



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

SETTLEMENT AGREEMENT

PART I - INTRODUCTION

1. Directors and officers set the "tone from the top" and are responsible for establishing and enforcing a culture of compliance.
2. In this case, the Individual Respondents¹ engaged in conduct at Katanga Mining Limited² that undermined Katanga's corporate governance and internal controls and, which, in the specific instances detailed in Section D of Part III 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.
3. 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.
4. Glencore³ 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.

¹ Aristotelis Mistakidis ("**Mistakidis**"), Tim Henderson ("**Henderson**"), Liam Gallagher ("**Gallagher**"), Jeffrey Best ("**Best**"), Johnny Blizzard ("**Blizzard**"), Jacques Lubbe ("**Lubbe**"), and Matthew Colwill ("**Colwill**").

² Hereafter, solely or collectively with its subsidiaries, "**Katanga**".

³ 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 29-30 below, Glencore was Katanga's sole customer, and financed Katanga's operations

During the Material Time⁴ 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.

5. 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 Section D and Section F of Part III below. This conduct was contrary to the public interest and it manifested in Katanga failing to comply with Ontario securities law.

6. In particular, Katanga:

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

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

8. Separately, Katanga also acknowledges that, 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.

⁴ The conduct set out in this document concerns the 6-year period from January 1, 2012 to December 31, 2017 (the "**Material Time**").

9. The parties shall jointly file a request that the Ontario Securities Commission (the “**Commission**”) issue a Notice of Hearing (the “**Notice of Hearing**”) to announce that it will hold a hearing (“**Settlement Hearing**”) to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5, as amended (the “**Act**”), it is in the public interest for the Commission to make certain orders against Katanga, Mistakidis, Henderson, Gallagher, Best, Blizzard, Lubbe and Colwill (collectively, the “**Respondents**”) in respect of the conduct described herein.

PART II - JOINT SETTLEMENT RECOMMENDATION

10. Staff of the Commission (“**Staff**”) recommend settlement of the proceeding (the “**Proceeding**”) against the Respondents commenced by the Notice of Hearing, in accordance with the terms and conditions set out in Part VII of this Settlement Agreement (the “**Settlement Agreement**”). The Respondents consent to the making of an order (the “**Order**”) in the form attached as Schedule “A” to this Settlement Agreement based on the facts set out herein.

11. For the purposes of the Proceeding and this Settlement Agreement:

- (a) Katanga agrees with the facts set out in Part III and Part IV of this Settlement Agreement and the conclusion in Part VI of this Settlement Agreement;
- (b) the Individual Respondents agree with the facts set out in Part III of this Settlement Agreement and the conclusion in Part VI of this Settlement Agreement.

This Settlement Agreement and the agreed facts set out herein are without prejudice to the Respondents in any other proceeding, including, without limitation, any civil, administrative, quasi-criminal or criminal actions or proceedings that may be brought by any person or agency, whether or not this Settlement Agreement is approved by the Commission.

PART III – AGREED FACTS

A. THE RESPONDENTS

(1) Katanga

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

13. 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.

14. 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 Générale des Carrières et des Mines S.A. ("**Gécamines**"), which owns 25% of KCC.⁵ Gécamines is a DRC state-owned entity.

15. 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*⁶ payable in installments at the end of each year up to 2016.

16. 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**

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

18. 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.

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

⁶ Katanga's public filings translate "*pas de porte*" as "entry premium".

(3) **Tim Henderson**

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

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

(4) **Liam Gallagher**

21. 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.

22. 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) **Jeffrey Best**

23. 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) **Johnny Blizzard**

24. 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) **Jacques Lubbe**

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

(8) **Matthew Colwill**

26. 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.

B. BACKGROUND

(1) **Katanga's Operations**

27. 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.

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

	(Tonnes)			
	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
Concentrate produced	495,642	710,449	905,750	859,647
Concentrate for Sale ⁷	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

29. 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).

30. 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

31. As a result of inquiries made during the course of 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

⁷ Concentrate for Sale was a subset of concentrate produced.

undertaken with the cooperation and assistance of management and in consultation with Katanga's external auditor.

32. 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.

33. 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.

34. On November 20, 2017, Katanga issued a news release announcing, among other things: (i) 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.

C. CONDUCT CONTRARY TO THE PUBLIC INTEREST AND ONTARIO SECURITIES LAW

35. The following sections detail the conduct contrary to Ontario securities law and the public interest:

- (a) Section D: Misleading disclosure relating to the results of Katanga's operations;
- (b) Section E: Corporate governance deficiencies, and misleading compensation and reporting structure disclosure; and
- (c) Section F: Internal control failures.

D. MISLEADING DISCLOSURE RELATING TO THE RESULTS OF KATANGA'S OPERATIONS

(1) Introduction

36. 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**

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

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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**

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

46. 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.

47. 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.

48. 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 assets⁸ 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.

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

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

⁸ This would cause the overstatement to be written off through normal course depreciation of the fixed assets.

51. 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
- (c) An overstatement of Katanga's fixed assets as at December 31, 2015 and 2016 and March 31, 2017 of approximately USD\$116 million.

52. 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.

53. 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").⁹

(4) Misleading Disclosure Regarding Copper Cathode Production in 2014

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

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

56. 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

⁹ (2004), 27 OSCB 3252, as amended.

was no direct correlation between "borrowings" and "pay-back" each month and an aggregate "borrowing" existed at each month-end in 2014.

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

58. 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.

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

60. 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.

61. 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.

62. 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.

63. 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.

64. 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**"¹⁰) 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.

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

66. 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**").¹¹

67. 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.

68. 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.

¹⁰ Finished Copper Cathode was bundled into lots for shipping. Each lot comprised approximately 30 tonnes and was assigned a unique sequential lot number.

¹¹ 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.

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

70. 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**")¹² 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.

71. Blizzard and Colwill acknowledge that they 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) Misleading Disclosure Regarding Production in 2015

72. 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.

73. 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.

¹² (2004), 27 OSCB 3230, as amended.

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

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

76. 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.

77. 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**").

78. 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**").

79. 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.

80. 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, 2015.¹³

81. The Related Misstatements were not addressed in the Restatement.¹⁴ 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.

82. 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.

83. 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.

¹³ The Restatement adjusted for the overstatement of \$41.8 million in 2014 referred to in paragraph 66, but did not adjust for the Related Misstatements.

¹⁴ 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.

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

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

E. CORPORATE GOVERNANCE DEFICIENCIES, AND MISLEADING COMPENSATION AND REPORTING STRUCTURE DISCLOSURE

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

87. 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.¹⁵

88. 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.

89. As set out in Section D 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 Section D above. As a result, the Respondents acted in a manner contrary to the public interest.

¹⁵ 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. 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 Section D.

91. In addition, as set out in Section D, 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 Section D. Gallagher’s conduct was contrary to the principles of NI 52-110 and the public interest.

F. INTERNAL CONTROL FAILURES

(1) Introduction

92. 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.

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

94. 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 Sections D and E above. As such, Katanga failed to maintain adequate ICFR and DC&P.

(2) **Material Weaknesses in ICFR**

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

96. 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 Section D 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.

97. These weaknesses resulted in the misleading disclosure of production activities and costs as set out in Section D above.

98. 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.

99. 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.

100. In respect of the matters set out in Section D 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.

101. 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) Failed to Maintain ICFR and DC&P

102. 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.

103. In respect of the admissions in Section D 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.

104. 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.

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

106. 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.

107. 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 FACTS AGREED TO BY KATANGA ONLY¹⁶

A. MISLEADING RISK DISCLOSURE

(1) Introduction

108. 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

109. 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

¹⁶ The admissions outlined in Part IV are made on behalf of Katanga only, and the Individual Respondents make no admissions relating to the matters in this Part.

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.

110. 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.

111. 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.

112. 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.

113. 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.

114. For example:

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

- (c) 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 113 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.
- (d) 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.

115. 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

116. 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.¹⁷

117. 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.

118. 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.

¹⁷ This resulted in Katanga's liability to Gécamines being offset to the extent of the payments.

119. 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 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.

120. 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.

121. 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.

122. 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.

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

(4) Misleading Entity-Specific Risk Disclosure

124. 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.

125. Katanga's AIFs for the period 2012 to 2016 provided risk disclosure including:¹⁸

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

¹⁸ This quotation is from Katanga's AIF dated March 28, 2014. There were different versions of this disclosure over the Material Time.

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

126. 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.

127. 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.

PART V - MITIGATING FACTORS

128. The Respondents request that the settlement hearing panel consider the following mitigating circumstances. Staff do not object to the mitigating circumstances set out by the Respondents below.

129. Upon learning of certain accounting irregularities relating to metal production during the course of Staff's investigation, Katanga took steps to investigate the issues, and initiated the Review, which was led by the Independent Directors. Following the commencement of the Review, Katanga publicly disclosed that its Filings for the period Q4 2014 to Q1 2017 should not be relied upon.

130. The Independent Directors supervised and directed the Review and engaged external professional advisors, including Canadian legal counsel and a multinational accounting firm to assist the Independent Directors in conducting the Review. The Independent Directors ensured that Katanga's outside auditor was consulted throughout the Review and was provided with regular updates about the status of the Review.

131. The Individual Respondents provided cooperation and assistance to the Independent Directors and their advisors throughout the Review.

132. As the results of the Review became clear, Katanga implemented a number of remediation measures, including the remediation steps recommended by the Independent Directors, intended to strengthen its corporate governance, address its metal accounting deficiencies and control weaknesses and improve its corporate culture.

133. Katanga undertook implementation of a new metal accounting system together with revised metal accounting policies and procedures.

134. Katanga determined that a recomposition of the Board was in the best interests of Katanga. The Glencore Respondents, who cooperated in the Review, offered to step down from the Board. Lubbe, who had previously indicated an intention to resign from Katanga but committed to stay in his position until the Review was complete, also voluntarily stepped down from his role as Katanga's CFO at the completion of the Review and Restatement.

135. Katanga and each of the Individual Respondents cooperated with Staff's investigation.

136. The Individual Respondents have no prior disciplinary record with any securities regulatory authority, including the Commission. After the conclusion of the Review, Blizzard, at his instance, participated in an accredited intensive director education and corporate governance program, and Best completed two corporate governance courses, at his own expense, at an accredited higher education centre.

137. Katanga and the Individual Respondents have sought to reach an early resolution of this matter that would enhance Katanga's corporate governance and disclosure practices going forward.

PART VI - NON-COMPLIANCE WITH ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

138. Katanga acknowledges and admits that it:

- (a) 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;

- (b) 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;
- (c) 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;
- (d) 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;
- (e) 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
- (f) Acted in a manner contrary to the public interest.

139. The Individual Respondents acknowledge and admit to the following in respect of Part III only:

- (a) 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.
- (b) 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.

(c) 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.

(d) 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.
- (e) 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.
- (f) 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.

(g) 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.

PART VII - TERMS OF SETTLEMENT

140. The Respondents agree to the terms of the settlement set forth below.

141. Katanga agrees to make a voluntary payment in the amount of \$28,500,000 by wire transfer to the Commission before the commencement of the Settlement Hearing, to be designated for allocation or use by the Commission in accordance with paragraph 3.4(2)(b)(i) or (ii) of the Act.

142. The Respondents consent to the Order, pursuant to which it is ordered that:

- (a) this Settlement Agreement be approved;
- (b) the voluntary payment of \$28,500,000 by Katanga is designated for allocation or use by the Commission in accordance with paragraph 3.4(2)(b)(i) or (ii) of the Act;
- (c) Katanga shall:
 - (i) submit to a review of its practices and procedures pursuant to paragraph 127(1)4 of the Act by an independent consultant agreed to by Staff and Katanga and paid for by Katanga, as set out in Schedule “B” to the Settlement Agreement, and if necessary, Katanga or Staff, as the case may be, may file a motion requesting the further direction of the Commission, as contemplated in paragraphs B(iv) and C(i) of Schedule “B” to the Settlement Agreement; and
 - (ii) pay costs in the amount of \$1,500,000 by wire transfer to the Commission before the commencement of the Settlement Hearing, pursuant to section 127.1 of the Act.
- (d) Mistakidis shall:
 - (i) be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 4 years commencing on the date of the Order, pursuant to paragraph 8 of subsection 127(1) of the Act;

- (ii) pay an administrative penalty in the amount of \$2,450,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act; and
 - (iii) pay costs in the amount of \$50,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to section 127.1 of the Act.
- (e) Henderson shall:
 - (i) be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 3 years commencing on the date of the Order, pursuant to paragraph 8 of subsection 127(1) of the Act;
 - (ii) pay an administrative penalty in the amount of \$450,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act; and
 - (iii) pay costs in the amount of \$50,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to section 127.1 of the Act.
- (f) Gallagher shall:
 - (i) be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 6 years commencing on the date of the Order, pursuant to paragraph 8 of subsection 127(1) of the Act;
 - (ii) pay an administrative penalty in the amount of \$950,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to paragraph 9 of subsection 127(1) of the

Act, which amount be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act; and

(iii) pay costs in the amount of \$50,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to section 127.1 of the Act.

(g) Best shall:

(i) be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 4 years commencing on the date of the Order, pursuant to paragraph 8 of subsection 127(1) of the Act;

(ii) pay an administrative penalty in the amount of \$750,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act; and

(iii) pay costs in the amount of \$50,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to section 127.1 of the Act.

(h) Blizzard shall:

(i) resign any position that he holds as a director or officer of a reporting issuer, pursuant to paragraph 7 of subsection 127(1) of the Act, with the exception that Blizzard may hold the position of the CEO of Katanga Mining Limited for a transition period of 30 days from the date of the Order, provided that he has no role in approving or certifying Katanga Mining Limited's 2018 annual Filings, after which period Blizzard shall immediately resign as the CEO of Katanga Mining Limited;

(ii) be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 2 years commencing on the date of the Order,

pursuant to paragraph 8 of subsection 127(1) of the Act, with the exception that Blizzard may:

- A. hold the position of the CEO of Katanga Mining Limited for a period of 30 days from the date of the Order as set out above in subparagraph 142(h)(i); and
- B. hold the position of Director of Operations with Katanga Mining Limited for a period of 90 days from the date of his resignation as the CEO of Katanga Mining Limited, provided that Blizzard shall not, directly or indirectly:
 - 1. appoint officers or nominate directors of Katanga Mining Limited;
 - 2. provide instructions or direction to any legal or financial advisors of Katanga Mining Limited, including its external auditor;
 - 3. have signing authority for Katanga Mining Limited, other than the authority to sign such invoices as may be required as part of his role as the Director of Operations;
 - 4. participate in any decisions relating to the compensation of management of Katanga Mining Limited;
 - 5. participate in any decisions of management or the board of directors of Katanga Mining Limited in relation to: (i) financial reporting; (ii) compliance with any obligations that may be applicable to Katanga Mining Limited under Ontario securities law; and (iii) preparation of any disclosure, filing or other

document(s) required to be submitted or filed by Katanga Mining Limited under Ontario securities law except as required by law or in respect of any disclosure describing Blizzard personally or describing his relationship to Katanga Mining Limited;

6. play any role (other than as an investor) in the raising of financing by, or the solicitation of investments in Katanga Mining Limited; and
 7. participate in any meeting of the board of Katanga Mining Limited or any committee of the board, unless specifically invited to attend by the independent directors;
- (iii) pay an administrative penalty in the amount of \$400,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act; and
- (iv) pay costs in the amount of \$50,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to section 127.1 of the Act.
- (i) Lubbe shall:
- (i) be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 4 years commencing on the date of the Order, pursuant to paragraph 8 of subsection 127(1) of the Act;
 - (ii) pay an administrative penalty in the amount of \$550,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to paragraph 9 of subsection 127(1) of the

Act, which amount be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act; and

(iii) pay costs in the amount of \$50,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to section 127.1 of the Act.

(j) Colwill shall:

(i) be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 2 years commencing on the date of the Order, pursuant to paragraph 8 of subsection 127(1) of the Act;

(ii) pay an administrative penalty in the amount of \$350,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act; and

(iii) pay costs in the amount of \$50,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to section 127.1 of the Act.

143. The prohibition against Gallagher set out in subparagraph 142(f)(i) has been increased from 4 years to 6 years to reflect Gallagher's role as a member of the Audit Committee and his conduct contrary to the principles of NI 52-110 during the Material Time.

144. The Respondents consent to a regulatory order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in subparagraphs 142(d)(i), (e)(i), (f)(i), (g)(i), (h)(ii), (i)(i) and (j)(i). These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

145. The Respondents acknowledge that this Settlement Agreement and the Order may form the basis for orders of parallel effect in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions allow orders made in this matter to take effect in those other jurisdictions

automatically, without further notice to the Respondents. The Respondents should contact the securities regulator of any other jurisdiction in which the Respondents intend to engage in any securities- or derivatives-related activities, prior to undertaking such activities.

PART VIII - FURTHER PROCEEDINGS

146. If the Commission approves this Settlement Agreement, Staff will not commence or continue any proceeding against the Respondents under Ontario securities law in relation to the facts set out in Part III or Part IV of this Settlement Agreement, unless one or more of the Respondents fails to comply with any term in this Settlement Agreement, in which case Staff may bring proceedings under Ontario securities law against that or those Respondents that may be based on, among other things, the facts set out in Part III and/or Part IV of this Settlement Agreement as well as the breach of the Settlement Agreement.

147. The Respondents acknowledge that, if the Commission approves this Settlement Agreement and any of the Respondents fails to comply with any term in it, Staff or the Commission, as the case may be, is entitled to bring any proceedings necessary to enforce compliance with the terms of the Settlement Agreement.

148. The Respondents waive any defences to a proceeding referenced in paragraph 146 or 147 that are based on the limitation period in the Act, provided that no such proceeding shall be commenced later than six years from the date of the occurrence of the last failure to comply with this Settlement Agreement.

PART IX - PROCEDURE FOR APPROVAL OF SETTLEMENT

149. The parties will seek approval of this Settlement Agreement at the Settlement Hearing before the Commission, which shall be held on a date determined by the Secretary to the Commission in accordance with this Settlement Agreement and the Commission's *Rules of Procedure* (2017), 40 OSCB 8988.

150. The Respondents may have counsel attend the Settlement Hearing on their behalf.

151. The parties confirm that this Settlement Agreement sets forth all of the agreed facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

152. If the Commission approves this Settlement Agreement:

- (a) the Respondents irrevocably waive all rights to a full hearing, judicial review or appeal of this matter under the Act; and
- (b) the parties will not make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.

153. Whether or not the Commission approves this Settlement Agreement, the Respondents will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other remedies or challenges that may be available.

PART X - DISCLOSURE OF SETTLEMENT AGREEMENT

154. If the Commission does not make the Order:

- (a) this Settlement Agreement and all discussions and negotiations between Staff and the Respondents before the Settlement Hearing will be without prejudice to Staff and the Respondents; and
- (b) Staff and the Respondents will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations in respect of the Proceeding. Any such proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

155. The parties will keep the terms of this Settlement Agreement confidential until the Settlement Hearing, unless they agree in writing not to do so or unless otherwise required by law.

PART XI - EXECUTION OF SETTLEMENT AGREEMENT

156. This Settlement Agreement may be signed in one or more counterparts which together constitute a binding agreement.

157. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

DATED at Toronto, Ontario this 14th day of December, 2018.

“Irene Arnold”

Witness: Irene Arnold

“Aristotelis Mistakidis”

ARISTOTELIS MISTAKIDIS

“Amith Singh”

Witness: Amith Singh

“Tim Henderson”

TIM HENDERSON

“Andrew Tucker”

Witness: Andrew Tucker

“Liam Gallagher”

LIAM GALLAGHER

“Felide Condon”

Witness: Felide Condon

“Jeffrey Best”

JEFFREY BEST

“John M. Picone”

Witness: John M. Picone

“Johnny Blizzard”

JOHNNY BLIZZARD

“Viviana Alarcon”

Witness: Viviana Alarcon

“Jacques Lubbe”

JACQUES LUBBE

“N.J. Colwill”

Witness: N.J. Colwill

“Matthew Colwill”

MATTHEW COLWILL

KATANGA MINING LIMITED

By: “Hugh Stoyell”
Name: Hugh Stoyell
Title: Chairman of the Board of Directors

DATED at Toronto, Ontario, this 14th day of December, 2018.

ONTARIO SECURITIES COMMISSION

By: “Jeff Kehoe”
Name: Jeff Kehoe
Title: Director, Enforcement Branch

SCHEDULE "A"



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**

[INSERT COMMISSIONERS OF THE PANEL]

[MONTH]____, [YEAR]

**ORDER
Sections 127 and 127.1 of the
Securities Act, RSO 1990, c S.5**

WHEREAS on [date], the Ontario Securities Commission (the "**Commission**") held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario to consider the Request made jointly by Katanga Mining Limited ("**Katanga**"), Aristotelis Mistakidis ("**Mistakidis**"), Tim Henderson ("**Henderson**"), Liam Gallagher ("**Gallagher**"), Jeffrey Best ("**Best**"), Johnny Blizzard ("**Blizzard**"), Jacques Lubbe ("**Lubbe**") and Matthew Colwill ("**Colwill**") (collectively, the "**Respondents**") and Staff of the Commission ("**Staff**") for approval of a settlement agreement dated [date] (the "**Settlement Agreement**").

ON READING the Statement of Allegations dated [MONTH, DATE, YEAR] and the Settlement Agreement and on hearing the submissions of representatives of each of the parties, and on considering Katanga's agreement to make a voluntary payment of \$28,500,000 to the Commission to be designated for allocation or use by the Commission in accordance with paragraph 3.4(2)(b)(i) or (ii) of the Act,

IT IS ORDERED THAT:

1. the Settlement Agreement is approved;

2. the voluntary payment of \$28,500,000 by Katanga is designated for allocation or use by the Commission in accordance with paragraph 3.4(2)(b)(i) or (ii) of the Act;
3. Katanga shall:
 - (a) submit to a review of its practices and procedures pursuant to paragraph 127(1)4 of the Act by an independent consultant agreed to by Staff and Katanga and paid for by Katanga, as set out in Schedule “A” to this Order, and if necessary, Katanga or Staff, as the case may be, may file a motion requesting the further direction of the Commission, as contemplated in paragraphs B(iv) and C(i) of Schedule “A” to this Order; and
 - (b) pay costs in the amount of \$1,500,000 by wire transfer to the Commission, pursuant to section 127.1 of the Act.
4. Mistakidis shall:
 - (a) be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 4 years commencing on the date of the Order, pursuant to paragraph 8 of subsection 127(1) of the Act;
 - (b) pay an administrative penalty in the amount of \$2,450,000 by wire transfer to the Commission within 30 days of the Commission’s approval of the Settlement Agreement, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act; and
 - (c) pay costs in the amount of \$50,000 by wire transfer to the Commission within 30 days of the Commission’s approval of the Settlement Agreement, pursuant to section 127.1 of the Act.
5. Henderson shall:

- (a) be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 3 years commencing on the date of the Order, pursuant to paragraph 8 of subsection 127(1) of the Act;
- (b) pay an administrative penalty in the amount of \$450,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act; and
- (c) pay costs in the amount of \$50,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to section 127.1 of the Act.

6. Gallagher shall:

- (a) be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 6 years commencing on the date of the Order, pursuant to paragraph 8 of subsection 127(1) of the Act;
- (b) pay an administrative penalty in the amount of \$950,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act; and
- (c) pay costs in the amount of \$50,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to section 127.1 of the Act.

7. Best shall:

- (a) be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 4 years commencing on the date of the Order, pursuant to paragraph 8 of subsection 127(1) of the Act;

- (b) pay an administrative penalty in the amount of \$750,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act; and
- (c) pay costs in the amount of \$50,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to section 127.1 of the Act.

8. Blizzard shall:

- (a) resign any position that he holds as a director or officer of a reporting issuer, pursuant to paragraph 7 of subsection 127(1) of the Act, with the exception that Blizzard may hold the position of the CEO of Katanga Mining Limited for a transition period of 30 days from the date of the Order, provided that he has no role in approving or certifying Katanga Mining Limited's 2018 annual financial statements or Management's Discussion & Analysis, after which period Blizzard shall immediately resign as the CEO of Katanga Mining Limited;
- (b) be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 2 years commencing on the date of the Order, pursuant to paragraph 8 of subsection 127(1) of the Act, with the exception that Blizzard may:
 - (i) hold the position of the CEO of Katanga Mining Limited for a period of 30 days from the date of the Order as set out above in subparagraph 8(a); and
 - (ii) hold the position of Director of Operations with Katanga Mining Limited for a period of 90 days from the date of his resignation as the CEO of Katanga Mining Limited, provided that Blizzard shall not, directly or indirectly:
 - A. appoint officers or nominate directors of Katanga Mining Limited;

- B. provide instructions or direction to any legal or financial advisors of Katanga Mining Limited, including its external auditor;
 - C. have signing authority for Katanga Mining Limited, other than the authority to sign such invoices as may be required as part of his role as the Director of Operations;
 - D. participate in any decisions relating to the compensation of management of Katanga Mining Limited;
 - E. participate in any decisions of management or the board of directors of Katanga Mining Limited in relation to: (i) financial reporting; (ii) compliance with any obligations that may be applicable to Katanga Mining Limited under Ontario securities law; and (iii) preparation of any disclosure, filing or other document(s) required to be submitted or filed by Katanga Mining Limited under Ontario securities law except as required by law or in respect of any disclosure describing Blizzard personally or describing his relationship to Katanga Mining Limited;
 - F. play any role (other than as an investor) in the raising of financing by, or the solicitation of investments in Katanga Mining Limited; and
 - G. participate in any meeting of the board of Katanga Mining Limited or any committee of the board, unless specifically invited to attend by the independent directors;
- (c) pay an administrative penalty in the amount of \$400,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount

be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act; and

- (d) pay costs in the amount of \$50,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to section 127.1 of the Act.

9. Lubbe shall:

- (a) be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 4 years commencing on the date of the Order, pursuant to paragraph 8 of subsection 127(1) of the Act;
- (b) pay an administrative penalty in the amount of \$550,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act; and
- (c) pay costs in the amount of \$50,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to section 127.1 of the Act.

10. Colwill shall:

- (a) be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 2 years commencing on the date of the Order, pursuant to paragraph 8 of subsection 127(1) of the Act;
- (b) pay an administrative penalty in the amount of \$350,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act; and

- (c) pay costs in the amount of \$50,000 by wire transfer to the Commission within 30 days of the Commission's approval of the Settlement Agreement, pursuant to section 127.1 of the Act.

[Name of Chair of Panel]

[Name of Commissioner]

[Name of Commissioner]

SCHEDULE "A"



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**

TERMS OF REFERENCE FOR THE CONSULTANT

In connection with Katanga's agreement to submit to a review of its practices and procedures pursuant to paragraph 127(1)4 of the Act by an independent consultant (the "**Consultant**"), the Consultant is required to conduct, in accordance with the following terms, a comprehensive examination and review of Katanga's metal accounting with respect to reporting of copper and cobalt metal production ("**Production**").

A. Scope of Review

The agreement with the Consultant shall provide that the Consultant examine at Katanga's expense:

- i. The policies, procedures and effectiveness of: (a) Katanga's metal accounting with respect to reporting of Production; and (b) Katanga's financial accounting with respect to the integration of production statistics, including the calculation of cost of sales and inventory values; and
- ii. In light of the findings with respect to A.i, whether any consequential changes directly related to such metal accounting or related financial accounting should be made in the policies and procedures followed by Katanga to prepare the disclosure documents filed by it to satisfy Ontario securities law requirements applicable to reporting issuers.

B. Consultant's Reporting Obligations

- i. The Consultant shall issue a report to Katanga's board of directors, its audit committee, and to Staff within three months of appointment, provided however, that the Consultant may seek to extend the period of review for one additional three-month term by requesting such an extension from Staff. After consultation with Katanga, Staff shall have discretion to grant such extension for the period requested if deemed reasonable and warranted.
- ii. The Consultant's report shall address the Consultant's review of the areas specified in paragraphs A.i and A.ii above and shall include a description of the review performed, the conclusions reached, and the Consultant's recommendations for any changes or improvements, having regard to Katanga's size, industry and shareholder structure, and to best practices. In addition, any recommendation for changes or improvements shall be accompanied by a recommended procedural change which shall take into account any relevant remediation proposals put forward by Katanga.
- iii. Katanga shall adopt all recommendations contained in the Consultant's report, provided, however, that within forty-five days of its receipt of the report, Katanga shall, in writing, advise the Consultant and Staff of any recommendation that it considers to be unnecessary, unworkable or otherwise inappropriate. With respect to any recommendation that Katanga considers unnecessary, unworkable or otherwise inappropriate, Katanga need not adopt that recommendation at that time but shall explain in writing why the recommendation is unnecessary or propose in writing to the Consultant an alternative policy, procedure, or system designed to achieve the same objective or purpose on a basis that is workable and appropriate, for consideration by the Consultant.
- iv. As to any recommendations of the Consultant with respect to which Katanga and the Consultant do not agree, including any recommendations that Katanga considers

unnecessary, unworkable or otherwise inappropriate, such parties shall attempt in good faith to reach an agreement within ninety days of the receipt of the Consultant's report. In the event Katanga and the Consultant are unable to agree on an alternative proposal, Katanga shall file a motion, on notice to Staff, asking the Commission to resolve the disagreement.

- v. Katanga shall retain the Consultant for a period of twelve months from the date of appointment in accordance with paragraph C below. After the Consultant's recommendations become final pursuant to this paragraph B, the Consultant shall provide a report to Katanga's board of directors, its audit committee, and to Staff twelve months after appointment concerning the progress of the implementation. If, at the conclusion of this twelve-month period, there remain any recommendations deemed significant by Staff that have not been substantially implemented for at least two successive fiscal quarters, Staff may, in its discretion, direct Katanga to extend the Consultant's term of appointment until such time as all recommendations (to the extent deemed significant by Staff) have been substantially implemented for at least two successive fiscal quarters.
- vi. In addition to the reports identified above, the Consultant shall provide Katanga's board of directors, its audit committee, and Staff with such documents or other information concerning the areas specified in paragraph A.i and A.ii above as any of them may request during the pendency or at the conclusion of the review.

C. Terms of Consultant's Retention

- i. Within forty-five days after the date of the Order, Katanga will submit to Staff a proposal setting forth the identity, qualifications, and proposed terms of retention of the Consultant. Staff, within thirty days of such notice, will either: (a) deem Katanga's choice of Consultant and proposed terms of retention not unacceptable; or (b) require Katanga to propose an alternative Consultant and/or revised proposed terms of retention within fifteen days. If the alternative Consultant and/or revised proposed terms of retention is unacceptable to Staff, Staff may (a) grant Katanga an extension of time to propose a further alternative Consultant and/or revised proposed terms of retention or, if no such extension is granted, (b) file a motion with the Commission on notice to Katanga for an order directing Katanga to appoint a Consultant nominated by Staff, on terms of retention that are proposed by Katanga and are not unacceptable to Staff.

- ii. The Consultant shall have reasonable access to all of Katanga's books and records including those of KCC and the ability to meet privately with Katanga's personnel and auditors pertaining to policies, procedures and accounting related to its metal accounting. Katanga shall instruct and otherwise encourage its officers, directors, and employees to cooperate fully with the review conducted by the Consultant, and inform its officers, directors, and employees that failure to cooperate with the review may be grounds for dismissal, other disciplinary actions, or other appropriate actions.
- iii. The Consultant shall have the right, as reasonable and necessary in his or her judgment but only after consultation with Katanga, to retain, at Katanga's expense, legal counsel, accountants, and other persons or firms, other than officers, directors, or employees of Katanga, where necessary for the discharge of the Consultant's obligations. Katanga shall pay all reasonable fees and expenses (as reasonably documented) of any persons or firms retained by the Consultant.
- iv. The Consultant shall make and keep notes of interviews conducted, and keep a copy of documents gathered, in connection with the performance of his or her responsibilities, and require all persons and firms retained to assist the Consultant to do so as well.
- v. If the Consultant determines that he or she has a conflict with respect to one or more of the areas described in paragraph A.i or A.ii above, he or she shall delegate his or her responsibilities with respect to that subject to a person who is chosen by the Consultant and who is not unacceptable to Staff.

SCHEDULE "B"



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,
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A. Scope of Review

The agreement with the Consultant shall provide that the Consultant examine at Katanga's expense:

- i. The policies, procedures and effectiveness of: (a) Katanga's metal accounting with respect to reporting of Production; and (b) Katanga's financial accounting with respect to the integration of production statistics, including the calculation of cost of sales and inventory values; and
- ii. In light of the findings with respect to A.i, whether any consequential changes directly related to such metal accounting or related financial accounting should be made in the policies and procedures followed by Katanga to prepare the disclosure documents filed by it to satisfy Ontario securities law requirements applicable to reporting issuers.

B. Consultant's Reporting Obligations

- i. The Consultant shall issue a report to Katanga's board of directors, its audit committee, and to Staff within three months of appointment, provided however, that the Consultant may seek to extend the period of review for one additional three-month term by requesting

such an extension from Staff. After consultation with Katanga, Staff shall have discretion to grant such extension for the period requested if deemed reasonable and warranted.

- ii. The Consultant's report shall address the Consultant's review of the areas specified in paragraphs A.i and A.ii above and shall include a description of the review performed, the conclusions reached, and the Consultant's recommendations for any changes or improvements, having regard to Katanga's size, industry and shareholder structure, and to best practices. In addition, any recommendation for changes or improvements shall be accompanied by a recommended procedural change which shall take into account any relevant remediation proposals put forward by Katanga.
- iii. Katanga shall adopt all recommendations contained in the Consultant's report, provided, however, that within forty-five days of its receipt of the report, Katanga shall, in writing, advise the Consultant and Staff of any recommendation that it considers to be unnecessary, unworkable or otherwise inappropriate. With respect to any recommendation that Katanga considers unnecessary, unworkable or otherwise inappropriate, Katanga need not adopt that recommendation at that time but shall explain in writing why the recommendation is unnecessary or propose in writing to the Consultant an alternative policy, procedure, or system designed to achieve the same objective or purpose on a basis that is workable and appropriate, for consideration by the Consultant.
- iv. As to any recommendations of the Consultant with respect to which Katanga and the Consultant do not agree, including any recommendations that Katanga considers unnecessary, unworkable or otherwise inappropriate, such parties shall attempt in good faith to reach an agreement within ninety days of the receipt of the Consultant's report. In the event Katanga and the Consultant are unable to agree on an alternative proposal, Katanga shall file a motion, on notice to Staff, asking the Commission to resolve the disagreement.
- v. Katanga shall retain the Consultant for a period of twelve months from the date of appointment in accordance with paragraph C below. After the Consultant's recommendations become final pursuant to this paragraph B, the Consultant shall provide a report to Katanga's board of directors, its audit committee, and to Staff twelve months after appointment concerning the progress of the implementation. If, at the conclusion of this twelve-month period, there remain any recommendations deemed significant by Staff that have not been substantially implemented for at least two successive fiscal quarters,

Staff may, in its discretion, direct Katanga to extend the Consultant's term of appointment until such time as all recommendations (to the extent deemed significant by Staff) have been substantially implemented for at least two successive fiscal quarters.

- vi. In addition to the reports identified above, the Consultant shall provide Katanga's board of directors, its audit committee, and Staff with such documents or other information concerning the areas specified in paragraph A.i and A.ii above as any of them may request during the pendency or at the conclusion of the review.

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- i. Within forty-five days after the date of the Order, Katanga will submit to Staff a proposal setting forth the identity, qualifications, and proposed terms of retention of the Consultant. Staff, within thirty days of such notice, will either: (a) deem Katanga's choice of Consultant and proposed terms of retention not unacceptable; or (b) require Katanga to propose an alternative Consultant and/or revised proposed terms of retention within fifteen days. If the alternative Consultant and/or revised proposed terms of retention is unacceptable to Staff, Staff may (a) grant Katanga an extension of time to propose a further alternative Consultant and/or revised proposed terms of retention or, if no such extension is granted, (b) file a motion with the Commission on notice to Katanga for an order directing Katanga to appoint a Consultant nominated by Staff, on terms of retention that are proposed by Katanga and are not unacceptable to Staff.
- ii. The Consultant shall have reasonable access to all of Katanga's books and records including those of KCC and the ability to meet privately with Katanga's personnel and auditors pertaining to policies, procedures and accounting related to its metal accounting. Katanga shall instruct and otherwise encourage its officers, directors, and employees to cooperate fully with the review conducted by the Consultant, and inform its officers, directors, and employees that failure to cooperate with the review may be grounds for dismissal, other disciplinary actions, or other appropriate actions.
- iii. The Consultant shall have the right, as reasonable and necessary in his or her judgment but only after consultation with Katanga, to retain, at Katanga's expense, legal counsel, accountants, and other persons or firms, other than officers, directors, or employees of Katanga, where necessary for the discharge of the Consultant's obligations. Katanga shall

pay all reasonable fees and expenses (as reasonably documented) of any persons or firms retained by the Consultant.

- iv. The Consultant shall make and keep notes of interviews conducted, and keep a copy of documents gathered, in connection with the performance of his or her responsibilities, and require all persons and firms retained to assist the Consultant to do so as well.
- v. If the Consultant determines that he or she has a conflict with respect to one or more of the areas described in paragraph A.i or A.ii above, he or she shall delegate his or her responsibilities with respect to that subject to a person who is chosen by the Consultant and who is not unacceptable to Staff.