Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | 22nd Floor, 20 Queen Street West, Toronto ON M5H 3S8 | 22e étage, 20, rue queen ouest, Toronto ON M5H 3S8

IN THE MATTER OF
KATANGA MINING LIMITED, ARISTOTELIS MISTAKIDIS,
TIM HENDERSON, LIAM GALLAGHER, JEFFREY BEST,
JOHNNY BLIZZARD, JACQUES LUBBE and MATTHEW COLWILL

STATEMENT OF ALLEGATIONS

(Subsection 127(1) and Section 127.1
of the *Securities Act*, RSO 1990, c S.5)

A. ORDER SOUGHT

1. Staff of the Enforcement Branch ("**Enforcement Staff**") of the Ontario Securities Commission (the "**Commission**") request that the Commission make an order pursuant to subsection 127(1) and (2) and section 127.1 of the *Securities Act*, RSO 1990, c S.5 (the "**Act**") to approve the settlement agreement dated December 14, 2018 between Aristotelis Mistakidis ("**Mistakidis**"), Tim Henderson ("**Henderson**"), Liam Gallagher ("**Gallagher**"), Jeffrey Best ("**Best**"), Johnny Blizzard ("**Blizzard**"), Jacques Lubbe ("**Lubbe**"), and Matthew Colwill ("**Colwill**") (collectively, the "**Individual Respondents**"), Katanga Mining Limited (collectively with the Individual Respondents, the "**Respondents**") and Enforcement Staff.

B. FACTS

Enforcement Staff make the following allegations of fact:

OVERVIEW

2. Directors and officers set the "tone from the top" and are responsible for establishing and enforcing a culture of compliance.

3. In this case, the Individual Respondents engaged in conduct at Katanga Mining Limited[1] that undermined Katanga's corporate governance and internal controls and, which, in the specific instances detailed in Part I below, resulted in Katanga making financial disclosure that was misleading in a material respect. This conduct breached Ontario securities law and was contrary to the public interest.

4. Katanga operates copper and cobalt mining and refinery facilities in the Democratic Republic of the Congo ("**DRC**"), a country perceived to have significant risk of public sector corruption.

5. Glencore[2] has been Katanga's majority shareholder since 2009. Glencore acquired control of Katanga through a series of transactions that commenced in 2007. Glencore worked with and invested alongside entities associated with Dan Gertler ("**Gertler**") in certain of these transactions. During the Material Time[3] and until February 2017, entities associated with Gertler were beneficial shareholders of Katanga. In February 2017, entities associated with Gertler beneficially held at least 11% of Katanga's common shares.

6. For differing periods during the Material Time, Gallagher, Henderson and Mistakidis (the "**Glencore Respondents**") served on Katanga's board of directors (the "**Board**") and exercised significant influence over operational and financial decisions at Katanga. Together with Katanga's officers, the Glencore Respondents were involved in conduct that undermined Katanga's internal controls as detailed in Part I and Part III below. This conduct was contrary to the public interest and it manifested in Katanga failing to comply with Ontario securities law.

7. In particular, Katanga:

(a) Misstated its financial position and the results of its operations; and

[1] Hereafter, solely or collectively with its subsidiaries, "**Katanga**".

[2] Glencore plc (solely or collectively with its subsidiaries, "**Glencore**") is one of the world's largest commodities firms and is based in Switzerland with its primary listing on the London Stock Exchange. As further described in paragraphs 27-28 below, Glencore was Katanga's sole customer, and financed Katanga's operations

[3] The conduct set out in this document concerns the 6-year period from January 1, 2012 to December 31, 2017 (the "**Material Time**").

(b) Failed to maintain adequate disclosure controls and procedures ("**DC&P**") and internal controls over financial reporting ("**ICFR**") and to disclose material weaknesses in its ICFR.

8. The Individual Respondents authorized, permitted or acquiesced in the above non-compliance with Ontario securities law by Katanga (Part I and Part III) and acted in a manner contrary to the public interest (Part II) in their roles as directors and officers of Katanga, as detailed below.

9. Separately, during the Material Time, Katanga's Annual Information Form ("**AIF**") disclosure failed to adequately describe the heightened risks associated with: (i) its operating environment, specifically the elevated risk of public sector corruption in the DRC; and (ii) its reliance on individuals and entities associated with Gertler (the "**Gertler Associates**"), including the risk that a cessation or deterioration in Katanga's business relationships with the Gertler Associates could have an adverse impact on Katanga's business.

THE RESPONDENTS

(1) <u>Katanga</u>

10. Katanga is an Ontario reporting issuer with its shares listed on the Toronto Stock Exchange.

11. Katanga was first incorporated under the laws of Bermuda in 1996 and continued under the Yukon Business Corporations Act on August 31, 2011. Katanga's registered office is in Whitehorse, Yukon with its head office in Zug, Switzerland.

12. Katanga's operations are primarily carried out through its 75%-owned subsidiary, Kamoto Copper Company SA ("**KCC**"), pursuant to a joint venture agreement (the "**JV Agreement**") with La Génerale des Carrières et des Mines S.A. ("**Gécamines**"), which owns 25% of KCC.[4] Gécamines is a DRC state-owned entity.

[4] Gécamines held 20% of KCC directly and 5% of KCC through its affiliate La Société Immobilière du Congo, another DRC state-owned entity.

13. The JV Agreement was signed in July 2009 and required, among other things, that Katanga make certain payments to Gécamines including: (i) royalties equivalent to 2.5% of KCC's net revenues; and (ii) a fixed *pas de porte*[5] payable in installments at the end of each year up to 2016.

14. Between January 2012 and February 2017, Glencore owned approximately 75% of Katanga's shares. In February 2017, Glencore purchased an additional approximately 11% of Katanga's shares from entities affiliated with Gertler following the September 2016 resolution of proceedings under the *Foreign Corrupt Practices Act* (US) brought by the US Securities and Exchange Commission and the US Department of Justice against Och-Ziff Capital Management Group LLC ("**Och-Ziff**") which implicated Gertler in corrupt acts and bribery in the DRC (the "**Och-Ziff Settlements**").

(2) Aristotelis Mistakidis

15. Mistakidis was a Glencore nominee director of Katanga from January 2008 to November 2017.

16. Mistakidis is a member of Glencore's senior management. From 2008 to 2013, Mistakidis was a co-head of Glencore's global copper and zinc department, and from 2013 to November 2017, he headed Glencore's global copper department. Glencore's 2017 Annual Report identified Mistakidis as having the third highest shareholding of all Glencore management personnel, owning 3.12% of Glencore plc's voting shares. Gallagher and Henderson reported to Mistakidis.

(3) Tim Henderson

17. Henderson was a Glencore nominee director of Katanga from May 2015 to November 2017.

18. From 2008 to 2014, Henderson served as an operations consultant to Glencore pursuant to a consulting agreement with the company. In this role, Henderson held the title of Glencore's executive director of operations for Africa and divided his time overseeing Glencore's various copper mining operations in Africa, including Katanga. In January 2015, Henderson's

[5] Katanga's public filings translate "*pas de porte*" as "entry premium".

responsibilities with Glencore expanded to include Glencore's copper mining operations in South America and Australia.

(4) <u>Liam Gallagher</u>

19. Gallagher was a Glencore nominee director of Katanga and a member of Katanga's audit committee (the "**Audit Committee**") from November 2012 to November 2017.

20. From 2009 to November 2017, Gallagher was an employee of Glencore and held the position of Asset Manager for Katanga. From 2013 and onward, Katanga was the only asset that Gallagher managed for Glencore. In the Asset Manager role, Gallagher managed Katanga as a financial asset of Glencore. His responsibilities as Asset Manager included, in particular, the review of the monthly financial results from the viewpoint of Glencore.

(5) <u>Jeffrey Best</u>

21. Best was the Chief Executive Officer ("**CEO**") and a director of Katanga from September 2011 to February 2015. Best first joined Katanga as its Chief Operating Officer ("**COO**") in May 2011.

(6) <u>Johnny Blizzard</u>

22. Blizzard is the current CEO and a director of Katanga. Blizzard first joined Katanga as its COO in January 2015 and became its CEO on February 12, 2015.

(7) <u>Jacques Lubbe</u>

23. Lubbe was the Chief Financial Officer ("**CFO**") of Katanga from November 2013 to February 2015, and from October 2016 to November 2017.

(8) <u>Matthew Colwill</u>

24. Colwill was the CFO of Katanga from February 2015 to October 2016. Between October 2011 and November 2013, Colwill was a Finance Manager at KCC.

BACKGROUND

(1) Katanga's Operations

25. During the Material Time, KCC's principal operations were located in the DRC and comprised the following:

(a) Mining Operations:

Ore was mined at open-pit and underground mines;

(b) Processing Operations at the KTC Concentrator ("**KTC**"):

Ore mined was then milled and treated to produce copper concentrate. During the Material Time, Katanga sold and designated some of this production as for sale ("**Concentrate for Sale**");

(c) Processing Operations at the Luilu Metallurgical Plant ("**Luilu**"):

Copper concentrate underwent further processing to produce copper cathode ("**Copper Cathode**"). Katanga reported the copper content of Concentrate for Sale (“**Contained Copper**”) and Copper Cathode as "**Total Copper**"; and

(d) Processing Operations at the Cobalt Plant:

Residue from the processing at Luilu was further processed to produce cobalt metal.

26. Between 2012 and 2015, Katanga reported the following production and sales of concentrate and Copper Cathode:

	(Tonnes)			
	2012	2013	2014	2015
Concentrate produced	**495,642**	**710,449**	**905,750**	**859,647**
Concentrate for Sale[6]	141,935	224,394	-	-
Contained Copper	***31,523***	***48,713***	***1,010***	***6,858***
Copper Cathode	***61,440***	***87,479***	***157,016***	***106,816***
Total Copper	***92,963***	***136,192***	***158,026***	***113,674***
Concentrate sold	83,134	108,171	0	0
Copper Cathode sold	59,368	90,626	151,474	116,469

[6] Concentrate for Sale was a subset of concentrate produced.

27. Beginning in 2007, Katanga entered into a series of agreements for the sale of products of its mining operations to Glencore (the "**Off-take Agreements**"). The Off-take Agreements provide for 100% of the produced copper and cobalt materials to be sold to Glencore for the life of any mines and plants operated, acquired and/or developed by Katanga in the DRC. Therefore, Glencore was Katanga's sole customer during the Material Time (with the exception of certain instances in which Katanga sold concentrate to third parties).

28. In addition to being Katanga's sole customer (other than as referred to in the paragraph above), Glencore financed Katanga's operations. It did this through: (i) prepayments under the Off-take Agreements; and (ii) loan facilities for capital expenditures including improvements and expansion of Katanga's production facilities.

(2) Review, MCTO and Restatement

29. As a result of inquiries made during the course of Enforcement Staff's investigation, Katanga commenced an internal review of certain of its accounting practices (the "**Review**"). This Review, announced on July 31, 2017, was led by Katanga's independent directors (the "**Independent Directors**"). The Independent Directors engaged Canadian legal counsel and a multinational accounting firm to assist the Independent Directors in conducting the Review, which was undertaken with the cooperation and assistance of management and in consultation with Katanga's external auditor.

30. On August 14, 2017, Katanga issued a news release announcing, among other things, that: (i) its annual and interim financial statements and related Management's Discussion & Analysis ("**MD&A**") (collectively, the "**Filings**") for the period Q4 2014 to Q1 2017 should not be relied upon; and (ii) the filing of Katanga's Q2 2017 interim Filings would be delayed.

31. On August 15, 2017, the Commission issued a Management Cease Trade Order against the directors and officers of Katanga (the "**MCTO**"). The MCTO remains in effect.

32. On November 20, 2017, Katanga issued a news release announcing, among other things: (i) Enforcement Staff's investigation; (ii) the conclusion of the Review; (iii) the restatement of its 2016 annual Filings and Q1 2017 interim Filings (the "**Restatement**"); and (iv) the resignation of the Glencore Respondents and Lubbe.

CONDUCT CONTRARY TO THE PUBLIC INTEREST AND ONTARIO SECURITIES LAW

33. The following Parts detail Enforcement Staff's allegations of conduct contrary to Ontario securities law and the public interest:

(a) Part I: Misleading disclosure relating to the results of Katanga's operations;

(b) Part II: Corporate governance deficiencies, and misleading compensation and reporting structure disclosure; and

(c) Part III: Internal control failures.

34. In addition, Part IV details additional allegations against Katanga only with respect to misleading risk disclosure.

PART I: MISLEADING DISCLOSURE RELATING TO THE RESULTS OF KATANGA'S OPERATIONS

(1) Introduction

35. During the Material Time, Katanga and the Individual Respondents (as described below) engaged in practices that resulted in Katanga misstating its financial position and the results of its operations by:

(a) Overstating Total Copper by incorrectly recording Contained Copper in 2012 to 2014;

(b) Improperly capitalizing impaired and overstated inventory;

(c) Overstating 2014 Copper Cathode; and

(d) Misstating 2015 Copper Cathode and Contained Copper.

This resulted in Katanga making materially misleading disclosure in its annual and interim financial statements and MD&As during the Material Time.

(2) Misleading Disclosure Regarding Total Copper Production from 2012 to 2014

36. In 2012 and 2013, Katanga overstated its Total Copper production by incorrectly recording Contained Copper.

37. In 2012 and 2013, Katanga calculated Concentrate for Sale as the difference between: (i) the total concentrate production; and (ii) the concentrate that was fed to Luilu.

38. However, during this time, the calculation of both concentrate production and feed were known to be flawed, primarily due to weaknesses in Katanga's metal accounting practices, and the calculations failed to account for unrecorded discharges. This led to an overstatement of concentrate being reported on Katanga's books.

39. As a result, Katanga overstated:

(a) Concentrate for Sale:

In 2012 and 2013, Katanga reported an aggregate of 366,329 tonnes of Concentrate for Sale but only 191,305 tonnes of concentrate sold, a difference of approximately 175,000 tonnes, some portion of which was overstated.

(b) Contained Copper and therefore Total Copper:

In 2012 and 2013, Katanga reported an aggregate of 80,236 tonnes of Contained Copper. However, the aggregate copper content of the 191,305 tonnes of concentrate reported as sold during that period only amounted to 39,331 tonnes, a difference of approximately 40,000 tonnes, some portion of which was overstated.

40. In addition, Katanga continued to report that copper concentrate was being produced for sale after the suspension of copper concentrate sales in August 2013. Katanga disclosed in its annual MD&A for 2013, that it halted concentrate sales in Q3 2013 due to an increase in export taxes and increased processing capacity downstream.

41. During this time, Katanga should have ceased reporting Concentrate for Sale. As a result, the Total Copper reported in 2013 was overstated by at least 15,501 tonnes, being the Contained Copper reported between September and December 2013.

42. Commencing in January 2014, Katanga did in fact cease reporting Concentrate for Sale. However, in April 2014, Katanga reported 1,010 tonnes of Contained Copper, resulting in the overstatement of Contained Copper and Total Copper reported in Q2 2014 by 1,010 tonnes.

43. As a result of the above, Katanga made statements that were misleading in a material respect in its Q2 2014 interim MD&A, and its 2012 and 2013 annual MD&As, contrary to section 122(1)(b) of the Act.

(3) Misleading Disclosure Regarding Improper Capitalization of Impaired and Overstated Inventory

44. In Q2 2014, Katanga improperly capitalized impaired ore and overstated concentrate inventories totaling approximately USD$122 million, as described below.

45. Overstated concentrate had been accumulating on Katanga's books since at least 2012 primarily as a result of Katanga's metal accounting weaknesses and failure to account for unrecorded discharges, as described above. In or about May 2014, at the request of its CFO, Katanga's management undertook an exercise to quantify Katanga's actual concentrate inventory and determine the extent of the overstatement. In or around the same time, Katanga's management also undertook a net realizable value ("**NRV**") analysis of its ore stockpiles. These exercises revealed that:

(a) Concentrate inventories were overstated by approximately 121,000 tonnes, with a recorded value of USD$106.9 million; and

(b) The book value of ore inventories exceeded its NRV by approximately USD$72 million.

46. According to the Restatement, by the end of Q2 2014, the book value continued to exceed the NRV of the ore inventories by USD$55.7 million.

47. Instead of writing down the overstated concentrate and impaired ore inventories in a single write-down when finalizing Katanga's Q2 2014 financial results, Katanga inappropriately reclassified some of the inventory as fixed assets[7] as follows:

(a) USD$66.6 million of overstated concentrate inventory (approximately 80,000 tonnes) was transferred from inventory and capitalized to fixed assets and depreciated using the unit of production method. According to the Restatement, USD$1.4 million had been depreciated at the time of the Restatement; and

(b) USD$55.7 million of ore inventory (being the NRV overstatement and comprising the equivalent of close to 860,000 tonnes of the recorded ore inventories) was transferred from inventory and capitalized to fixed assets and depreciated using the unit of production method. According to the Restatement, USD$2.6 million had been depreciated at the time of the Restatement.

48. On November 20, 2017, Katanga released its Restatement, which addressed various inappropriate accounting practices and inaccurate historical disclosure, including the abovementioned improper adjustments.

49. The Restatement indicates that the balance of the overstated concentrate inventories (approximately USD$40 million) was expensed during fiscal 2014.

50. The improper adjustments discussed above resulted in misstatements in Katanga's quarterly and annual Filings between Q2 2014 and Q1 2017, including, on an annual basis:

(a) An understatement of Katanga's 2014 and prior years cost of sales of approximately USD$88 million;

(b) An overstatement of Katanga's fixed assets as at December 31, 2014 of approximately USD$118 million; and

[7] This would cause the overstatement to be written off through normal course depreciation of the fixed assets.

(c) An overstatement of Katanga's fixed assets as at December 31, 2015 and 2016 and March 31, 2017 of approximately USD$116 million.

51. As set out above, Katanga made statements in its annual Filings for 2014, 2015 and 2016 and its interim Filings for Q1 2017 that were misleading in a material respect. As a result, Katanga breached section 122(1)(b) of the Act.

52. In their capacity as directors and officers, Gallagher, Best and Lubbe authorized, permitted or acquiesced in Katanga's misleading statements, during the period in which they were directors and officers respectively, and are deemed to have failed to comply with Ontario securities law pursuant to section 129.2 of the Act. Additionally, as a member of Katanga's Audit Committee, Gallagher's conduct was contrary to the principles of National Instrument 52-110 *Audit Committees* ("**NI 52-110**").[8]

(4) Misleading Disclosure Regarding Copper Cathode Production in 2014

53. In 2014, Katanga overstated its 2014 Copper Cathode production by approximately 8,000 tonnes.

54. Each month in 2014, Katanga engaged in a practice referred to internally as "borrowing" and "paying back" of Copper Cathode.

55. Through "borrowing", Copper Cathode produced in month two would be reported as having been produced in month one (i.e. "borrowed") and then be omitted from the reported Copper Cathode production results for month two (i.e. "paid back"). However, in practice, there was no direct correlation between "borrowings" and "pay-back" each month and an aggregate "borrowing" existed at each month-end in 2014.

56. Prior to Q4 2014, these aggregate "borrowings" caused misstatements of reported copper cathode production at each reporting period.

[8] (2004), 27 OSCB 3252, as amended.

57. However, by October 31, 2014, the aggregate "borrowings" had more than doubled to an overstatement of approximately 2,700 tonnes. At that time, Katanga recorded year-to-date production of 128,211 tonnes of Copper Cathode.

58. During a Glencore conference call with analysts on December 10, 2014, Mistakidis stated that Katanga's production forecast for 2014 was 165,000 tonnes.

59. Katanga had recorded November 2014 year-to-date production of 139,713 tonnes of Copper Cathode. This meant that Katanga had to report at least 17,277 tonnes of Copper Cathode for December 2014 to report 158,000 tonnes of Total Copper for the year.

60. In late December 2014, the Glencore Respondents participated in instructing management to report 2014 total copper of approximately 158,000 tonnes. At this time, Mistakidis and Gallagher were directors of Katanga and Henderson was a de facto officer of Katanga.

61. Katanga ultimately reported Copper Cathode production of 17,303 tonnes in December 2014 that included a net overstatement of 5,410 tonnes and, as a result, the aggregate overstatement had increased to approximately 8,000 tonnes by December 31, 2014.

62. On February 11, 2015, Katanga released its annual MD&A for 2014 and reported:

(a) 42,807 tonnes of Copper Cathode for Q4 2014, an overstatement of approximately 6,800 tonnes; and

(b) 157,016 tonnes of Copper Cathode for 2014, an overstatement of approximately 8,000 tonnes.

63. The overstatement of Copper Cathode production in December 2014 was too large to be satisfied by "borrowing" January 2015 Copper Cathode alone. Instead, Katanga recorded the approximately 8,000 tonnes by:

(a) "Borrowing" approximately 1,400 tonnes from January 2015 Copper Cathode (the "**January 2015 Lots**"[9]) and reporting it as December 2014 production; and

(b) Issuing a provisional invoice (the "**December 2014 Invoice**") to Glencore for 6,650 tonnes of non-existent Copper Cathode (the "**Non-Existent Lots**"). The invoice was dated December 31, 2014 in the amount of USD$43 million and was subsequently settled by Glencore.

64. Both the January 2015 Lots and the Non-Existent Lots were improperly recorded as stock-in-transit as at December 31, 2014.

65. The above-mentioned overstatement of Katanga's 2014 Copper Cathode resulted in the following misstatements:

(a) An understatement of Q4 2014 and 2014 cost of sales of approximately USD$41.8 million; and

(b) An overstatement of finished product inventories as at December 31, 2014 of approximately USD$41.8 million, (collectively, the "**2014 Copper Cathode Misstatements**").[10]

66. Best and Lubbe both resigned on February 12, 2015, and were succeeded by Blizzard and Colwill respectively. Blizzard and Colwill subsequently learned of the 2014 overstatement of Copper Cathode in Q1 2015.

67. As set out above, Katanga made statements in its 2014 annual Filings that were misleading in a material respect, contrary to section 122(1)(b) of the Act.

68. To varying degrees, Mistakidis, Gallagher, Henderson, Best and Lubbe authorized, permitted or acquiesced in misleading statements made by Katanga in the 2014 annual Filings and

[9] Finished Copper Cathode was bundled into lots for shipping. Each lot comprised approximately 30 tonnes and was assigned a unique sequential lot number.
[10] According to the Restatement, the recording of the December 2014 Invoice also resulted in an overstatement of receivables and deferred revenue of $41.9 million as at December 31, 2014.

are deemed to have failed to comply with Ontario securities law pursuant to section 129.2 of the Act.

69. In addition, Blizzard and Colwill certified Katanga's 2014 annual Filings, which were misleading in a material respect, contrary to section 2.1 of National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* ("**NI 52-109**")[11] and section 122(1)(b) of the Act. Additionally, as a member of Katanga's Audit Committee, Gallagher's conduct was contrary to the principles of NI 52-110.

70. Blizzard and Colwill ought to have exercised the required due diligence and oversight and sought guidance in their review and certification of the previously filed 2014 annual Filings.

(5) <u>Misleading Disclosure Regarding Production in 2015</u>

71. In response to the 2014 Copper Cathode Misstatements, Katanga improperly:

(a) Issued credit notes to Glencore in respect of the Non-Existent Lots;

(b) Understated 2015 Copper Cathode production;

(c) Removed the Non-Existent Lots from stock-in-transit; and

(d) Understated the amount of concentrate fed to Luilu and recorded the copper content of that concentrate as Contained Copper.

72. As noted above, the 2014 "borrowings" of approximately 8,000 tonnes were reported as stock-in-transit as at December 31, 2014. By January 31, 2015, the January 2015 Lots had been shipped to Glencore and were no longer recorded as stock-in-transit. However, the January 2015 Lots were not "paid back" but instead recorded again as Copper Cathode production in January 2015.

73. The Non-Existent Lots were "paid back" and removed from stock-in-transit between May and August 2015. To do this, Katanga issued credit notes to Glencore (the "**2015 Credit Notes**")

[11] (2004), 27 OSCB 3230, as amended.

for the full value of the December 2014 Invoice and reduced the Copper Cathode reported in those months.

74. On September 11, 2015, Katanga announced that it was suspending the processing of copper and cobalt.

75. In order to reflect a "pay-back" of the January 2015 Lots "borrowed" in December 2014, Katanga reduced the Copper Cathode recorded for September 14, 2015 by approximately 1,400 tonnes.

76. As a result of the above, Katanga reported 106,816 tonnes of Copper Cathode for 2015. This amount was understated by approximately 8,225 tonnes. More specifically:

(a) Katanga's Q2 2015 interim MD&A reported 35,974 tonnes of Copper Cathode, an understatement of 4,040 tonnes;

(b) Katanga's Q3 2015 interim MD&A reported 33,709 tonnes of Copper Cathode, an understatement of 4,185 tonnes; and

(c) These understatements resulted in an overstatement of Katanga's 2015 cost of sales by approximately USD$41.8 million in its 2015 annual Filings, (collectively, the "**2015 Copper Cathode Misstatements**").

77. In an effort to offset the impact of the 2015 Copper Cathode Misstatements, Katanga engaged in further inappropriate accounting practices by:

(a) recording 6,857 tonnes of Contained Copper as part of Katanga's Total Copper between May and August 2015; and

(b) reducing the reported concentrate fed to Luilu between May and August 2015 (collectively, the "**Related Misstatements**").

78. There was not an adequate basis under applicable accounting practices for recording the abovementioned 6,857 tonnes of Contained Copper and Katanga’s system of metal accounting was prone to inaccuracies and manipulation. The recording of this Contained Copper meant that

Katanga ultimately reported 2015 Total Copper that closely approximated its actual 2015 Copper Cathode production.

79. However, some part of the abovementioned concentrate feed adjustment was the result of actual measurements of concentrate diverted to the Luilu ponds at that time. The unsupported portion of the adjustment to the concentrate feed caused:

(a) The Q2 and Q3 2015 costs of sales to be understated by at least USD$18.5 million at the KCC level and USD$9.7 million at the Katanga level after tax and minority interests; and

(b) The value of concentrate inventory to be overstated at every quarter end between Q2 2015 and Q4 2017. This amounted to approximately USD$18.5 million at the KCC level and USD$9.7 million at the Katanga level at September 30, 2015.[12]

80. The Related Misstatements were not addressed in the Restatement.[13] In 2018, Katanga's financial management, with input from the external auditors and the Audit Committee, assessed the effect of the Related Misstatements on the 2015 financial statements as immaterial.

81. As set out above, Katanga made statements in its 2015 annual Filings and its Q2 and Q3 2015 interim MD&As in respect of the 2015 Copper Cathode Misstatements that were misleading in a material respect, contrary to section 122(1)(b) of the Act.

82. To varying degrees, Mistakidis, Henderson, Gallagher, Colwill and Blizzard authorized, permitted or acquiesced in statements made by Katanga in the 2015 annual Filings that were misleading in a material respect at the time.

83. In addition, Blizzard and Colwill certified Katanga's 2015 annual Filings, which were misleading in a material respect, contrary to section 2.1 of NI 52-109 and section 122(1)(b) of the

[12] The Restatement adjusted for the overstatement of $41.8 million in 2014 referred to in paragraph 65, but did not adjust for the Related Misstatements.
[13] After the processing suspension in or around September 2015, a clean up and pond excavation at the site resulted in the identification of previously unaccounted for copper concentrate at the mine. Katanga sold 5,862 tonnes of copper contained in concentrate in 2017.

Act. Additionally, as a member of Katanga's Audit Committee, Gallagher's conduct was contrary to the principles of NI 52-110.

84. Blizzard and Colwill ought to have exercised the required due diligence and oversight and sought guidance in their review and certification of the 2015 annual Filings.

PART II: CORPORATE GOVERNANCE DEFICIENCIES, AND MISLEADING COMPENSATION AND REPORTING STRUCTURE DISCLOSURE

85. The Individual Respondents were responsible for setting the "tone from the top" at Katanga by establishing and enforcing a culture of compliance.

86. During the Material Time, in addition to their formal reporting to the Board, Katanga's CEO and CFO reported to the Glencore Respondents and the Glencore Respondents exercised significant influence over operational and financial decisions at Katanga.[14]

87. Additionally, certain members of Katanga management received additional compensation directly from Glencore (the "**Glencore Compensation**") that was not previously disclosed. The compensation was paid in cash and in equity of Glencore. Such compensation should have been disclosed in Katanga's executive compensation disclosure in Katanga's management information circulars during the Material Time. Katanga did not disclose the existence of the Glencore Compensation until the Restatement in November 2017.

88. As set out in Part I above, the Individual Respondents engaged in conduct that undermined Katanga's corporate governance, internal controls and culture of compliance. This resulted in matters not being adequately disclosed to, and discussed with, the Independent Directors and the external auditor. This conduct contributed to the breaches set out in Part I above. As a result, the Respondents acted in a manner contrary to the public interest.

89. This "tone from the top" contributed to a culture in which Katanga staff failed to adhere to documented policies and overrode controls as set out in Part I.

[14] During the Material Time, the Board was comprised of the three Independent Directors, Katanga's CEO and two (later three) directors nominated by Glencore.

90. In addition, as set out in Part I, Gallagher failed to exercise the impartial judgment necessary to fulfill his responsibilities as a member of the Audit Committee and failed to disclose to the other members of the Audit Committee such knowledge as he had of the matters set out in Part I. Gallagher's conduct was contrary to the principles of NI 52-110 and the public interest.

PART III: INTERNAL CONTROL FAILURES

(1) <u>Introduction</u>

91. NI 52-109 is a core element of the continuous disclosure regime for reporting issuers. Its objective is to improve the quality, reliability and transparency of annual filings, interim filings and other materials that issuers file or submit under securities legislation. It does this principally by requiring that:

(a) Issuers establish and maintain DC&P and ICFR;

(b) Issuers disclose any material weaknesses in their ICFR; and

(c) The issuer's CEO and CFO certify its disclosure, including the existence of any material weaknesses and conclusions regarding the effectiveness of the issuer's ICFR and DC&P.

92. Material weaknesses existed in Katanga's ICFR during the Material Time and contributed to misleading disclosure discussed in Part I above. Katanga did not disclose any material weaknesses in its ICFR until the Restatement.

93. In addition, the weaknesses in the culture of compliance at Katanga rendered Katanga's ICFR and DC&P ineffective during the Material Time, leading to the misleading disclosure discussed in Part I and Part II above. As such, Katanga failed to maintain adequate ICFR and DC&P.

(2) <u>Material Weaknesses in ICFR</u>

94. As set out in Part I above, the Individual Respondents engaged in conduct that undermined Katanga's corporate governance, internal controls and culture of compliance.

95. In addition, Katanga's inadequate metal accounting practices did not provide reasonable assurance that information required to be disclosed by Katanga was reported accurately. This included relying on:

(a) Flawed calculations for its concentrate inventory balances as set out in Part I above; and

(b) Manual systems to record key production metrics for the purposes of its financial and operational reporting. These systems required manual inputs and did not maintain an adequate audit trail, making them susceptible to manipulation.

96. These weaknesses resulted in the misleading disclosure of production activities and costs as set out in Part I above.

97. In its Restatement in 2017, Katanga first disclosed the following material weaknesses in its ICFR:

> Control environment material weaknesses – […] The Company has concluded that it did not adequately establish and enforce a strong culture of compliance and controls which includes the adherence to policies, procedures and controls necessary to present financial statements in accordance with IFRS;
>
> Management override material weaknesses – The Company did not maintain effective controls to prevent or detect the circumvention or override of controls. Certain of the accounting adjustments identified in the Review are a result of senior management and executive directors in office at that time overriding the Company's control processes; and
>
> Monitoring material weaknesses – […] The Company has determined that certain of the accounting adjustments identified in the Review were not identified earlier due to inadequate monitoring controls, including inadequate controls and procedures to properly quantify and verify the value of in-process concentrate inventories, inadequate controls with respect to quarter-end and year-end sales cut-off procedures, insufficient involvement of internal audit in the testing of the accuracy of external financial reporting and inadequate procedures to ensure the effective implementation of internal audit recommendations on high risk areas, particularly with respect to metal accounting.

98. Katanga failed to disclose these material weaknesses in its MD&As during the Material Time, contrary to section 3.2 of NI 52-109. As a result, Katanga's interim and annual MD&As for

the reporting periods between January 1, 2012 to March 31, 2017 were misleading in a material respect, contrary to section 122(1)(b) of the Act.

99. In respect of the matters set out in Part I above, the Individual Respondents authorized, permitted or acquiesced in the misleading statements Katanga made in its interim and annual MD&As relating to ICFR between January 1, 2012 and March 31, 2017, for the reporting periods in which they were officers and/or directors and are deemed to have failed to comply with Ontario securities law pursuant to section 129.2 of the Act.

100. In addition, Katanga's CEO and CFO certified Katanga's interim and annual MD&As for the reporting periods between January 1, 2012 and March 31, 2017 which contained the misleading statements relating to ICFR and are deemed to have failed to comply with Ontario securities law pursuant to section 122(1)(b) and section 2.1 of NI 52-109 for the reporting periods in which they were officers respectively.

(3) <u>Failed to Maintain ICFR and DC&P</u>

101. ICFR and DC&P are more than written policies and procedures. It is the responsibility of the directors and officers to communicate clear expectations within an issuer that its ICFR and DC&P must be followed.

102. In respect of the allegations in Part I above, the Individual Respondents authorized, permitted or acquiesced in Katanga's failure to adhere to documented policies and controls for the reporting periods in which they were officers and/or directors respectively. This contributed to Katanga making materially misleading disclosure in its interim and annual MD&As as outlined above. As a result, Katanga failed to maintain adequate ICFR and DC&P, contrary to section 3.1 of NI 52-109.

103. Katanga stated in its interim and annual MD&As for the reporting periods between January 1, 2012 and March 31, 2017 that its CEO and CFO had concluded that:

(a) Katanga's ICFR had been designed effectively to provide reasonable assurance regarding the reliability of the preparation and presentation of the financial statements for external purposes and were effective; and

(b) Katanga's DC&P provided a reasonable level of assurance that they were effective.

104. These statements were misleading in a material respect, contrary to section 122(1)(b) of the Act.

105. The Individual Respondents authorized, permitted or acquiesced in the misleading statements by Katanga relating to the effectiveness of ICFR and DC&P in its interim and annual MD&As for the reporting periods between January 1, 2012 and March 31, 2017, for the reporting periods in which they were officers and/or directors respectively, and are deemed to have failed to comply with Ontario securities law pursuant to section 129.2 of the Act.

106. In addition, Katanga's CEO and CFO certified Katanga's interim and annual MD&As for the reporting periods between January 1, 2012 and March 31, 2017 with respect to the effectiveness of Katanga's ICFR and DC&P, which were materially misleading. As such, Best, Blizzard, Lubbe and Colwill breached section 2.1 of NI 52-109 and section 122(1)(b) of the Act for the reporting periods in which they were officers respectively.

PART IV: ADDITIONAL ALLEGATIONS AGAINST KATANGA ONLY - MISLEADING RISK DISCLOSURE[15]

(1) Introduction

107. During the Material Time, Katanga failed to disclose the risks posed by its reliance on the Gertler Associates.

(2) Gertler Associates Represented Katanga in its Dealings with the DRC Government

108. Glencore acquired control of Katanga through a series of transactions that commenced in 2007. Glencore worked with and invested alongside entities associated with Gertler in certain of these transactions. During the Material Time and until February 2017, entities associated with Gertler were beneficial shareholders of Katanga. In February 2017, entities associated with Gertler beneficially held at least 11% of Katanga’s common shares.

[15] The allegations outlined in Part IV are made against Katanga only, and not against the Individual Respondents.

109. During the Material Time, there were references in non-governmental reports, as well as media reports about Gertler's close relationship with Joseph Kabila, the President of the DRC, and allegations of Gertler's possible involvement in corrupt activities in the DRC. Until September 2016, however, there were no allegations relating to Gertler by any government agency responsible for anti-corruption enforcement.

110. In September 2016, the US Securities and Exchange Commission and the US Department of Justice announced the Och-Ziff Settlements. Och-Ziff's deferred prosecution agreement refers to corrupt practices by an unidentified “DRC Partner” described as an “Israeli businessman”. Katanga's senior management and the Board understood the “DRC Partner” to be Gertler.

111. Following the Och-Ziff Settlements in September 2016, Glencore bought out Gertler's interest in Katanga (approximately 11%) in February 2017 and Katanga took steps to terminate its business relationships with the Gertler Associates in 2017.

112. During the Material Time, Katanga relied upon and paid the Gertler Associates to maintain relations with the DRC government and for a variety of other services which required interactions with DRC government officials to represent Katanga's interests. These services, provided by Gertler Associates through their offices and employees in the DRC, included legal, tax, and customs clearing services.

113. For example:

(c) In or about October 2010, Pieter Deboutte ("**Deboutte**"), an individual who represented Gertler's interests in the DRC, was tasked with responsibility for engaging with the DRC government on Katanga's behalf.

(d) During the period from October 2010 to December 2013, Deboutte and his associates represented Katanga on a number of matters involving the DRC government.

(e) Katanga first formalized its relationship with Deboutte in December 2013, when KCC entered into a contract for various services with De Novo Congo ("**De Novo**"), as referred to in paragraph 112 above, including the maintenance of relations with relevant sector ministries, the Presidency, national and provincial assemblies, the prime minister's office, the Governor and provincial government, the judicial system and responsible security bodies. The agreement provided that KCC pay De Novo a total fixed fee of USD$6 million plus applicable taxes for each of 2013 and 2014.

(f) Beginning in or about January 2015, Deboutte and his associates continued to provide services to KCC through an entity named Jarvis Congo ("**Jarvis**"). KCC paid Jarvis at the same rate as it previously agreed to pay De Novo.

114. Katanga did not disclose its reliance on the Gertler Associates, including Deboutte, De Novo and Jarvis.

(3) Katanga Paid Royalties and *Pas de Porte* to AHIL – a Gertler Associate

115. During the Material Time, Gécamines directed that royalties and *pas de porte* payable to Gécamines under the JV Agreement be paid to a Gertler Associate instead of Gécamines.[16]

116. Between December 2013 and July 2015 and on the direction of Gécamines, Katanga paid the royalties and *pas de porte* previously due to Gécamines under the JV Agreement to a Gertler Associate. Katanga was instructed by Gécamines to make the required royalty and *pas de porte* payments to Africa Horizons Investment Ltd. ("**AHIL**"), a Gertler Associate. Katanga did not disclose these facts until 2018.

117. In particular, in 2013, Katanga received instructions from Gécamines to make royalty and *pas de porte* payments to AHIL. Katanga made the payments to AHIL in December 2013. In its 2013 AIF, Katanga disclosed that the royalties and *pas de porte* were payable to Gécamines but did not disclose that they were actually paid to AHIL.

118. Katanga continued to pay royalties and *pas de porte* in 2014 to AHIL pursuant to further directions from Gécamines. This included prepayments directed by Gécamines amounting to over

[16] This resulted in Katanga's liability to Gécamines being offset to the extent of the payments.

USD$30 million. Katanga disclosed in its 2014 AIF that royalties and *pas de porte* were required to be paid under the JV Agreement, but did not disclose that they were paid to AHIL.

119. In January 2015, KCC entered into a formal agreement with Gécamines and AHIL (the "**Tripartite Royalty Agreement**"), which formally assigned Gécamines' right to receive royalties to AHIL and amended the JV Agreement accordingly.

120. In March and July 2015, Katanga made a series of additional royalty and *pas de porte* prepayments to AHIL, totalling over USD$83 million. Katanga disclosed in its 2015 AIF that royalties and *pas de porte* were required to be paid under the JV Agreement, without identifying the payee. Katanga did not disclose: (i) the amendment of the JV Agreement; (ii) the Tripartite Royalty Agreement; or (iii) that it prepaid royalties and *pas de porte* to AHIL.

121. Katanga disclosed in its 2016 AIF that KCC was required to pay royalties to a "third party". Katanga did not disclose the payment of royalties and *pas de porte* to AHIL prior to 2017 and did not disclose the connection between AHIL and Gertler until 2018.

122. During the Material Time, Katanga made royalty and *pas de porte* payments to AHIL totaling over USD$146 million.

(4) <u>Misleading Entity-Specific Risk Disclosure</u>

123. As a reporting issuer operating in the DRC, Katanga did not properly consider the disclosure it was required to provide in connection with its ongoing engagement of the Gertler Associates and the related risks.

124. Katanga's AIFs for the period 2012 to 2016 provided risk disclosure including:[17]

> Katanga may also be subject to certain international laws including, but not limited to, the *Corruption of Foreign Officials Act*, the *Bribery Act* (UK) and *Foreign Corrupt Practices Act* (USA). Despite Katanga's efforts to comply with applicable requirements, there can be no assurance that the Corporation has been or will be at all times in complete compliance with such requirements, that compliance will not be challenged nor that the costs of complying with current and future requirements will

[17] This quotation is from Katanga's AIF dated March 28, 2014. There were different versions of this disclosure over the Material Time.

not materially or adversely affect Katanga's future cash flow, results of operations and financial condition.

125. Katanga's AIF disclosure failed to adequately describe the heightened risks associated with: (i) its operating environment, specifically the elevated risk of public sector corruption in the DRC; and (ii) the nature and extent of its reliance on the Gertler Associates (including Deboutte, De Novo and Jarvis), including the risk that a cessation or deterioration in Katanga's business relationships with the Gertler Associates could have an adverse impact on Katanga's business.

126. As a result of the above, Katanga's AIFs for the period 2012 to 2016 failed to make appropriate entity-specific risk disclosure and were misleading in a material respect, contrary to section 122(1)(b) of the Act.

C. BREACHES AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

127. Enforcement Staff allege the following breaches of Ontario securities law and/or conduct contrary to the public interest:

In respect of allegations in Parts I, II, III and IV,

(a) Katanga:

  (i) Made statements that were misleading in a material respect in its AIFs for 2012 to 2016, contrary to section 122(1)(b) of the Act;

  (ii) Made statements that were misleading in a material respect in its interim and annual MD&As for the reporting periods between January 1, 2012 and March 31, 2017, contrary to section 122(1)(b) of the Act;

  (iii) Made statements that were misleading in a material respect in its interim financial statements for Q1 2017 and its annual financial statements for 2014 to 2016, contrary to section 122(1)(b) of the Act;

  (iv) Failed to maintain adequate ICFR and DC&P for the reporting periods between January 1, 2012 to March 31, 2017, contrary to section 3.1 of NI 52-109;

(v) Failed to disclose material weaknesses in ICFR in its interim and annual MD&As for the reporting periods between January 1, 2012 to March 31, 2017, contrary to section 3.2 of NI 52-109; and

(vi) Acted in a manner contrary to the public interest.

In respect of allegations in Parts I, II and III only:

(b) Mistakidis:

(i) Authorized, permitted or acquiesced in Katanga making statements that were misleading in a material respect relating to the effectiveness of its ICFR and DC&P in its interim and annual MD&As for the reporting periods between January 1, 2012 and March 31, 2017, and in respect of the 2014 Copper Cathode Misstatements in its 2014 annual MD&A and in respect of its 2015 Copper Cathode Misstatements in its Q2 and Q3 2015 interim MD&As and 2015 annual MD&A, contrary to section 129.2 of the Act;

(ii) Authorized, permitted or acquiesced in Katanga making statements relating to the 2014 Copper Cathode Misstatements and 2015 Copper Cathode Misstatements that were misleading in a material respect in its annual financial statements for 2014 and 2015, contrary to section 129.2 of the Act;

(iii) Authorized, permitted or acquiesced in Katanga failing to maintain adequate ICFR and DC&P for the reporting periods between January 1, 2012 to March 31, 2017, contrary to section 129.2 of the Act;

(iv) Authorized, permitted or acquiesced in Katanga failing to disclose material weaknesses in ICFR in its interim and annual MD&As for the reporting periods between January 1, 2012 to March 31, 2017, contrary to section 129.2 of the Act; and

(v) Acted in a manner contrary to the public interest.

(c) Henderson:

(i) Authorized, permitted or acquiesced in Katanga making statements that were misleading in a material respect in its interim and annual MD&As for the reporting periods between January 1, 2014 and March 31, 2017, contrary to section 129.2 of the Act;

(ii) Authorized, permitted or acquiesced in Katanga making statements that were misleading in a material respect in its annual financial statements for 2014 and 2015, contrary to section 129.2 of the Act;

(iii) Authorized, permitted or acquiesced in Katanga failing to maintain adequate ICFR and DC&P for the reporting periods between January 1, 2014 to March 31, 2017, contrary to section 129.2 of the Act;

(iv) Authorized, permitted or acquiesced in Katanga failing to disclose material weaknesses in ICFR in its interim and annual MD&As for the reporting periods between January 1, 2014 to March 31, 2017, contrary to section 129.2 of the Act; and

(v) Acted in a manner contrary to the public interest.

(d) Gallagher:

(i) Authorized, permitted or acquiesced in Katanga making statements that were misleading in a material respect in its interim and annual MD&As for the reporting periods between October 1, 2012 and March 31, 2017, contrary to section 129.2 of the Act;

(ii) Authorized, permitted or acquiesced in Katanga making statements that were misleading in a material respect in its interim financial statements for Q1 2017 and its annual financial statements for 2014 to 2016, contrary to section 129.2 of the Act;

(iii) Authorized, permitted or acquiesced in Katanga failing to maintain adequate ICFR and DC&P for the reporting periods between October 1, 2012 to March 31, 2017, contrary to section 129.2 of the Act;

(iv) Authorized, permitted or acquiesced in Katanga failing to disclose material weaknesses in ICFR in its interim and annual MD&As for the reporting periods between October 1, 2012 to March 31, 2017, contrary to section 129.2 of the Act; and

(v) Acted in a manner contrary to the principles of NI 52-110 and the public interest.

(e) Best:

(i) Authorized, permitted or acquiesced in Katanga making statements that were misleading in a material respect in its interim and annual MD&As for the reporting periods between January 1, 2012 and December 31, 2014, contrary to section 129.2 of the Act;

(ii) Authorized, permitted or acquiesced in Katanga making statements that were misleading in a material respect in its annual financial statements for 2014, contrary to section 129.2 of the Act;

(iii) Authorized, permitted or acquiesced in Katanga failing to maintain adequate ICFR and DC&P for the reporting periods between January 1, 2012 and December 31, 2014, contrary to section 129.2 of the Act;

(iv) Authorized, permitted or acquiesced in Katanga failing to disclose material weaknesses in ICFR in interim and annual MD&As for the reporting periods between January 1, 2012 and December 31, 2014, contrary to section 129.2 of the Act;

(v) Certified Katanga's interim and annual MD&As for the reporting periods between January 1, 2012 and September 30, 2014, which were materially misleading, contrary to section 2.1 of NI 52-109 and section 122(1)(b) of the Act; and

(vi) Acted in a manner contrary to the public interest.

(f) Blizzard:

(i) Authorized, permitted or acquiesced in Katanga making statements that were misleading in a material respect in its interim and annual MD&As for the reporting periods between January 1, 2015 and March 31, 2017, contrary to section 129.2 of the Act;

(ii) Authorized, permitted or acquiesced in Katanga making statements that were misleading in a material respect in its annual financial statements for 2015, contrary to section 129.2 of the Act;

(iii) Authorized, permitted or acquiesced in Katanga failing to maintain adequate ICFR and DC&P for the reporting periods between January 1, 2015 to March 31, 2017, contrary to section 129.2 of the Act;

(iv) Authorized, permitted or acquiesced in Katanga failing to disclose material weaknesses in ICFR in its interim and annual MD&As for the reporting periods between January 1, 2015 and March 31, 2017, contrary to section 129.2 of the Act;

(v) Certified Katanga's interim MD&As for the reporting periods between January 1, 2015 and March 31, 2017, its annual MD&As for 2014 to 2016, and its annual financial statements for 2014 to 2015, which were materially misleading, contrary to section 2.1 of NI 52-109 and section 122(1)(b) of the Act; and

(vi) Acted in a manner contrary to the public interest.

(g) Lubbe:

(i) Authorized, permitted or acquiesced in Katanga making statements that were misleading in a material respect in its (a) interim MD&As for the reporting periods between January 1, 2014 and September 30, 2014, and January 1, 2017 to March 31, 2017; and (b) annual MD&As for 2013, 2014 and 2016, contrary to section 129.2 of the Act;

(ii) Authorized, permitted or acquiesced in Katanga making statements that were misleading in a material respect in its interim financial statements for Q1 2017 and its annual financial statements for 2014 and 2016, contrary to section 129.2 of the Act;

(iii) Authorized, permitted or acquiesced in Katanga failing to maintain adequate ICFR and DC&P for the reporting periods between November 1, 2013 and December 31, 2014, and between October 1, 2016 and March 31, 2017, contrary to section 129.2 of the Act;

(iv) Authorized, permitted or acquiesced in Katanga failing to disclose material weaknesses in ICFR its: (a) interim MD&As for the reporting periods between January 1, 2014 and September 30, 2014, and January 1, 2017 to March 31, 2017; and (b) annual MD&As for 2013, 2014 and 2016, contrary to section 129.2 of the Act;

(v) Certified Katanga's: (a) interim MD&As for the reporting periods between January 1, 2014 and September 30, 2014, and July 1, 2016 and March 31, 2017; and (b) annual MD&A for 2016, which were materially misleading, contrary to section 2.1 of NI 52-109 and section 122(1)(b) of the Act; and; and

(vi) Acted in a manner contrary to the public interest.

(h) Colwill:

(i) Authorized, permitted or acquiesced in Katanga making statements that were misleading in a material respect in its interim and annual MD&As for the reporting periods between January 1, 2015 and September 30, 2016, contrary to section 129.2 of the Act;

(ii) Authorized, permitted or acquiesced in Katanga making statements that were misleading in a material respect in its annual financial statements for 2015, contrary to section 129.2 of the Act;

(iii) Authorized, permitted or acquiesced in Katanga failing to maintain adequate ICFR and DC&P for the reporting periods between January 1, 2015 and September 30, 2016, contrary to section 129.2 of the Act;

(iv) Authorized, permitted or acquiesced in Katanga failing to disclose material weaknesses in ICFR in its interim and annual MD&As for the reporting periods between January 1, 2015 and September 30, 2016, contrary to section 129.2 of the Act;

(v) Certified Katanga's interim MD&As for the reporting periods between January 2015 and September 30, 2016, annual MD&A for 2015, and annual financial statements for 2014 and 2015, which were materially misleading, contrary to section 2.1 of NI 52-109 and section 122(1)(b) of the Act; and

(vi) Acted in a manner contrary to the public interest.

Enforcement Staff reserve the right to make such other allegations as Enforcement Staff may advise and the Commission may permit.

DATED at Toronto, December 14, 2018.

Carlo Rossi
Senior Litigation Counsel
Enforcement Branch
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, ON M5H 3S8
Tel: (416) 204-8987
Email: crossi@osc.gov.on.ca

Lawyer for Staff of the
Ontario Securities Commission