

Form 49
Rule 13.19

Clerk's stamp

COURT FILE NUMBERS B201-979735 / 25-2979735

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

MATTERS IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, OF GRIFFON PARTNERS OPERATION CORP., GRIFFON PARTNERS HOLDING CORP., GRIFFON PARTNERS CAPITAL MANAGEMENT LTD., SPICELO LIMITED, STELLION LIMITED, 2437799 ALBERTA LTD., 2437801 ALBERTA LTD. and 2437815 ALBERTA LTD.

APPLICANTS TRAFIGURA CANADA LIMITED and SIGNAL ALPHA C4 LIMITED

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **STIKEMAN ELLIOTT LLP**
Barristers & Solicitors
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888-3rd Street SW
Calgary, AB T2P 5C5

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Lawyers for the Applicants,
Trafigura Canada Limited and Signal Alpha C4 Limited

File No.: 137093.1011

AFFIDAVIT OF CHRISTOPHER B. CHUFF**Sworn on November 20, 2023**

I, Christopher B. Chuff, of the County of New Castle in the State of Delaware, SWEAR AND SAY THAT:

1. I am a Partner at the law firm of Troutman Pepper Hamilton Sanders LLP. I am a lawyer qualified to practice law in the State of Delaware and the Commonwealth of Pennsylvania. I focus my practice on complex corporate and commercial litigation in the Delaware Court of Chancery, including merger and acquisition (M&A) disputes, fiduciary duty actions, and statutory proceedings under the Delaware General Corporation Law and Delaware Alternative Entity Law. Attached and marked as **Exhibit "A"** is a copy of my current *curriculum vitae*. I have personal knowledge of the

facts and-matters stated herein, except where stated to be based on information and belief, and, where so informed, I believe such matters to be true.

- 2. I was engaged by Trafigura Canada Limited and Signal Alpha C4 Limited to provide a legal memorandum with respect to the law in the State of Delaware and its application to the Lock Up Agreement dated September 20, 2023, and the Shareholder Support Agreement dated December 14, 2022 (the “Legal Memorandum”). The Legal Memorandum correctly reflects, to my knowledge, the law in the State of Delaware and its application to the facts of this case. Attached and marked as **Exhibit “B”** is a copy of the Legal Memorandum.
- 3. I am not physically present before the Commissioner for Oaths (the “Commissioner”) taking this Affidavit, but I am linked with the Commissioner by video technology and the remote commissioning process has been utilized.

SWORN utilizing video technology this 20 day
of November, 2023.

DocuSigned by:
Natasha Doelman
9710BB8B283D412...

NATASHA DOELMAN
BARRISTER AND SOLICITOR
A Notary Public in and for the Province of
Alberta

DocuSigned by:
Chuff, Christopher B.
E4B8B950638147C...

CHRISTOPHER B. CHUFF

This is **Exhibit "A"** referred to in the Affidavit of Christopher B. Chuff sworn before me via video technology this 20 day of November, 2023.

DocuSigned by:

Natasha Doelman

971DBB8B283D412...

Notary Public in and for the
Province of Alberta

NATASHA DOELMAN
BARRISTER & SOLICITOR

Christopher B. Chuff

Partner
Wilmington

chris.chuff@troutman.com

D 302.777.6547



Chris is a seasoned litigator specializing in complex corporate and commercial litigation in the Delaware Court of Chancery.

Areas of Focus:

- Business Litigation
- Class Action
- Corporate Governance
- Securities, Corporate Governance + D&O Defense Litigation
- Delaware Court of Chancery Litigation

Chris focuses his practice on complex corporate and commercial litigation in the Delaware Court of Chancery, including merger and acquisition (M&A) disputes, fiduciary duty actions, and statutory proceedings under the Delaware General Corporation Law and Delaware Alternative Entity Law.

He has extensive experience handling the following types of matters:

- Breach of fiduciary duty actions brought against corporate officers and directors, LLC members and managers, and partners and limited partners.
- Contract and fraud claims arising out of merger agreements, asset purchase agreements, stock purchase agreements, and other commercial agreements.
- Motions for temporary restraining orders and preliminary injunctions.
- Advancement and indemnification proceedings.
- Books and records demands and actions.
- Appraisal actions.
- Petitions to compel or enjoin arbitration.
- Challenges to corporate dividends and stock redemptions.
- Statutory proceedings under the Delaware General Corporation Law and Delaware Alternative Entity Law.

Chris frequently advises boards of directors and special committees regarding fiduciary duties and corporate governance matters, including in connection with potential mergers and acquisitions and other transactions. He also has considerable experience defending securities fraud lawsuits, including actions arising under Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 and Sections 10(b), 14(a), and 20(a) of the Securities Exchange Act of 1934.

Representative Matters

Commercial Litigation

- *Shareholder Representative Services, LLC v. Prescient Medicine Holdings, Inc.* C.A. No. 2022-0160-JTL (Del.Ch.) – Representing stockholder representative seeking to recover portions of merger consideration owed to selling stockholders under the parties' merger agreement.
- *Wible v. Spectrio, LLC*, Case No. 1410009113 (JAMS Arbitration) – Represented stockholder representative seeking recovery of earn-out payment provided for in the parties' stock purchase agreement.
- *Shareholder Representative Services, LLC v. Pyng Medical USA Corp.* C.A. No. 2021-0141-JRS (Del. Ch.) – Helped secure consensual payment of millions in earn-out amounts owed to compar stockholders under the parties' merger agreement.
- *Rhem v. Star2Star Holdings, LLC*, Case No. 2020 CA 005505NC – Secured complete dismissal breach of contract, implied covenant, and fraudulent inducement claims arising in connection with a \$400 million acquisition.
- *Kentucky Downs Management, Inc. v. Kentucky Downs, LLC*, C.A. No. 2021-0251-JRS (Del. Ch.) – Defended buyer against breach of contract claims arising out of the purchase of the Kentucky Downs racetrack and historical horse racing facility.
- *EWT Holdings III Corp. v. Fortis Advisors, LLC*, C.A. No. 2020-0394-MTZ (Del. Ch.) – Successfully recovered funds held in escrow in connection with stock purchase transaction on behalf of a leading water treatment company.
- *Conduent Business Services, LLC v. Skyview Capital, LLC*, C.A. No. 2020-0232-VCL (Del. Ch.) – Successfully defended a privately held investment firm against breach of contract claims arising out of its purchase of plaintiff's call center business.
- *CoxCom, LLC v. Hiatt* C.A. No. 2020-0178-PAF (Del. Ch.) – Defending founders and former officers of a market leading managed cloud solutions company against fraud and contract claims arising from the sale of the company to a global telecommunications conglomerate.
- *Aquary Group Corp Delaware, LLC v. Soho Properties General Partner II, LLC*, C.A. No. N20C-C 204 (Del. Sup.) – Defending a real estate development company in the Delaware Superior Court against claims that it breached certain voting provisions of a limited liability company agreement.
- *Claros Diagnostics, Inc. Shareholder Committee v. Opko Health Inc.* C.A. No. 2019-0262-SG (Del. Ch.) – Representing a shareholder committee seeking to enforce earn-out payment obligations of a publicly traded health care company in the Delaware Court of Chancery.
- *Delaware North iGaming, Inc. v. Miomni Gaming Ltd.* C.A. No. 2019-0301-JTL (Del. Ch.) – Representing a gaming operator and casino management consulting company seeking to enforce various call option and other rights under the parties' limited liability company agreement.
- *RMS Lifeline Inc. v. South Florida Vascular Solutions LLC*, C.A. No. 2019-0500-JRS (Del. Ch.) – Successfully recovered funds from other members of a vascular and dialysis limited liability company as part of consensual resolution of a breach of contract action in the Delaware Court of Chancery.

- *iBio, Inc. v. Fraunhofer-Gesellschaft Zur Forderung Der Angewandten Forschung, E.V.* C.A. No. 2017-0790-TMR (Del. Ch. Dec. 10, 2018) – Obtained dismissal of \$300 million trade secret misappropriation lawsuit brought against one of the largest application-oriented research organizations in the world in the Delaware Court of Chancery.
- *Paul v. Rockpoint Group, LLC* C.A. No. 2018-0907-JTL (Del. Ch.) – Representing a former member of a real estate investment firm seeking to enforce certain of the firm's contractual obligations under its limited liability company agreement.
- *Eastern Profit v. Strategic Vision, C.A.* No. 18-2185 (S.D.N.Y.) – Representing a Hong Kong-based investment company in an action arising out the alleged breach of a private investigation contract.
- *Edinburgh Holdings, Inc. v. Education Affiliates, Inc.*, C.A. No. 2017-0500-JRS (Del. Ch.) – Achieved favorable settlement for post-secondary education company in an earn-out dispute brought in the Delaware Court of Chancery.
- *Advanced Reimbursement Management, LLC v. Plaisance* C.A. No. 17-667-MN (D. Del.) – Represented sellers of an accounts receivable and revenue cycle management business against claims that the sellers breached certain non-competition obligations in the asset purchase agreement and other related contracts.
- *Molina Information Systems, LLC v. Unisys Corp.*, C.A. No. 12-1022 (D. Del.) – Achieved favorable settlement and dismissal of claims on behalf of a global information technology company in a fraud and breach of contract action arising out of plaintiffs' acquisition of our client's health information management business.
- *Harland Clarke Holdings Corp. v. Milken*, C.A. No. 14-138-GMS (D. Del.) – Achieved a complete defense victory in the District of Delaware for the former chief executive officer of an educational software company in a dispute where plaintiffs sought more than \$130 million in damages for alleged fraud and other claims arising out of the plaintiffs' acquisition of the educational software company.
- *Boehringer Technologies L.P. v. Convatec, Inc.* – Turned a multimillion-dollar arbitration claim against our client, a medical device manufacturer, into a multimillion-dollar settlement in favor of our client.
- *Sustainable Energy General Group, LLC v. Photon Energy Projects B.V.* C.A. No. 8524-VCP (Del. Ch.) – Obtained dismissal of tortious interference claims in the Delaware Court of Chancery for a global solar power plant developer arising out of a proposed business transaction.
- *HBC Solutions, Inc. v. Harris Corp.*, C.A. No. 13-06237-JMF (S.D.N.Y.). Achieved dismissal of a purchase price adjustment lawsuit against a global private equity firm in favor of arbitration and obtained an award of more than \$1 million for client in the resulting arbitration.
- *Goldfinger v. MPC Holding Establishment, et al.* C.A. No. 6207-CS (Del. Ch.) – Successfully represented investor in action to pierce the corporate veil in connection with efforts to collect on multimillion-dollar judgment in prior action between the parties.

Corporate Litigation

- *Schoenmann v. Irvin (Clear Align, LLC)* C.A. No. 2021-0326-SG (Del. Ch.) – Achieved dismissal of breach of contract and implied covenant claims asserted against the controlling member and director of an optical engineering and systems integration company.
- *Cohen v. Wilkerson (National Security Group, Inc.)* C.A. No. 2022-0333-LWW (Del. Ch.) – Secured voluntary dismissal of class action complaint in the Delaware Court of Chancery challenging the disclosures in a proxy statement issued in connection with a proposed merger.
- *Atwood v. Remine, Inc.*, C.A. No. 2022-0141-SG (Del. Ch.) – Representing respondent in appraisal proceeding brought in the Delaware Court of Chancery pursuant to Del. C. § 262(f).

- *Dru v. Cruttenden*, C.A. No. 2021-1091-MTZ (Del. Ch.) – Defended former directors in a breach of fiduciary duty action in the Delaware Court of Chancery challenging the fairness of a merger.
- *Dru v. Blast Intergalactic Group, Inc.*, C.A. No. 2021-1092-MTZ (Del. Ch.) – Represented respondent in appraisal proceeding brought in the Delaware Court of Chancery pursuant to 8 Del. C. § 262(f).
- *CGH Investment Management, LLC v. Timothy B. Harmon*, C.A. No. 2021-0252-KSJM (Del. Ch. Jan. 18, 2022) – Secured summary judgment granting advancement to former limited partner and agent of a Delaware limited partnership in the Delaware Court of Chancery.
- *The Harmon 1999 Descendants' Trust v. CGH Investment Management, LLC*, C.A. No. 2021-0407-KSJM (Del. Ch.) – Represented former limited partner and agent of a Delaware limited partnership in an advancement action in the Delaware Court of Chancery.
- *Jeter v. Cox Communications, Inc.*, C.A. No. 2021-0047-PAF (Del. Ch.) – Represented former officers of a telecommunications company in an advancement action in the Delaware Court of Chancery.
- *Cheney v. Kohut*, C.A. No. 2020-0914-SG (Del. Ch.) – Secured favorable settlement on behalf of officers and majority stockholders of a military electronic communications provider in a dispute over corporate control under Section 225 of the Delaware General Corporation Law.
- *Banman v. Human Regenerative Technologies, LLC*, C.A. No. 2020-0490-PAF (Del. Ch. Apr. 23, 2021) – Achieved a complete post-trial victory in a books and records action under 6 Del. C. § 18305, in which the Court of Chancery required the defendant, a biologics company, to produce each and every category of documents requested by the plaintiff in his demand.
- *Avaya Holdings Corp. v. James Haigh*, C.A. No. 2019-0344-JRS (Del. Ch. July 2, 2019) – Successfully defeated a communications software company's attempt to temporarily restrain and later preliminarily enjoin our client from working for alleged competitor.
- *In re W.J. Bradley Mortgage Capital, LLC, et al.*, 18-50385-KG (Bankr. Ct. Dist. Del.) – Obtained favorable settlement for former managers of a mortgage lender and servicing company in a breach of fiduciary duty and fraudulent transfer action arising out of a stock redemption transaction.
- *Empire Group Holdings LLC v. Lexford Pools 1/3 LLC*, C.A. No. 2018-0694-MTZ (Del. Ch.) – Successfully obtained production of books and records for LLC member through consensual resolution of a books and records action in the Delaware Court of Chancery.
- *Archbold v. Rackwise, Inc., et al.*, C.A. No. 17-766470-B (Nev. Dist.) – Achieved complete dismissal of fraud, tortious interference, conspiracy, and aiding and abetting breach of fiduciary duty claims brought against global information technology company.
- *Creel v. Ecolab, Inc.*, C.A. No. 12917 (Del. Ch.) – Successfully recovered millions of dollars for a former director of a water, hygiene, and energy company through settlement of an indemnification action in the Delaware Court of Chancery.
- *In re ScripsAmerica, Inc.*, 17-50935-LSS (Bankr. Ct. Dist. Del.) – Achieved favorable settlement for the former officer and director of a pharmaceutical company in a breach of fiduciary duty action.
- *In re Main Avenue Pharmacy, Inc.*, 17-50936-LSS (Bankr. Ct. Dist. Del.) – Achieved favorable settlement for a former officer and director of a pharmaceutical company in a breach of fiduciary duty action.
- *Hui Wai Ngai v. Hazout, Silver Dragon*, C.A. No. 12022-CB (Del. Ch. Feb. 22, 2016) – Obtained injunction and postponement of a stockholders' meeting of a publicly traded corporation to afford our clients additional time to mount a proxy contest for control of the corporation's board of directors.

- *In re CS Mining, LLC*, Adv. Case Nos. 17-02024, 17-02025 (Bankr. Ct. D. Utah) – Represented a metals and minerals mining and processing company in multiple bankruptcy adversary proceedings, including actions seeking to disallow certain purported secured loans of the company.
- *In re Solar Trust of America, LLC* C.A. No. 12-11136(KG) (Bankr. Ct. D. Del) – Represented liquidation trustee in multiple adversary proceedings, including actions for breach of fiduciary duties against debtors' former officers and directors, breach of contract, fraudulent transfer, and equitable subordination.
- *Rimat Advanced Technologies Ltd. v. Bomeny* C.A. No. 9086-VCL (Del. Ch.) – Represented stockholders in a breach of fiduciary duty action in the Delaware Court of Chancery against the directors of the second largest fast food company in Brazil arising out of proposed merger transaction.
- *Southwire Company v. Ares Capital Corp.* C.A. No. 8725-VCP (Del. Ch.) – Defended the former president of a low-voltage cable manufacturer in the Delaware Court of Chancery against fraud, breach of contract, and breach of fiduciary duty claims arising out of plaintiffs' acquisition of the company.
- *Ioimage, Ltd. v. SCP Private Equity Partners II, L.P.* C.A. No. 8391-VCP (Del. Ch.) – Defended directors and alleged controlling stockholder of a video surveillance developer in the Delaware Court of Chancery against breach of fiduciary duty claims arising out of a series of financing transactions.
- *In re Freeport-McMoran Copper & Gold Inc. Derivative Litig.* C.A. No. 8145-VCN (Del. Ch.) – Represented independent directors of acquirer against fiduciary duty claims in connection with \$20 billion acquisitions of two publicly traded oil and gas exploration corporations.
- *Danenberg v. Fittracks, Inc.*, C.A. No. 6454-VCL (Del. Ch.) – Successfully secured advancement for former CEO of footwear technology company in underlying action alleging misrepresentations in merger negotiations.
- *Levinhar v. MDG Medical, Inc.*, C.A. No. 4301-CS (Del. Ch.) – Represented founders of Delaware corporation in post-merger appraisal proceedings.

Securities Litigation

- *Kent v. Gardner Denver Holdings, Inc.*, C. A. No. 20-0145-CFC (D. Del.) – Assisted a diversified industrial manufacturing company obtain a no liability settlement in a District of Delaware lawsuit arising under Section 20(a) of the Securities Exchange Act of 1934.
- *Torreano v. CAS Medical Systems, Inc.* C.A. No. 19-478 (D. Del.) – Helped obtain disclosure-only settlement on behalf of a medical innovation and technology company in a District of Delaware lawsuit arising under Sections 14(a) and 20(a) of the Securities Exchange Act of 1934.
- *Plant v. Jaguar Animal Health, Inc.* C.A. No. 17-4102 (N.D. Cal.) – Representing a human and animal health company and certain of the company's directors in a Northern District of California lawsuit arising under Sections 14(a) and 20(a) of the Securities Exchange Act of 1934.
- *Paradise Wire & Cable Defined Benefit Pension Plan v. Weil*, C.A. No. 17-132 (D. Md.) – Obtained complete dismissal of claims arising under Section 11 of the Securities Act of 1933 on behalf of directors of a real estate investment trust (REIT).
- *Orgone Capital III, LLC v. Daubenspeck*, 16-10849 (N.D. Ill.) – Achieved full dismissal of fraud, breach of fiduciary duty, and other common-law claims arising out of the sale of preferred stock to a hybrid-electric automobile company on behalf of a former member of the board of directors of the company.

- *In re Fisker Automotive Holdings, Inc. S'holder Litig.* C.A. 13-2100 (D. Del.) – Obtained favorable settlement on behalf of a former director of a hybrid-electric automobile manufacturer in a lawsuit brought in the District of Delaware arising under Sections 12(a)(2) and 15 of the Securities Act of 1933 and Sections 10(b) and 20(a) of the Securities Exchange Act of 1934.
- *In re Wilmington Trust Securities Litig.*, 10-990 (D. Del.) – Represented independent directors of global commercial bank in the District of Delaware against claims arising under Sections 11 and 15 of the Securities Act of 1933 and 10(b) and 20(a) of the Securities Exchange Act of 1934.

Related Practices and Industries

- Litigation + Trial

Publications

- Co-author, "[Ninth Circuit En Banc Panel Doubles Down: Maintains Enforceability of Delaware Exclusive Forum Provision Foreclosing Stockholder's Derivative Securities Exchange Act Claim](#)," *Troutman Pepper*, July 24, 2023.
- Co-author, "[Delaware Court of Chancery Confirms Enforceability of NVCA Covenant Not to Sue for Breach of Fiduciary Duty](#)," *Troutman Pepper*, June 6, 2023.
- Co-author, "[Delaware Court of Chancery Strikes Down Another Sale of Business Noncompete](#)," *Troutman Pepper*, April 18, 2023.
- Co-author, "[Preserving the Corporate Attorney-Client Privilege as Against Investors](#)," *Troutman Pepper*, April 13, 2023.
- Co-author, "[No Class Voting Right Available to Nonvoting Class for Adoption of Officer Exculpation Provision](#)," *Troutman Pepper*, April 12, 2023.
- Co-author, "[More Than a Majority: Chancery Court Provides Rare Guidance on Charter Amendments](#)," *Troutman Pepper*, February 16, 2023.
- Co-author, "[Oversight Duties Apply to Corporate Officers](#)," *Troutman Pepper*, February 6, 2023.
- Co-author, "[Court of Chancery Strikes Down Restrictive Covenants Designed to Protect Private Equity Investments Beyond the Target](#)," *Troutman Pepper*, January 17, 2023.
- Co-author, "[A Cautionary Tale About PE Principal Liability for Portfolio Company Operations](#)," *Troutman Pepper*, December 13, 2022.
- Co-author, "[Delaware Corporations Cannot Use Their Charter to Alter the Judicial Standard of Review](#)," *Troutman Pepper*, July 27, 2022.
- Co-author, "[Circuit Split: Ninth And Seventh Circuits Disagree Over Enforceability of Delaware Exclusive Forum Provisions](#)," *Troutman Pepper*, July 25, 2022.
- Co-author, "[Failure to Pay 'Fair Value' to Holders of Fractional Shares in a Reverse Stock Split Constitutes an Independent Claim in Delaware](#)," *Troutman Pepper*, July 6, 2022.
- Co-author, "[Closing the Private Equity Fund Triggers Entire Fairness Under Delaware Law](#)," *Troutman Pepper*, June 27, 2022.
- Podcast, "[Private Equity and Delaware Law – Part Two](#)," *Troutman Pepper*, April 27, 2022.
- Co-author, "[Proposed Amendments to DGCL Broaden Corporate Autonomy and Stockholders' Rights](#)," *Troutman Pepper*, April 21, 2022.
- Podcast, "[Private Equity and Delaware Law – Part One](#)," *Troutman Pepper*, April 13, 2022.

- Co-author, "[Firms Seeking Mootness Fees for Supplemental Disclosures Suffer Another Blow](#)" *Troutman Pepper*, March 24, 2022.
- Co-author, "[Delaware Court of Chancery Signals That Delaware Is a Pro-Sandbagging Jurisdiction](#)," *Troutman Pepper*, March 22, 2022.
- Co-author, "[M&A Ruling Illustrates Limits of Disclaiming Fraud in Del.](#)" *Law360*, January 13, 2022.
- Co-author, "[Disclaiming Fraud Under Delaware Law](#)" *Troutman Pepper*, January 11, 2022.
- Co-author, "[Common M&A Provision Precludes Private Equity Buyer From Escaping an Aiding and Abetting Claim](#)," *Troutman Pepper*, December 10, 2021.
- Co-author, "[An Overview of the 2021 Amendments to the Delaware General Corporation Law and Alternative Entity Acts](#)," *Troutman Pepper*, November 16, 2021.
- Co-author, "[Upshots of Del. Holding on Appraisal Rights Waivers in M&A](#)" *Law360*, October 12, 2021.
- Co-author, "[Delaware Court of Chancery Highlights Seriousness of Cybersecurity Concerns While Maintaining High Standard for Caremark Claims](#)," *Troutman Pepper*, October 12, 2021.
- Co-author, "[Appraisal Waivers Are Enforceable Under Delaware Law](#)," *Troutman Pepper*, September 20, 2021.
- Co-author, "[Controlling Stockholder or Member Status Under Delaware Law – A Table of Key Decisions](#)," *Troutman Pepper*, July 12, 2021.
- Co-author, "[Pill with 5% Trigger Too Poisonous to Address Hypothetical Stockholder Activism](#)," *Troutman Pepper*, March 30, 2021.
- Co-author, "[Changes to Target's Business Prompted by COVID-19 Pandemic Breached Ordinary Course Covenant, Permitting Buyer to Escape Deal](#)," *Troutman Pepper*, December 2, 2020.
- Co-author, "[Fraud on the Board II: Conflicted CEO Tilts Company Sale in PE Firm's Favor](#)," *Troutman Pepper*, October 5, 2020.
- Co-author, "[The Latest Successful Caremark Claim](#)," *Troutman Pepper*, August 26, 2020.
- Co-author, "[Delaware Court of Chancery Tells California to Get Off Its Lawn](#)," *Troutman Pepper*, August 17, 2020.
- Co-author, "[The 2020 Amendments to the Delaware LLC Act and Partnership Act](#)," *Troutman Pepper*, July 20, 2020.
- Co-author, "[The 2020 Amendments to the Delaware General Corporation Law](#)," *Troutman Pepper*, July 20, 2020.
- Co-author, "[Delaware Standards of Review](#)," *Troutman Pepper*, July 9, 2020.
- Co-author, "[A Flowchart of Delaware Standards of Review](#)," *Troutman Pepper*, July 8, 2020.
- Co-author, "[Fraud on the Board: Material Conflicts Must Be Disclosed to the Board to Warrant Business Judgment Review](#)," *Troutman Pepper*, July 7, 2020.
- Co-author, "[Fiduciary Duty of Disclosure Does Not Apply to Individual Transactions With Equityholders](#)," *Pepper Hamilton*, June 24, 2020.
- Co-author, "[MFW Pitfalls: Bypassing the Special Committee and Retaining Authority to Pursue Detrimental Alternatives](#)," *Pepper Hamilton*, June 12, 2020.
- Co-author, "[Attorney-Client Privilege Does Not Pass to the Buyer in Asset Deal](#)" *Pepper Hamilton*, June 5, 2020.
- Co-author, "[Delaware Chancery Court Sustains Breach of Fiduciary Duty Claims Against Nonparty to LLC Agreement](#)," *Pepper Hamilton*, May 26, 2020.

- Co-author, "[LLC Member Buyout Provision With Familiar Wording Held to Be Irrevocable](#)," *Pepper Hamilton*, March 30, 2020.
- Co-author, "[Boards of Directors May Be Required to Disclose Reasons Behind Financial Advisor Withdrawal](#)," *Pepper Hamilton*, March 26, 2020.
- Co-author, "[Exclusive Federal Forum Selection Provisions for Securities Act Claims Held to be Valid in Delaware](#)," *Pepper Hamilton*, March 19, 2020.
- Co-author, "[Ab Initio 2.0: Even Without a Controller, Special Committees Must Be Formed Before Economic Negotiations Begin](#)," *Pepper Hamilton*, March 9, 2020.
- Co-author, "[Board's Discretion to Select Among Competing Acquisition Proposals Confirmed](#)," *Pepper Hamilton*, February 5, 2020.
- Co-author, "[Enforcing Del. Choice-Of-Law Provisions In Restrictive Covenant Agreements](#)," *Pepper Hamilton*, September 25, 2019.
- Co-author, "[Amended Delaware Laws Allow Transactions to Be Documented Electronically, Among Other Changes](#)," *Pepper Hamilton*, July 23, 2019.
- Co-author, "[Protecting Privileged Pre-Merger Communications Through Contractual Provisions](#)," *Pepper Hamilton*, June 5, 2019.
- Co-author, "[Non-Delaware PE Firms Should Be Aware of Potential Jurisdictional Hook](#)," *Pepper Hamilton*, April 26, 2019.
- Co-author, "[Efforts Clauses Do Not Impose Duty to Warn and Notice Provisions Will Be Strictly Enforced](#)," *Pepper Hamilton*, April 3, 2019.
- Co-author, "[The Importance of Well-Crafted Corporate Opportunity Waivers in Private Equity and Venture Capital Investments](#)," *Pepper Hamilton*, February 21, 2019.
- For a complete list of articles, [click here](#).

Media Commentary

- Quoted, "[Individual Merger Suits Replacing Class Action in Strategy Shift](#)" *Bloomberg Law*, October 13, 2022.

Rankings and Recognition

- *Super Lawyers Delaware*: Rising Star (2022-2023)
- *Best Lawyers in America®: Ones to Watch*: Commercial Litigation (2021-2024), Litigation - Securities (2021-2024), Mergers and Acquisitions Law (2021-2024)
- Part of the pro bono litigation team awarded the American Civil Liberties Union of Delaware Clarence Darrow Award, the Community Legal Aid Society, Inc. Founder's Award, the National Disability Rights Network Advocacy Award, and the Delaware State Bar Association's Christopher W. White Distinguished Access to Justice Leadership Award
- Awarded the Hyman-Goodman Award from Villanova University School of Law in 2012, which is awarded to the student who, in the opinion of the faculty, has done the most for the school through both academic and extracurricular achievement

Bar Admissions

- Delaware
- Pennsylvania

Court Admissions

- U.S. District Court, District of Delaware
- U.S. Bankruptcy Court, District of Delaware
- U.S. Court of Appeals, Third Circuit

Education

- Villanova University Charles Widger School of Law, J.D., *magna cum laude*, 2012; editor-in-chief, *Jeffrey S. Moorad Sports Law Journal*; elected, Order of the Coif
- The Pennsylvania State University, B.S., *with distinction* 2009; finance

This is **Exhibit "B"** referred to in the Affidavit of Christopher B. Chuff sworn before me via video technology this 20 day of November, 2023.

DocuSigned by:

Natasha Doelman

971DBB8B283D412...

Notary Public in and for the
Province of Alberta

**NATASHA DOELMAN
BARRISTER & SOLICITOR**



Memorandum

TO: Trafigura Canada Limited
Signal Alpha C4 Limited

FROM: Troutman Pepper Hamilton Sanders LLP

DATE: November 20, 2023

RE: *In the Matter of the Bankruptcy and Insolvency Act, R.S.C. 1985, c B-3*

SUBJECT: Applicability of Transfer Restrictions to Lien Enforcement Rights

EXECUTIVE SUMMARY

You have asked us to evaluate whether Trafigura Canada Limited ("**Trafigura**") and Signal Alpha C4 Limited ("**Signal**," and together with Trafigura, the "**Lenders**") are prevented from exercising their contractual rights with respect to the shares (the "**Greenfire Shares**") of Greenfire Resources Ltd. ("**Greenfire**") owned by Spicelo Limited ("**Spicelo**") by the share transfer restrictions in:

- (1) the Shareholder Support Agreement, dated as of December 14, 2022 (the "**Shareholder Agreement**"), by and among M3-Brigade Acquisition III Corp., Greenfire, DE Greenfire Merger Sub Inc., 2476276 Alberta ULC, Greenfire Resources Inc., and certain shareholders of Greenfire Resources, Inc., including Spicelo; and
- (2) the Lock-Up Agreement (the "**Lock-Up Agreement**") made and entered into as of September 20, 2023, by and between Greenfire Resources, Inc., M3-Brigade Acquisition III Corp., and certain shareholders of Greenfire Resources, Inc., including Spicelo.

We conclude based upon the documents and facts referenced herein and the reasoning set forth below,¹ that the Shareholder Agreement and the Lock-Up Agreement, including the transfer restrictions contained in those agreements, do not prevent the Lenders from exercising their contractual rights with respect to the Greenfire Shares.

¹ Specifically, we considered the following documents: the Business Combination Agreement (as defined herein), the Shareholder Agreement, the Lock-Up Agreement, the Proxy Statement for Special Meeting of Stockholders of M3-Brigade Acquisition III Corp., and certain documents available at <https://www.alvarezandmarsal.com/GriffonPartners>.



STATEMENT OF RELEVANT FACTS

A. The Loan Documents

On July 21, 2022, GLAS USA LLC and GLAS Americas LLC (collectively, the "**Collateral Agent**"), as agent for the Lenders, executed a credit agreement (the "**Credit Agreement**") with Griffon Partners Operation Corp. ("**GPOC**") whereby the Lenders agreed to advance a total of USD\$35,869,565.21 to GPOC (the "**Commitment**") to serve as financing towards an asset purchase and sale transaction between Tamarack Valley Energy Ltd. ("**Tamarack**") and GPOC (the "**Tamarack Acquisition**").

Pursuant to the Credit Agreement, GPOC agreed to monthly amortization payments of USD\$1,328,502.415 starting on October 1, 2022 and ending on January 31, 2025, at which point the Commitment was to be repaid in full, along with all accrued unpaid interest, fees, and all other obligations in connection with the Credit Agreement (including, inter alia, any applicable MOIC Amount owing to the Lenders). The MOIC Amount is defined in the Credit Agreement as an amount sufficient to achieve a 1.4 multiple on each Lender's ratable portion of the outstanding principal less the original issue discount of USD\$2,869,565.21 (the "**OID**").

The Commitment advanced under the Credit Agreement (after netting the OID) was made on July 21, 2022. The Commitment was allocated as to Trafigura in the amount of USD\$10,869,565.21 and as to Signal in the amount of USD\$25,000,000. As security for the payment of the Commitment, GPOC executed a fixed and floating term debenture over all of GPOC's present and future real and personal property (the "**GPOC Debenture**"). Concurrent with the execution of the Credit Agreement and the GPOC Debenture, a total of seven secured guarantees were provided to the Lenders. Spicelo, Griffon Partners Capital Management Ltd., Griffon Partners Holding Corp., Stellion Limited, 2437801 Alberta Ltd., 2437799 Alberta Ltd., and 2437815 Alberta Ltd. each executed guarantees along with supporting security in favour of the Collateral Agent, whereby they guaranteed the obligations of GPOC under the Credit Agreement.



In the case of Spicelo, a Limited Recourse Guarantee and Securities Pledge Agreement dated July 21, 2022 (the “**Spicelo Guarantee**”), was executed between Spicelo and the Collateral Agent, as amended by a first amending agreement dated August 31, 2022, the collateral of which was, *inter alia*, all of the Greenfire Shares (the “**Share Pledge**”).

B. The Business Combination Agreement

On December 14, 2022, M3-Brigade Acquisition III Corp., Greenfire, DE Greenfire Merger Sub Inc., 2476276 Alberta ULC, and Greenfire Resources Inc. entered into a Business Combination Agreement (as amended on April 21, 2023 and June 15, 2023, the “**Business Combination Agreement**,” and the transactions contemplated thereby, collectively, the “**Business Combination**”), pursuant to which 2476276 Alberta ULC amalgamated with and into Greenfire Resources Inc. becoming a direct, wholly-owned subsidiary of Greenfire and DE Greenfire Merger Sub Inc. merged with and into M3-Brigade Acquisition III Corp., with M3-Brigade Acquisition III Corp. continuing as the surviving corporation following the Merger, as a result of which M3-Brigade Acquisition III Corp. became wholly-owned subsidiary of New Greenfire.

In connection with the Business Combination Agreement, certain parties entered into certain additional contracts, which were incorporated into the terms of the Business Combination Agreement. See Business Combination Agreement, §§ 1.1, 11.2, 11.8, 11.13, Recitals. As is relevant here, certain of the parties to the Business Combination Agreement and certain shareholders of Greenfire, including Spicelo, entered into the Shareholder Agreement and the Lock-Up Agreement. *Id.* The Business Combination Agreement provides that, among other documents, the Shareholder Agreement and the Lock-Up Agreement were expressly “incorporated into [the Business Combination Agreement] and . . . made a part [t]hereof as if set out in full in [the Business Combination Agreement].” *Id.* § 11.8. Likewise, the Business Combination Agreement states that it, along with the Shareholder Agreement and the Lock-Up Agreement (plus certain other documents not relevant for the purposes of this Memorandum),



“constitute [t]he entire agreement among the Parties with respect to the subject matter hereof.”

Id. § 11.2. The Business Combination Agreement also contained a non-recourse provision making clear that the agreement “may only be enforced against . . . the Parties.” *Id.* § 11.13.

C. The Shareholder Agreement

As explained above, on December 14, 2022, concurrently with the execution of the Business Combination Agreement, M3-Brigade Acquisition III Corp., Greenfire, DE Greenfire Merger Sub Inc., 2476276 Alberta ULC, and certain shareholders of Greenfire Resources, Inc., including Spicelo, entered into the Shareholder Agreement. One of the primary purposes of the Shareholder Agreement was to obligate the shareholders of Greenfire Resources, Inc., including Spicelo, to vote their Greenfire Shares to approve and adopt the Business Combination Agreement and the transactions contemplated thereby. Shareholder Agreement §§ 1.1, 1.5. The Shareholder Agreement also contains a provision prohibiting the shareholder parties from transferring their shares in Greenfire Resources, Inc. until the Business Combination became effective or was terminated. *Id.* § 1.3. By its terms, that provision only applies to the time between the signing of the Business Combination Agreement and closing or termination. *Id.*

Another one of the key aspects of the Shareholder Agreement was to explicitly preserve the rights of existing lienholders, including the rights of the Lenders under the Spicelo Guarantee. *Id.* § 1.2. Indeed, one of the very first sections of the Shareholder Agreement is a provision recognizing that the Greenfire Shares were subject to the Spicelo Guarantee, including the Share Pledge, and that any actions taken by the Lenders pursuant to the Spicelo Guarantee, including the Share Pledge, would serve as an exception to each of the prohibitions, covenants, and other provisions contained in the agreement (the “Existing Liens Exception”):

Section 1.2. Existing Liens and Replacement Liens. Set forth on Exhibit II attached hereto and made a part hereof is a list of existing liens to which certain Subject Shares are subject, copies of which liens have been provided to the parties hereto (“Existing Liens”).



Notwithstanding any other provision hereof, it is expressly acknowledged and agreed (i) that such Existing Liens, and any . . . Replacement Liens, and actions taken by Supporting Company Shareholders and secured parties thereto in accordance with the provisions of such instruments, shall serve as exceptions to each of the prohibitions, covenants and other provisions contained herein.

Id.

The Shareholder Agreement also contains a requirement that the shareholder parties, including Spicelo, sign a Lock-Up Agreement substantially in the form attached as Exhibit C to the Business Combination Agreement at the Effective Time of the Business Combination:

Section 1.7. Lock-Up Agreement. Each of the Supporting Company Shareholders set forth on Schedule III hereto, on behalf of itself, agrees that it will deliver, substantially simultaneously with the Effective Time, a duly-executed copy of the Lock-Up Agreement substantially in the form attached as Exhibit C to the Business Combination Agreement. Section 1.7 Investor Rights Agreement.

Id. § 1.7.

The Shareholder Agreement also has an integration clause stating that the Shareholder Agreement and all agreements referenced therein, including, but not limited to, the Lock-Up Agreement should be construed as one agreement:

Section 3.12. Entire Agreement. This Agreement and the agreements referenced herein constitute the entire agreement and understanding of the parties hereto in respect of the subject matter hereof and supersede all prior understandings, agreements or representations by or among the parties hereto to the extent they relate in any way to the subject matter hereof.

Id. § 3.12; *see also id.* § 1.7 (referencing the Lock-Up Agreement).

In addition, the Shareholder Agreement contains an anti-inconsistency provision that prohibits the shareholder parties, including Spicelo, from entering into any agreement that is inconsistent with the provisions of the Shareholder Agreement, including the Existing Liens Exception in Section 1.3:



Section 1.10. No Inconsistent Agreement. Each Supporting Company Shareholder hereby represents and covenants that such Supporting Company Shareholder . . . shall not enter into, any agreement that would restrict, limit or interfere with the performance of such Supporting Company Shareholder's obligations hereunder.

Id. § 1.10.

The Shareholder Agreement also makes clear that it cannot be enforced against non-parties, such as Trafigura and Signal. *Id.* § 3.11 ("This Agreement may only be enforced against . . . the parties."). The Agreement is governed by Delaware law. *Id.* § 3.2.

D. The Lock-Up Agreement

The Lock-Up Agreement prevents the party shareholders, including Spicelo, from "Transfer[ring] any shares they own in Greenfire for 180 days after the Business Combination closed on September 20, 2023—that is until March 18, 2024. The transfer restrictions are subject to a number of exceptions, however. As is relevant here, the transfer restrictions do not apply to:

- "the enforcement of any such pledge by a financial institution" "in connection with a pledge of [Greenfire Shares]." (the "Pledge Enforcement Exception"); and
- "in connection with any legal, regulatory or other order" (the "Order Exception").

There are other exceptions to the transfer restrictions within the Lock-Up Agreement, none of which appear to be relevant for the purposes of this Memorandum and are therefore not addressed herein.



ANALYSIS

Neither the Shareholder Agreement nor the Lock-Up Agreement, including the transfer restrictions contained in those agreements, prevent the Lenders from exercising their contractual rights with respect to the Greenfire Shares. This conclusion is reached by applying Delaware law contract interpretation principles.

As an initial matter, it is well-settled Delaware law that contracts generally cannot be enforced against non-parties. See *Neurvana Med., LLC v. Balt USA, LLC*, 2019 WL 4464268, at *3 (Del. Ch. Sept. 18, 2019); *NAMA Holdings, LLC v. Related World Mkt. Ctr., LLC*, 922 A.2d 417, 430 (Del. Ch. 2007). When determining the scope of a contractual obligation against a party against whom enforcement is appropriate, “the role of a court is to effectuate the parties’ intent.” *Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 739 (Del. 2006). Absent ambiguity, the court “will give priority to the parties’ intentions as reflected in the four corners of the agreement, construing the agreement as a whole and giving effect to all its provisions.” *In re Viking Pump, Inc.*, 148 A.3d 633, 648 (Del. 2016). “Unless there is ambiguity, Delaware courts interpret contract terms according to their plain, ordinary meaning.” *Alta Berkeley VI C.V. v. Omneon, Inc.*, 41 A.3d 381, 385 (Del. 2012). The “contract’s construction should be that which would be understood by an objective, reasonable third party.” *Salamone v. Gorman*, 106 A.3d 354, 367–68 (Del. 2014) (internal citation omitted).

“Absent some ambiguity, Delaware courts will not destroy or twist [contract] language under the guise of construing it.” *Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1195 (Del. 1992). “If a writing is plain and clear on its face, *i.e.*, its language conveys an unmistakable meaning, the writing itself is the sole source for gaining an understanding of intent.” *City Investing Co. Liquidating Tr. v. Cont’l Cas. Co.*, 624 A.2d 1191, 1198 (Del. 1993). Where contracts do not define particular terms at issue in a dispute, “Delaware courts look to



dictionaries for assistance in determining the plain meaning of [those] terms.” *Thermo Fisher Sci. PSG Corp. v. Arranta Bio MA, LLC*, 2023 WL 2771509, at *17 (Del. Ch. Apr. 4, 2023). Indeed, “Delaware case law is settled that undefined words [in a contract] are given their plain meaning based upon the definition provided by a dictionary.” *In re Solera Ins. Coverage Appeals*, 240 A.3d 1121, 1132 n.67 (Del. 2020).

“In upholding the intentions of the parties, a court must construe the agreement as a whole, giving effect to all provisions therein.” *E.I. du Pont de Nemours & Co., Inc. v. Shell Oil Co.*, 498 A.2d 1108, 1113 (Del. 1985). “[T]he meaning which arises from a particular portion of an agreement cannot control the meaning of the entire agreement where such inference runs counter to the agreement’s overall scheme or plan.” *Id.* “[A] court interpreting any contractual provision ... must give effect to all terms of the instrument, must read the instrument as a whole, and, if possible, reconcile all the provisions of the instrument.” *Elliott Assocs., L.P. v. Avatex Corp.*, 715 A.2d 843, 854 (Del. 1998).

In that regard, “under Delaware law, all related documents and instruments in a single transaction together are harmonized to the extent possible.” *In re Northwestern Corp.*, 313 B.R. 595, 601 (D. Del. Bankr. 2004). “[N]umerous cross-references between [] two agreements, and the fact that they are both parts of the same overall transaction, are ‘sufficient nexus[es] to justify the merging of . . . documents.’” *H & S Ventures, Inc. v. RM Techtronics, LLC*, 2017 WL 237623, at *2 (Del. Super. Jan. 18, 2017). Indeed, “incorporation by reference is ‘[a] method of making a secondary document part of a primary document by including in the primary document a statement that the secondary document should be treated as if it were contained within the primary one.’” *Black Diamond Hope House, Inc. v. U & I Invs., LLC*, 2018 WL 2331849, at *3 (Del. Super. May 22, 2018).



Here, under these principles and as explained in greater detail below, the Shareholder Agreement and Lock-Up Agreement do not prevent the Lenders from exercising their contractual rights with respect to the Greenfire Shares because: (a) the Shareholder Agreement and Lock-Up Agreement cannot bind the Lenders because they are not parties to those agreements; (b) the Shareholder Agreement's transfer restrictions expired when the Business Combination closed on September 20, 2023 and are therefore of no further force or effect; and (c) several exceptions to the transfer restrictions in the Lock-Up Agreement apply to the Lenders' enforcement of the Spicelo Guarantee, including the Pledge Enforcement Exception, the Order Exception, and the Existing Liens Exception.

A. The Shareholder Agreement and Lock-Up Agreements Do Not Bind the Lenders

As an initial matter, the transfer restrictions in the Shareholder Agreement and Lock-Up Agreement do not prevent the Lenders from enforcing their security interests against the Greenfire Shares because the Lenders are not parties to those agreements. Indeed, while the Shareholder Agreement and the Lock-Up Agreement bind Spicelo, they do not bind the Lenders. It is well-settled Delaware law that contracts generally cannot be enforced against non-parties. See *Balt USA*, 2019 WL 4464268, at *3 (refusing to enforce a contract against a party that was "not a signatory to the" contract); *Related World*, 922 A.2d at 430 (same). Here, the Lenders are not parties to the Shareholder Agreement and Lock-Up Agreement and those contracts therefore cannot be enforced against them, absent circumstances which are not present in this matter.

This conclusion is bolstered by the fact that provisions in the Business Combination Agreement and the Shareholder Agreement, which contain integration clauses requiring that those contracts must be read together with the terms of the Lock-Up Agreement as one contract, explicitly state that the agreements "may only be enforced against . . . the parties." See Business Combination Agreement § 11.13; Shareholder Agreement § 3.11.



Thus, whether the Shareholder Agreement and Lock-up Agreement prevent Spicelo from affirmatively transferring the Greenfire Shares is irrelevant to the question of whether the Lenders may enforce their security interests against those shares. Under both Delaware law and the plain language of the parties' agreement, the transfer restrictions in the Shareholder Agreement and Lock-up Agreement cannot be enforced against the Lenders, as non-parties to those contracts.

B. The Shareholder Agreement Transfer Restrictions Expired

The Shareholder Agreement's transfer restrictions do not prevent the Lenders from exercising their rights under the Spicelo Guarantee, including the Share Pledge, because those transfer restrictions expired when the Business Combination closed on September 20, 2023 and are therefore of no further force or effect. As set forth in Section 1.3 of the Shareholder Agreement, the transfer restrictions therein expire upon the "Effective Time" of the Business Combination, which is defined in the Business Combination Agreement as when the transactions officially close. The Business Combination closed on September 20, 2023. Therefore, the transfer restrictions in the Shareholder Agreement have no further force or effect.

C. Several Exceptions to the Transfer Restrictions in the Lock-Up Agreement Apply

Even if the Lock-Up Agreement were somehow binding on the Lenders (it is not), several exceptions to the transfer restrictions apply here, including the Pledge Enforcement Exception, the Order Exception, and Existing Liens Exception.

1. The Pledge Enforcement Exception Applies

First, the Pledge Enforcement Exception applies to the Lenders' enforcement of their contractual rights under the Spicelo Guarantee, including the Share Pledge. Indeed, as noted above, the Lock-up Agreement does not prevent transfers of the Greenfire Shares in connection with "the enforcement of any such pledge by a financial institution" "in connection with a pledge of [Greenfire Shares]." Lock-Up Agreement § 2(b)(vii). Thus, the enforcement of any pledge by



a “financial institution” is explicitly excluded from the transfer restrictions in the Lock-up Agreement. The question, then, is whether the Lenders are appropriately regarded as “financial institutions” under the plain and ordinary meaning of that term.

Financial institution is not defined in the Lock-up Agreement. Therefore, as explained above, a Delaware court would look to the dictionary definitions of the word “financial institution” to determine whether the Lenders qualified as such. Both Black’s Law and Merriam-Webster dictionaries define “financial institution” as a business, organization, or other entity that manages money, credit, or capital, such as a bank, credit union, savings-and-loan association, securities broker or dealer, pawnbroker, or investment company.² If the parties wished to enact a narrower definition of the phrase “financial institution,” they could have done so by defining it expressly. They chose not to, however, and therefore the ordinary and plain meaning of the term applies.

Here, both Trafigura and Signal are entities that manage and provide money, credit, or capital within the oil and gas industry in Western Canada and elsewhere. To our knowledge, Signal is predominantly engaged in activities which include managing a private credit and investment management platform, providing financing solutions across a broad range of asset classes, including corporate loans and bonds, natural resources, transportation assets, and real estate. Given their lines of business, both Trafigura and Signal are properly regarded as “financial institutions” under that term’s ordinary and plain meaning. Thus, any actions that they take to enforce the Share Pledge are explicitly excepted from the transfer restrictions of the Lock-Up Agreement.

² *Financial Institution*, Black’s Law Dictionary (11th ed. 2019) (defining “financial institution” as a “business, organization, or other entity that manages money, credit, or capital, such as a bank, credit union, savings-and-loan association, securities broker or dealer, pawnbroker, or investment company”); *Financial Institution*, Merriam-Webster, https://www.merriam-webster.com/dictionary/financial_institution (defining “financial institution” as “a company that deals with money”) (last visited November 15, 2023).



2. The “Order” Exception Applies

Second, the Order Exception to the transfer restrictions in the Lock-up Agreement would apply if the Court of King's Bench of Alberta ordered the transfer of the shares from Spicelo to the Lenders. Indeed, as noted above, the Lock-up Agreement does not prevent transfers of the Greenfire Shares “in connection with any legal, regulatory, or other order.” Lock-Up Agreement § 2(b)(xi). The Lock-Up Agreement does not define the terms “legal,” “regulatory,” or “order.” That said, “Delaware courts look to dictionaries for assistance in determining the plain meaning of terms which are not defined in a contract.” *Arranta Bio*, 2023 WL 2771509, at *17; *In re Solera*, 240 A.3d at 1132 n.67 (Del. 2020). Delaware courts frequently look to Black’s law dictionary to interpret legal terms. *Id.*; *NetApp, Inc. v. Cinelli*, 2023 WL 4925910, at *9 (Del. Ch. Aug. 2, 2023); *Metro Storage Int’l LLC v. Harron*, 275 A.3d 810, 874 (Del. Ch. 2022). Delaware courts frequently look to Merriam-Webster to interpret undefined terms as well. *Spintz v. Div. of Fam. Servs.*, 228 A.3d 691, 700 (Del. 2020); *USAA Cas. Ins. Co. v. Carr*, 225 A.3d 357, 360 (Del. 2020); *Intermec IP Corp. v. TransCore, LP*, 2021 WL 3620435, at *22 (Del. Super. Aug. 16, 2021).

Black’s Law and Merriam-Webster dictionaries both define “order” as a command, direction, or instruction, such as by a court of a judge, “legal” as relating to the law, and “regulatory” as a rule or order issued by an executive authority or regulatory agency.³ Thus, the phrase “in connection with any legal, regulatory, or other order” in the Lock-up Agreement is

³ *Order*, Black’s Law Dictionary (11th ed. 2019) (“1. A command, direction, or instruction. . . . 2. A written direction or command delivered by a government official, esp. a court or judge.”); *Order*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/order> (defining “order” as “[a] specific rule, regulation, or authoritative direction”) (last visited November 15, 2023); *Legal*, Black’s Law Dictionary (11th ed. 2019) (defining “legal” as “of, relating to, or involving law generally”); *Legal*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/legal> (defining “legal” as “of or relating to law”) (last visited November 15, 2023); *Regulation*, Black’s Law Dictionary (11th ed. 2019) (“1. Control over something by rule or restriction <the federal regulation of the airline industry>”); *Regulation*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/regulation> (defining “regulation” as “a rule or order issued by an executive authority or regulatory agency of a government and having the force of law”) (last visited November 15, 2023).



properly interpreted as in connection with any command, direction, or instruction issued by a court. Consequently, any court order requiring the transfer of the Greenfire Shares to the Lenders would be explicitly excepted from the transfer restrictions in the Lock-up Agreement.

3. The Existing Liens Exception Applies

Third, the Existing Liens Exception in the Shareholder Agreement applies to the Lenders' enforcement of their contractual rights under the Spicelo Guarantee, including the Share Pledge. As noted above, the Shareholder Agreement explicitly incorporates the Lock-Up Agreement into it, expressly recognizes that the Greenfire Shares were subject to the Share Pledge, and provides that the Share Pledge and any actions taken by secured parties pursuant to the Share Pledge would serve as an exception to each of the prohibitions, covenants, and other provisions contained in the agreement, such as the transfer restrictions. Shareholder Agreement §§ 1.2, 1.7, 3.12.

"Under Delaware law, all related documents and instruments in a single transaction together are harmonized to the extent possible." *In re Northwestern Corp.*, 313 B.R. at 601. "[N]umerous cross-references between [] two agreements, and the fact that they are both parts of the same overall transaction, are 'sufficient nexus[es] to justify the merging of . . . documents.'" *RM Techtronics*, 2017 WL 237623, at *2. Indeed, "incorporation by reference is '[a] method of making a secondary document part of a primary document by including in the primary document a statement that the secondary document should be treated as if it were contained within the primary one.'" *Black Diamond*, 2018 WL 2331849, at *3.

Here, as explained above, the Business Combination Agreement incorporates both the Shareholder Agreement and the Lock-Up Agreement into its terms and the Shareholder Agreement incorporates the Lock-Up Agreement into its terms. Indeed, the Business Combination Agreement states that, among other documents, the Shareholder Agreement and



the Lock-Up Agreement are expressly “incorporated into [the Business Combination Agreement] and . . . made a part [t]hereof as if set out in full in [the Business Combination Agreement].” Business Combination Agreement § 11.8. Likewise, it also provides that it, along with the Shareholder Agreement and the Lock-Up Agreement (plus certain other documents not relevant for the purposes of this Memorandum) “constitute [t]he entire agreement among the Parties with respect to the subject matter hereof.” *Id.* § 11.2. Furthermore, the Shareholder Agreement contains an integration clause stating the Shareholder Agreement and all agreements referenced therein, including, but not limited to, the Lock-Up Agreement should be construed as one agreement. Shareholder Agreement § 3.12. It also contains an anti-inconsistency provision that prohibits the shareholder parties, including Spicelo, from entering into any agreement that is inconsistent with the provisions of the Shareholder Agreement, including the Existing Liens Exception in Section 1.3. *Id.* § 1.10.

These provisions, particularly when taken together, demonstrate that the Shareholder Agreement and the Lock-Up Agreement must be read as one single agreement. As such, the transfer restrictions in the Lock-Up Agreement would be subject to the overarching Existing Liens Exception in Section 1.3 of the Shareholder Agreement, which states that “[n]otwithstanding any other provision hereof, it is expressly acknowledged and agreed . . . that such Existing Liens, and any . . . Replacement Liens, and actions taken by Supporting Company Shareholders and secured parties thereto in accordance with the provisions of such instruments, *shall serve as exceptions to each of the prohibitions, covenants and other provisions contained herein.*”

As a consequence, even if the Lenders were subject to the Lock-Up Agreement (they are not), the Existing Lien Exception would nevertheless permit the Lenders to take action in accordance with the Spicelo Guarantee, including the Share Pledge, without contravening the transfer restriction in the Lock-Up Agreement.



CONCLUSION

For these reasons, the Shareholder Agreement and the Lock-Up Agreement, including the transfer restrictions contained in those agreements, do not prevent the Lenders from exercising their contractual rights with respect to the Greenfire Shares.