulted in 5 verbal expressions of interest and 3 term sheets Only one of the three parties that submitted a term sheet performed due diligence That party passed on the opportunity shortly after commencing due diligence
August 2013	<ul style="list-style-type: none"> LOI submitted offering to purchase the business for \$15 million cash plus \$2 million in preferred equity, before adjustments for past due payables (totaling \$4.5 million at the time) with financing from a US PE firm; this came from a party involved in the Canaccord process Alternatively, the US PE firm offered to purchase the Callidus debt for \$17 million Callidus rejected both offers Callidus entered into forbearance agreement with XTG, which expired September 2013
October 2013	<ul style="list-style-type: none"> Callidus filed a receivership application with the Ontario Superior Court of Justice seeking to appoint Duff & Phelps as receiver and seeking approval of a sale order Amounts owing to Callidus at October 24, 2013 was \$36.97 million Duff & Phelps prepared a liquidation analysis which showed that "Callidus would incur a substantial shortfall on its advances to the XTG Debtors should the XTG Debtors' business and assets be liquidated" (Page 18 of Application Record dated October 25, 2013) A sale process was undertaken by Duff & Phelps with bids due on November 19, 2013; Callidus served as the stalking horse bid in the amount of their loan outstanding less \$3 million, plus priority payables at the date of closing
November 2013	<ul style="list-style-type: none"> The sale process yielded no offers and Callidus effectively credit bid the company in the amount of \$35 million with closing expected in December 2013
April 2014	<ul style="list-style-type: none"> Transaction had not yet closed. Callidus loan outstanding grew to \$40 million XTR, a German subsidiary of XTG, is sold for an undisclosed amount to satisfy German vendor obligations Callidus IPO is completed, led by Canaccord Genuity (same party hired to run May 2013 refinancing process). No disclosure made
November 2014	<ul style="list-style-type: none"> Sale process to Callidus still has not closed Duff & Phelps and its legal counsel have continuously inquired and discussed with Callidus its intention and timing to close the transaction

Arthon Industries

Timeline of Events	
Company Description	<ul style="list-style-type: none"> Arthon Industries Limited ("Arthon") has four main entities: 1.) Arthon Contractors is involved in the construction industry; 2.) Arthon Equipment owns equipment that is largely leased internally to Arthon's entities; 3.) Coalmont Energy has the rights to operate a coal mine near Tulameen, BC; 4.) Sandhill Materials is 84% owned by Arthon and has title to a major deposit of natural aggregate materials (gravel and sand) in the process of development in Kitimat, BC
August 2013	<ul style="list-style-type: none"> After a number of delays and capital cost increases, Coalmont Energy experienced a spill of filter cake slurry material which halted development of the mine On October 2013, HSBC, the primary lender for Arthon's various entities, served notice of its intention to enforce its security on Arthon's assets
November 2013	<ul style="list-style-type: none"> Lacking available cash, Arthon did not have the ability to repay the loan and was forced to seek CCAA protection. Alvarez and Marsal ("A&M") was appointed as bankruptcy monitor
December 2013	<ul style="list-style-type: none"> The HSBC loan in the amount of \$47 million was assigned to Callidus and a forbearance agreement was reached between Arthon and Callidus Callidus also agreed to provide up to an additional \$5 million in interim financing HSBC agreed to provide a \$10 million letter of credit to Callidus which would be drawn in the event that Coalmont Energy was sold for anything less than \$10 million A sale process was initiated by the company to sell Coalmont Energy. MNP Corporate Finance selected as financial advisor A parallel sale process was initiated to sell approximately 100 pieces of equipment owned by Arthon Equipment, which were sitting idle as a result of the inactivity of the Coalmont Energy mine. Great West Equipment was retained to sell the equipment through a consignment arrangement
February 2014	<ul style="list-style-type: none"> Total amounts due to Callidus grew to \$56.8 million 77 parties were contacted with regards to the Coalmont Energy sale and LOIs were received A&M submitted a review of the asset value of Arthon and came to conclude that the "two key assets that will impact the exposure of Callidus and HSBC are the Coalmont Mine and the Sandhill property" and that "it does not appear likely that [the Coalmont Mine] will generate sufficient proceeds to retire the claims of both HSBC and Callidus." (Page 16 of the Third Report of the Monitor dated February 25, 2014) It seems de minimis value was attributed to Arthon Contracts and Arthon Equipment (other than the sale of equipment)
April 2014	<ul style="list-style-type: none"> The sale process for the Coalmont Energy failed to attract any firm bids The restructuring focus turned to monetizing Sandhill Materials and continuing equipment sales

Arthon Industries Continued

Timeline of Events	
May 2014	<ul style="list-style-type: none"> Arthon presented analysis that showed that Sandhill Materials would garner more value for stakeholders if it was further developed and brought to commercial operations rather than sold at its current state Arthon also advanced negotiations on the pre-sale of a large volume of aggregates to an international organization looking to develop an LNG terminal in Kitimat, BC A&M provided the opinion that <u>“the nature of the assets of Sandhill pose significant challenges in estimating realizations”</u> (Page 13 of Fifth Report of the Monitor dated May 6, 2014) Total amounts due to Callidus of \$48.2 million Callidus DIP capacity increased to \$7.5 million To date, 18 pieces of equipment were sold for proceeds of \$5.6 million
July 2014	<ul style="list-style-type: none"> Arthon engaged MNP to explore strategic alternatives related to Sandhill Materials 51 parties were contacted To date, 25 pieces of equipment were sold for proceeds of \$6 million. Arthon considered reducing the prices on the balance of the equipment to expedite further sales to fund scheduled principal repayments set out by the forbearance agreement between Arthon and Callidus Total amounts due to Callidus of \$52.5 million
October 2014	<ul style="list-style-type: none"> Progress on Sandhill Materials’ strategic alternatives was redacted from the Seventh Report of the Monitor, but it would seem some progress had been made on the pre-sale of aggregate To date, 28 pieces of equipment sold for proceeds of \$6 million. Further equipment sales are largely halted Callidus drew on HSBC letter of credit in the amount of \$10 million as a result of the failed sale process of Coalmont Energy. As a result, HSBC gained a \$10 million guarantee from Coalmont Energy that ranked behind Callidus Total amounts due to Callidus of \$44.6 million A settlement agreement between Callidus and HSBC is currently being negotiated which would contemplate Callidus providing an unguaranteed loan to Sandhill, which will then use the proceeds to purchase the \$10 million security held by HSBC. The new loan provided by Callidus would be subordinated to Callidus’ existing facility This would effectively increase total amounts due to Callidus to \$54.6 million

Kaptor Financial/CarCap

Timeline of Events	
Company Description	<ul style="list-style-type: none"> CarCap Inc. ("CarCap") operated as an automobile leasing and financing company primarily to sub-prime borrowers. Cashland Financial ("Cashland") operated as a sub-prime equity auto loan provider. Both were subsidiaries of Kaptor Financial whose parent company was Kaptor Group
September 2011	<ul style="list-style-type: none"> On September 1, 2011 CarCap and Cashland entered into a loan facility of up to \$15 million with Callidus and drew \$8.4 million for the purpose of: 1.) repaying certain indebtedness owed to Laurentian Bank, 2.) fulfilling certain payments to investors, and 3.) working capital purposes Only 3 weeks later, Eric Inspektor (the owner of Kaptor Group) informed Callidus that due to a technicality, the Kaptor Group bank accounts with TD had gone into overdraft in August 2011 and had the ability to offset deposits in CarCap's bank accounts against overdrafts This information was withheld from Callidus during due diligence Callidus ascertained that CarCap part of the \$8.4 million that was drawn was actually applied by TD to overdrafts of certain Kaptor Group accounts instead of the three uses described above Upon further diligence by Callidus, it was discovered through a PPSA search that CarCap had provided security to TD that was registered on August 22, 2011, approximately 10 days prior to the Callidus loan being made. CarCap did not disclose that they had granted security to TD On September 26, 2011 Cashland's COO revealed that the company had missed payroll and payments to certain dealers as a result of insufficient funds at TD Later, a field audit revealed that various other improprieties had occurred at CarCap and Cashland
October 2011	<ul style="list-style-type: none"> Forbearance agreement was entered into with CarCap and Cashland Callidus continued to fund losses at the companies in an attempt to preserve security value
November 2011	<ul style="list-style-type: none"> Callidus eventually terminated the forbearance agreement and sought to appoint a receiver to liquidate CarCap and Cashland
December 2011	<ul style="list-style-type: none"> BDO Canada Limited ("BDO") was appointed receiver
March 2012	<ul style="list-style-type: none"> CarCap's assets were sold for \$9.25 million and part of the proceeds were used to retire the Callidus loan in full

Comparables

Callidus Capital Comparables

	Ticker	Exchange	Share Price (CAD) 24-Nov-14	Market Cap	Debt/ Cap	Yield	Price/Earnings			Price/Book			ROE		
							LTM	FY+1	FY+2	LTM	FY+1	FY+2	LTM	FY+1	FY+2
<i>(in CAD\$ millions, unless otherwise noted)</i>															
Banks															
Bank of Montreal	BMO	TSX	\$83.20	\$53,780.5	76.2%	3.8%	12.7x	12.6x	11.9x	1.8x	1.7x	1.6x	14.0%	13.8%	13.5%
The Bank of Nova Scotia	BNS	TSX	\$70.19	\$85,391.2	72.0%	3.8%	11.8x	12.7x	12.0x	1.9x	1.9x	1.8x	16.3%	14.8%	14.6%
Canadian Western Bank	CWB	TSX	\$37.48	\$3,012.2	36.2%	2.1%	14.1x	13.8x	12.4x	2.0x	1.9x	1.7x	13.9%	13.9%	13.9%
Canadian Imperial Bank of Comm	CM	TSX	\$104.29	\$41,400.4	71.4%	3.8%	13.0x	11.6x	11.2x	2.4x	2.3x	2.1x	18.7%	20.0%	18.9%
Laurentian Bank of Canada	LB	TSX	\$50.13	\$1,445.7	79.4%	4.1%	11.3x	9.5x	8.8x	1.1x	1.1x	1.0x	9.8%	11.5%	11.6%
National Bank of Canada	NA	TSX	\$53.33	\$17,528.1	73.8%	3.6%	12.0x	11.9x	11.3x	2.1x	2.0x	1.9x	17.7%	17.1%	16.4%
Royal Bank of Canada	RY	TSX	\$82.47	\$118,932.9	73.4%	3.6%	13.9x	13.4x	12.6x	2.5x	2.4x	2.2x	18.1%	18.2%	17.8%
The Toronto-Dominion Bank	TD	TSX	\$56.77	\$104,547.6	74.4%	3.3%	13.9x	13.2x	12.2x	2.1x	2.0x	1.9x	14.8%	15.4%	15.3%
Average				\$53,254.8	69.6%	3.5%	12.9x	12.3x	11.5x	2.0x	1.9x	1.8x	15.4%	15.6%	15.3%
Median				\$47,590.4	73.6%	3.7%	12.8x	12.6x	11.9x	2.0x	2.0x	1.8x	15.6%	15.1%	14.9%
Mortgage Lenders															
Equitable Group Inc.	EQB	TSX	\$67.99	\$1,047.9	86.6%	1.1%	10.2x	10.2x	9.2x	1.7x	1.7x	1.4x	16.9%	16.1%	15.3%
Equity Financial Holdings Inc.	EQI	TSX	\$8.59	\$81.7	0.0%	0.0%	nmf	nmf	nmf	0.9x	0.9x	0.9x	nmf	nmf	0.3%
First National Financial Corporatio	FN	TSX	\$23.89	\$1,432.6	98.2%	6.3%	11.8x	11.1x	9.7x	4.5x	3.9x	3.4x	37.6%	34.8%	34.8%
Home Capital Group Inc.	HCG	TSX	\$51.33	\$3,598.3	78.0%	1.6%	12.5x	12.5x	11.0x	2.6x	2.5x	2.1x	21.0%	20.0%	19.1%
Average				\$1,540.1	65.7%	2.2%	11.5x	11.3x	10.0x	2.4x	2.2x	1.9x	25.1%	23.6%	17.4%
Median				\$1,240.2	82.3%	1.3%	11.8x	11.1x	9.7x	2.2x	2.1x	1.8x	21.0%	20.0%	17.2%
Business Development Companies															
American Capital, Ltd.	ACAS	NasdaqGS	\$16.83	\$4,537.8	20.3%	0.0%	21.3x	27.0x	20.2x	0.8x	0.7x	0.8x	3.9%	2.7%	4.1%
Apollo Investment Corporation	AINV	NasdaqGS	\$9.29	\$2,198.6	43.3%	9.7%	7.6x	8.6x	9.2x	1.1x	0.9x	0.9x	14.0%	10.9%	9.9%
Ares Capital Corporation	ARCC	NasdaqGS	\$18.42	\$5,784.7	41.2%	9.6%	9.6x	11.2x	10.3x	1.1x	1.0x	1.0x	11.5%	8.7%	9.3%
BlackRock Kelso Capital Corporati	BKCC	NasdaqGS	\$10.11	\$753.7	32.6%	9.4%	6.6x	10.1x	10.2x	1.0x	0.9x	0.9x	15.4%	8.9%	8.8%
Fifth Street Finance Corp.	FSC	NasdaqGS	\$9.92	\$1,511.9	49.6%	12.5%	12.1x	8.8x	8.2x	1.0x	0.9x	0.9x	8.4%	10.4%	11.1%
FS Investment Corporation	FSIC	NYSE	\$11.79	\$2,831.9	43.9%	8.5%	10.6x	10.9x	10.6x	1.2x	1.0x	1.0x	10.9%	9.4%	9.6%
Prospect Capital Corporation	PSEC	NasdaqGS	\$10.85	\$3,827.0	45.9%	14.5%	10.8x	8.8x	8.6x	1.0x	0.9x	1.0x	9.6%	10.6%	11.2%
TPG Specialty Lending, Inc.	TSLX	NYSE	\$20.06	\$1,079.3	31.3%	8.8%	10.1x	9.4x	10.8x	1.3x	1.1x	1.1x	12.7%	12.0%	10.3%
Average				\$2,815.6	38.5%	9.1%	11.1x	11.9x	11.0x	1.1x	0.9x	1.0x	10.8%	9.2%	9.3%
Median				\$2,515.2	42.3%	9.5%	10.3x	9.8x	10.2x	1.1x	0.9x	0.9x	11.2%	9.9%	9.8%
Specialty Finance															
Accord Financial Corp.	ACD	TSX	\$9.82	\$81.6	64.0%	3.5%	11.4x	n/a	n/a	1.4x	n/a	n/a	12.2%	n/a	n/a
Alaris Royalty Corp.	AD	TSX	\$33.97	\$1,087.1	2.5%	4.4%	30.9x	21.2x	19.8x	2.1x	2.1x	1.9x	6.8%	9.7%	9.7%
Carfinco Financial Group Inc.	CFN	TSX	\$11.19	\$296.2	71.4%	4.3%	14.6x	13.2x	11.0x	4.0x	3.8x	3.2x	27.2%	28.8%	29.5%
Chesswood Group Limited	CHW	TSX	\$11.55	\$120.2	64.9%	6.8%	11.8x	11.3x	9.1x	1.8x	1.8x	1.6x	15.3%	15.6%	18.0%
Element Financial Corporation	EFN	TSX	\$14.48	\$3,823.5	72.8%	0.0%	nmf	26.2x	14.7x	1.6x	1.6x	1.4x	nmf	6.1%	9.8%
Marlin Business Services Corp.	MRLN	NasdaqGS	\$21.04	\$271.7	0.0%	2.7%	15.2x	12.0x	11.6x	1.5x	1.4x	1.3x	10.1%	11.4%	11.1%
Average				\$946.7	46.0%	3.6%	16.8x	16.8x	13.2x	2.1x	2.1x	1.9x	14.3%	14.3%	15.6%
Median				\$284.0	64.5%	3.9%	14.6x	13.2x	11.6x	1.7x	1.8x	1.6x	12.2%	11.4%	11.1%
Callidus Capital Corporation	CBL	TSX	\$21.65	\$1,054.2	35.7%	0.0%	nmf	26.0x	12.2x	2.7x	2.6x	2.1x	4.1%	9.8%	17.0%

Select Comparable Company Descriptions

	 CALLIDUS CAPITAL CORPORATION	 ACCORD FINANCIAL Keeping Business Liquid	 CARFINCO™	 Chesswood Group Limited
Description	<ul style="list-style-type: none"> Provides flexible loan structuring on a fully collateralized basis, but typically with no financial covenants 	<ul style="list-style-type: none"> Provides factoring and other asset-based financial services to businesses 	<ul style="list-style-type: none"> Provides financing to subprime borrowers originated through a select network of automobile dealerships 	<ul style="list-style-type: none"> Engages in equipment financing and working capital loans to small businesses; and legal financing to attorneys/plaintiffs
Company Type	<ul style="list-style-type: none"> Canadian specialty finance 	<ul style="list-style-type: none"> Canadian specialty finance 	<ul style="list-style-type: none"> Canadian specialty finance 	<ul style="list-style-type: none"> Canadian specialty finance
Geographies of Focus	<ul style="list-style-type: none"> Canada and US 	<ul style="list-style-type: none"> Canada and US 	<ul style="list-style-type: none"> Canada and US 	<ul style="list-style-type: none"> Canada and US
Sector Focus	<ul style="list-style-type: none"> Diversified 	<ul style="list-style-type: none"> Diversified 	<ul style="list-style-type: none"> Automobiles 	<ul style="list-style-type: none"> Diversified
Loan Book Annualized Yield	<ul style="list-style-type: none"> 20.0% 	<ul style="list-style-type: none"> 21.6% 	<ul style="list-style-type: none"> 38.9% 	<ul style="list-style-type: none"> 31.3%
Assets Under Management	<ul style="list-style-type: none"> \$752 million gross \$596 million on derecognized basis 	<ul style="list-style-type: none"> \$155 million 	<ul style="list-style-type: none"> \$295 million 	<ul style="list-style-type: none"> \$139 million
Number of Investments	<ul style="list-style-type: none"> 31 loans 	<ul style="list-style-type: none"> Latest quarter volume of \$579 million Loan book turned over 3.7x in one quarter 	<ul style="list-style-type: none"> Thousands. Carfinco has relationships with more than 2,500 dealerships across North America 	<ul style="list-style-type: none"> >10,000
Target Duration	<ul style="list-style-type: none"> 18-24 months 	<ul style="list-style-type: none"> 30 days 	<ul style="list-style-type: none"> 12-72 months 	<ul style="list-style-type: none"> Varies from 9-10 months to years depending on product
Employees	<ul style="list-style-type: none"> 17 investment professionals 	<ul style="list-style-type: none"> 94 employees 	<ul style="list-style-type: none"> 212 employees 	<ul style="list-style-type: none"> 41 employees

Source: Company Reports

Select Comparable Company Descriptions

					
Description	<ul style="list-style-type: none"> Offers fleet leases, railcar financing, aviation financing, and financing for commercial and industrial equipment 	<ul style="list-style-type: none"> Finances acquisition of commercial equipment to small and mid-sized businesses 	<ul style="list-style-type: none"> Originates investments in private equity, leveraged finance, real estate, and structured products 	<ul style="list-style-type: none"> Invests in various forms of debt investments as well as private equity 	<ul style="list-style-type: none"> Invests primarily in debt capital
Company Type	<ul style="list-style-type: none"> Canadian specialty finance 	<ul style="list-style-type: none"> Canadian specialty finance 	<ul style="list-style-type: none"> US business development company 	<ul style="list-style-type: none"> US business development company 	<ul style="list-style-type: none"> US business development company
Geographies of Focus	<ul style="list-style-type: none"> Canada and US 	<ul style="list-style-type: none"> US 	<ul style="list-style-type: none"> Global 	<ul style="list-style-type: none"> Mostly US 	<ul style="list-style-type: none"> Mostly US
Sector Focus	<ul style="list-style-type: none"> Industrial and transportation 	<ul style="list-style-type: none"> Diversified 	<ul style="list-style-type: none"> Diversified 	<ul style="list-style-type: none"> Diversified 	<ul style="list-style-type: none"> Diversified
Loan Book Annualized Yield	<ul style="list-style-type: none"> 8.4% 	<ul style="list-style-type: none"> 9.3% 	<ul style="list-style-type: none"> 7.8% 	<ul style="list-style-type: none"> 11% 	<ul style="list-style-type: none"> 9.9%
Assets Under Management	<ul style="list-style-type: none"> \$8.3 billion 	<ul style="list-style-type: none"> \$729 million 	<ul style="list-style-type: none"> \$5.9 billion 	<ul style="list-style-type: none"> \$3.7 billion 	<ul style="list-style-type: none"> \$8.8 billion
Number of Investments	<ul style="list-style-type: none"> Not explicitly stated, but very large number 	<ul style="list-style-type: none"> Over 75,000 leases with 63,000 customers 	<ul style="list-style-type: none"> Over 300 	<ul style="list-style-type: none"> Over 110 	<ul style="list-style-type: none"> Over 250
Target Duration	<ul style="list-style-type: none"> Varies from 12 months to 36-120 months depending on product 	<ul style="list-style-type: none"> 47 months 	<ul style="list-style-type: none"> 5-7 years 	<ul style="list-style-type: none"> 5-7 years 	<ul style="list-style-type: none"> 6 years
Employees	<ul style="list-style-type: none"> 412 employees 	<ul style="list-style-type: none"> 285 employees 	<ul style="list-style-type: none"> Just under 300 investment professionals 	<ul style="list-style-type: none"> Over 300 investment professionals 	<ul style="list-style-type: none"> Over 80

Source: Company Reports

To: 'kdaniels@osc.gov.on.ca'[kdaniels@osc.gov.on.ca]
From: - Greg Boland[/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2d2132f27a5c4ecdb17080d2ad0f7b85-Greg]
Sent: Wed 12/10/2014 6:36:09 PM (UTC)
Subject: RE: Follow up re Callidus
[CBL 2014 Q3 Conference Call.pdf](#)

WF016010/001

This is the transcript from the most recent quarterly call.

They state that they have no non-performing loans in the portfolio (bottom page 9).

I find it puzzling that such could happen in receivership. If technically true it is misleading and likely because they are funding debt to pay themselves interest.

Moreover, it appears that they are delaying equitization in order to delay realization of the impairment.

There are some conflicts of interest between the private equity fund and the public company. If Callidus equitizes it may have recourse to the Catalyst funds at the time of the impairment.

I am happy to go over this in person or on a call if you like.

GB

From: kdaniels@osc.gov.on.ca [mailto:kdaniels@osc.gov.on.ca]
Sent: Tuesday, December 09, 2014 4:42 PM
To: - Greg Boland
Subject: RE: Follow up re Callidus

Thanks - we'll review.

I did search our system and don't see an earlier complaint on this from Westface. Let me know if there was something else.

Katie

Katie Daniels | Ontario Securities Commission | Deputy Director, Corporate Finance
 20 Queen Street West, Suite 1903 | Toronto ON M5H 3S8
 (416) 593-8093 | kdaniels@osc.gov.on.ca

From: "- Greg Boland" <greg.boland@westfacecapital.com>
 To: "kdaniels@osc.gov.on.ca" <kdaniels@osc.gov.on.ca>,
 Date: 09/12/2014 12:08 PM
 Subject: RE: Follow up re Callidus

Attached is the full deck which includes other case studies. Obviously the opinion part you can ignore.

I would read this in the context of company disclosure that "all loans are current" and prospectus statements including "no impairments have been realized on Callidus sourced loans".

The Duff and Phelps reports referenced can be viewed here: <http://www.duffandphelps.com/intl/en-ca/Pages/RestructuringCases.aspx?caseId=895>

The document password is "daniels"

Best,
 Greg



Greg Boland - President and CEO | West Face Capital Inc.
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WF016010/002

From: kdaniels@osc.gov.on.ca [<mailto:kdaniels@osc.gov.on.ca>]
Sent: Tuesday, December 09, 2014 10:51 AM
To: - Greg Boland
Subject: Re: Follow up re Callidus

Thanks for forwarding

Katie

Katie Daniels | Ontario Securities Commission | Deputy Director, Corporate Finance
20 Queen Street West, Suite 1903 | Toronto ON M5H 3S8
(416) 593-8093 | kdaniels@osc.gov.on.ca

From: "- Greg Boland" <greg.boland@westfacecapital.com>
To: "kdaniels@OSC.gov.on.ca" <kdaniels@OSC.gov.on.ca>,
Date: 09/12/2014 10:49 AM
Subject: Follow up re Callidus

Kathryn,

I understand you met my partner Tom Dea. We have been working on some short ideas and have been doing a deep dive on Callidus Capital. I have previously reported to the OSC what I believed to be aggressive valuations in the Catalyst Capital private equity funds (which I still believe to be the case).

Catalyst is the sponsor of the recently IPO of Callidus capital. I think the prospectus disclosure is aggressive at best and certainly misleading. More troubling is objective evidence of possible undisclosed portfolio write-downs or delays in recognition to facilitate the IPO.

Attached is one of the problem loans in question.

I am happy to discuss further.

Regards,
Greg Boland



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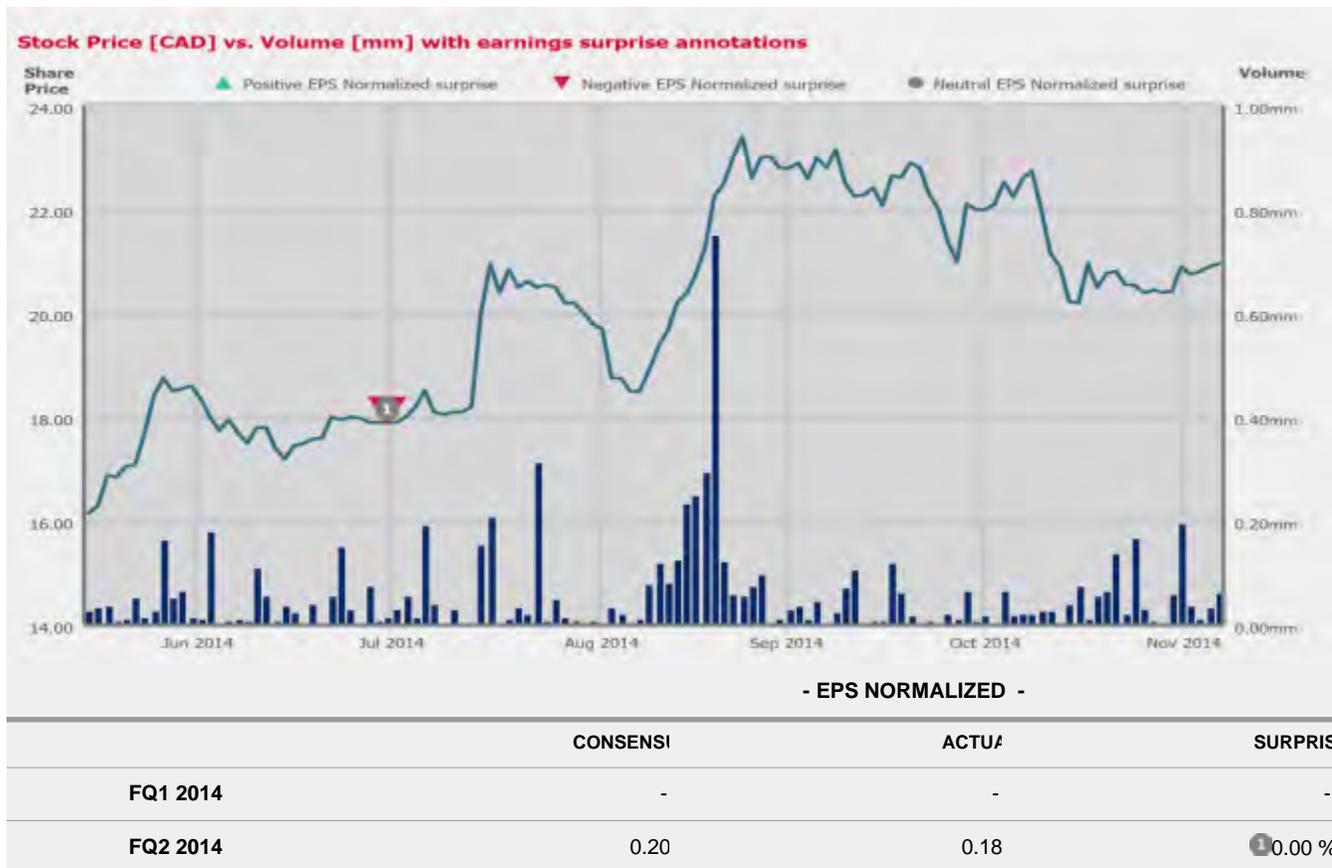
Friday, November 07, 2014 12:30 PM GMT

S&P CapitalIQ Estimates

	-FQ32014-			-FQ42014-	-FY 2014-	-FY 2015-
	CONSENSUS	ACTUAL	SURPRISE	CONSENSUS	CONSENSUS	CONSENSUS
EPS Normalize	0.24	0.27	0.00	0.35	0.83	1.70
Revenue (mm)	25.92	26.18	(3.04)	35.26	104.09	177.40

Currency: CAD

Consensus as of Nov-03-2014 2:00 PM GMT



Call Participants

EXECUTIVES

Dan Nohdomi

Chief Financial Officer and Vice President

David M. Reese

Chief Operating Officer and Member of Credit Committee

Newton G.Z. Glassman

Executive Chairman, Chief Executive Officer and Chairman of Credit Committee

ANALYSTS

Lemar Persaud

TD Securities Equity Research

Paul Holden

CIBC World Markets Inc., Research Division

Scott Chan

Canaccord Genuity, Research Division

Shubha Rahman Khan

National Bank Financial, Inc., Research Division

Yashwant Sankpal

Dundee Capital Markets Inc., Research Division

Presentation

Operator

Good morning, my name is Melissa, and I will be your conference operator today. At this time, I would like to welcome everyone to the Callidus Capital Corporation Third Quarter Results Conference Call. [Operator Instructions] Mr. Newton Glassman, Executive Chairman and CEO, will begin your conference.

Newton G.Z. Glassman

Executive Chairman, Chief Executive Officer and Chairman of Credit Committee

Good morning, everybody, and thank you for participating in our Fiscal 2014 Third Quarter Investor Call. I am Newton Glassman, Executive Chairman and CEO of Callidus Capital Corporation. I'm joined this morning on the call by David Reese, our COO; Jim Riley, the Secretary and Director of Callidus; and Dan Nohdomi, our CFO.

We are pleased to have this opportunity to discuss our third quarter results for the period ending September 30, 2014, and provide you with some current highlights regarding our business.

As it relates to disclosure, our goal is to be as transparent as possible with the market. To that end, we encourage listeners to let us know if there is other information they would like us to add to future press releases and calls. By way of example, we will continue to press release significant movements in our loan portfolio and expect to inform the market of the loan portfolio moves by more than approximately \$65 million or \$70 million, roughly 10%. This threshold amount will be adjusted as the loan book changes. Please be aware that our comments today are subject to the caveat regarding "forward-looking statements" that is contained in the press release.

The format we will use for today's call is as follows: one, provide a brief description of Callidus itself; two, review the highlights of our current business using November 4, 2014 data; three, review highlights of our Q3 results; and four, open the lines for questions.

One, about Callidus. Established in 2003, Callidus Capital Corporation is a Canadian company that specializes in innovative and creative financing solutions for companies that are unable to obtain adequate financing from conventional lending institutions. Unlike conventional lending institutions who demand a long list of covenants and make credit decisions based on cash flow and projections, Callidus credit facilities have few and, in fact, limited, if any, covenant -- neither covenants because they are based on the value of borrower's assets, its enterprise and borrowing needs, while also being structured as demand facilities.

Callidus employs a proprietary system of monitoring collateral and exercising control over the cash inflow and outflows of each borrower, enabling Callidus to very effectively manage any risk of loss.

Two, current status of the business as of November 4, 2014. Gross accounts receivables of \$684 million on November 4, 2014, at 29% -- at \$29 million, a 4% increase from the \$655 million as of September 30, 2014, quarter end and an increase of \$303 million, 79% from \$381 million at the December 31, 2013 year end. Pipeline of potential new loans have been reaching from approximately \$500 million to \$600 million and currently in the upper end of that range. Of the approximately \$600 million pipeline, we have signed back term sheets that we are pursuing of approximately \$172 million.

Historically, Callidus has closed on approximately 60% to 80% of signed-back term sheets. Callidus closed on loans with aggregate commitments of \$169 million in the third quarter as compared to \$126 million in the second quarter, an absolute increase of \$43 million or 34% quarter-over-quarter.

Notwithstanding such, the number of closings in the third quarter was somewhat adversely affected by our focus on integrating and training new hires and we therefore hope that in the future the numbers will continue to increase.

Callidus cash position currently will support \$188 million of additional loans upon completion of anticipated changes to the financing arrangements supporting 60% leverage. Management has concluded that although a long-term leverage target of

40% is desirable in the medium to longer term, leverage could be allowed to exceed 70%. This would obviously increase net income dramatically and is a simple matter of math since we constantly reinvest net income and growth becomes close to or actually is self-funding at a specific amount of leverage.

Furthermore, Catalyst managed funds have now committed to provide such leverage to fund continued growth if and when required by Callidus due to unfavorable market conditions for an equity offering. For example, if we feel that the cost of capital being greater than that at the time of IPO.

Total debt of \$246 million before derecognition, or 36% of gross loans receivable before derecognition, which we could increase to approximately 38% based on the estimated undrawn availability currently.

Pro forma net income of approximately \$62 million after derecognition of the approximate 14% undivided participation interest in the loan portfolio held by the Catalyst group down from 18% at the time of the IPO. This calculation was prepared on a basis consistent with our MD&A for Q3.

We continue to see exciting growth opportunities in each of the strategic areas discussed during the IPO. We will go through some of those now.

Canadian market opportunity. The IPO and our status as a public company has increased our profile in the Canadian market. We are seeing increased interest from prospective clients, which has resulted in an increase in our pipeline. In addition, with better access to capital and a strong balance sheet, we are better positioned to respond expeditiously to a variety of client loan requirements including size and structure. We continue to believe that the Canadian market offers an attractive opportunity for our core lending product and will continue to grow.

U.S. market opportunity. As discussed in the IPO prospectus, we are active in the U.S. in originating, managing and underwriting U.S.-based loans. Our new U.S. originator has broadened the range and scope of opportunities that we are seeing and expect our activity in the U.S. to increase significantly. Although the U.S. market has a different competitive dynamic and different bankruptcy process than in Canada, we have the track record and experience to successfully operate in this important strategic market for us.

Callidus Lite. We are pleased to report continued growth in the deployment of Callidus Lite as an expansionary loan product. Year-to-date, we have successfully closed 3 Callidus Lite loans, representing \$62 million in commitments in the aggregate. As previously disclosed, this product offering provides an attractive alternative for borrowers seeking growth capital or those with an improved risk profile as compared to borrowers of Callidus' legacy products. We continue to believe that there is a significant opportunity as a result of the discontinuity in the credit markets where borrowers cannot otherwise source potential capital, and this product fills this gap. This has the potential of significantly increasing our activity in both the Canadian and U.S. markets.

Portfolio acquisitions. We also continue to closely monitor the market for portfolio acquisitions and we'll pursue these acquisitions opportunistically. Additionally, we're now actively exploring potential corporate acquisitions and believe that there are a number of complementary and highly synergistic businesses, as opposed to portfolios, that could fit with our strategic and operational objectives. Although no such transactions are imminent, we believe that we have the management capabilities to identify, negotiate and integrate these acquisitions successfully.

Further, Catalyst Fund Limited Partnership IV has advised Callidus that it intends to sell its \$50 million participation interest in the loan portfolio on or before December 31, 2014. The participation agreement between Callidus and Catalyst Fund Limited Partnership IV provides the company the option to acquire all or part of the interest in the loan portfolio at par plus accrued interest and fees and in exchange for such getting principal guarantee. Callidus expects to complete the acquisition of 100% of the remaining participation interest, thus eliminating the need for accounting for derecognition of this \$50 million participation interest on a go-forward basis within the above noted timeframe.

In addition to pursuing these strategic growth initiatives, as disclosed previously, we hired new originators in Seattle, Washington to cover the Pacific West Coast, British Columbia and Alberta and another originator in Montréal to cover each of the Quebec and Eastern Canadian markets. These new originators are delivering on our expectations. Both originators have identified in advance a number of prospective opportunities. We're working on a number of signed-back termsheets sourced by these originators and expect to close these financings over time. Clearly, the addition of originators will increase our pipeline over time as well.

Additionally, as discussed previously we have added to the underwriting finance and field examination groups to support our existing platform and our increased lending activity.

Four, highlights from the third quarter ending September 30, 2014. Gross loans receivable increased \$118.5 million or 22% from the previous quarter of June 30, 2014, to \$655 million as at September 30, 2014. Average gross loan receivable of \$60 million for the third quarter represented 136% increase over the \$258 million average gross loan receivable for the same period in the prior year Q3 2013.

Total revenue was \$26.2 million for the third quarter compared to \$13.6 million in Q3 2013 the prior year, or approximately 100% increase. Gross deals were 20% for the third quarter compared to 21.2% -- as compared to 21.2% for Q3 2013, a small decrease year-over-year.

Adjusted net interest income was \$23.5 million for the third quarter of 2014 compared to \$12.6 million, or nearly a 100% increase from the Q3 2013 period. Net income was \$13.2 million for the third quarter compared to \$0.7 million in Q3 2013. Year-to-date, net income was \$20.7 million compared to a net loss of \$1.2 million in the same period last year. The movement in earnings was attributable to the full repayment of the principal balance of the participating debenture that resulted in profitability in the year-to-date period as a result of the public offering, the IPO and related transactions.

During the third quarter, 6 new loans totaling \$174 million in commitments were extended and 2 loans totaling \$15 million were repaid by borrowers. Additionally, \$45 million in net funding was advanced to existing borrowers, which we think is very important. There were 60 loan commitments as at December 30, 2014, the largest of which was \$75 million -- U.S. \$75 million commitment, and the smallest of which was a \$3 million commitment. The average loan amount funded was approximately \$22 million.

We continue to work to increase the average loan size as we find larger clients generally have better systems and more reliable information. We remain vigilant in our credit process as evidenced by realized losses and adhering to our annual loan loss provision estimate of between 1.5% and 2%. To be clear, all provisions taken this quarter relate to loans that existed prior to the IPO and are still subject to the guarantee provided by Catalyst, which means that they will result in 0 losses.

Conclusion. Overall we are very pleased with the performance of our business across a number of operating financial metrics. Our loan book continues to grow ahead of our expectations while we continue to enforce our very strict lending criteria. We have a differentiated and unique offering for borrowers and the successful growth of the business demonstrates that we are topping burgeoning demand from our -- for our core lending products. We are cognizant of the faith you have put in us by investing in Callidus, and we'll do our utmost to deliver for all of our shareholders and other stakeholders. We continue to believe that given the current economic environment, our team, liquidity and market presence that we are well-positioned to execute on our business initiatives as outlined in our prospectus.

Thank you for your attention and we will now open lines to questions.

Question and Answer

Operator

[Operator Instructions] Your first question is from the line of Scott Chan from Canaccord Genuity.

Scott Chan

Canaccord Genuity, Research Division

Just on the gross yield side, it just came a bit lower than expected. Which drove the year-over-year decline? Was it Callidus Lite or was it some other factors?

David M. Reese

Chief Operating Officer and Member of Credit Committee

Scott, it's David. Generally, on a quarter-to-quarter basis, our mix bounces around a little bit tied to prepayment penalties fees and just our interest rate mix across the portfolio. So it's nothing that we're concerned about and we do generally expect to see anywhere from 0.5% to 1% bounce quarter-to-quarter. So we just happened to bounce at the low end. When compared to the same period last year, I think we actually collected a fairly sizable prepayment penalty when we closed one of our loans.

Scott Chan

Canaccord Genuity, Research Division

Okay. And just looking at the sector in terms of your loans, I see that energy over the last 2 quarters have been -- you've originated some energy loans. With the recent backdrop in oil prices, is there kind of concern on those loans? Or maybe you can give an example of one of those loans that was originated.

Newton G.Z. Glassman

Executive Chairman, Chief Executive Officer and Chairman of Credit Committee

Yes. We've probably done a poor job of explaining what we mean by energy or technology as examples. In the energy sector, we're actually not lending against E&P. We actually don't. We're lending against service providers to that industry. So in this environment, rig maintenance, as an example, would be something that is almost untied and, in fact, could have a front end loaded increase in activity because people have to move rigs or decommissioning rigs. So we're not tied to the E&P cycle or the price of energy. Similarly, and we've told this publicly before but I want people to make sure they understand our biggest concentration is on an [indiscernible] numbered basis technology, but it's actually to VaR, which is of value-added reseller, who has forward contracts with A- or AA-rated credit customers, and we're actually lending against that credit as they repackage for that VaR. So we don't actually have exposure to what people would traditionally call either energy or technology.

David M. Reese

Chief Operating Officer and Member of Credit Committee

And in the sense of the technology comment [ph] that Newton was referencing, virtually all our exposure is supported by AR. And it's, as Newton said, very high quality and it turns very quickly. So it's basically a straight-up AR deal.

Newton G.Z. Glassman

Executive Chairman, Chief Executive Officer and Chairman of Credit Committee

And on the energy side, there's a fair amount that's supported by AR from high credit also.

David M. Reese

Chief Operating Officer and Member of Credit Committee

Yes. Good point.

Newton G.Z. Glassman

Executive Chairman, Chief Executive Officer and Chairman of Credit Committee

Because of the service providing nature of the business.

Scott Chan

Canaccord Genuity, Research Division

Okay. And you talk about potential acquisition opportunities for the first time. Can you just give us maybe a flavor of the type of businesses that you're kind of looking at that could be complementary?

Newton G.Z. Glassman

Executive Chairman, Chief Executive Officer and Chairman of Credit Committee

Sure. I'd be happy to give you a flavor when we conclude one.

Operator

The next question is from the line of Shubha Khan from National Bank Financial.

Shubha Rahman Khan

National Bank Financial, Inc., Research Division

Just a couple of questions regarding the financial arrangements. I guess, you talked about changes to those arrangements. I just want to be clear about what that exactly means. And I'm assuming -- am I correct in assuming that what you're referring to is the fact that you don't intend to issue equity in the near term, so you'll borrow from Catalyst instead, that will require you to boost leverage to 60% maybe even 70%. What what you're referring to? And then maybe in the long term, you're going to come back to 40%.

Newton G.Z. Glassman

Executive Chairman, Chief Executive Officer and Chairman of Credit Committee

So let me give you a little bit better clarity if I can. First of all, Catalyst is not the only provider of capital. We have other sources of capital that are senior on the balance sheet. We have existing facilities in place that we've obviously disclosed at the time of the IPO. We have the ability as the book grows to actually increase those facilities. And we've gone back and are in discussions and have tentative agreements to increase those facilities with those providers. That's I think it's public. That's a very, very low cost capital.

David M. Reese

Chief Operating Officer and Member of Credit Committee

Yes. The cost that is LIBOR plus 33, publicly disclosed.

Newton G.Z. Glassman

Executive Chairman, Chief Executive Officer and Chairman of Credit Committee

Yes. It was supposed to be 300, but it is 333. That would be a very large source of the capital. So obviously, when we're making 20-odd percent unlevered returns and we have a cost of capital for the vast majority of that at LIBOR plus 33, the spread increases our net income quite dramatically. That leads to the second source of capital, which is our own net income. As we increase leverage, that net income goes up dramatically, which we think will have 2 impacts. First, it helps us fund the business itself. And secondly, assuming the multiples stayed constant, the stock price should increase disproportionately since it's a multiplier effect. The third source of capital is Catalyst Funds. The funds themselves have the availability and the ability to actually provide growth capital for the business. As the largest shareholder, we are particularly well aligned with the public shareholders and have said publicly that we will not allow an equity offering that is dilutive from a multiple perspective on a forward basis relative to that of the IPO. We just don't think that's fair to the investors, and we're willing to put our mouth where

our money is. The interesting impact of that, which I think has been lost by people running the math, is that at a certain point, this business, even with hitting our targets of doubling the book every 2 to 3 years, actually becomes self-funding. So you guys can do the math, but somewhere between 60% and 70%, this business is self-funding and we don't have any need for equity. And one of the reasons why we spend so much time training the new originators, field examiners and collateral clerks that we've brought on site -- and in fact, although we've grown 34% quarter-over-quarter in terms of loan book, we actually could have done much more than that in the quarter as evidenced by the growing pipeline -- we are spending so much time on training people in our own systems and our approach because we actually think that managing the loan loss is more important than the growth. And that becomes particularly important for us as we consider how much more additional leverage and/or how long we will maintain that leverage in our book. So when you run the math, it becomes quite evident that unless our valuation is at or very similar to the valuation at the time of the IPO, we're just not ever coming back to the equity markets until such time. And as a result, as the largest shareholder, I'm particularly interested in ensuring that loan losses don't change materially. In the longer run -- I'm sorry, for one more thing you asked, in the longer run meaning over years, many years, it's been my desire to actually eventually end up at around 40%. But people need to also understand that we were ranging between 32% and 36% since the IPO. And frankly for years before that, we were at 10% to 20%. So over time, many, many, many years if necessary, we will eventually get to 40% but it could take a very long time because we're not going to be dependent on the equity market.

Shubha Rahman Khan

National Bank Financial, Inc., Research Division

Okay. So leverage of 60% to 70% is more appropriate at this time is what you're saying.

Newton G.Z. Glassman

Executive Chairman, Chief Executive Officer and Chairman of Credit Committee

Yes. I think that if you ran the math, you'd find that somewhere in that range, the business is self-funding even with our aggressive growth target.

Shubha Rahman Khan

National Bank Financial, Inc., Research Division

Okay. And then you talked about Catalyst being the third, maybe fourth, source of funds -- I'm just wondering -- or Catalyst Funds being the fourth source of funds -- how likely is it that you tap into that source in the near term, given that you're already negotiating an expansion of your existing revolving facilities?

Newton G.Z. Glassman

Executive Chairman, Chief Executive Officer and Chairman of Credit Committee

I don't have the ability to comment on that. I can tell you that Catalyst -- as the CEO and managing partner of Catalyst, we stand ready, willing and able. Because it's related party, we would ensure that all processes and procedures required are abided by. And the reality is that it would benefit accretively to Callidus no matter what.

Shubha Rahman Khan

National Bank Financial, Inc., Research Division

Okay. And is there any color you can provide on possible lending terms if you were to access capital from Catalyst Funds?

Newton G.Z. Glassman

Executive Chairman, Chief Executive Officer and Chairman of Credit Committee

I could, but Jim Riley would shoot me.

Operator

[Operator Instructions] Your next question is from Paul Holden from CIBC.

Paul Holden

CIBC World Markets Inc., Research Division

You've already answered a number of my questions explaining how you view the financial leverage and self-funding, but one additional question I do have is on the potential acquisition of operating companies. So the angle I want to come from is what would you potentially gain from a strategic viewpoint by potential acquisition?

Newton G.Z. Glassman

Executive Chairman, Chief Executive Officer and Chairman of Credit Committee

Thanks, Paul. That's actually a very good question. We could opt -- just like Callidus Lite is a new line of business, we are seeing dislocation in the credit markets in specific areas. So we can imagine entering into a new line of business, whether it's, for example -- and we wouldn't do it without actually acquiring a team that shows us that they have the experience in that line of business. But I can see areas that are related to either consumer finance or bridge lending to troubled real estate that fit our credit profile that we would consider or have considered looking at as areas where we can expand. And those are just 2 examples that we've looked at and continue to look at. It would have to be something that has a high level of current assets that are available for collateral and a quick ability to create liquidity in the event that we seized collateral. So for example, when I talk about real estate, I'm talking about bridge construction loans that have a term of a year to completion or something like that where there is a significant equity invested but the banks are no longer willing to provide the bulk of the facility to the developer, which we think is an area that's going to become important in the next 1 to 2 years because of the bank's current posture.

Paul Holden

CIBC World Markets Inc., Research Division

Got it. Okay. I want to go back to the question a bit on the cost of borrowing from Catalyst. It would be helpful to get some kind of at least relative borrowing cost to your current facilities just to help us run the math like on the self-funding and what the numbers will look like if the leverage ratio goes up to 60%. So any kind of context would be appreciated.

Newton G.Z. Glassman

Executive Chairman, Chief Executive Officer and Chairman of Credit Committee

Well, as Jim Riley pulls out his gun and puts it to my left temple, I'm advised by counsel that it will be at market and it'll have to be approved by the independent committee because it's a related transaction and we will adhere to all processes necessary, both statutorily and morally. The reality is that it's in everybody including Catalyst Funds' best interest that any capital being provided increases the net margin for Callidus and is for the benefit of Callidus. We own 59% of the business.

Operator

[Operator Instructions] Your next question is from the line of Lemar Persaud from TD Securities.

Lemar Persaud

TD Securities Equity Research

I just have a quick question on the participation fees. It looks like it's a bit high relative to what we saw last quarter. Now I understand this is a piece of the overhead that Catalyst is repaying to Callidus. But I'm just wondering like why the mathematics seem like it's a bit higher this quarter.

Newton G.Z. Glassman

Executive Chairman, Chief Executive Officer and Chairman of Credit Committee

Dan, do you want to answer that?

Dan Nohdomi

Chief Financial Officer and Vice President

Sure, absolutely. It's primarily related to G&A. Exactly that, Lemar, so G&A overhead. And the math is quite simple, it's just what we've paid in Callidus and then the percentage interest that Catalyst has in Callidus.

Newton G.Z. Glassman

Executive Chairman, Chief Executive Officer and Chairman of Credit Committee

So if over the quarter, we have on average 14% outstanding amount, meaning \$50 million over the total loans outstanding is 14%, we simply apply that 14% to the cost of running the business over the quarter and attribute that to Catalyst, which it has to repay. Since we've been adding a lot of people, our G&A ahead of growing the book, you can see that we're investing in it and the best place to see that is that although the percentage of participation interest has gone down, the dollars have gone up ahead of the growth and we allocate that to Catalyst and it has to repay it.

Lemar Persaud

TD Securities Equity Research

Okay. Is that percentage of the salaries and expenses stock options in G&A? Like..

Newton G.Z. Glassman

Executive Chairman, Chief Executive Officer and Chairman of Credit Committee

Everything. The cost of running the business.

Operator

Your next question is from the line of Yash Sankpal from Dundee Capital.

Yashwant Sankpal

Dundee Capital Markets Inc., Research Division

Just all my questions have been answered except the question on loan loss provisions. Maybe I was wondering if you could provide some color around that number like what happened or anything you could provide.

Newton G.Z. Glassman

Executive Chairman, Chief Executive Officer and Chairman of Credit Committee

I'm sorry, Yash, you're asking about loan loss provisions?

Yashwant Sankpal

Dundee Capital Markets Inc., Research Division

That's right.

Newton G.Z. Glassman

Executive Chairman, Chief Executive Officer and Chairman of Credit Committee

So, it's 0. We've had no realized losses in the quarter. We provide a provision of between 1.5% and 2%, so we're increasing the provision as the book grows. The absolute dollars in the provision goes up but the actual experienced losses have been 0. And furthermore, if there is to be an experienced loss, everything currently on the watch list is actually guaranteed by Catalyst. So the losses to be experienced by Callidus, least for anything that's currently on the watch list, is 0.

Yashwant Sankpal

Dundee Capital Markets Inc., Research Division

Okay. And I was just wondering if those were specific loan loss provisions or general loan loss provisions?

Newton G.Z. Glassman

Executive Chairman, Chief Executive Officer and Chairman of Credit Committee

So IFRS is a bit annoying. Technically, under IFRS you have to allocate the provision on a loan-by-loan basis. So -- and I think we went through this in the IPO, but just to remind people, we set up a separate watch list, which is the stuff that although performing -- because we don't have a single loan in the portfolio that's not performing, and just to remind again everybody, performing means current interest and all obligations -- so we don't have a single loan in our book that is nonperforming. But

we do have loans that we were worried about and put on what we call our watch list, which triggers a change in how we monitor those loans internally. They become much more actively reviewed daily and then weekly, it's reviewed by everybody especially the committee at least once, sometimes twice a week. Once it's on the watch list, we do something that we call VaR, which isn't really technically correct. VaR is standing for value at risk, and we analyze what we think the recovery will be if we had to sell the loan immediately or liquidate it. And in most cases, except for currently, that VaR is actually positive. In other words, we have excess collateral and we would actually hold more than what is necessary under the loans. In 2 cases, the VaR is slightly negative, and it's actually not a meaningful number relative to the entire portfolio, it's quite, quite small. And in those cases where the VaR is negative, we actually attribute the provision against those loans specifically.

Operator

[Operator Instructions]

Newton G.Z. Glassman

Executive Chairman, Chief Executive Officer and Chairman of Credit Committee

Sorry, one second going back to finish Yash's question. And in both cases, those loans that have negative VaR actually have a guarantee from Catalyst. So although we do have the provisions, the actual exposure for Callidus is 0 because they were loans that were purchased as part of the IPO and, therefore, came with the guarantee. So the actual dollars at risk for Callidus is 0, notwithstanding the fact that on the face of our financial statements, we actually have a dollar provision amount. Sorry, guys.

Operator

And there are no further questions at this time. Mr. Glassman, turn it back over to you.

Newton G.Z. Glassman

Executive Chairman, Chief Executive Officer and Chairman of Credit Committee

Thank you, everybody, for joining us the call. We're very excited by this business. We obviously believe that it's doing well, and we're happy with the performance of the team. Our loan book continues to grow ahead of our expectations, and we continue to enforce our strict lending criteria. We do have a differentiated and unique offering for borrowers, and the successful growth of the business demonstrates that we are tapping that burgeoning demand for our core lending product. Thank you very much for your attention and we hope to continue to enjoy your support.

Operator Ladies and gentlemen, this concludes today's conference call. You may now disconnect.

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Plaintiffs Defendants Third Party
WEST FACE CAPITAL INC. et al. -and- THE CATALYST CAPITAL GROUP INC. et al.
Plaintiffs by Counterclaim Defendants to the Counterclaim

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

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OF WEST FACE CAPITAL INC. AND GREGORY BOLAND**

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