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FARRIS

File No: 45941-0001-0000

April 12, 2021

BY EMAIL

British Columbia Securities Commission
701 Georgia St W
PO Box 10142 Pacific Centre
Vancouver, BC V7Y 1L2

Attention: Secretary to the Commission

Dear Commission Secretary:

Re: Fancamp Exploration Ltd. (the "Company" or "Fancamp")

Request for a Hearing and Review of the TSX Venture Exchange (the "TSXV" or the "Exchange") Decision and

A Hearing Under Section 161 of the Securities Act , R.S.B.C. 1996, c. 418 (the "Act")

We are counsel to Dr. Peter H. Smith.

Under section 27 and 28 of the Act and BC Policy 15-601 - *Hearings,* Dr. Smith applies for a review of the decision (the "**Decision**") of the Exchange to not require shareholder approval of the securities to be issued by Fancamp in connection with a proposed plan of arrangement between Fancamp and ScoZinc Mining Ltd. ("**ScoZinc**") which contemplates the issuance of approximately 84,508,764 shares of Fancamp at a 6:1 ratio (the "**Arrangement**").

Dr. Smith also seeks a hearing under sections 114 and 161 of the Act restraining the issuance of any shares under the Arrangement.

The Arrangement is expected to close on April 20, 2021. Dr. Smith requests that the hearing proceed on an expedited basis. Dr. Smith asks that the hearing occur either prior to April 20, 2021 or that there be a stay or temporary order delaying the Arrangement from closing such that the hearing can occur and the issues be determined prior to closing. Dr. Smith requests a hearing management meeting as soon as possible to address scheduling issues.

PART 1 - ORDERS SOUGHT

Dr. Smith seeks the following relief:

1. Pursuant to sections 27 and 28 of the Act, an order overturning the Decision and directing that Fancamp shareholder approval is required for the issuance of any shares or other securities by Fancamp pursuant to the Arrangement;

2. A stay of the Decision pursuant to sections 28(1) and 165(5) of the Act or, in the alternative, a temporary order pursuant to sections 161(2) and (3) of the Act, effective immediately, such that the Company refrain from acts in furtherance of a trade by issuing the securities to be issued by Fancamp in connection with the Arrangement until such time as the British Columbia Securities Commission (the "**Commission**") determines the issues herein;

3. An order under sections 161(1)(b) and 114(1)(l) of the Act that the Company refrain from acts in furtherance of a trade by including issuing the securities to be issued by Fancamp in connection with the Arrangement, until such time as shareholder approval is obtained by the Fancamp shareholders;

4. An order under sections 114(1)(c) requiring that the Company issue a management information circular in connection with a meeting to be held to obtain shareholder approval for the issuance of securities in connection with the Arrangement and in connection with its annual general meeting, including with respect to the election of directors;

5. An order under sections 161(c) and 114(1)(m) that any of the exemptions set out under the Act, do not apply to Fancamp in connection with any shares to be issued pursuant to the Arrangement until such time as Fancamp shareholder approval is obtained; and

6. If the Arrangement has been effected, an order under section 114(1)(h), rescinding the Arrangement.

PART 2 - OVERVIEW

Dr. Smith is a founder, director and significant shareholder of Fancamp. Dr. Smith holds 4,511,097 Fancamp shares and has options to acquire a further 2,400,000 shares. There are approximately 166,043,296 shares in Fancamp issued and outstanding. Dr. Smith indicated his intention to replace the board of the directors of Fancamp (the "**Board**") in October, 2020 and has been seeking to have the Company call its annual general meeting (the "**AGM**") since that time. The Company's last AGM was in October, 2019. Without Board approval, the Company obtained an extension to have its AGM held prior to June 31, 2021, relying on COVID-19 related relief. In announcing the extension, the Company indicated the AGM would be held in the first quarter of 2021. The Board was deadlocked on certain matters until the appointment of an additional fifth director in the fall of 2020 whose appointment was achieved by utilizing an outdated, never previously utilized casting vote of the chair contained in the Company's articles of incorporation.

On November 9, 2020, the Company received an offer from ScoZinc leading to the Arrangement. The offer was not disclosed to the Board until approximately one month after it was received. This being after negotiations on the terms including the negotiation of the exchange ratio from 10:1 to 6:1, after engagement of a financial advisor and only one day prior to the first vote on the Arrangement. Two days prior to the first vote on the Arrangement, one of Fancamp's five directors resigned from the ScoZinc

board and took the position he was accordingly entitled to vote on the Arrangement. A second of Fancamp's directors remained on both boards and he held greater than 10% of the shares in ScoZinc, a fact not disclosed in any of Fancamp's news releases relating to the Arrangement (only his dual directorship was disclosed).

Following completion of the Arrangement, current Fancamp shareholders would hold 66.3% (55.7% fully diluted) of Fancamp and former ScoZinc shareholders would hold 33.7% (or 44.3% fully diluted).

Fancamp has repeatedly stated in news releases that it has followed a transparent, credible and thorough process relating to the Arrangement with input from independent legal and financial advisors. The Company has repeatedly relied on a fairness opinion without disclosing it or any methodology relating to it (and Dr. Smith has obtained his own expert report expressing concerns relating to it). The "independent" financial advisor was engaged by management prior to disclosure to the Board and never attended any Board meetings or made any independent report to Fancamp's Board. Dr. Smith has also repeatedly expressed concerns that Fancamp's corporate counsel is acting in a conflict of interest.

Dr. Smith has repeatedly requested from both the Company and the Exchange that Fancamp shareholders be permitted to vote on the Arrangement. The Arrangement involves two publicly traded companies and as such there would be significant difficulties in attempting to unwind the Arrangement after it has closed.

PART 3 – FACTS

The facts set out below are a summary of those set out in our letters to the Exchange dated November 11, 2020, December 29, 2020, February 26, 2021, March 16, 2021, March 26, 2021 and April 9, 2021, which constituted in total approximately 98 pages of submissions with approximately 116 supporting schedules.

a) Dr. Smith Ceases Being CEO & President and Indicates Intention to Replace the Board

On October 30, 2019, Fancamp held its last AGM. At that time Dr. Smith, Paul Ankcorn, Mark Billings and Ashwath Mehra were re-elected to the Board.

On August 11, 2020, the Board requested that Dr. Smith resign as President and Chief Executive Officer ("**CEO**"), positions he held for 35 years since the Company was founded. Dr. Smith agreed and it was further agreed that Dr. Smith would remain a director and that his consulting agreement would remain in force.

On October 2, 2020, at a Board meeting, a resolution failed to appoint Rajeesh Sharma to the Board with Dr. Smith and Mr. Ankcorn voting against and Mr. Mehra and Mr. Billings voting in favour. As a result, the resolution did not pass.

On October 13, 2020, Dr. Smith sent an email to each member of the Board attaching a draft requisition to remove Mr. Billings and Mr. Mehra as directors of Fancamp, and fill the vacancies created by the election of five nominee directors.

On October 14, 2020, at another Board meeting, a resolution was again put forward to have Mr. Sharma appointed to the Board. Mr. Billings and Mr. Mehra voted in favour and Mr. Ankcorn and Dr. Smith voted against. At this meeting, Mr. Billings relied upon a provision in Fancamp's articles, contrary to the standard form articles in British Columbia, for the chair to have a second vote, which Mr. Billings used, resulting in the appointment of Mr. Sharma to the Board. This provision in the articles had never previously been used.

b) Attempts to Call AGM, Receipt of Offer from ScoZinc Not Disclosed to the Board & First Letter to the Exchange

On November 2, 2020, Dr. Smith emailed Lavery De Billy, LLP ("**Lavery**"), counsel for Fancamp and the Board asking that the Company hold its AGM by December 31, 2020. On November 3, 2020, Mr. Billings responded "… the board as a whole will decide when to call an AGM, which as I indicated previously, will be soon enough."

On November 9, 2020 ScoZinc made an offer to the Company for a proposed business combination. The offer was not disclosed to the Board, nor has Dr. Smith ever seen the offer. As of that date, the ScoZinc board of directors and officers were as set out below along with their interests in ScoZinc. The ScoZinc AGM re-electing the entire board had been held on November 3, 2020. ScoZinc had 14,084,794 common shares outstanding:

- Mr. Mehra (Chairman of the board of ScoZinc who became a director on August 20, 2019): 1,538,334 common shares and 1,338,334 warrants and 40,000 options, which represented 18.86% of the total issued and outstanding shares on a partially diluted basis, according to Mr. Mehra's early warning report filed June 1, 2020;
- Mr. Billings (Director of ScoZinc since October 25, 2019): 17,000 common shares, 40,000 options and 17,000 warrants;
- Mark Haywood (President and CEO since August 20, 2019 and Director as of September 20, 2019): 507,452 common shares, 250,000 options, 123,456 restricted stock units and 494,952 warrants;
- Christopher Hopkins (Director since June 14, 2017): 83,333 common shares and 58,333 options;
- Robert Suttie (Chief Financial Officer "**CFO**" since September 30, 2013): 53,000 options;
- Simion Candrea (Vice President Investor Relations since October 7, 2019): 191,667 common shares, 125,000 options and 129,167 warrants.

On November 11, 2020, we wrote to Lavery requesting that Fancamp call its AGM and put Fancamp on notice that it should not enter into any transaction outside the normal course of business in the face of a proxy fight. The same day we wrote our first letter to the Exchange concerning this matter to ask it to closely scrutinize any potential transaction that it may be asked to approve, although Dr. Smith was not aware of any transactions at that time. We further asked that the Exchange require that the Company hold its AGM by December 31, 2020 in accordance the BC *Business Corporations Act* (the "**BCBCA**"), the Company's articles and Exchange polices.

On November 16, 2020, Fancamp, without disclosure to or authorization of the Board, retained Ernst & Young Global Limited ("**E&Y**") to advise Fancamp in response to the Arrangement, the services were to be provided in two phases, the first to provide high level pricing advice and the second to provide a fairness opinion should the Arrangement proceed.

On November 20, 2020, Fancamp issued a news release announcing that it had obtained an extension to hold its AGM until June 30, 2021 but stated that it expected to hold the AGM during the first quarter of 2021.

On December 1, 2020, we wrote to Lavery noting that Dr. Smith had not been advised of, nor authorized the request for an extension for holding the AGM. We further stated that counsel appeared to be acting in a conflict of interest as Dr. Smith, as a member of the Board, was not being advised of fundamental facts. We reiterated that Fancamp should not be undertaking any transaction outside the ordinary course of business.

c) Disclosure of Offer to the Board & First Board Meeting to Approve Arrangement & Discussions of a Potential Financing

On December 2, 2020, Mr. Billings resigned from the board of ScoZinc.

Late on December 3, 2020 Dr. Smith received a Board package for a meeting scheduled for the following day with respect to the Arrangement. The materials indicated that Fancamp had received an offer on November 9, 2020, had retained E&Y and had negotiated the exchange ratio from 10:1 to 6:1. None of this had previously been disclosed to the Board.

The term sheet (the "**Term Sheet**") stated that the parties would complete due diligence with a view toward entering into the definitive agreement and announcing the transaction on or about December 22, 2020. The Term Sheet stated that each party would bear its own costs and expenses in connection with the Arrangement. The Term Sheet also stated that one of ScoZinc's independent board members and ScoZinc's CEO shall be recommended for election by the Fancamp Board. With respect to management, the Term Sheet stated:

> On or about the Effective Date, Fancamp will invite certain members of ScoZinc's management team to be part of Fancamp's management team. For ScoZinc's management team joining Fancamp under substantially the same or better terms and conditions, ScoZinc shall utilize a best efforts approach to obtain, at no cost for ScoZinc nor Fancamp, the resignation or termination of ScoZinc's consulting contracts **which will include a waiver of change of control payments** due to the ScoZinc management team under their existing contracts with ScoZinc, the whole at no cost to ScoZinc or Fancamp. **The Parties intend that the new employment or consulting contracts will be negotiated in good faith and finalized between the ScoZinc management team and Fancamp before the Definitive Agreement is signed**.

The E&Y materials in setting out the background stated:

> ScoZinc owns a 100% interest in the Scotia Mine and Mill ("Scotia Mine"), a past producing zinc and lead mine near Halifax in Nova Scotia. ScoZinc has recently completed a pre-feasibility study on the Scotia Mine that confirmed it could achieve commercial production within the next 12 months with approximately C$30 million of capital investment given it has a permitted mill and other infrastructure that has been maintained through a high-level care and maintenance program. **Considering Fancamp's marketable securities, which could form a key component of the capital required for the Scotia Mine, ScoZinc has approached Fancamp to consider a combination of Fancamp and ScoZinc.**

We emailed Lavery upon receipt of the Board package from Dr. Smith on December 3, 2020, and requested that the proposed Board agenda item, which requested approval of the term sheet and the finalization of definitive agreements, be set aside from consideration at the meeting given the lack of notice. We again reminded Fancamp not to undertake any transaction outside the ordinary course.

On December 4, 2020, Fancamp held a Board meeting. Dr. Smith's understanding of what occurred at the meeting and the disclosure contained in the meeting minutes conflict (drafts of which were not produced to Dr. Smith until December 30). The minutes indicate that Mr. Mehra advised that he had a disclosable interest as he was a board member and investor in ScoZinc. Mr. Billings reported that he no longer had a disclosable interest in ScoZinc as he resigned from ScoZinc's board and sold his minimal investment in ScoZinc. The minutes reflect that the exchange ratio for the Arrangement went from 10:1 to 6:1 after negotiation by management prior to being presented to the Board. The minutes further state that under the terms of the transaction, ScoZinc's shareholders will hold between 37 to 43% of Fancamp's shares. ScoZinc will be entitled to submit 2 nominees as directors on the board of Fancamp. The minutes reflect that Dr. Smith raised concerns with the Arrangement including with respect to Mr. Billing's vote. **The minutes also reflect that both Dr. Smith and Mr. Ankcorn believed that shareholders should be able to vote on the Arrangement.**

Also discussed at the board meeting was a potential financing (the "**Financing**"). Dr. Smith disputed that there was approval to proceed with the Financing. The minutes state that a motion was put forth and approved a maximum of $1.5 million for flow through financing at a price to be determined after disclosure of the Arrangement. Dr. Smith has objected to the inclusion of this statement in the meeting minutes, and has refused to approve the minutes.

d) Dr. Smith Reasserts Conflict of Directors and Opposes Arrangement

On December 5, 2020 Dr. Smith wrote to the Board setting out the problems that he perceived with the Arrangement.

On December 9, 2020 we wrote to counsel for Fancamp with respect to the Arrangement and took the position that both Mr. Mehra and Mr. Billings should recuse themselves from the vote on the Arrangement. We noted that both Mr. Mehra and Mr. Billings had been on both boards during the principal negotiations of the proposed deal terms (including the change in the exchange ratio from 10:1 to 6:1) and Mr. Billings had maintained a close relationship with ScoZinc and Mr. Mehra, thus disentitling Mr. Billings from voting. We noted that Mr. Billings had been re-elected to the ScoZinc board on November 6, 2020 and resigned on December 2, 2020 only two days prior to the scheduled vote by

Fancamp's Board on the Arrangement and that he remained conflicted such that he should not vote on the Arrangement. We reiterated our objection to any type of transaction outside the normal course of business.

On December 13, 2020 a draft fairness opinion (the "**E&Y Fairness Opinion**") and draft board presentation from E&Y were provided to the Fancamp Board.

On December 18, 2020, there was a Board meeting. Dr. Smith repeated that Mr. Billings and Mr. Mehra should recuse themselves and Fancamp confirmed that Mr. Mehra recused himself but Mr. Billings had received legal advice that he was not required to recuse himself and he would not do so. Dr. Smith requested a shareholder meeting to allow shareholders to vote on the Arrangement but the Company said that no shareholder vote was required. No vote occurred with respect to the Arrangement at the meeting.

The draft minutes also state that:

> Using the EY fairness opinion as a basis, Mark Billings, Ashwath Mehra and Debra Chapman think the Proposed Transaction is fair and is a great opportunity for the Shareholders. **Peter A. Smith [sic] and Paul Ankcorn believed that the deal was not fair and that Corporation should focus instead on exploration.** The interim CEO pointed out that EY is a renowned firm and that it concluded, after a complete financial review, that the Proposed Transaction is fair. Champion Iron Mines Ltd. was also consulted and is in favour of the Proposed Transaction. The interim CEO added that the exploration site will continue to be part of the portfolio of the Corporation even after completion of the Proposed Transaction.

When Dr. Smith received draft minutes from the December 18, 2020 Board meeting on December 28, 2020, he responded later that day raising various issues with the minutes and reasserted that both Mr. Billings and Mr. Mehra are in conflict. Dr. Smith also noted that the draft minutes indicated that Champion Iron Limited ("**CIA**") had been consulted and had indicated their support for the proposed transaction. Dr. Smith asked for details about who consulted with CIA, who is Fancamp's largest shareholder holding 22,000,000 common shares, although no response was provided. Mr. Sharma also responded later that day with his own comments including that the reference to CIA being informed about the ScoZinc Transaction was not correct.

On December 22, 2020, Lavery, on behalf of Fancamp responded to our previous letters and advised that Fancamp had no intention to follow Dr. Smith's demands of not engaging in any transaction outside the ordinary course of business.

On December 22, 2020, Dr. Smith issued a news release with respect to his concerns with the management of Fancamp and the failure to call an AGM.

On December 23, 2020 ScoZinc issued a news release in which it stated "[t]he Company advises that it is in advanced discussions with a third party regarding a potential significant equity infusion with a view of securing a large portion of the Scotia Mine financing."

e) Dr. Smith Opposes the Financing & Financing Closes

On December 29, 2020, Dr. Smith received draft financial statements with a subsequent event note that stated "On December 30, 2020, the Company closed a private placement of 6,666,667 flow-through common shares, at a price of $0.15 per flow-through common share. A 4.5% cash commission was paid in relation to this placement." This was the first information Dr. Smith received about the Financing following the December 4, 2020 Board meeting.

The same day, we wrote to the Exchange setting out our concerns with respect to the proposed Financing. We noted that there was no need for the Financing as Fancamp held significant shares of CIA which it routinely sold to meet its needs. We also raised numerous other issues with respect to the Financing including that the Financing was a defensive tactic in the face of a proxy fight.

On December 30, 2020, Dr. Smith received the December 4, 2020 draft Board meeting minutes; Dr. Smith voted against the resolution to approve those minutes at a December 30, 2020 Board meeting.

At the December 30, 2020 Board meeting, a majority of the Board voted to approve the Financing on the terms set out in the draft financial statements, with Dr. Smith voting against. The December 30, 2020 Board minutes were similarly misleading as Dr. Smith was never provided with specific details or complete resolutions purported to be disclosed in the December 30, 2020 minutes, in particular, the identity of the proposed subscribers to the Financing was never disclosed to the Board. Dr. Smith also voted against approval of the December 30 Board minutes. There was also discussion regarding the Arrangement at the December 30, 2020 Board meeting and Dr. Smith again raised concerns regarding a conflict of interest with respect to the Arrangement.

During the Board meeting on December 30, 2020 various threats and allegations were made against Dr. Smith. At the conclusion of the Board meeting, the balance of the Board and management (other than Dr. Smith) asked to speak privately with Mr. Ankcorn. Although Mr. Ankcorn has originally agreed to stand for election as part of a dissident slate of directors proposed to be nominated by Dr. Smith once the AGM was called, following that time, Mr. Ankcorn advised he no longer supports the dissident slate. However, despite this position, during a call with Mr. Sharma, Mr. Ankcorn and Dr. Smith on January 28, 2021, Mr. Ankcorn confirmed that it remained his position that that Fancamp shareholders should be permitted to vote on the Arrangement.

On December 31, 2020, Fancamp issued a news release announcing it had closed the Financing.

f) The Final Board Meeting to Approve the Arrangement and Arrangement Agreement & Submissions to the Exchange Requesting Shareholder Approval

During an Investor Call on January 19, 2021 the Company stated it would call an AGM in the coming weeks.

On January 22, 2021, Fancamp's counsel wrote to us regarding Fancamp's governance and made various allegations against Dr. Smith.

On January 25, 2021, we responded to Fancamp's counsel's letter reiterating our position with respect Fancamp's corporate governance and denying the allegations made against Dr. Smith.

On January 31, 2021, Dr. Smith and concerned shareholder Mr. James Hunter engaged Gryphon Advisors Inc. to act as strategic shareholder services advisor.

On February 2, 2021, an early warning report was filed with respect to Dr. Smith, Mr. Hunter and Mark Fekete who held, in aggregate, 8.94% of the Company's outstanding shares and if Dr. Smith's options are exercised would own, in the aggregate, 10.28% disclosing that they were acting jointly and in concert with respect to their efforts to have Fancamp call an AGM and with respect to voting of the shares held by them at the AGM once called. Mr. Hunter also issued a news release that day demanding that Fancamp hold its AGM by March 31, 2021. The news release referred to the fact that Fancamp stated that it expected to call its AGM in the first quarter of 2021 in its November 20, 2020 news release and during the Investor Call on January 19, 2021 it stated that it would call an AGM in the coming weeks.

On February 4, 2021, Dr. Smith received several documents to be discussed at a Board meeting to be held on February 5, 2021. One of the documents included a listing of the sale of CIA shares (with prices ranging from $4.85 to $5.72 per share) in January 2021 which showed a closing balance of 3,400,000 CIA shares. Dr. Smith also received a draft of the Arrangement Agreement. The following clauses are noteworthy:

1. Fancamp Senior Management is defined as Mr. Sharma and Debra Chapman, CFO.

2. The Arrangement contemplates approval of the shareholders of ScoZinc only.

3. The outside date is June 30, 2021 or such later dates as agreed to between the parties.

4. There will be a vote of the ScoZinc shareholders under Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**") excluding related parties and interested parties (s. 2.4(e)).

5. Article 2.5(c) provides that if requested by Fancamp, ScoZinc will allow Fancamp's legal counsel to prepare a first draft of the ScoZInc circular. The Term Sheet required that each party bear their own expenses.

6. Under Article 4 - Covenants, section 4.7 addresses employment and other agreements and provides that the agreements with Mr. Haywood and Mr. Candrea are both to be assumed by Fancamp. The agreement then states that "After Fancamp's upcoming AGM, Fancamp shall negotiate a new executive engagement agreement on the same or better terms with Mr. Haywood." The agreement further provides that if a new agreement is not concluded within 6 months, Fancamp is required to pay the change of control payment (despite it having been a condition of the Term Sheet that waivers would be obtained as set out in the due diligence report above). No explanation was given for the change in

timing of the execution of the employment agreements from the Term Sheet or why the waivers were not provided.

7. Section 5.4 provides that in consideration for entering into the Arrangement Agreement, Fancamp shall make a loan of $150,000 at 5% annual interest rate until repaid, upon terms mutually acceptable to the parties. If needed an additional $100,000 on the same conditions may be available to ScoZinc. This is despite the Term Sheet stating that each party will bear its own expenses.

8. Article 7 - Conditions Precedent, section 7.2 contains additional conditions precedent to the obligations of ScoZinc and s. 7.2(g) provides that Mr. Hopkins and Mr. Haywood shall be duly recommended for election by the Fancamp Board at Fancamp's next AGM. As noted above, the current board of ScoZinc is Mr. Mehra, Mr. Haywood and Mr. Hopkins (after Mr. Billings resignation on December 2) and as such, the entire ScoZinc board will be on the Fancamp Board.

9. Section 3.1(e) of the Disclosure Letter forming part of the Arrangement Agreement lists the capitalization which shows

    a. Options - Mehra - 40,000 options, Mr. Hopkins – 55,000, Haywood – 250,000, Candrea – 75,000 (replacement options will be issued under the Arrangement)

    b. Warrants – Mehra – 775,334, Haywood - 394,952, Candrea – 129,167 (replacement warrants to be issued under the Arrangement)

10. Section 3.2 which sets out the representations and warranties of Fancamp provides in (ii) that Fancamp is not in material breach or violation of or in default of any Fancamp Material Contract. Section 3.2(t) of the Disclosure Letter lists the contract with Dr. Smith as a material contract. At the time Fancamp was in default as it has ceased paying Dr. Smith.

On February 5, 2021 Dr. Smith raised a number of questions or concerns relating to the above provisions of the draft Arrangement agreement and also concerning the following:

1. No information was provided to Dr. Smith regarding whether any submissions had already been made to the Exchange with respect to the Arrangement, despite request.

2. Fancamp shareholders should be able to vote on the Arrangement. Fancamp previously represented that the AGM would be held in the first quarter of 2021 and the technical review report, which was given as a reason for the delay at the investor call in January, was final.

3. Mr. Billings is in a conflict and should not vote on the Arrangement.

The Board passed a resolution to approve the Arrangement. Mr. Billings and Mr. Sharma voted in favour. Mr. Ankcorn advised that given Mr. Billings had the casting vote under the Company's articles in any event, Mr. Ankcorn may as well vote in favour of the Arrangement. Dr. Smith voted against.

Fancamp and ScoZinc entered into a definitive Arrangement Agreement signed effective February 12, 2021 (the "**Arrangement Agreement**").

On February 18, 2021, Fancamp issued a news release announcing the Arrangement. Although at the Board meeting on February 5, 2021, Dr. Smith was advised that a draft of the news release would be circulated to the Board prior to dissemination, Dr. Smith did not receive a draft, nor a copy of the final executed Arrangement Agreement or any other materials following the February 5, 2021 Board meeting. The news release stated "The Combination will be a non-arm's length transaction pursuant to the policies of the TSX Venture Exchange. The Combination will be an arm's length transaction pursuant to the applicable securities laws."

On February 22, 2021, Dr. Smith issued a news release opposing the Arrangement and asking that Fancamp's shareholders be able to vote on the Arrangement and election of directors. Dr. Smith noted that Fancamp's February 18, 2021 news release did not disclose that he voted against the Arrangement, that Mr. Mehra and Mr. Billings were conflicted and that Mr. Sharma was appointed, not elected, to the Board by the two conflicted directors. Only two independent elected directors voted on the Arrangement and one (Dr. Smith) voted against (we note also that although Mr. Ankcorn voted in favour given Mr. Billings deciding vote, Mr. Ankcorn has expressed his views that shareholders should be able to vote on the Arrangement). Dr. Smith noted that the February 18, 2021 news release did not disclose that Mr. Merha is a significant shareholder at ScoZinc, in addition to being a director, and as a result stands to personally benefit from the proposed Arrangement. The Fancamp news release also did not disclose that Mr. Billings was a director of ScoZinc until December 2, 2020 less than a month after being re-elected (and as noted above this was only 2 days before the Fancamp Board was first asked to vote on the Arrangement).

On February 26, 2021, we provided a 55-page submission with approximately 66 schedules to the Exchange requesting that the Exchange require shareholder approval of the Fancamp shareholders in connection with the shares to be issued under the Arrangement. The legal basis for those submissions is discussed further below.

g) Further News Releases Identifying Deficiencies & Issuance of Options

On March 1, 2021, Dr. Smith filed a news release, which noted the numerous calls and emails received from shareholders expressing dissatisfaction with the Arrangement and reiterated a request for a shareholder meeting to allow shareholders to vote on the Arrangement and the election of directors. It noted the absence of several items in Fancamp's announcement of the Arrangement on February 18, 2021. This included the lack of valuation metrics to obtain the E&Y Fairness Opinion and requesting that it be posted on the System for Electronic Document Analysis and Retrieval ("**SEDAR**") to be independently assessed. It also stated that it appeared that Mr. Mehra will gain approximately $1.24 million from the Arrangement.

On March 4, 2021 in a joint Fancamp/ScoZinc investor presentation, Fancamp said that it followed a very robust process in terms of reviewing the Arrangement. It said that E&Y provided significant input in terms of benchmark references and evaluation of the pre-feasibility report of ScoZinc and they looked at several parameters and determined that the Arrangement is fair. In response to a question as to why no shareholder approval was required, Fancamp advised that it has "followed a high level of governance, taken absolute top notch legal advice and followed the securities and other exchange regulations."

On March 10, 2021, Fancamp issued a news release advising that due to the COVID-19 pandemic and its technical review, it would not hold its AGM until the second quarter of 2021 but stated that it was "eager to move forward with the AGM in a timely fashion".

On March 11, 2021, we sent a letter to Lavery concerning a number of matters including requesting copies of any communications with the TSXV with respect to the Arrangement, including whether, and if so when, conditional approval has been granted with respect to the issuances of shares in connection with the Arrangement.

On March 12, 2021, at a Board meeting, it was determined that certain individuals were no longer consultants and their options should be treated as having expired. It was also resolved (Dr. Smith voting against) to grant 2 million options to certain directors and officers so they would have a minimum of 1.75 million options to be closer to Dr. Smith who holds 2.4 million options (despite Dr. Smith's significantly longer tenure). As such, it was resolved that the individuals set out below would receive options exercisable at $0.10.

- Rajesh Sharma – 750,000 options
- Mark Billings – 600,000 options
- Debra Chapman – 200,000 options
- Enrico DeCesaere – 150,000 options
- Paul Ankcorn – 150,000 options
- Ashwath Mehra – 150,000 options

During the March 12, 2021 Board meeting, Mr. Billings reiterated that shareholder approval of the Fancamp shareholders would not be required. Dr. Smith repeated on several occasions that shareholders should have a voice. A resolution was passed fro Fancamp to engage Kingsdale Advisors as a communications firm for what Mr. Billings and Mr. Mehra described as a "harsh", "bloody", "brutal" proxy battle that will financially ruin Dr. Smith. Dr. Smith was told that he should not engage in such an endeavour at his age, a clear attempt at intimidation aimed at causing Dr. Smith to cease his actions opposing the proposed Arrangement.

On March 16, 2021, we wrote another letter to the Exchange updating them with respect to events that had occurred since our letter of February 26, 2021. We further advised that, in response to our previous

communications with the Exchange, we received a standard email on March 1, 2021 advising that due to confidentiality guidelines, the Exchange is not at liberty to disclose any information regarding any review or investigation. We noted in our March 16 letter that while the standard response may be appropriate where the complainant is only a shareholder, Dr. Smith is a director of the Company and has a right to such information. We repeated again, our right to seek a hearing and review before the Commission. We further expressed concern with waiting until the Arrangement closes and final approval is granted to seek a hearing and review based on the practical difficulties that arise with trying to unwind a transaction, in this case, a transaction involving the Exchange of securities of two reporting issuers.

On March 18, 2021, Fancamp issued a news release addressing a number of items. It reiterated that the "[t]he Transaction was the result of a transparent, credible and thorough process with input from Fancamp's independent financial and legal advisors" and again refers to the E&Y Fairness Opinion. There is no reference to Mr. Mehra's shareholdings in ScoZinc. The news release says that Fancamp is eager to hold its AGM and also states:

> While the Activists have demanded that the Corporation incur additional expenses by conducting an unnecessary shareholder vote on the Transaction or hold its AGM prior to completing the Transaction, under applicable securities regulations, the Transaction is an arm's length transaction. Accordingly, no approval is required from the shareholders of the Corporation.

Lastly, we note that the March 18, 2021 news release states that Dr. Smith has declined to engage in any meaningful dialogue with Fancamp. Dr. Smith's repeated response to any request to resolve this matter is that shareholders should be permitted to vote on the Arrangement and in response he has been met with threats.

h) The ScoZinc Circular

On March 18, 2021, ScoZinc filed its management information circular in connection with the Arrangement (the "**ScoZinc Circular**"). We note the following:

1. The ScoZinc Circular states that information pertaining to Fancamp has been furnished by Fancamp. The Fancamp Board was not provided with a draft of the ScoZinc Circular to review in advance of filing, or at all.

2. The background to the Arrangement Agreement contains errors or omissions as follows.

    a. There is no reference to the offer from ScoZinc to Fancamp on November 9, 2020 that is referenced in the E&Y Fairness Opinion. Dr. Smith has not been provided with a copy of the offer either.

    b. There is no reference to the negotiation of the exchange ratio from 10:1 to 6:1 as referenced in the Fancamp Board package for the December 4, 2020 meeting and in the Board minutes.

c. Dr. Smith was not aware that there was a non-disclosure agreement executed on November 11, 2020 as referenced and has not been provided a copy.

d. It says that a special committee of ScoZinc (the "**ScoZinc Special Committee**") recommended the Arrangement but it does not say when the ScoZinc Special Committee was formed, nor is there any discussion in either the background section or elsewhere about the ScoZinc Special Committee The ScoZinc Circular does not set out who was on the ScoZinc Special Committee, its mandate or its involvement in negotiations.

e. The Circular also says that "On February 5, 2021, the Fancamp Board approved the execution of the Arrangement Agreement, with Mr. Ashwath Mehra and Mr. Mark Haywood both abstained from voting on the Arrangement Agreement as directors of the Corporation." Mr. Haywood is not on the Board of Fancamp. Further, there is no reference to Dr. Smith having voted against the Arrangement.

3. The final order for court approval for the Arrangement is scheduled for Apr. 19, 2021. The Arrangement is expected to close on April 20, 2021.

4. The expenses of ScoZinc in connection with the Arrangement are expected to be approximately $50,000, including financial opinion fees and legal advisory fees, costs associated with applications to regulatory authorities and the preparation, printing and mailing of the proxy materials for the meeting. Such fees will be paid out of ScoZinc's general funds. Under the Term Sheet, each party was to bear their own expenses. The Arrangement Agreement confirms that each party will pay its own legal and accounting costs and expenses incurred pursuant to the Arrangement agreement. However, the Arrangement Agreement also provided that Fancamp's counsel could prepare the ScoZinc Circular, upon request.

5. The ScoZinc Circular does not disclose that Mr. Billings' resignation was only two days before the Fancamp Board was asked to first vote on the Arrangement.

6. There is a fairness opinion from Devon Capital (the "**Devon Capital Fairness Opinion**"):

a. There is only a single paragraph relating to experience (none of which on its face relates to mining).

b. In the Devon Capital Fairness Opinion, it states that Devon Capital owns 30,000 ScoZinc common shares and 30,000 share purchase warrants which it acquired in a private placement in May, 2020.

c. Devon Capital relied on the information provided to it without independent verification.

d. The Devon Capital Fairness Opinion provides no analysis and is simply conclusory.

Late on March 18, 2021, Dr. Smith received an email from Lavery, forwarding an email received from the Exchange's Compliance and Disclosure Department ("**C&D Department**") on March 17, 2021 seeking responses to various questions some of which related to our previous correspondence to the Exchange.

i) The Evans & Evans Report

On March 22, 2021, Evans & Evans Inc. ("**Evans & Evans**") produced a report (the "**Evans & Evans Report**") which was commissioned by Dr. Smith in order to comment and provide advice to Dr. Smith in connection with his review of the E&Y Fairness Opinion that was provided to Fancamp's Board. Extracts from the Evans & Evans Report received by Dr. Smith are set out below:

> 7.02 It would appear from the E&Y Presentation that little investigation and analysis was undertaken with respect to the underlying assets of Fancamp and a rationalization of the share price to net asset value ("**NAV**").
>
> 7.04 The E&Y Presentation does not include a Price to Net Asset Value ("**P/NAV**") for the guideline companies or precedent transactions. In the view of Evans & Evans, this is a standard approach for companies at the pre-feasibility or feasibility stage.
>
> 8.07 The lack of a consideration of a Market Approach for either of the Companies has the impact of potentially over-valuing ScoZinc and its assets and under-valuing Fancamp and its assets in the view of Evans & Evans.
>
> 9.02 Page 7 notes that "*All market data has been observed as at December 7, 2020*". As noted above there was a 10-week lag between the preparation of a fairness opinion and the signing of the Arrangement Agreement. While E&Y is under no obligation to update the E&Y Opinion, it is unclear if the Board of Directors of Fancamp sought assurance that the terms of the Arrangement remained fair as of the announcement effective date of February 12, 2021.[1]
>
> 9.07 Page 15 of the E&Y Presentation outlines the valuation approaches considered for both Companies. There is no discussion why a market approach was not considered for of the Companies. In the view of Evans & Evans, the lack of a market approach is unusual.
>
> 9.08 Related to the point above, the E&Y Opinion does not discuss the financing history of ScoZinc. In its 2018 Management and Discussion Analysis, ScoZinc disclosed, "*The Company is in the process of securing the necessary financing for restarting operations at its 100%- owned ScoZinc Mine, which has been on care and maintenance since the third quarter of 2013*." As can be seen from the following chart, zinc prices in 2018 exceed the prices used in the E&Y financial model. No discussion is provided to support why the investment attractiveness for the Scotia Mine has increased given it appears that ScoZinc has spent at least two years attempting to secure development financing.

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[1] No such confirmation was provided in connection with the February 5 Board meeting or at any other time to Dr. Smith. We further note that E&Y was not present at any Board meeting as reflected in the Board minutes from the December 4, December 18 and December 30 minutes.

9.11 Related to the point above, it would appear a market approach results in a much lower value for ScoZinc than implied by the combination of the Asset Approach and the Income Approach utilized by E&Y. Given the wide disparity in the values being placed on similar assets in the market, ScoZinc's limited financing history and the volatility of the zinc market, it is unusual, in the view of Evans & Evans not to consider a market approach. The value implied for the Scotia Mine in excess of the market capitalization and peer analysis, implies a premium for the Scotia Mine that is never rationalized.

j) Further Communications with the Exchange

On March 24, 2021, Dr. Smith issued a news release in response to Fancamp's March 18, 2021 news release. Dr. Smith reiterates that the shareholders should be able to vote on the Arrangement. In response to the comments regarding the E&Y Fairness Opinion, Dr. Smith asks that Fancamp share the E&Y Fairness Opinion with all shareholders so they can come to their own conclusions.

On March 24, 2021, Dr. Smith was copied on Fancamp's response to the letter received from the Exchange's C&D Department").

On March 26, 2021, we wrote to the Exchange addressing matters since our letter of March 16, 2021 and also responding to certain points raised in Fancamp's response to the Exchange's C&D Department, including relating to the Company's request to obtain an extension to hold its AGM in November, 2020 without informing Dr. Smith, advising of questions regarding concerns raised by Dr. Smith with respect to the Arrangement, noting that Fancamp did not disclose in its news releases Mr. Mehra's holdings in ScoZinc (ie. an insider). We concluded our letter by noting that given the Arrangement is expected to close on April 20, 2020 and should Dr. Smith or any other shareholder wish to file a hearing and review with the Commission in respect of the issuance of securities in connection with the proposed Arrangement, we would be required to do so in advance of that date in order to obtain relief prior to closing of the Arrangement and to avoid the difficulties arising in trying to unwind a transaction involving two publicly traded companies. As such, we asked that the Exchange require that Fancamp issue a news release sufficiently in advance of that date (we suggested at least 10 days prior) disclosing to its shareholders whether the Exchange will or will not require shareholder approval of the shares issued in connection with the Arrangement

k) Dr. Smith's Termination

On March 29, 2021, Fancamp issued a news release addressing a number of items relating to the Arrangement, referring again to the "transparent, credible and thorough process with input from Fancamp's independent financial and legal advisors", the E&Y Fairness Opinion, that the Arrangement is arm's length and that the Company will hold its AGM by June 30, 2021.

On April 1, 2021, Fancamp held a Board meeting, the agenda for which was delivered the day prior. At this Board meeting there was a heated discussion relating to terminating Dr. Smith's consulting agreement dated January 1, 2018 (the "**Consulting Agreement**"). Dr. Smith's fellow director Mr. Mehra reiterated previously stated erroneous opinions to Dr. Smith, to the effect that as a Board member, Dr. Smith has an obligation not to oppose the majority of the Board with respect to the proposed

Arrangement or a potential proxy fight and threatened Dr. Smith if he chose to continue. Mr. Mehra advised Dr. Smith that his actions which Dr. Smith may be taking in the interest of shareholders, were not in Dr. Smith's own interests. When Dr. Smith advised that he would not cease his attempts to have the proposed Arrangement put to a vote of shareholders the Board then went in camera and Dr. Smith left the meeting. What Dr. Smith understood was that the Board was suggesting they would not terminate his Consulting Agreement if he ceased his efforts to have the proposed Arrangement put to a vote of shareholders or in respect of any proxy fight.

Later in the day, Dr. Smith received a notice terminating the Consulting Agreement (the "**Termination Notice**"). The Termination Notice does not provide extensive details and requests that Dr. Smith resign as a director, failing which the Board will take all necessary actions to remove him.

The same day, Fancamp issued a news release announcing that Dr. Smith had been terminated for cause. The news release states among other things "The Corporation cannot justify spending shareholders' money to pay an individual who not only is refusing to do any work for the Corporation, but instead, is actively working against shareholders' interests." The news release does not note that it stopped paying Dr. Smith in December, 2020 when he first learned of and began opposing the Arrangement. Moreover, this statement appears contradictory to the statements made in the April 1, 2020 Board meeting where other board members accused Dr. Smith of being "on a crusade" to act in the shareholders' best interests.

The news release stated that it had reported Dr. Smith to the Commission for disclosing the December 31, 2020 financing in the news release of December 22, 2020.

The news release also contains many of the same assertions that Fancamp has previously made including that the Arrangement was the result of a transparent, credible and thorough process. The news release also refers to Dr. Smith's "self-serving actions to initiate an unnecessary, costly and time-consuming proxy contest".

On April 7, 2021, Dr. Smith issued a news release responding to the March 29, 2021 Fancamp news release. The news release referred to the Evans & Evans Report. It also reiterated concerns relating to the process surrounding the Arrangement. Once again, Dr. Smith questions Fancamp's motivations in not having shareholders vote on the Arrangement, namely to both ensure that the Arrangement closes and to ensure sufficient dilution to entrench their positions when shareholders are finally provided an opportunity to vote for the election of directors at Fancamp's long overdue AGM.

On April 8, 2021, we wrote to Lavery setting out Dr. Smith's response to the Termination Notice. Dr. Smith disputed that there were grounds to terminate the Consulting Agreement and reiterated that Dr. Smith is acting in what he believes to be the best interests of the Company and its shareholders.

With respect to the alleged disclosure of the Financing in the December 22, 2020 news release, we reviewed the facts relating to Dr. Smith's knowledge at that time, namely that he believed the private placement had not been authorized. More importantly, Dr. Smith did not disclose any actual proposed or planned private placement in his December 22, 2020 news release, he simply expressed his concern and warning against any dilutive financing or transaction. This is entirely consistent with the position Dr. Smith had repeatedly expressed to the Company and the Exchange in its November 11, 2020 letter prior

to having any knowledge of the Financing or the Arrangement. Entering into a financing or dilutive transaction is a tactic common in proxy contests and frequently opposed. A statement expressing concern about those types of tactics is entirely normal and consistent with our previous cautions to the Company and as expressed to the Exchange.

We noted that the Board does not have any authority to remove Dr. Smith as a director under its articles or the BCBCA. We further stated that if the Company wants to replace Dr. Smith it should call its AGM which Dr. Smith has been repeatedly requesting since he delivered his draft requisition in October, 2020.

On April 9, 2021 Dr. Smith issued a news release responding to the April 1, 2021 news release relating to his termination. In the news release, Dr. Smith reiterated his demand that the Board call the AGM and allow shareholders to vote on the Arrangement.

The same day we again wrote to the Exchange summarizing events since our letter of March 26, 2021. We advised that absent receiving any additional information it was our intention to file early next week an application for a hearing and review with the Commission in respect of the share issuances in connection with the proposed Arrangement in order to obtain relief prior to closing of the Arrangement.

PART 4 - ANALYSIS

a) Standing

As a shareholder, Dr. Smith is directly affected by the Decision for the purposes of section 28(1) of the Act.

Fancamp is also subject to a business combination and a proxy solicitation and accordingly Dr. Smith has standing to make an application for relief under section 114 and section 161.

Fancamp is a reporting issuer in British Columbia and the Commission is its principal regulator.

b) Stay

Section 165(5) permits the Commission to grant a stay of a decision under review until disposition of the hearing and review. This is also reflected in section 7.4 of BC Policy 15-601.

Section 161(2) and (3) allow the Commission to make a temporary order if the length of time to hold a hearing could be prejudicial to the public interest to be in effect for 15 days and 161(3) allows temporary orders to be extended.

The Commission has repeatedly addressed the difficulties in attempting to unwind a transaction after it has closed and recognized that shareholders should be permitted to exercise their rights under section 28 prior to the closing of a transaction. This is particularly so when both parties are publicly traded companies. Moreover, there is no actual prejudice to granting such an order as the outside date for the Arrangement is June 30, 2021, which coincides with the deadline to hold the AGM.

Dr. Smith seeks an order that Shareholder approval be required for the shares to be issued by Fancamp in connection with the Arrangement. Dr. Smith further says that that shareholder approval should be obtained at a meeting at which Fancamp's annual business is also addressed, including the election of directors.

c) Standard of Review

BC Policy 15-601 sets out a framework for the review of a decision of the Exchange. The Commission has discretion to exercise in reviewing Exchange decisions. Each panel in each application is empowered to apply BC Policy 15-601 with appropriate flexibility.

The Exchange has not yet produced the Exchange Record and as such, it is difficult to discern the basis on which the Exchange reached the Decision. However, it is submitted that the Exchange must have made an error in law, overlooked material evidence or the Commission's view of the public interest is different than that of the Exchange.

d) Basis for Orders sought

i) Shareholder Approval Should be Required in the Public Interest

Section 4.1 of Exchange Policy 1.1 provides:

> The policies of the Exchange have been put in place to serve as guidelines to Issuers seeking a listing on the Exchange and their professional advisers. However, the Exchange reserves the right to exercise its discretion in its application of these policies. The Exchange may waive or modify an existing requirement or impose additional requirements in applying its discretion. It may also take into consideration the public interest and any facts or situations unique to a particular party. Issuers are reminded that listing on the Exchange is a privilege and not a right. The Exchange may grant or deny an application, including an Application for Listing, notwithstanding the published policies of the Exchange.

Principles relating to the public interest have been discussed in several decisions involving whether to require shareholder approval and engages many of the concerns that are raised with the Arrangement (however, in our case, there is a lack of prejudice to requiring shareholder approval unlike is present in many other instances). *Bradstone Equity Partners Inc.* [1998] 23 BCSCWS 15 involved a decision where the BCSC overturned an exchange decision and held that shareholder approval of a transaction was required. In *Re Mercury Partners & Co.*, 2002 BCSECCOM 173, an exchange decision was overturned as shareholder approval should have been required of a transaction in the public interest:

Both *Bradstone* and *Mercury Partners* were considered in *Hudbay Minerals* (2009), 32 O.S.C.B. 373 where the Ontario Securities Commission (the "**OSC**") held that the Commission has accepted that shareholder interests are an important consideration when a stock exchange is deciding whether to require shareholder approval of a transaction by the shareholders of an acquiror. The OSC made the following comment.

> [248] While HudBay and Lundin may have the legal right to make these decisions under corporate law, they appear to us to be actions taken for the purpose of frustrating the legitimate exercise by HudBay shareholders of their right to require a shareholders meeting to consider the replacement of the HudBay board, in effect, a shareholder vote on the Transaction. If the Transaction is completed before the requisitioned shareholders meeting, the principal purpose for that meeting will be frustrated. That is manifestly unfair to the shareholders of HudBay. If shareholders wish to challenge a transaction by exercising their fundamental right to elect or remove directors in accordance with their legal rights to do so under corporate law, the board of directors should not be permitted to actively frustrate that objective in this manner.

The OSC concluded as follows:

> [255] The combined effect of the considerations discussed above raise serious concerns as to the fair treatment of HudBay shareholders. In this case, we believe that the fair treatment of HudBay shareholders is fundamentally more important than considerations such as deal or regulatory certainty in assessing the impact of the Transaction on the quality of the marketplace. We are satisfied that ensuring the fair treatment of HudBay shareholders in this case far outweighs any prejudice to HudBay or Lundin of requiring HudBay shareholder approval of the Transaction. We have carefully considered the implications of our decision for market participants and on market practices. In our view, far from undermining confidence in our capital markets, our decision will foster such confidence.
>
> …
>
> [258] Fair treatment of shareholders is a key consideration going to the quality and integrity of our capital markets. In our view, permitting the Transaction to proceed without a HudBay shareholder vote in these circumstances would be manifestly unfair to HudBay shareholders.

In *Eco Oro Minerals* 2017 ONSEC 23 in finding that the exchange should have required shareholder approval of a share issuance during a proxy fight. The OSC ordered that shareholder approval be required, despite that the transaction had closed, based on public interest considerations:

> [125] In our view, the public interest requires an evaluation of whether an issuance of shares by a listed issuer is for the purpose of entrenching management in the face of a proxy contest, thwarting the justified expectations of shareholders trusting in a system that appropriately promotes shareholder democracy and board accountability.
>
> …
>
> [153] Even if the effect on control was not so apparent, in the context of a close vote on a board election such as this, the TSX should generally exercise its discretion to require a vote to promote the fair treatment of shareholders and the quality and integrity of Ontario capital markets, an approach that is consistent with the Commission's decision in *HudBay*.

> [154] Whether management is pursuing the best course of action for Eco Oro or whether the Eco Oro Board should be reconstituted is for the shareholders to decide without management's ability to manipulate the vote. Allowing such conduct would directly affect the integrity of Ontario capital markets contrary to the Commission's mandate and the public interest.
>
> …
>
> [182] Any complexity in such a reversal is outweighed by the public interest in that it does not take away the right to have an appropriate vote of shareholders on the composition of Eco Oro's Board and the future direction of the company.

The discretion afforded to the Exchange in protecting the public interest was considered and recognized in *Chilean Metals Inc.*, 2019 BCSECCOM 24. The Commission stated:

> **The Exchange plays a significant role as a gatekeeper in our capital markets. Part of that role, as a gatekeeper (as set out in the Exchange's recognition order from the Commission), is the enforcement of its rules and policies in the public interest.** With the authority to enforce its rules and policies, must come some latitude for the Exchange to reasonably use its discretion to apply, waive or modify (through the imposition of conditions) those rules and policies in a nuanced manner, applicable to the specific circumstances of each situation. This concept is clearly reflected in Policy 1.1, section 4.1 of the TSXV Manual, as outlined above.

This includes the discretion to require shareholder approval even if it is not strictly required under any Exchange Policy. Fair treatment dictates that, even if not strictly required under Exchange policies, in the current situation, where this highly dilutive transaction is proposed to be undertaken in the face of a potential proxy fight, the Exchange should ensure that shareholders are given the opportunity to exercise their vote. The Exchange should have required that a shareholder meeting be held and shareholders be given the opportunity of choosing whether to approve the Arrangement, as well as being allowed to elect directors.

In considering the exercise of its discretion, the Exchange should have also considered Exchange Policy 3.1 and the fact that the directors of Fancamp were not acting in accordance with their general duties, including the requirement under s. 14.1 (and section 4.1 of policy 3.2) to hold its AGM and had not properly addressed insider interests as required under section 6.1.

Moreover, several concerns as identified in Canadian Securities Administrators Staff Notice 61-302 and *The Catalyst Group Inc.*, 2020 ONSEC 6 are engaged, including with respect to the fairness opinions obtained by each of Fancamp and ScoZinc and related disclosure.

The above principles are equally applicable in determining whether the Exchange should have exercised its discretion to require shareholder approval or if the Commission is independently exercising its s. 161 public interest jurisdiction.

ii) Defensive Tactic

National Policy 62-202 – *Takeover Bids-Defensive Tactics*. Section 1.1 provides

> In considering the merits of a take-over bid, there is the possibility that the interests of management of the target company will differ from those of its shareholders…
>
> Without limiting the foregoing, defensive tactics that may come under scrutiny if undertaken during the course of a bid, or immediately before a bid, if the board of directors has reason to believe that a bid might be imminent, include
>
> (c) entering into a contract other than in the normal course of business or taking corporate action other than in the normal course of business.

Similar principles apply when assessing the Arrangement in the context of a proxy fight. In *Eco Oro*[2] in addition to states that that the TSX should have allowed a pause to permit objections to be raised prior to closing during a proxy fight, the OSC also made the following comments regarding the consideration of defensive tactics:

> [246] Considered more broadly, the jurisdiction asserted in the present case, which involves a contest for control of a public company by way of a proxy contest, can be analogized to the jurisdiction of the Commission over change of control transactions effected by way of a takeover bid. Proxy contests and takeover bids provide alternative means of effecting a change of control of a public company that have very material consequences for shareholders. Issuances of shares as a defensive measure in the face of a contest for control of a public company to influence the outcome in management's favour are subject to review by the Commission. Private placements with this tactical motivation have more typically arisen in the context of takeover bids and may constitute defensive tactics contrary to the public interest and to National Policy 62-202 - *Take-Over Bids - Defensive Tactics* ***(National Policy 62-202)*****,** which provides:
>
> 1.1(4) ... defensive tactics that may come under scrutiny if undertaken during the course of a bid, or immediately before a bid, if the board of directors has reason to believe that a bid may be imminent, include
>
> (a) the issuance ... of ... securities representing a significant percentage of the outstanding securities of the target company.
>
> [247] Where a party wishes to contest such an issuance under Ontario securities law, they may seek to persuade the TSX to require shareholder approval, and if shareholder approval is not required by the TSX, to have that decision reviewed by the Commission. The Commission reviews the TSX's decision in the same manner as in this proceeding. Whether or not there is an exchange decision, a person may also seek to invoke the

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[2] *Eco Oro Minerals Corp*. 2017 ONSEC 23 see paras 87-106

> Commission's public interest jurisdiction under section 127 of the Act based on the underlying policies in *National Policy 62-202*, as the Applicants did here.
>
> [248] If the share issuance is challenged as a defensive tactic in relation to a take-over bid, the Commission must necessarily delve into the purpose of the issuance. In *Re Hecla Mining Co*. (2016), 39 OSCB 8927, the Commission and the BC Securities Commission provided a framework for considering these matters where the first inquiry is whether the issuance is clearly not for a defensive purpose and the onus is initially on the target company in that context.
>
> [249] When the Commission considers the public interest, whether under subsection 8(3) or section 127 of the Act, fairness to shareholders and therefore the integrity of the markets may well yield the same result in assessing a private placement designed to thwart a bid as it does in the case of an issuance designed to tip the balance in a proxy contest.
>
> [250] **Although *National Policy 62-202* addresses takeover bids, the public interest in promoting fairness to shareholders clearly extends to ensuring fair contests for control whether pursued through the proxy solicitation process for contested shareholder meetings or by way of a takeover bid. In considering whether to exercise our discretion to require shareholder approval based on our view of the public interest, control transactions, regardless of form, may involve similar public interest concerns.**
>
> [251] The policy considerations underlying the fair treatment of shareholders in the Act and as reflected in *National Policy 62-202* applicable to takeover bids are also applicable to proxy contests. The ability to craft terms and conditions to address inappropriate defensive tactics is necessary to fulfill the Commission's mandate to provide investor protection and to foster confidence in capital markets in connection with change of control transactions implemented through a bid or a vote.

As noted above, the OSC and the Commission set down a test to apply in determining whether to block a private placement which is a defensive tactic in *Hecla Mining Co* 2016 BCSECCOM 359, (2016), 39 OSCB 8927. The importance of corporate governance processes was recognized in *Hecla*, where the Commission stated:

> "88 **Public confidence in the capital markets requires us to consider the responsibilities of boards of directors in implementing corporate actions,** including the duties owed by directors to the corporation, the standard of care imposed on directors, and the deference afforded to the business judgment of properly informed directors **following appropriate governance processes**."

Moreover, it should also be recalled that there are different considerations as to whether to require shareholder approval which is the consideration for the Commission, as opposed to blocking a transaction or a lawsuit for wrongdoing relating to a transaction. In the face of a proxy fight and where shareholders have been denied the right to elect directors and considering the circumstances of the Arrangement, shareholder approval should be required.

iii) Other Exchange Policies Requiring Shareholder Approval

Under section 6.4 of Exchange Policy 3.2 the Exchange could have required shareholder approval of the Arrangement as a Change of Control or Change in Management.

The Arrangement should be treated as a Change of Business or Reverse Takeover under policy 5.2 requiring shareholder approval. Even if the definitions were not strictly met, the TSXV can nevertheless apply the policies, which would result in a requirement for shareholder approval under section 1.2(b) of Policy 5.2.

The Arrangement constitutes both a Reviewable Transaction and Fundamental Acquisition under policy 5.3 and shareholder approval should have been required. The Arrangement involves Non-Arm's Length Parties.

PART 5 - CONCLUSION

Contrary to applicable corporate and securities laws, Fancamp has continued to refuse to provide adequate disclosure to its shareholders or allow them the opportunity to vote on the Arrangement or the election of directors in the circumstances of a non-arm's length transaction. Accordingly, Dr. Smith requests that the Commission grant the orders sought as identified above.

Should you have any questions or require any additional information, please do not hesitate to contact the undersigned.

Yours truly,

FARRIS LLP

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